



Foreign, Commonwealth & Development Office



CONTRACT FOR SUPPLIER SERVICES

Section 1 - FORM OF CONTRACT

CONTRACT FOR : Education Research in Conflict and Protracted Crisis (ERICC)
PURCHASE ORDER NUMBER : PO 10084

THIS CONTRACT is made

BETWEEN : The Secretary of State for Foreign, Commonwealth and Development Affairs at the Foreign Commonwealth and Development Office, Abercrombie House, Eaglesham Road, East Kilbride, G75 8EA ("**FCDO**");

AND : International Rescue Committee UK ("**Supplier**") whose principal place of business, or, where the Supplier is a company, whose registered office is situate at 100 Wood Street, 6th Floor, London, EC2V 7AN.

(and FCDO and the Supplier together shall be the "**Parties**").

WHEREAS:

- A. FCDO requires the Supplier to provide the Services to FCDO (the "Recipient"); and
- B. the Supplier has agreed to provide the Services on the terms and conditions set out in this Contract.

IT IS HEREBY AGREED as follows:

1. Documents

This Contract shall be comprised of the following documents:

Section 1	Form of Contract
Section 2	Standard Terms and Conditions
Section 3	Terms of Reference
Section 4	Special Conditions
Section 5	Schedule of Prices

2. Contract Signature

If the original Form of Contract is not returned to the FCDO Contract Officer (as identified in Section 4) duly completed (including the applicable Purchase Order Number at the top of Section 1), and signed and dated on behalf of the Supplier within **15 working days** of the date of signature on behalf of FCDO, FCDO will be entitled, at its sole discretion, to declare this Contract void.

No payment will be made to the Supplier under this Contract until a copy of the Form of Contract, signed on behalf of the Supplier, is returned to the FCDO Contract Officer.

3. Commencement Date and End Date of Initial Period

The Services shall commence on 1st December 2021 and the end date of the Initial Period shall September 2020



Foreign, Commonwealth & Development Office



be 30th November 2024.

4. Financial Limit

Payments under this Contract shall not, in any circumstances, exceed £15,800,000.00 exclusive of any government tax, if applicable.

5. Programme Name

The Programme Name to which this Contract relates is Education Research in Conflict and Protracted Crisis (ERICC).

6. Time of the Essence

Time shall be of the essence as regards the performance by the Supplier of its obligations under this Contract.

Signed by an authorised signatory
for and on behalf of
The Secretary of State for Foreign,
Commonwealth and Development Affairs

REDACTED

Signed by an authorised signatory
for and on behalf of the Supplier

REDACTED

subForeign, Commonwealth and Development Office (FCDO)

Standard Terms and Conditions – Service Contracts

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Preliminaries

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Contract, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (Definitions) or the meaning set out in the relevant Schedule in which that capitalised expression appears.
- 1.2 If a capitalised expression does not have an interpretation in Schedule 1 (Definitions) or the relevant Schedule, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.3 The interpretation and construction of the Contract shall be subject to the following provisions:
- 1.3.1 clause headings shall not affect the interpretation or construction of the Contract;
 - 1.3.2 a reference to Law includes a reference to that Law as amended, consolidated or re-enacted from time to time;
 - 1.3.3 references to a **“person”** includes a natural person and a corporate or unincorporated body;
 - 1.3.4 words in the singular shall include the plural and vice versa;
 - 1.3.5 references to **“representations”** shall be construed as references to present facts, to **“warranties”** as references to present and future facts and to **“undertakings”** as references to obligations under this Contract;
 - 1.3.6 words **“including”, “other”, “in particular”, “for example”** and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words **“without limitation”**;
 - 1.3.7 a reference to one gender shall include a reference to the other genders; and
 - 1.3.8 where the context allows, references to Clauses are to clauses in this Contract and references to Sections are the sections of this Contract.
- 1.4 Except as expressly provided elsewhere in this Contract, and subject to Clause 1.5, in the event of and only to the extent of any conflict between each Section of this Contract, the conflict shall be resolved in accordance with the following order of precedence:
- 1.4.1 Section 1 (Form of Contract);
 - 1.4.2 Section 4 (Special Conditions);
 - 1.4.3 Section 3 (Terms of Reference);
 - 1.4.4 Section 2 (Standard Terms and Conditions (except Schedule 4 (Tender)));
 - 1.4.5 Section 5 (Schedule of Prices); and
 - 1.4.6 Schedule 4 (Tender).
- 1.5 Where Schedule 4 (Tender) contain provisions which are more favourable to FCDO in relation to (the rest of) this Contract, such provisions of the Tender shall prevail. FCDO shall in its absolute and sole discretion determine whether any provision in the Tender is more favourable in this context.
- 1.6 In entering into this Contract FCDO is acting as part of the Crown.

2. REPRESENTATIONS AND WARRANTIES

- 2.1 The Supplier represents and warrants that:
- 2.1.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
 - 2.1.2 it has full capacity and authority to enter into and to perform this Contract;
 - 2.1.3 this Contract is executed by its duly authorised representative;

- 2.1.4 it has all necessary consents and regulatory approvals, including in the country of performance, to enter into this Contract;
- 2.1.5 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Contract;
- 2.1.6 its execution, delivery and performance of its obligations under this Contract will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- 2.1.7 its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
- 2.1.8 all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the standard selection questionnaire and invitation to tender (if applicable), its Tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Contract or to the extent that the Supplier has otherwise disclosed to FCDO in writing prior to the date of this Contract;
- 2.1.9 it has notified FCDO in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;
- 2.1.10 it has all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-Contractor) to FCDO which are necessary for the performance of the Supplier's obligations under this Contract and/or the receipt of the Services by FCDO;
- 2.1.11 the Charges set out in Section 5 (Schedule of Prices) is/will be a true and accurate reflection of the costs and the Projected Profit Margin and the Supplier does not have any other internal financial model in relation to the Services inconsistent with the Charges;
- 2.1.12 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract;
- 2.1.13 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue
- 2.2 The representations and warranties set out in Clause 2.1 shall be deemed to be repeated by the Supplier on the Commencement Date (if later than the date of signature of this Contract) by reference to the facts then existing.
- 2.3 The representations and warranties set out in this Clause 2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Contract.
- 2.4 If at any time the Supplier becomes aware that a representation or warranty given by it under Clause 2.1 has been breached, is untrue or is misleading, it shall immediately notify FCDO of the relevant occurrence in sufficient detail to enable FCDO to make an accurate assessment of the situation.
- 2.5 the Supplier System and assets used in the performance of the Services will be:
 - 2.5.1 free of all encumbrances, any exceptions must be agreed in writing with FCDO; and
 - 2.5.2 Euro Compliant.
- 2.6 The Supplier shall at all times comply with Law in carrying out its obligations under this Contract.
- 2.7 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination which FCDO may have in respect of breach of that provision by the Supplier.
- 2.8 Except as expressly stated in this Contract, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

3. FINANCIAL LIMIT

- 3.1 The components which comprise the Financial Limit are set out in Section 5 (Schedule of Prices). No expenditure may be incurred in excess of the Financial Limit and no virements between components shown in the Section 5 (Schedule of Prices) are permitted without the prior written authority of the FCDO Contract Officer.

Term of Contract**4. CONTRACT TERM**

- 4.1 The duration of this Contract shall be the Term.
- 4.2 Where FCDO has specified an Extension Period in the Section 4 (Special Conditions), FCDO may extend this Contract for the Extension Period by providing written notice to the Supplier before the end of the Initial Period. The minimum period for the written notice shall be as specified in Section 4 (Special Conditions).

Provision of Services**5. OBLIGATIONS OF THE SUPPLIER**

- 5.1 The Supplier shall perform all its obligations under this Contract with all necessary skill, diligence, efficiency and economy to satisfy generally accepted professional standards expected from experts and in accordance with FCDO's Supply Partner Code of Conduct (Appendix B).
- 5.2 If the Supplier is a joint venture or an unincorporated consortium then each of the joint venture or consortium partners shall bear joint and several liability where liability may arise.
- 5.3 In performing its obligations under this Contract, neither the Supplier, nor any of its Affiliates, shall embarrass FCDO or otherwise bring FCDO into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in FCDO, regardless of whether or not such act or omission is related to the Supplier's obligations under this Contract.
- 5.4 The Supplier shall gather, collate, and provide such information and cooperation as FCDO may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Contract.
- 5.5 The Supplier shall ensure that the Services:
- 5.5.1 comply in all respects with the description of Services in Section 3 (Terms of Reference) or elsewhere in this Contract; and
 - 5.5.2 are supplied in accordance with the provisions of this Contract and the Tender.
- 5.6 The Supplier shall perform its obligations under this Contract in accordance with:
- 5.6.1 all applicable Law;
 - 5.6.2 Good Industry Practice;
 - 5.6.3 any policies provided by FCDO; and
 - 5.6.4 the Supplier's own established procedures and practices to the extent they do not conflict with the requirements of Clauses 5.6.1 to 5.6.3.
- 5.7 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that its Supplier Personnel also do, or refrain from doing, such act or thing.

Supplier Personnel and Supply Chain Matters**6. SUPPLIER PERSONNEL**

- 6.1 The Supplier shall not remove or replace any Key Personnel (including when carrying out its obligations under Clause 16 (Exit Management)) unless:
- 6.1.1 requested to do so by FCDO;
 - 6.1.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
 - 6.1.3 the person's employment or contractual arrangement with the Supplier or a Sub-Contractor is terminated by the employer for material breach of contract; or
 - 6.1.4 the Supplier obtains Approval (such Approval not to be unreasonably withheld or delayed).
- 6.2 The Supplier shall:
- 6.2.1 provide a list of the names of all Supplier Personnel requiring admission to FCDO Sites, specifying the capacity in which they require admission and giving such other particulars as FCDO may reasonably require;
 - 6.2.2 ensure that all Supplier Personnel:
 - (a) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - (b) are vetted in accordance with Good Industry Practice and in compliance with the Staff Vetting Procedure;

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/301861/Security_Policy_for_Contractors_Consultants_Suppliers.pdf
 - (c) shall be subject to pre-employment checks that include, as a minimum, employment history for the last three years, identity checks, unspent criminal convictions and right to work (including nationality and immigration status);
 - (d) obey all lawful instructions and reasonable directions of FCDO (including, if so required by FCDO, the ICT Policy) and provide the Services to the reasonable satisfaction of FCDO; and
 - (e) comply with:
 - (i) all reasonable requirements of FCDO concerning conduct at FCDO Sites, including any security requirements; and
 - (ii) any FCDO policies, provided to the Supplier or Supplier Personnel from time to time
 - 6.2.3 subject to Schedule 2 (Staff Transfer), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or Contractors of FCDO;
 - 6.2.4 be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Contract shall be a Default by the Supplier;
 - 6.2.5 use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
 - 6.2.6 subject to Clause 6.1, replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
 - 6.2.7 bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
 - 6.2.8 procure that the Supplier Personnel shall vacate FCDO Sites immediately upon the Expiry Date.
- 6.3 If FCDO reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Contract, it may:
- 6.3.1 refuse admission to the relevant person(s) to FCDO Sites and/or
 - 6.3.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).
 - 6.3.3 require the Supplier to replace the relevant person(s) without direct or indirect charge to FCDO and the Supplier shall fully indemnify and hold FCDO harmless against any claims of any kind that may arise with regard to the replacement of such Supplier Personnel.

7. SUB-CONTRACTORS AND EXCLUSIVITY

- 7.1 FCDO has consented to the appointment of the Sub-Contractors set out in Section 4 (Special Conditions).
- 7.2 The Supplier shall exercise due skill and care in the selection of any Sub-Contractors to ensure that the Supplier is able to:
- 7.2.1 manage any Sub-Contracts in accordance with Good Industry Practice;
 - 7.2.2 comply with its obligations under this Contract in the provision of the Services; and
 - 7.2.3 assign, novate or otherwise transfer to FCDO or any Replacement Supplier any of its rights and/or obligations under each Sub-Contract that relates exclusively to this Contract.
- 7.3 Prior to sub-contacting any of its obligations under this Contract, the Supplier shall both act in accordance with Clause 8 below and notify FCDO and provide FCDO with:
- 7.3.1 the proposed Sub-Contractor's name, registered office and company registration number;
 - 7.3.2 the scope of any Services to be provided by the proposed Sub-Contractor; and
 - 7.3.3 where the proposed Sub-Contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of FCDO that the proposed Sub-Contract has been agreed on "arm's-length" terms.
- 7.4 If requested by FCDO within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 7.3, the Supplier shall also provide:
- 7.4.1 a copy of the proposed Sub-Contract; and
 - 7.4.2 any further information reasonably requested by FCDO.
- 7.5 FCDO may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 7.3 (or, if later, receipt of any further information requested pursuant to Clause 7.4), object to the appointment of the relevant Sub-Contractor if they consider that:
- 7.5.1 the appointment of a proposed Sub-Contractor may prejudice the provision of the Services or may be contrary to the interests of FCDO under this Contract;
 - 7.5.2 the proposed Sub-Contractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
 - 7.5.3 the proposed Sub-Contractor employs unfit persons,
- in which case, the Supplier shall not proceed with the proposed appointment.
- 7.6 If FCDO has not notified the Supplier that it objects to the proposed Sub-Contractor's appointment by the later of ten (10) Working Days of receipt of:
- 7.6.1 the Supplier's notice issued pursuant to Clause 7.3; or
 - 7.6.2 any further information requested by FCDO pursuant to Clause 7.4,
- the Supplier may proceed with the proposed appointment.
- 7.7 The Supplier shall ensure that all Sub-Contracts contain provisions:
- 7.7.1 requiring the Sub-Contractor to comply with the FCDO's Supply Partner Code of Conduct (Appendix B) at all times;
 - 7.7.2 requiring the Supplier to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice;

- 7.7.3 requiring that any invoices submitted by a Sub-Contractor shall be considered and verified by the Supplier in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed;
- 7.7.4 conferring a right to FCDO to publish the Supplier's compliance with its obligation to pay undisputed invoices to the Sub-Contractor within the specified payment period;
- 7.7.5 giving the Supplier a right to terminate the Sub-Contract if the Sub-Contractor fails to comply in the performance of the Sub-Contract with legal obligations in the fields of environmental, social or labour law; and
- 7.7.6 requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by this Clause 7.7.

7.8 The Supplier shall:

- 7.8.1 pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days from the receipt of a valid invoice;
- 7.8.2 include within the Performance Monitoring Reports required under Clause 13.3 a summary of its compliance with this Clause 7.8.1, such data to be certified each quarter by a director of the Supplier as being accurate and not misleading;
- 7.8.3 not include in any Sub-Contract any provision the effect of which would be to limit or restrict the ability of the Sub-Contractor to contract directly with FCDO, a Replacement Supplier, or with any other organisation and Sub-Contractors shall be free to assert their rights independently regarding contractual exclusivity.
- 7.8.4 where Sub-Contracting has been Approved by FCDO, promptly provide FCDO with written confirmation from each Sub-Contractor identified within Section 4 of the Contract that they accept provisions set out at Clauses 50.1 to 50.7, which shall be included in all Supplier Sub-Contracts.

8. VISIBILITY OF SUBCONTRACT OPPORTUNITIES

8.1 The Supplier shall:

- 8.1.1 subject to Clause 8.3, advertise on Contracts Finder all subcontract opportunities arising from or in connection with the provision of the Goods and/or Services and/or Works above a minimum threshold of £25,000 that arise during the Term;
- 8.1.2 within 90 days of awarding a Sub-Contract to a Sub-Contractor, update the notice on Contracts Finder with details of the successful Sub-Contractor;
- 8.1.3 monitor the number, type and value of the Sub-Contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;
- 8.1.4 provide reports on the information at clause 8.1.3 to FCDO in the format and frequency as reasonably specified by FCDO; and
- 8.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.

8.2 Each advert referred to at Clause 8.1 above shall provide a full and detailed description of the Sub-Contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.

8.3 The obligation at Clause 8.1 shall only apply in respect of Sub-Contract opportunities arising after the Commencement Date.

8.4 Notwithstanding Clause 8.1, FCDO may by giving its Approval, agree that a Sub-Contract opportunity is not required to be advertised on Contracts Finder.

9. STAFF TRANSFER

9.1 The Parties agree that:

- 9.1.1 where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 2 (Staff Transfer) shall apply as follows:
 - (a) where the Relevant Transfer involves the transfer of Transferring FCDO Employees, Part A of Schedule 2 (Staff Transfer) shall apply;

- (b) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B of Schedule 2 (Staff Transfer) shall apply;
- (c) where the Relevant Transfer involves the transfer of Transferring FCDO Employees and Transferring Former Supplier Employees, Parts A and B of Schedule 2 (Staff Transfer) shall apply; and
- (d) Part C of Schedule 2 (Staff Transfer) shall not apply.

9.1.2 where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Schedule 2 (Staff Transfer) shall apply and Parts A and B of Schedule 2 (Staff Transfer) shall not apply; and

9.1.3 Part D of Schedule 2 (Staff Transfer) shall apply on the expiry or termination of the Services or any part of the Services;

9.2 The Supplier shall both during and after the Term indemnify FCDO against all Employee Liabilities that may arise as a result of any claims brought against FCDO by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel.

10. DUTY OF CARE

10.1 The Supplier owes a duty of care to the Supplier Personnel and is responsible for the health, safety, security of life and property and general wellbeing of such persons and their property and this includes where the Supplier Personnel carry out the Services.

10.2 The Supplier warrants that it has and will throughout the duration of the Contract:

10.2.1 carry out the appropriate risk assessment with regard to its delivery of the Services;

10.2.2 provide the Supplier Personnel with adequate information, instruction, training and supervision;

10.2.3 have appropriate emergency procedures in place to enable their provision of the Services so as to prevent damage to the Supplier Personnel's health, safety, security of life and property and general wellbeing.

10.3 The provision of information of any kind whatsoever by FCDO to the Supplier shall not in any respect relieve the Supplier from responsibility for its obligations under this Clause 10. The positive evaluation of the Supplier's proposal for the provision of the Services and the award of this Contract is not an endorsement by FCDO of any arrangements which the Supplier has made for the health, safety, security of life and property and wellbeing of the Supplier Personnel in relation to the provision of the Services.

10.4 The Supplier acknowledges that the FCDO accepts no responsibility for the health, safety, security of life and property and general wellbeing of the Supplier Personnel with regard to the Supplier Personnel carrying out the Services under this Contract.

10.5 The Supplier will ensure that such insurance arrangements as are made to cover the Supplier Personnel, or any person employed or otherwise engaged by the Supplier, and pursuant to the Suppliers duty of care as referred to in this Clause 10, are reasonable and prudent in all circumstances, including in respect of death, injury or disablement, and emergency medical expenses.

10.6 The costs of any insurance specifically taken out by the Supplier to support the performance of this Contract in relation to the Supplier's duty of care may be included as part of the management costs of the project, and must be separately identified in all financial reporting relating to the project.

10.7 Where FCDO is providing any specific security arrangements for the Supplier or Supplier Personnel in relation to the Contract, these will be as detailed in the Section 3 (Terms of Reference).

10.8 The Supplier shall provide training on a continuing basis for all Supplier Personnel, in compliance with the Security Policy and the security plan.

11. PROCUREMENT OF EQUIPMENT

11.1 The Supplier shall ensure that procurement of goods and equipment shall:

11.1.1 be undertaken in accordance with best practice principles of openness fairness and transparency;

11.1.2 achieve "Value for Money" defined as the optimum combination of whole-life cost and quality to meet requirements in a fully transparent manner and the procurement may be subject to audit by FCDO;

11.1.3 be carried out using strict due diligence processes that ensure the protection of FCDO's interests and reputation, with particular emphasis on anti-terrorism, anti-corruption and fraud throughout the delivery chain; and

11.1.4 be on the basis that the ownership of Equipment shall vest in FCDO, and shall be so marked.

12. USE OF AND RESPONSIBILITY FOR EQUIPMENT

- 12.1 Equipment may only be used in providing the Services and shall be safely kept and maintained. Personal use of Equipment by the Supplier is not permitted without Approval.
- 12.2 The Supplier shall keep an up to date inventory of the Equipment, its condition and location, and make such inventory available to FCDO immediately on request.
- 12.3 Subject to Clause 12.4 the Supplier shall be responsible for all loss or damage to Equipment other than that caused by fair wear and tear. The Supplier shall notify FCDO immediately the Supplier becomes aware of any loss of or damage to Equipment
- 12.4 Except as required by law or circumstance, the Supplier shall not insure Equipment. FCDO shall bear the risk in respect of loss or damage provided such loss or damage was not due to the Supplier's negligence and provided the Supplier obtains and pays to FCDO such proper compensation as may be due from any third party in respect of such loss or damage to the Equipment.
- 12.5 The Supplier shall obtain FCDO's instructions on the disposal of Equipment and comply with such instructions.

Contract Governance

13. MONITORING OF CONTRACT PERFORMANCE

- 13.1 Unless Section 4 (Special Conditions) specifies that obligations relating to the monitoring of Contract performance shall be those set out in Section 3 (Terms of Reference), the remaining provisions of this Clause 13 shall apply.
- 13.2 Within twenty (20) Working Days of the Commencement Date the Supplier shall provide FCDO with details of how the process in respect of the monitoring and reporting of the performance of the Supplier's obligations under this Contract will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.
- 13.3 The Supplier shall provide FCDO with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process and timescales agreed pursuant to Clause 13.2 above which shall contain, as a minimum, the following information:
- 13.3.1 details of compliance with its obligations under Clause 7.8.2
 - 13.3.2 details of compliance with any additional obligations set out in Section 3 (Terms of Reference);
 - 13.3.3 details of compliance with its obligations under Annex 1b of Section 2 (Contractual Annual Compliance Declaration); and
 - 13.3.4 such other details as FCDO may reasonably require from time to time.
- 13.4 The Parties shall attend meetings to discuss Performance Monitoring Reports ("**Performance Review Meetings**") on a monthly basis (unless otherwise agreed). The Performance Review Meetings will be the forum for the review by the Supplier and FCDO of the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):
- 13.4.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier;
 - 13.4.2 take place at such location and time (within normal business hours) as FCDO shall reasonably require unless otherwise agreed in advance;
 - 13.4.3 be attended by the Supplier's Contract Officer and the FCDO's Project Officer; and
 - 13.4.4 be fully minuted by the Supplier. The prepared minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the FCDO Project Officer and any other recipients agreed at the relevant meeting. The minutes of the preceding month's Performance Review Meeting will be agreed and signed by both the Supplier's Contract Officer and the FCDO's Project Officer at each meeting.
- 13.5 In order to assess the level of performance of the Supplier, FCDO may undertake satisfaction surveys in respect of the Supplier's provision of the Services and FCDO shall be entitled to notify the Supplier of any aspects of their performance of the provision of the Services which the responses to the satisfaction surveys reasonably suggest are not in accordance with this Contract.
- ### **14. PROGRESS & FINANCIAL REPORTS**
- 14.1 Where progress and financial reports are to be submitted under the Contract, the Supplier shall render those reports at such time and in such form as may be specified by FCDO or where not specified by FCDO, as otherwise agreed between the Parties.

15. OPEN BOOK ACCOUNTING AND AUDIT

- 15.1 The Supplier shall keep and maintain for seven (7) years after the expiry of the Term (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Contract including the Services provided under it, any Sub-Contracts and the amounts paid by FCDO.
- 15.2 If so stated in Section 3 (Terms of Reference), FCDO shall be entitled to apply the principles of open book contract management set out in Procurement Policy Note 05/16 (<https://www.gov.uk/government/publications/procurement-policy-note-0516-open-book-contact-management>), or any other replacement guidance or policy issued from time to time to this Contract. FCDO shall apply the appropriate tier level which, in FCDO's reasonable opinion, is commensurate with the delivery model of the Services and the Supplier shall comply with the principles etc. (as more particular described in the OBMC guidance).
- 15.3 The Supplier shall:
- 15.3.1 keep the records and accounts referred to in Clause 15.1 in accordance with Good Industry Practice and Law; and
- 15.3.2 afford FCDO and/or its Auditors access to the records and accounts referred to in Clause 15.1 at the Supplier's premises and/or provide records and accounts (including copies of the Supplier's published accounts) or copies of the same, as may be required by any of the Auditors from time to time during the Term and the period specified in Clause 15.1, in order that the Auditor(s) may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this Contract including in order to:
- (a) verify the accuracy of the Charges and any other amounts payable by FCDO under this Contract (and proposed or actual variations to them in accordance with this Contract);
 - (b) verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Services;
 - (c) verify the Open Book Data;
 - (d) verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;
 - (e) identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances FCDO shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
 - (f) identify or investigate any circumstances which may impact upon the financial stability of the Supplier and/or any Sub-Contractors or their ability to perform the Services;
 - (g) obtain such information as is necessary to fulfil FCDO's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
 - (h) review any books of account and the internal contract management accounts kept by the Supplier in connection with this Contract;
 - (i) carry out FCDO's internal and statutory audits and to prepare, examine and/or certify FCDO's annual and interim reports and accounts;
 - (j) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which FCDO has used its resources;
 - (k) review any records relating to the Supplier's performance of the provision of the Services and to verify that these reflect the Supplier's own internal reports and records;
 - (l) verify the accuracy and completeness of any information delivered or required by this Contract;
 - (m) review the Supplier's quality management systems (including any quality manuals and procedures);
 - (n) review the Supplier's compliance with any standards referred to in this Contract or applicable to the provision of the Services;

- (o) inspect any of FCDO's assets, including FCDO's IPRs, equipment and facilities, for the purposes of ensuring that any of FCDO's assets are secure and that any register of assets is up to date; and/or
- (p) review the integrity, confidentiality and security of FCDO Data.

- 15.4 FCDO shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of FCDO.
- 15.5 Subject to the Supplier's rights in respect of Confidential Information, the Supplier shall on demand provide the Auditor(s) with all reasonable co-operation and assistance in:
- 15.5.1 all reasonable information requested by FCDO within the scope of the audit;
 - 15.5.2 reasonable access to sites controlled by the Supplier and to any Supplier Equipment used in the provision of the Services; and
 - 15.5.3 access to the Supplier Personnel.
- 15.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 15, unless the audit reveals a Default by the Supplier in which case the Supplier shall reimburse FCDO for the FCDO's reasonable costs incurred in relation to the audit.

16. EXIT MANAGEMENT

- 16.1 On reasonable notice at any point during the Term, the Supplier shall provide to FCDO and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by FCDO of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:
- 16.1.1 details of the Service(s);
 - 16.1.2 a copy of the Register, updated by the Supplier up to the date of delivery of such Registers;
 - 16.1.3 an inventory of FCDO Data in the Supplier's possession or control;
 - 16.1.4 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
 - 16.1.5 a list of on-going and/or threatened disputes in relation to the provision of the Services;
 - 16.1.6 all information relating to Transferring Supplier Employees or those who may be Transferring Supplier Employees required to be provided by the Supplier under this Contract such information to include the Staffing Information as defined in Schedule 2 (Staff Transfer); and
 - 16.1.7 such other material and information as FCDO shall reasonably require,
- (together, the "**Exit Information**").
- 16.2 The Supplier acknowledges that FCDO may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom FCDO is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that FCDO may not disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-Contractors' prices or costs).
- 16.3 if the Exit Information materially changes from the Exit Information previously provided and it could reasonably adversely affect:
- 16.3.1 the provision of the Services; and/or
 - 16.3.2 the delivery of the exit services/exit plan; and/or
 - 16.3.3 any re-tender exercise by FCDO,
- then the Supplier shall notify FCDO within a reasonable period of time and consult and shall consult with FCDO regarding such proposed material changes and provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from FCDO.
- 16.4 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:

- 16.4.1 prepare an informed offer for those Services; and
- 16.4.2 not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).
- 16.5 The Supplier shall, within three (3) months after the Commencement Date, deliver to FCDO an Exit Plan which:
 - 16.5.1 sets out the Supplier's proposed methodology for achieving an orderly transition of the Services from the Supplier to FCDO and/or its Replacement Supplier on the expiry or termination of this Contract;
 - 16.5.2 complies with the requirements set out in Clause 16.7 below;
 - 16.5.3 is otherwise reasonably satisfactory to FCDO.
- 16.6 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 16.7 Unless otherwise specified by FCDO, the Exit Plan shall set out, as a minimum:
 - 16.7.1 how the Exit Information is obtained;
 - 16.7.2 the management structure to be employed during both transfer and cessation of the Services;
 - 16.7.3 the management structure to be employed whilst carrying out the activities to be performed by the Supplier as identified in the Exit Plan;
 - 16.7.4 a detailed description of both the transfer and cessation processes, including a timetable;
 - 16.7.5 how the Services will transfer to the Replacement Supplier and/or FCDO, including details of the processes, documentation, data transfer, systems migration, security and the segregation of FCDO's technology components from any technology components operated by the Supplier or its Sub-Contractors (where applicable);
 - 16.7.6 details of contracts (if any) which will be available for transfer to FCDO and/or the Replacement Supplier upon the Expiry Date together with any reasonable costs required to effect such transfer (and the Supplier agrees that all assets and contracts used by the Supplier in connection with the provision of the Services will be available for such transfer);
 - 16.7.7 proposals for the training of key personnel of the Replacement Supplier in connection with the continuation of the provision of the Services following the Expiry Date charged at rates agreed between the Parties at that time;
 - 16.7.8 proposals for providing FCDO or a Replacement Supplier copies of all documentation:
 - (a) used in the provision of the Services and necessarily required for the continued use of the Replacement Services, in which the Intellectual Property Rights are owned by the Supplier; and
 - (b) relating to the use and operation of the Services;
 - 16.7.9 proposals for the assignment or novation of the provision of all services, leases, maintenance agreements and support agreements utilised by the Supplier in connection with the performance of the supply of the Services;
 - 16.7.10 proposals for the identification and return of all Equipment in the possession of and/or control of the Supplier or any third party (including any Sub-Contractor);
 - 16.7.11 proposals for the disposal of any redundant Services and materials;
 - 16.7.12 procedures to:
 - (a) deal with requests made by FCDO and/or a Replacement Supplier for Staffing Information pursuant to Schedule 2 (Staff Transfer);
 - (b) determine which Supplier Personnel are or are likely to become Transferring Supplier Employees; and
 - (c) identify or develop any measures for the purpose of the Employment Regulations envisaged in respect of Transferring Supplier Employees;

- 16.7.13 how each of the issues set out in this Clause 16 will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or FCDO with the aim of ensuring that there is no disruption to or degradation of the Services;
- 16.7.14 proposals for the supply of any other information or assistance reasonably required by FCDO or a Replacement Supplier in order to effect an orderly handover of the provision of the Services.

PAYMENT AND TAXATION

17. Charges

- 17.1 In consideration of the Supplier carrying out its obligations under this Contract, including the provision of the Services, FCDO shall pay the undisputed Charges in accordance with the pricing and payment profile set out in Section 5 (Schedule of Prices) and the invoicing procedure set out in Clause 22.
- 17.2 If FCDO fails to pay any undisputed Charges properly invoiced under this Contract, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

18. VAT

- 18.1 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by FCDO following delivery of a Valid Invoice.
- 18.2 The Supplier shall indemnify FCDO on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on FCDO at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Contract. Any amounts due shall be paid in cleared funds by the Supplier to FCDO not less than five (5) Working Days before the date upon which the tax or other liability is payable by FCDO.

19. RETENTION AND SET OFF

- 19.1 FCDO may retain or set off any amount owed to it by the Supplier against any amount due to the Supplier under this Contract or under any other agreement between the Supplier and FCDO.
- 19.2 If FCDO wishes to exercise its right pursuant to Clause 19.1 it shall give at least 21 days' notice of its intention to do so, setting out the reasons for retaining or setting off the relevant Charges.
- 19.3 The Supplier shall make any payments due to FCDO without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has obtained a sealed court order requiring an amount equal to such deduction to be paid by FCDO to the Supplier

20. SUPPLIER PROFIT

- 20.1 On completion of each Contract Year (or on a six-monthly basis if requested by FCDO giving reasonable written notice), and for any Variation, the Supplier is required to send a written report (the "**Actual Profit Margin Report**") in an overall format determined by FCDO but to include an updated cost pro-forma template, setting out the Actual Profit Margin including any change to the Projected Profit Margin.
- 20.2 Where the Actual Profit Margin Report identifies that the Supplier has exceeded the Projected Profit Margin over the period set out in the Actual Profit Margin Report ("the **Exceeded Amount**"), the Parties shall agree within a reasonable period of time following receipt by FCDO of the Actual Profit Margin Report how the Exceeded Amount should be apportioned. Where the Parties are unable to agree FCDO shall be entitled to require the Supplier to do any of the following:
- 20.2.1 pay FCDO an amount equal to the difference between the Projected Profit Margin and the Exceeded Amount; or
- 20.2.2 redirect an amount equal to the difference between the Projected Profit Margin and the Exceeded Amount back in to the programme being delivered as part of the Services; or
- 20.2.3 adjust the Charges.

21. SATISFACTORY PERFORMANCE

- 21.1 Payments made pursuant to Clause 17.1 are subject to the satisfactory performance by the Supplier of its obligations under the Contract as determined by the FCDO Project Officer in addition to verification by the FCDO Project Officer that all prior payments made to the Supplier under this Contract were properly due.
- 21.2 If for any reason the Services are not provided in accordance with this Contract, or FCDO is dissatisfied with the performance of this Contract, FCDO, without prejudice to any other rights or remedies howsoever arising, shall be entitled to withhold payment of the applicable Charges for the Services that were not so provided until such time as the applicable Services are provided in accordance with this Contract.
- 21.3 Should FCDO determine after paying for a particular part of the Services that this has not been provided in accordance with this Contract, FCDO may recover, or withhold from further payments, an amount not exceeding the applicable Charges paid for that part of the Service until the unsatisfactory part of the Services is remedied to FCDO's satisfaction.

22. PAYMENTS & INVOICING INSTRUCTIONS

- 22.1 Subject to FCDO being satisfied that the Supplier is or has been carrying out their duties, obligations and responsibilities under this Contract, the applicable Charges shall be paid within 30 days of receipt of an undisputed Valid Invoice and payment shall be made in sterling in the UK or any other currency in any other country as determined from FCDO from time to time.
- 22.2 Expenses (if any) arising in foreign currency shall be reimbursed at the exchange rate stated in OANDA (www.oanda.com) on the Friday immediately preceding the date on which the purchase was made or services acquired by the Supplier or, if this took place on a Friday, at the rate so stated on that day.
- 22.3 Unless otherwise expressly provided in Section 4 (Special Conditions) or Section 5 (Schedule of Prices), invoices should be submitted electronically monthly in arrears to the Accounts Payable Section, FCDO Financial Management Group e-invoicing@FCDO.gov.uk, and in accordance with this Clause 22.
- 22.4 FCDO shall unless otherwise expressly provided in Section 4 (Special Conditions) make payments due by direct credit through the UK Bank Clearing Systems (BACS). For an invoice to be valid, it must contain:
- 22.4.1 details of the bank account to which payments are to be made (i.e. name and address of bank, sort code, account name and number).
 - 22.4.2 the date of the invoice;
 - 22.4.3 a unique invoice number;
 - 22.4.4 the period(s) to which the relevant charge(s) relate;
 - 22.4.5 the correct reference for this Agreement and the purchase order to which it relates;
 - 22.4.6 a contact name and telephone number of a responsible person in the supplier's finance department;
 - 22.4.7 a detailed breakdown of the Services and the appropriate Charges and supported by any other documentation required by FCDO to substantiate the invoice.
- 22.5 All Valid Invoices should correspond with the budget lines identified in Section 5 (Schedule of Prices) of this Contract.
- 22.6 FCDO may request proof of purchase in respect of any item and shall be entitled to refuse to meet a claim if this cannot be provided.
- 22.7 Where an invoice is not a Valid Invoice it may be rejected by FCDO and in any event shall be liable to query and delay in payment. FCDO reserves the right to not pay any amount due in respect of any invoice received by FCDO more than 90 days after the day of the Supplier becoming entitled to invoice for the payment to which it relates.
- ## **23. UNITED KINGDOM INCOME TAX AND NATIONAL INSURANCE CONTRIBUTIONS**
- 23.1 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Contract, the Supplier shall:
- 23.1.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration;

- 23.1.2 indemnify FCDO against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Supplier Personnel.

24. TAX COMPLIANCE

- 24.1 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- 24.1.1 notify FCDO in writing of such fact within 5 Working Days of its occurrence;
- 24.1.2 promptly provide to FCDO:
- (a) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (b) such other information in relation to the Occasion of Tax Non-Compliance as FCDO may reasonably require.

Intellectual Property, Security and Information

25. INTELLECTUAL PROPERTY RIGHTS

- 25.1 Save as expressly granted elsewhere under this Contract:
- 25.1.1 FCDO shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:
- (a) the Supplier Background IPR; and
 - (b) the Third Party IPR.
- 25.1.2 the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of FCDO or its licensors, including the:
- (a) FCDO Background IPR;
 - (b) FCDO Data;
 - (c) Project Specific IPRs; and
 - (d) Programme Name and any rights and interests in it at all times.
- 25.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 25.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).
- 25.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.
- 25.4 Any Project Specific IPRs created under this Contract shall be owned by FCDO. FCDO grants the Supplier a licence to use any FCDO Background IPR and Project Specific IPRs for the purpose of fulfilling its obligations under this Contract during its Term.
- 25.5 Subject to Clause 25.7, to the extent that it is necessary to enable FCDO to obtain the full benefits of ownership of the Project Specific IPRs, the Supplier hereby grants to FCDO and shall procure that any relevant third party licensor shall grant to FCDO a perpetual, irrevocable, non-exclusive, assignable, royalty-free licence to use, sub-license and/or commercially exploit any Supplier Background IPRs or Third Party IPRs that are embedded in or which are an integral part of the Project Specific IPR Items.
- 25.6 The Supplier shall promptly notify FCDO if it is reasonably believes that it will be unable to grant or procure the grant of the licences set out in Clause 25.5 above and the Supplier shall provide full details of the adverse effect this may have on FCDO's use of the Project Specific IPRs.
- 25.7 Where the Supplier is unable to comply with Clause 25.5, the Supplier shall refrain from embedding or integrating any Supplier Background IPRs and/or Third Party IPRs with the Project Specific IPRs in such a way that could affect FCDO obtaining full benefit of the ownership of those Project Specific IPRs, except where FCDO has provided express written Approval to do so.

25.8 The Supplier shall, during and after the Term, on written demand, indemnify FCDO against all Losses incurred by, awarded against, or agreed to be paid by FCDO (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.

25.9 If an IPR Claim is made or anticipated, the Supplier must at its own expense and FCDO's sole option, either:

25.9.1 procure for FCDO the rights in Clause 25.5 without infringing the IPR of any third party; or

25.9.2 replace or modify the relevant item with non-infringing substitutes with no detriment to functionality of performance of the Services.

26. SECURITY REQUIREMENTS

26.1 The Supplier shall comply, and shall procure that the Supplier Personnel comply, with the Security Policy and any security plan requested by FCDO, and the Supplier shall ensure that the security plan produced by the Supplier fully complies with the Security Policy.

26.2 The Supplier shall ensure that it keeps up to date with the latest version of the Security Policy.

26.3 If the Supplier believes that a change to the Security Policy will have a material and unavoidable cost implication to the Services it may submit a variation in accordance with Clause 38. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in discussion with the FCDO Contract Officer.

26.4 Until and/or unless a change to the Charges is agreed by FCDO pursuant to Clause 26.3 the Supplier shall continue to perform the Services in accordance with its obligations and for the Charges applicable prior to any change request.

27. MALICIOUS SOFTWARE

27.1 The Supplier shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.

27.2 Notwithstanding Clause 27.1 if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of FCDO Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.

27.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 27.2 shall be borne by the Parties as follows:

27.3.1 by the Supplier where the Malicious Software originates from the Supplier Software, the Third Party Software or the FCDO Data (whilst the FCDO Data was under the control of the Supplier); and

27.3.2 by FCDO if the Malicious Software originates from the FCDO Software or the FCDO Data (whilst FCDO Data was under the control of FCDO).

28. TRANSPARENCY

28.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of Clause 30 (Freedom of Information), the content of this Contract is not confidential information. FCDO shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.

28.2 Notwithstanding any other term of this Contract, the Supplier hereby gives their consent for FCDO to publish the Contract in its entirety, including from time to time agreed changes to the Contract, to the general public.

28.3 FCDO may consult with the supplier to inform its decision regarding any exemptions with regard to FOIA but FCDO shall have the final decision in its absolute discretion.

28.4 The Supplier shall assist and cooperate with FCDO to enable FCDO to publish this Contract.

28.5 The Supplier acknowledges that FCDO endorses/supports the requirements of the IATI standard and shall assist and cooperate with FCDO, to enable the Supplier to understand the different elements of IATI implementation and to comply with the different data, policy and technical considerations that need to be taken into account.

28.6 The Supplier shall:

28.6.1 publish information data to the IATI standard, that relates to a specific activity in a single, common, electronic format for the transparent, accurate, timely and comprehensive publishing of data, on all activities in the delivery chain, in the delivery of development cooperation and humanitarian aid; and

28.6.2 provide all necessary assistance as reasonably requested by FCDO to enable FCDO to respond to the IATI requirements.

28.7 The Supplier shall maintain an up-to-date and accurate record of named downstream delivery partners in receipt of FCDO funds and/or FCDO funded inventory or assets. This record should demonstrate how funds flow from initial source to end beneficiaries. This record should be made available to FCDO upon written request and within the time set out in the request. This record should be updated by the Supplier;

28.7.1 as required in the terms of reference;

28.7.2 annually;

28.7.3 when there are material changes in the delivery chain; and

28.7.4 as part of the project completion process.

29. CONFIDENTIALITY

29.1 Except to the extent set out in this Clause 29 or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

29.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly;

29.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

29.2 Clause 29.1 shall not apply to the extent that:

29.2.1 such disclosure is a requirement of Law applicable to the Party making the disclosure, including any requirements for disclosure under the FOIA, the Environmental Information Regulations and associated codes of practice pursuant to Clause 30 (Freedom of Information);

29.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

29.2.3 such information was obtained from a third party without obligation of confidentiality;

29.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or

29.2.5 it is independently developed without access to the other Party's Confidential Information.

29.3 The Supplier may only disclose FCDO's Confidential Information to the Supplier Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Supplier Personnel are aware of and shall comply with these obligations as to confidentiality.

29.4 The Supplier shall not, and shall procure that the Supplier Personnel do not, use any of FCDO's Confidential Information received otherwise than for the purposes of this Contract.

29.5 At the written request of FCDO, the Supplier shall procure that those members of the Supplier Personnel referred to in Clause 29.3, respectively sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.

29.6 Nothing in this Contract shall prevent FCDO from disclosing the Supplier's Confidential Information:

29.6.1 on a confidential basis to any Central Government Body for any proper purpose of FCDO or of the relevant Central Government Body;

29.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

29.6.3 to the extent that FCDO (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

- 29.6.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 29.6.1 (including any benchmarking organisation) for any purpose relating to or connected with this Contract;
- 29.6.5 on a confidential basis for the purpose of the exercise of its rights under this Contract, including the Audit Rights, its step-in rights pursuant to Clause 15 (Open Book Accounting and Audit), its rights to appoint an advisor pursuant to Clause 47 (Dispute Resolution) and any rights set out in Clause 16 (Exit Management);
- 29.6.6 on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract; or
- 29.6.7 for the purpose of the examination and certification of FCDO's accounts,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on FCDO under this Clause 29.

- 29.7 Nothing in this Clause 29 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.

30. FREEDOM OF INFORMATION

- 30.1 The Supplier acknowledges that FCDO is subject to the requirements of the FOIA, the Environmental Information Regulations and associated codes of practice and shall assist and cooperate with FCDO to enable FCDO to comply with its Information disclosure obligations.
- 30.2 The Supplier shall and shall ensure that its Sub-Contractors shall:
 - 30.2.1 transfer to FCDO all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
 - 30.2.2 provide FCDO with a copy of all Information in its possession, or power in the form that FCDO requires within five (5) Working Days (or such other period as FCDO may specify) of FCDO's request; and
 - 30.2.3 provide all necessary assistance as reasonably requested by FCDO to enable FCDO to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 30.3 FCDO shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA, the Environmental Information Regulations and associated codes of practice.
- 30.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by FCDO.
- 30.5 The Supplier acknowledges that FCDO may, acting in accordance with any code of practice issued pursuant to Section 45 of FOIA ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Services:
 - 30.5.1 in certain circumstances without consulting the Supplier;
 - 30.5.2 following consultation with the Supplier and having taken their views into account;
 - 30.5.3 provided always that where Clause 30.5.1 applies FCDO shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 30.6 The Supplier shall ensure that all Information is retained for disclosure in accordance with Clauses 30.7 and 30.8 and shall permit FCDO to inspect such records as requested by FCDO from time to time.
- 30.7 The Supplier shall, during this Contract and for a period of at least seven years following the expiry or termination of this Contract, retain and maintain all Information:
 - 30.7.1 in accordance with Good Industry Practice and Law;

30.7.2 in chronological order;

30.7.3 in a form that is capable of audit;

30.7.4 at its own expense.

30.8 Wherever practical, original Information shall be retained and maintained in hard copy form.

31. OFFICIAL SECRETS ACT

31.1 The Supplier shall, and shall ensure that the Supplier Personnel shall, comply with any relevant obligations arising under the Official Secrets Acts 1911 to 1989.

32. FCDO DATA

32.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to FCDO Data.

32.2 The Supplier shall not store, copy, disclose, or use FCDO Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise expressly authorised in writing by FCDO.

32.3 To the extent that FCDO Data is held and/or processed by the Supplier, the Supplier shall supply that FCDO Data to FCDO as requested by FCDO in the format(s) specified by FCDO.

32.4 Upon receipt or creation by the Supplier of any FCDO Data and during any collection, processing, storage and transmission by the Supplier of any FCDO Data, the Supplier shall take responsibility for preserving the integrity of FCDO Data and preventing the corruption or loss of FCDO Data.

32.5 The Supplier shall perform secure back-ups of all FCDO Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Security Policy. The Supplier shall ensure that such back-ups are available to FCDO at all times upon request, with delivery times as specified by FCDO.

32.6 The Supplier shall ensure that the system on which the Supplier holds any FCDO Data, including back-up data, is a secure system that complies with the Security Policy.

32.7 If FCDO Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, FCDO may:

32.7.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of FCDO Data to the extent and in accordance with the Business Continuity and Disaster Recovery Provisions specified in the Security Policy and the Supplier shall do so as soon as practicable but not later than three days following a written request from FCDO; and/or

32.7.2 itself restore or procure the restoration of FCDO Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in the Business Continuity and Disaster Recovery provisions specified in the Security Policy.

32.8 If at any time the Supplier suspects or has reason to believe that FCDO Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify FCDO immediately and inform FCDO of the remedial action the Supplier proposes to take.

32.9 The Supplier shall obtain and maintain certification under the HM Government Cyber Essentials Scheme.

33. PROTECTION OF PERSONAL DATA

33.1 The Parties acknowledge that the factual activity carried out by each of them in relation to their obligations under this Contract will determine the status of each Party under the Data Protection Legislation. A Party may act as "Joint Controller" or a "Controller" or a "Processor" of certain Personal Data under this Contract. The Parties shall detail the envisaged status in Appendix A of the Terms of Reference (at Section 3 of the Contract) and update it where appropriate.

33.2 Where a Party is Processing on behalf of the other Party who is the Controller

33.2.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, FCDO is the Controller and the Supplier is the Processor unless otherwise specified in Appendix A of the Terms of Reference (at Section 3 of the contract). The only processing that the Processor is authorised to do is listed in Appendix A of the Terms of Reference by the Controller and may not be determined by the Processor.

33.2.2 The Processor shall notify the Controller immediately if it considers that any of Controller's instructions infringe the Data Protection Legislation.

33.2.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the services.
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

33.2.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- (a) process that Personal Data only in accordance with the Appendix A referred to in Clause 33.2.1, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
 - a. nature of the data to be protected;
 - b. harm that might result from a Data Loss Event;
 - c. state of technological development; and
 - d. cost of implementing any measures;
- (c) ensure that:
 - I. the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Appendix A referred to in Clause 33.2.1);
 - II. it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - a. are aware of and comply with the Processor's duties under this clause;
 - b. are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - c. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
 - d. have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - a. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 - b. the Data Subject has enforceable rights and effective legal remedies;
 - c. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - d. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;

- (e) At the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

33.2.5 Subject to clause 33.2.6, the Processor shall notify the Controller without due delay and in any event within 48 hours if it:

- a. receives a Data Subject Access Request (or purported Data Subject Access Request);
- b. receives a request to rectify, block or erase any Personal Data;
- c. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- d. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- e. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- f. becomes aware of a Data Loss Event.

33.2.6 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 33.2.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

- a. the Controller with full details and copies of the complaint, communication or request;
- b. such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- c. the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
- d. assistance as requested by the Controller following any Data Loss Event;
- e. assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.

33.2.7 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:

- a. the Controller determines that the processing is not occasional;
- b. the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- c. the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

33.2.8 Where the Supplier is the Processor it shall allow for audits of its Data Processing activity by the FCDO or its FCDO's designated auditor.

33.2.9 Each party shall designate its own Data Protection Officer if required by the Data Protection Legislation.

33.2.10 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:

- a. notify the Controller in writing of the intended Sub-processor and processing;
- b. obtain the written consent of the Controller;
- c. enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 33.2 such that they apply to the Sub-processor; and

- d. provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

33.2.11 The Processor shall remain fully liable for all acts or omissions of any Sub-processor.

33.2.12 The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable Controller to Processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

33.2.13 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. FCDO may on not less than 30 Working Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

33.3 Where the Parties both Control Personal Data Independently

33.3.1 With respect to Personal Data which a Party acts as Controller but which is not under the Joint Control (because the Parties determine the means and purposes of processing Personal Data independently of each other) each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controller and with this Clause 33.3.

33.3.2 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its processing of Personal Data as independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 33(1)(a), (b), (c) and (d) of the GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the GDPR.

33.3.3 Each Party shall promptly (and without undue delay) notify the other Party if in relation to any Personal Data processed by it as independent Controller in the performance of its obligations or the exercise of its rights under this Contract if:

- (a) it receives a complaint, notice or communication which relates to either Party's actual or alleged non-compliance with the Data Protection Legislation; or
- (b) it becomes aware of a Personal Data Breach;

and shall provide the other Party with such assistance and cooperation as is reasonably requested by the other Party in order to address and resolve the complaint, notice, communication or Personal Data Breach.

33.3.4 In respect of any losses, cost claims or expenses incurred by either Party as a result of a Personal Data Breach (the "Claim Losses"): the Party responsible for the relevant breach shall be responsible for the Claim Losses.

33.3.5 The Parties agree to erase Personal Data from any computers, storage devices and storage media that are to be retained as soon as practicable after it has ceased to be appropriate for them to retain such Personal Data under applicable Data Protection Law Legislation and their privacy policy (save to the extent and for the limited period) that such information needs to be retained by the a Party for statutory compliance the purposes of complying with Law or as otherwise required by this Contract), and taking all further actions as may be necessary or desirable to ensure its compliance with Data Protection Law Legislation and its privacy policy

33.4 Where the Parties are both Controllers of Personal Data Jointly

33.4.1 Where the Parties jointly determine the purposes of means of processing Personal Data in accordance with GDPR Article 26, the Parties shall identify the applicable Personal Data under Joint Control in Appendix A and the Parties shall enter into a Joint Controller Agreement based on the terms outlined in Appendix B in replacement of Clause 33.2-33.3 which shall not apply for any such the Personal Data under Joint Control.

34. PUBLICITY AND BRANDING

34.1 The Supplier shall not:

- 34.1.1 make any press announcements or publicise this Contract or its contents in any way; or

- 34.1.2 use FCDO's name or brand (including the 'UK aid logo') in any promotion, marketing, communications or announcement of orders;
without the prior written consent of the FCDO.
- 34.2 Where and to the extent that FCDO has provided consent pursuant to Clause 34.1, then the Supplier:
- 34.2.1 shall collaborate with FCDO and proactively look for ways to build support for development and raise awareness of FCDO's funding.
- 34.2.2 shall explicitly acknowledge FCDO's funding, in written and verbal communications about activities related to the funding, to the public or third parties, including in announcements, and through use, where appropriate, of FCDO's "UK aid – from the British people" logo ('UK aid logo') in accordance with FCDO standards for use of the UK aid logo, unless otherwise agreed in advance by FCDO and in all cases subject to security and safety considerations of the Supplier.
- 34.2.3 shall provide a visibility statement of how and when they or Sub-Contractors will acknowledge funding from FCDO and where they will use the UK aid logo. The Supplier shall include reference to this in its progress reports and annual reviews.
- 34.2.4 may use the UK aid logo in conjunction with other donor logos, and where the number of donors to a programme or project is such as to make co-branding impractical, acknowledgement of funding from FCDO shall be equal to that of other co-donors making contributions of equivalent amounts to the programme or project.

Liabilities

35. LIMIT OF LIABILITY

- 35.1 Neither Party limits its liability for:
- 35.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
- 35.1.2 fraud or fraudulent misrepresentation by it or its employees;
- 35.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- 35.1.4 any liability to the extent it cannot be limited or excluded by Law.
- 35.2 Subject to Clause 35.1, the Supplier's total aggregate liability in respect of all Losses (whether in tort, contract or otherwise) incurred by FCDO under or in connection with the Contract as a result of Defaults by the Supplier shall not exceed the Financial Limit unless a different amount has been stated in Section 4 (Special Conditions) in which case that amount shall apply.
- 35.3 Subject to Clause 35.1, FCDO's total aggregate liability in respect of all Losses (whether in tort, contract or otherwise) shall not exceed one hundred thousand pounds (£100,000).
- 35.4 Subject to Clause 35.1 neither Party be liable to the other for any:
- 35.4.1 loss of profits, turnover, savings business opportunities, revenue or damage to goodwill (in each case whether direct or indirect); and/or
- 35.4.2 indirect, special or consequential loss or damage of any nature and howsoever caused, even if the losses were reasonably foreseeable or the Party has been advised of the possibility of such losses occurring.
- 35.5 Subject to Clause 35.2, and notwithstanding Clause 35.4, the Supplier acknowledges that FCDO may, amongst other things, recover from the Supplier the following losses incurred by FCDO to the extent that they arise as a result of a Default by the Supplier:
- 35.5.1 any additional operational and/or administrative costs and expenses incurred by FCDO, including costs relating to time spent by or on behalf of FCDO in dealing with the consequences of the Default;
- 35.5.2 any wasted expenditure or charges;
- 35.5.3 the additional cost of procuring Replacement Services for the remainder of the Term, which shall include any incremental costs associated with such Replacement Services above those which would have been payable under this Contract;
- 35.5.4 any compensation or interest paid to a third party by FCDO; and

35.5.5 any fine, penalty or costs incurred by FCDO pursuant to Law.

36. INDEMNITY

36.1 Subject to Clauses 35.1 to 35.5 (inclusive), the Supplier shall indemnify FCDO in respect of any Losses howsoever arising out of or in consequence of negligent acts or omissions by the Supplier or the Supplier Personnel or any claims made against FCDO by third parties in respect thereof and in relation to this Contract.

36.2 The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of FCDO or FCDO's employees, or by breach by FCDO of its obligations under the Contract.

37. INSURANCE

37.1 The Supplier shall effect and maintain insurances in relation to the performance of its obligations under this Contract in accordance with Schedule 3 (Insurance Requirements).

37.2 The Supplier shall ensure that its Sub-Contractors shall effect and maintain insurances (where appropriate) in relation to the performance of their obligations under any Sub-Contracts appropriate to Services being provided.

37.3 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities arising under this Contract.

Control of Contract

38. VARIATIONS

38.1 Either Party may request a variation to this Contract provided that such variation does not amount to a material change of this Contract within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a **"Variation"**.

38.2 A Party may request a Variation at any time by sending the request in writing to the relevant Contract Officer. The request shall contain sufficient information setting out:

38.2.1 the extent of the proposed Variation and any additional cost that may be incurred; and

38.2.2 a formal, technical and commercial justification.

38.3 In the event that the Parties are unable to agree a change to the Contract that may be included in a request of a Variation or response to as a consequence thereof FCDO may:

38.3.1 agree to continue to perform its obligations under this Contract without the Variation; or

38.3.2 terminate this Contract with immediate effect, except where the Supplier has already fulfilled part or all of the provision of the Services in accordance with this Contract or where the Supplier can show evidence of substantial work being carried out to provide the Services under this Contract, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.

38.4 If the Parties agree the Variation, the Variation shall be effected upon both Parties signing the Contract Amendment Letter (Appendix A) and the Supplier shall implement such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in this Contract. FCDO shall not be liable for any costs for any additional activity or otherwise undertaken by the Supplier where the Parties have not agreed in writing in an executed Contract Amendment Letter in accordance with this Clause 38 for such costs to be incurred or for the additional activity to be undertaken. The Supplier shall promptly return on request by FCDO, any monies which FCDO may have paid the Supplier in respect of activities or payments which have not been authorised by FCDO in accordance with this Clause 38.

39. ASSIGNMENT AND NOVATION

39.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Contract without Approval.

39.2 Subject to Clause 39.1, the Supplier may assign to a third party ("the Assignee") the right to receive payment of the Charges or any part thereof due to the Supplier under this Contract (including any interest to which FCDO is liable under the Late Payments of Commercial Debts (Interest) Act 1998). Any assignment under this Clause 39.2 shall be subject to:

39.2.1 deduction of any sums in respect of which FCDO exercises its right of recovery under Clause 19 (Retention and Set Off);

39.2.2 all related rights of FCDO under the Contract in relation to the recovery of sums due but unpaid; and

39.2.3 FCDO receiving notification under both Clauses 39.3 and 39.4.

39.3 In the event that the Supplier assigns the right to receive the Charges under Clause 39.2, the Supplier shall notify FCDO in writing of the assignment and the date upon which the assignment becomes effective.

39.4 The Supplier shall notify FCDO of the assignee's contact information and bank account details to which FCDO shall make payment.

Default and Termination

40. FCDO REMEDIES FOR DEFAULT

40.1 Remedies

40.1.1 Without prejudice to any other right or remedy of FCDO howsoever arising if the Supplier commits any Default of this Contract then FCDO may (whether or not any part of the Services have been provided) do any of the following:

- (a) at FCDO's option, give the Supplier the opportunity (at the Supplier's expense) to remedy the Default together with any damage resulting from such Default (where such Default is capable of remedy) or to supply Replacement Services and carry out any other necessary work to ensure that the terms of this Contract are fulfilled, in accordance with the FCDO's instructions;
- (b) carry out, at the Supplier's expense, any work necessary to make the provision of the Services comply with this Contract;
- (c) if the Default is a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults - whether of the same or different obligations and regardless of whether such Defaults are remedied - which taken together constitute a material Default):
 - (i) instruct the Supplier to comply with the Rectification Plan Process;
 - (ii) suspend this Contract (whereupon the relevant provisions of Clause 45 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) the Services;
 - (iii) without terminating or suspending the whole of this Contract, terminate or suspend this Contract in respect of part of the provision of the Services only (whereupon the relevant provisions of Clause 45 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) such part of the Services.

40.1.2 Where FCDO exercises any of its step-in rights under Clauses 40.1.1 (c) (ii) or 40.1.1 (c) (iii), FCDO shall have the right to charge the Supplier for and the Supplier shall on demand pay any costs reasonably incurred by FCDO (including any reasonable administration costs) in respect of the supply of any part of the Services by FCDO or a third party and provided that FCDO uses its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Services.

40.2 Rectification Plan Process

40.2.1 Where FCDO has instructed the Supplier to comply with the Rectification Plan Process pursuant to 40.1.1 (c) (i):

- (a) the Supplier shall submit a draft Rectification Plan to FCDO for it to review as soon as possible and in any event within 10 (ten) Working Days (or such other period as may be agreed between the Parties) from the date of FCDO's instructions. The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Default giving rise to the FCDO's request for a draft Rectification Plan.
- (b) the draft Rectification Plan shall set out:
 - (i) full details of the Default that has occurred, including a root cause analysis;
 - (ii) the actual or anticipated effect of the Default; and
 - (iii) the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable).

- 40.2.2 The Supplier shall promptly provide to the FCDO any further documentation that the FCDO requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with Dispute Resolution Procedure.
- 40.2.3 FCDO may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
- (a) is insufficiently detailed to be capable of proper evaluation;
 - (b) will take too long to complete;
 - (c) will not prevent reoccurrence of the Default; and/or
 - (d) will rectify the Default but in a manner which is unacceptable to FCDO.
- 40.2.4 FCDO shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If FCDO rejects the draft Rectification Plan, FCDO shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to FCDO for review within five (5) Working Days (or such other period as agreed between the Parties) of the FCDO's notice rejecting the first draft.
- 40.2.5 If FCDO consents to the Rectification Plan, the Supplier shall immediately start work on the actions set out in the Rectification Plan.

41. FINANCIAL DISTRESS

- 41.1 The Supplier acknowledges and agrees that the financial stability and solvency of the Supplier and its key Sub-Contractors is critical to the successful delivery of the Services and that any deterioration or potential deterioration of their financial position may have an adverse effect on the performance of the Contract. The Supplier shall monitor its own financial standing and that of its key Sub-Contractors on a regular basis throughout the term using a Financial Monitoring Plan and shall report on this to FCDO.
- 41.2 The Financial Monitoring Plan shall be designed by the Supplier to ensure that FCDO has an early and clear warning indicator of any financial distress of the Supplier and key Sub-Contractors which may affect the Services; such design to be proportionate for the circumstances; taking into account the nature of the Services and the identity of the suppliers.
- 41.3 Except where FCDO has agreed otherwise, the Supplier shall within four (4) weeks of the Commencement Date, prepare and submit via the Project Officer for Approval by FCDO, a Financial Monitoring Plan which shall set out the Supplier's proposals for the monitoring and reporting of its financial stability, and the financial stability of its key Sub-Contractors to FCDO on a regular basis throughout the Term.
- 41.4 The Financial Monitoring Plan may include (but shall not be limited to):
- 41.4.1 A summary of the Supplier's and key Sub-Contractors' financial positions at the date of submission of the Financial Distress Plan and on a regular basis thereafter to FCDO (including credit ratings, financial ratios, details of current liabilities, value of marketable securities, cash in hand and bank, account receivables etc.);
 - 41.4.2 An objective means of measuring the Supplier and key Sub-Contractor's financial standing on a regular basis throughout the Term against historical financial standing to show trend (including use of credit ratings, financial ratios and/or other financial indicators);
 - 41.4.3 The Supplier's proposals for reporting financial standing to FCDO (including the template reporting forms which the Supplier intends to use);
 - 41.4.4 The frequency of monitoring and reporting activity;
 - 41.4.5 Provision of reporting lines for the supply chain to notify FCDO of incidents of non-payment of valid and undisputed invoices;
 - 41.4.6 Any other provisions which in the reasonable opinion of the Supplier may be required by FCDO to assess current financial standing of the Supplier and key Sub-Contractors and which enable quick and easy assessment of any movement in financial standing.

- 41.5 The Supplier shall make any reasonable amendments to the Financial Monitoring Plan as may be requested by FCDO and shall resubmit it for Approval. If Approved by FCDO, the Supplier shall promptly implement the Financial Monitoring Plan throughout the Term.
- 41.6 In addition to its obligations under the Financial Monitoring Plan, the Supplier shall promptly notify FCDO in writing if any of the following “Financial Distress Events” occurs in respect of the Supplier or a key Sub-Contractor:
- 41.6.1 there is a material deterioration of its financial standing;
 - 41.6.2 the appointment of an administrator or receiver;
 - 41.6.3 late filing of statutory accounts with Companies House;
 - 41.6.4 it issues a profits warning or other similar public announcement about a deterioration in its finances or prospects;
 - 41.6.5 it is being publicly investigated for improper financial accounting and reporting, fraud or any other financial impropriety;
 - 41.6.6 it commits a material breach of covenant to its lenders;
 - 41.6.7 a key Sub-Contractor not being paid any sums properly due under a specified invoice that is not subject to a genuine dispute;
 - 41.6.8 it is subject to any claims, litigation, investigations, actions or decisions in respect of financial indebtedness.
- 41.7 In the event of a Financial Distress Event occurring, then the Supplier shall and shall procure that any affected key Sub-Contractor shall, as soon as reasonably practicable review the effect of the Financial Distress Event on the continued performance of the Services under this Contract and provide a report to FCDO. Where FCDO reasonably believes that the Financial Distress Event is likely to adversely impact on the performance of the Services, the Supplier shall submit to FCDO for Approval a Financial Distress Service Continuity Plan as soon as is reasonably practicable and shall provide any further financial information as FCDO may reasonably require to assess financial standing and risks.
- 41.8 If FCDO acting reasonably considers that the Financial Distress Service Continuity Plan is insufficient to remedy the effects of the Financial Distress Event on the Service, then it may require the Supplier (and/or key Sub-Contractor) to redraft and resubmit an improved and updated plan or may require the issue to be escalated via the Dispute Resolution Procedure.
- 41.9 If FCDO Approves the Financial Distress Service Continuity Plan, then the Supplier shall execute and continue to review the plan (with submissions to FCDO for Approval where it is updated).
- 41.10 Where the Parties agree that the Financial Distress Event no longer adversely affects the delivery of the Services, the Supplier shall be relieved of its obligations in respect of the current Financial Distress Service Continuity Plan.
- 41.11 FCDO shall be entitled to terminate this Contract for material Default if:
- 41.11.1 The Supplier fails to notify FCDO of a Financial Distress Event in accordance with Clause 41.6;
 - 41.11.2 FCDO and the Supplier fail to agree a Financial Distress Service Continuity Plan or any updates to a plan within a reasonable timescale (taking into account the effects of the Financial Distress Event on the Services);
 - 41.11.3 The Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan or any updates to the plan.
- 42. FORCE MAJEURE**
- 42.1 Subject to the remainder of this Clause 42, a Party may claim relief under this Clause 42 from liability for failure to meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- 42.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 42.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 42 to the extent that consequences of the relevant Force Majeure Event:

- 42.3.1 are capable of being mitigated by any of the provision of any Services but the Supplier has failed to do so; and/or
- 42.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Contract.

42.4 Subject to FCDO's right to terminate set out in Clause 42.5, the Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

42.5 Where FCDO receives a Force Majeure Notice, from the date of receipt of the Force Majeure Notice, FCDO may, at its sole discretion, either suspend this Contract for a period of up to six (6) months ("the Suspension Period") or terminate this Contract forthwith.

42.6 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract.

42.7 Relief from liability for the Affected Party under this Clause 42 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under Clause 42.6.

42.8 If by the end of the Suspension Period the Parties have not agreed a further period of suspension or re-instatement of the Contract, this Contract shall terminate automatically.

43. TERMINATION WITHOUT DEFAULT OF THE SUPPLIER

43.1 FCDO may, at its sole discretion, terminate this Contract, at any time by issuing a Termination Notice to the Supplier giving at least thirty (30) Working Days written notice (unless stated differently in Section 4 (Special Conditions)).

44. TERMINATION WITH DEFAULT OF THE SUPPLIER

44.1 FCDO may terminate this Contract for material Default by issuing a Termination Notice to the Supplier where:

- 44.1.1 any representation or warranty given by the Supplier pursuant to Clause 2 (Representations and Warranties) is materially untrue or misleading, and the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of FCDO are acceptable;
- 44.1.2 FCDO expressly reserves the right to terminate this Contract for material Default;
- 44.1.3 the Supplier commits any material Default of the Contract which is not, in the reasonable opinion of FCDO, capable of remedy; and/or
- 44.1.4 the Supplier commits a Default, including a material Default, which in the opinion of FCDO is remediable but has not remedied such Default to the satisfaction of FCDO in accordance with the Rectification Plan Process.

44.2 For the purpose of Clause 44.1, a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default.

44.3 FCDO may, without prejudice to its other rights, including but not limited to the right to claim for Losses incurred, issue a Termination Notice where:

- 44.3.1 the Supplier or any Supplier Personnel, either directly or through their servants or agents or Sub-Contractors breaches any of their obligations under this Contract; or
- 44.3.2 the Supplier, Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf has committed an offence under the Bribery Act 2010 or the Terrorism Act 2000 in breach of Clauses 48 or 49 of this Contract; or
- 44.3.3 FCDO has the right to terminate under Clause 38.3.2; or
- 44.3.4 the Supplier is an individual or a partnership and at any time:

- (a) becomes bankrupt; or

- (b) is the subject of a receiving order or administration order; or
- (c) makes any composition or arrangement with or for the benefit of the Supplier's creditors; or
- (d) makes any conveyance or assignment for the benefit of the Supplier's creditors; or
- (e) the warranty given by the supplier pursuant to Clause 24 (Tax Compliance) is materially untrue; or
- (f) the Supplier commits a material breach of its obligation to notify FCDO of any Occasion of Tax Non-Compliance as required by Clause 24 (Tax Compliance); or
- (g) the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of FCDO, are acceptable; or

44.3.5 the Supplier is a company and:

- (a) an order is made or a resolution is passed for the winding up of the Supplier; or
- (b) a receiver or administrator is appointed in respect of the whole or any part of the undertaking of the Supplier; or

44.3.6 the Supplier is a partnership or a company and there is a Change of Control.

44.3.7 there is an occurrence of any of the statutory provisos contained in Regulation 73(1)(a)-(c) of the Regulations.

44.4 Where this Contract is terminated in accordance with this Clause 44, the Supplier shall without prejudice to FCDO's other remedies, take any steps necessary to terminate the provision of the Services in a timely and orderly manner and in compliance with Clause 16 (Exit Management) but shall not be entitled to any further payment in relation to this Contract.

45. PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION

45.1 Where FCDO has the right to terminate this Contract, FCDO shall be entitled to terminate or suspend all or part of this Contract provided always that, if FCDO elects to terminate or suspend this Contract in part, the parts of this Contract not terminated or suspended can, in FCDO's reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Contract.

45.2 Any suspension of this Contract under Clause 45.1 shall be for such period as FCDO may specify and without prejudice to any right of termination which has already accrued, or subsequently accrues, to FCDO.

45.3 The Parties shall seek to agree the effect of any Variation necessitated by a partial termination, suspension or partial suspension in accordance with the procedure set out in Clause 38 (Variation), including the effect that the partial termination, suspension or partial suspension may have on the provision of any other Services and the Charges, provided that the Supplier shall not be entitled to:

45.3.1 an increase in the Charges in respect of the provision of the Services that have not been terminated if the partial termination arises due to the exercise of any of FCDO's termination rights under Clause 44 (Termination With Default of the Supplier) except Clause 43 (Termination Without Default of the Supplier); and

45.3.2 reject the Variation.

46. CONSEQUENCES OF EXPIRY OR TERMINATION

46.1 Where this Contract has been terminated pursuant to Clause 43 (Termination Without Default of the Supplier), the Supplier shall:

46.1.1 take such steps as are necessary to terminate the provision of the Services or any part of the Services (including suspending or terminating any Sub-Contracts) in a cost-effective, timely and orderly manner;

46.1.2 act in accordance with Clause 16 (Exit Management); and

46.1.3 provide to FCDO, not more than 60 days after FCDO notifies the Supplier of the termination of this Contract an account in writing with detailed supporting evidence, stating:

- (a) any costs, if any, due before the date of termination, which cannot be avoided by the Supplier using reasonable endeavours; and

- (b) costs to be expended after the date of termination which the Supplier necessarily incurred in the proper performance of this Contract and which the Supplier cannot reasonably avoid or recover using reasonable endeavours;

and, subject to Approval, FCDO shall pay such amount stated pursuant to Clause 46.1.3 to the Supplier within 30 days of receipt from the Supplier of a Valid Invoice in respect of the amount due.

- 46.2 Where this Contract is terminated under Clause 44 (Termination with Default of the Supplier) and FCDO makes other arrangements for the provision of Services FCDO may recover from the Supplier pursuant to Clause 19 (Retention and Set Off) or otherwise, the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by FCDO throughout the remainder of the Term provided that FCDO shall take all reasonable steps to mitigate such additional expenditure.
- 46.3 Where this Contract is terminated for any reason, save as expressly provided in this Contract:
 - 46.3.1 termination or expiry of this Contract shall be without prejudice to any rights, remedies or obligations accrued under this Contract prior to termination or expiration and nothing in this Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
 - 46.3.2 termination of this Contract shall not affect the continuing rights, remedies or obligations of FCDO or the Supplier under Clauses 15, 16, 17, 18, 19, 21, 22, 25, 28, 29, 30, 31, 32, 33, 35, 36, 46, 47, 52 and 57, and the provisions of Schedule 2 (Staff Transfer) of this Section 2 and any relevant clauses listed under Section 4 (Special Conditions), and, without limitation to the foregoing, any other provision of this Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the Expiry Date.

MISCELLANEOUS AND GOVERNING LAW

47. DISPUTE RESOLUTION PROCEDURE

- 47.1 The Parties will attempt in good faith to negotiate a settlement to any Dispute between them arising out of or in connection with this Contract. If the matter is not resolved by negotiation within 45 days of when either Party first made contact in respect of the same, the Parties will refer the Dispute to mediation in accordance with CEDR (Centre for Effective Dispute Resolution in London, UK) procedures. If the parties fail to agree terms of settlement within 90 days of the initiation of the procedure the Dispute may be referred to an arbitrator as agreed between the parties or failing such agreement as may be nominated by the President of the Law Society of England and Wales upon application of any Party. The initiation of the procedure is defined as the written request to CEDR by any Party for mediation provided that such request is copied to the other Party.
- 47.2 The decision of the arbitrator shall be final and binding on both Parties.
- 47.3 The seat and place of arbitration shall be London.

48. PREVENTION OF FRAUD AND BRIBERY

- 48.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, any person acting on their behalf, have at any time prior to the Commencement Date:
 - 48.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - 48.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 48.2 The Supplier, Supplier Personnel, or any person acting on their behalf shall not during the Term:
 - 48.2.1 commit a Prohibited Act; and/or
 - 48.2.2 do or suffer anything to be done which would cause FCDO or any of FCDO's employees, consultants, suppliers, Sub-Contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 48.3 The Supplier shall during the Term:
 - 48.3.1 establish, maintain and enforce, and require that its Supplier Personnel establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;

48.3.2 keep appropriate records of its compliance with its obligations under Clause 48.3.1 and make such records available to FCDO on request.

48.4 The Supplier shall immediately notify FCDO in writing if it becomes aware of any breach of Clause 48.1 and/or Clause 48.2, or has reason to believe that it has or any Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf have:

48.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

48.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

48.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.

48.5 The Supplier warrants and represents to FCDO that to the best of its knowledge, that neither the Supplier, Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf:

48.5.1 has given, offered or agreed to give or accepted, any gift or consideration of any kind as an inducement or reward for doing or for bearing to do or for having done or forborne to do any act in relation to the obtaining or execution of any contract or for showing or forbearing to show favour or disfavour to any person or entity in relation to any contract; or

48.5.2 has entered into any contract in connection with which commission has been paid or agreed to be paid by or to the Supplier or Supplier Personnel or on their behalf or to their knowledge unless, before such contract was made, particulars of any such commission and of the terms of any agreement for the payment of such commission were disclosed in writing to FCDO, whose written consent was subsequently given to such payment.

48.6 Neither the Supplier or the Supplier Personnel or any person acting on their behalf shall accept for their own benefit or pass on for the benefit of partner government, recipient or end user, any trade commission, discount, voucher scheme, re-sale or similar payment or benefit in connection with this Contract.

48.7 Where the Supplier or Supplier Personnel, or any person acting on their behalf, does any of the acts mentioned in Clause 48.5 or commits any offence under the Bribery Act 2010, with or without the knowledge of the Supplier, in relation to this Contract or any other contract with the Crown, FCDO shall be entitled:

48.7.1 to terminate the Contract with immediate effect by written notice to the Supplier and recover from the Supplier the amount of any Losses resulting from the termination;

48.7.2 to recover from the Supplier the amount or value of any such gift, consideration or commission;

48.7.3 to recover from the Supplier any other Losses sustained as a result of any breach of this Clause 48, whether or not the Contract is terminated.

48.8 FCDO, the Supplier and the Supplier Personnel shall immediately and without undue delay inform each other of any event that interferes or threatens to materially interfere with the successful delivery of the Services, whether financed in full or in part by FCDO, including credible suspicion of/or actual fraud, bribery, corruption or any other financial irregularity or impropriety.

FCDO has an expert fraud investigation unit, that should be contacted in the first instance at reportingconcerns@fcdo.gov.uk or +44 (0)1355 843747. All suspicions will be treated with the utmost confidentiality.

49. ANTI-TERRORISM REGULATIONS

49.1 In accordance to the Terrorism Act 2000 and all subsequent regulations pursuant to this Act, the Supplier will assure itself to the best of its knowledge that UK funding, including financial assets or economic resources is not made available, either directly or indirectly to, or for the benefit of persons, groups or entities listed in accordance with European Council Regulation EC/2580/2001 (as amended) and/or the Terrorism (United Nations Measures) Orders 2009 of the United Kingdom, or contravene the provisions of those and any subsequent applicable terrorism legislation.

49.2 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf, have at any time prior to the Commencement Date and/or during the term of this Contract appeared on the Home Office Proscribed Terrorist Organisations List.

49.3 The Supplier shall immediately notify FCDO in writing if it becomes aware of any breach of Clause 49.1 and/or Clause 49.2, or has reason to believe that it has or any Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf have:

49.3.1 been subject to an investigation or prosecution which relates to an alleged infringement of Clause 49.1 and/or Clause 49.2;

49.3.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts.

49.4 Where the Supplier or any of his employees, servants, agents or Sub-Contractors, or any person acting on their behalf, breaches any of the acts mentioned in Clause 49.1 and/or Clause 49.2 commits any offence under the Terrorism Act 2000, with or without the knowledge of the Supplier, in relation to this Contract or any other contract with the Crown, FCDO shall be entitled:

49.4.1 to terminate the Contract with immediate effect by written notice to the Supplier and recover from the Supplier the amount of any loss resulting from the termination;

49.4.2 to recover from the Supplier any other loss sustained as a result of any breach of this Clause 49, whether or not the Contract has been terminated.

50. SAFEGUARDING

50.1 For the purposes of this Clause 50, “Reasonable Measures” shall mean:

all reasonable endeavours expected to be taken by a professional and prudent supplier in the Supplier’s industry to eliminate or minimise risk of actual, attempted or threatened exploitation, abuse and harassment (including Sexual Abuse, Sexual Exploitation and Sexual Harassment) and whether or not such conduct would amount to a criminal offence in the United Kingdom or an offence under the laws of the territory in which it takes place (together “**Serious Misconduct**”) as is reasonable and proportionate under the circumstances. Such endeavours may include (but shall not be limited to):

(a) clear and detailed policies and guidance for Supplier Personnel, Supplier Providers and where appropriate, beneficiaries;

(b) developing, implementing and maintaining a safeguarding plan throughout the term (including monitoring);

(c) provision of regular training to Supplier Personnel, Supplier Providers and where appropriate, beneficiaries

(d) clear reporting lines and whistleblowing policies in place for Supplier Personnel, Supplier Providers and beneficiaries,

(e) maintaining detailed records of any allegations of Serious Misconduct and regular reporting to FCDO and the Appropriate Authorities (where relevant) of any such incidents;

(f) any other Good Industry Practice measures (including any innovative solutions),

50.2 The Supplier shall take all Reasonable Measures to prevent Serious Misconduct by the Supplier Personnel or any other persons engaged and controlled by it to perform any activities under this Agreement (“**Supplier Providers**”) and shall have in place at all times robust procedures which enable the reporting by Supplier Personnel, Supplier Providers and beneficiaries of any such Serious Misconduct, illegal acts and/or failures by the Supplier or Supplier Personnel to investigate such reports.

50.3 The Supplier shall take all Reasonable Measures to ensure that the Supplier Personnel and Supplier Providers do not engage in sexual activity with any person under the age of 18, regardless of the local age of majority or age of consent or any mistaken belief held by the Supplier Personnel or Supplier Provider as to the age of the person. Furthermore, the Supplier shall ensure that the Supplier Personnel and Supplier Providers do not engage in ‘transactional sex’ which shall include but not be limited to the exchange of money, employment, goods, or services for sex and such reference to sex shall include sexual favours or any form of humiliating, degrading or exploitative behavior on the part of the Supplier Personnel and the Supplier Providers. For the avoidance of doubt, such ‘transactional sex’ shall be deemed to be Serious Misconduct in accordance with Clause 50.1.

50.4 The Supplier shall promptly report in writing any complaints, concerns and incidents regarding Serious Misconduct or any attempted or threatened Serious Misconduct by the Supplier Personnel and Supplier Providers to FCDO, including FCDO’s Counter Fraud Section at reportingconcerns@fcdo.gov.uk or +44 (0)1355 843747, and where necessary, the Appropriate Authorities.

50.5 The Supplier shall fully investigate and document all cases or potential cases of Serious Misconduct and shall take appropriate corrective action to reduce the risk and/or eliminate Serious Misconduct being committed by the Supplier Personnel and Supplier Providers (which may include disciplinary action, termination of contracts etc.), such investigations and actions to be reported to FCDO as soon as is reasonably practicable

50.6 The Supplier shall not engage as Supplier Personnel or Supplier Provider for the purposes of the Services any person whose previous record or conduct known to the Supplier (or reasonably ought to be known by a diligent supplier which undertakes the appropriate checks) indicates that they are unsuitable to perform the Services and/or where they represent an increased and unacceptable risk of committing Serious Misconduct.

50.7 The Supplier shall comply with all applicable laws, legislation, codes of practice and government guidance in the UK and additionally, in the territories where the Services are being performed, relevant to safeguarding and protection of children and vulnerable adults, which the Supplier acknowledges may include vetting of the Supplier Personnel by the UK Disclosure and Barring Service in respect

of any regulated activity performed by the Supplier Personnel (as defined by the Safeguarding Vulnerable Groups Act 2006 (as amended)) and/or vetting by a local equivalent service. Where FCDO reasonably believes that there is an increased risk to safeguarding in the performance of the Services, the Supplier shall comply with any reasonable request by FCDO for additional vetting to be undertaken.

50.8 Failure by the Supplier to:

50.8.1 put in place preventative measures to eliminate and/or reduce the risk of Serious Misconduct; or

50.8.2 fully investigate allegations of Serious Misconduct; or

50.8.3 report any complaints to FCDO and where appropriate, the relevant authorities (including law enforcement)

shall be a material Default of this Contract and shall entitle FCDO to terminate this Contract with immediate effect.

51. DISCRIMINATION

51.1 The Supplier shall not unlawfully discriminate either directly or indirectly against protected characteristics such as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the provisions of all relevant legislation including the Equality Act 2010, the International Development (Gender Equality) Act 2014 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof. The Supplier shall ensure that in its delivery of the Services, it has due regard for the advancement of equal opportunity and promotes good relations between people who share a protected characteristic and those who do not, as required by the equality legislation.

51.2 The Supplier shall adhere to the current relevant codes of practice or recommendations published by the Equality and Human Rights Commission. The Supplier shall take all reasonable steps to secure the observance of these provisions and codes of conduct by all suppliers, employees or agents of the Supplier and all suppliers and Sub-Contractors employed in the execution of this Contract.

51.3 The Supplier will comply with any request by FCDO to assist FCDO in meeting its obligations under the Equality Act 2010 and to allow FCDO to assess the Supplier's compliance with its obligations under the Equality Act 2010.

51.4 Where any investigation is concluded or proceedings are brought under the Equality Act 2010 which arise directly or indirectly out of any act or omission of the Supplier, its agents or Sub-Contractors, or Supplier Personnel, and where there is a finding against the Supplier in such investigation or proceedings, the Supplier will indemnify FCDO with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment FCDO may have been ordered or required to pay to a third party.

52. LAW AND JURISDICTION

52.1 This Contract shall be governed by and interpreted in accordance with English Law and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

53. ENVIRONMENTAL REQUIREMENTS

53.1 The Supplier shall provide the Services and any goods & equipment required under the Contract in accordance with applicable national and international laws, including those of the country or countries in which the Services or goods & equipment are to be provided, and FCDO's environmental operations policy, which is to conserve energy, water and other resources, reduce waste, phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

53.2 The Supplier shall work with FCDO and the populations that are potentially affected by its operations under the Contract regarding any environmental issues that could affect the sustainable development provisions of the International Development Act (2002), comply with special conditions as stipulated in the Terms of Reference and carry out any reasonable additional request to ensure the protection of the environment, society and the economy throughout the contract period.

53.3 The Supplier shall ensure it has the requisite expertise and controls to identify and mitigate all factors that may affect compliance with the conditions outlined in Clauses 53.1 and 53.2 as a result of its own operations or those of Sub-Contractors working on its behalf.

53.4 The Supplier shall promptly notify FCDO of any changes in potential material adverse effects from its operations under the Contract and of the occurrence of any incident or accident related to the Project that has or is likely to have a significant adverse effect on the environment.

- 53.5 Nothing in Clauses 53.1 to 53.3 shall relieve the obligations of the Supplier to comply with its statutory duties and Good Industry Practice.

54. CONFLICT OF INTEREST

- 54.1 Neither the Supplier nor any of the Supplier Personnel shall engage in any personal, business or professional activity which conflicts or could conflict with any of their obligations in relation to this Contract.
- 54.2 The Supplier and the Supplier Personnel shall notify FCDO immediately of any actual or potential conflict together with recommendations as to how the conflict can be avoided.
- 54.3 The Supplier shall establish and maintain appropriate business standards, procedures and controls to ensure that no conflict of interest arises between Services undertaken for FCDO and that undertaken for other clients. The Supplier shall avoid knowingly committing any acts which are likely to result in any allegation of impropriety against FCDO, including conflicts of interest which are likely to prejudice their independence and objectivity in performing the Contract, howsoever arising.
- 54.4 The Supplier shall notify FCDO immediately of any circumstances of which it becomes aware which give rise or potentially give rise to a conflict with the Services and shall advise FCDO of how they intend to avoid such a conflict arising or remedy such situation. The Supplier shall, subject to any obligations of confidentiality it may have to third parties, provide all information and assistance reasonably necessary (at the Supplier's cost) that FCDO may request of the Supplier in order to avoid or resolve a conflict of interest and shall ensure that at all times they work together with FCDO with the aim of avoiding a conflict or remedy a conflict.
- 54.5 Pursuant to Clause 54.4, FCDO shall have the right to require that the Supplier puts in place Ethical Walls and will ensure and satisfy FCDO that all information relating to the Contract and to the Services (including all working papers, draft reports in both tangible and intangible form) are not shared or made available to person(s) other than Supplier Personnel and that such matters are not discussed by any person(s) other than Supplier Personnel.
- 54.6 In the event of a failure to maintain the Ethical Walls as described above arising during the course of this Contract, FCDO reserves the right to immediately terminate the Contract on giving written notice to the Supplier.

55. WAIVER

- 55.1 A waiver of any of the terms and/or conditions of this Contract shall be valid only where it is agreed expressly in writing and signed by the parties. No failure or delay by a Party to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

56. ENTIRE AGREEMENT

- 56.1 The Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Clause 56.1 shall not exclude liability in respect of any fraudulent misrepresentation.
- 56.2 The Supplier is not the agent of FCDO and has no authority to represent and shall not purport to represent or enter into any commitments on behalf of FCDO in any respect.
- 56.3 Nothing in this Contract is intended to make nor shall it make FCDO the employer of the Supplier or any of the Supplier Personnel.
- 56.4 All communications by the Supplier relating to the Contract must be addressed to the FCDO Contract Officer whose name and address is given in Section 4 (Special Conditions).

57. THIRD PARTY RIGHTS

- 57.1 The provisions of paragraphs 2.1 and 2.6 of Part A, paragraphs 2.1, 2.6, 3.1 and 3.3 of Part B, paragraphs 2.1 and 2.3 of Part C and paragraphs 1.4, 2.3 and 2.8 of Part D of Schedule 2 (Staff Transfer) (together the **"Third Party Provisions"**) confer benefits on persons named in such provisions other than the Parties (each such person a **"Third Party Beneficiary"**) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the Contracts (Rights of Third Parties) Act 1999 (**"CRTPA"**).
- 57.2 Subject to Clause 57.1, a person who is not a Party to this Contract has no right under the CRTPA to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 57.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of FCDO, which may, if given, be given on and subject to such terms as FCDO may determine.

- 57.4 Any amendments or modifications to this Contract may be made, and any rights created under Clause 57.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

58. NOTICES

- 58.1 Except as otherwise expressly provided within this Contract, any notices sent under this Contract must be in writing. For the purpose of Clause 58, an e-mail is accepted as being "in writing".

- 58.2 Subject to Clause 58.3, the following table sets out the method by which notices may be served under this Contract and the respective deemed time and proof of service:

Manner of delivery	Deemed time of delivery	Proof of Service
Email (Subject to Clauses 58.3 and 58.4)	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day	Properly addressed and delivered as evidenced by signature of a delivery receipt
Royal Mail Signed For™ 1 st Class or other prepaid, next Working Day service providing proof of delivery	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm)	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

- 58.3 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or Royal Mail Signed For™ 1st Class or other prepaid in the manner set out in the table in Clause 58.2:

- 58.3.1 any Termination Notice (Clause 43 (Termination Without Default of the Supplier) and Clause 44 (Termination With Default of the Supplier)); and

- 58.3.2 any notice in respect of:

- (a) partial termination, suspension or partial suspension (Clause 45 (Partial Termination, Suspension and Partial Suspension)),
- (b) waiver (Clause 55 (Waiver)); or
- (c) Default.

- 58.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 58.3 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 58.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

- 58.5 Clause 58 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

- 58.6 For the purposes of Clause 58, the address and email address of each Party shall be as specified in Section 4 (Special Conditions).

SCHEDULE 1: DEFINITIONS

Unless otherwise provided or the context otherwise requires the following expressions shall have the meanings set out below:

“Actual Profit Margin” means the actual profit achieved during the relevant period set out in Clause 20.1;

“Affected Party” the Party seeking to claim relief in respect of a Force Majeure Event;

“Affiliate” in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;

“Approval” means the prior written consent of FCDO and **“Approve”** and **“Approved”** shall be construed accordingly;

“Auditor” means:

- (a) FCDO’s internal and external auditors;
- (b) FCDO’s statutory or regulatory auditors;
- (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
- (d) HM Treasury or the Cabinet Office;
- (e) any party formally appointed by FCDO to carry out audit or similar review functions; and
- (f) successors or assigns of any of the above.

“Appropriate Authorities” means any and/or all of (as may be relevant under the circumstances) the UK government bodies and/or government bodies/agencies in the territory where Serious Misconduct may have or is suspected of having taken place, which have responsibility for safeguarding, recording, investigating, enforcing and/or determining allegations of Serious Misconduct and which may include (but shall not be limited to), the FCDO, the National Crime Agency, UK Police force, local territory police forces, and social services.

“Central Government Body” a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or
- (d) Executive Agency;

“Change of Control” means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;

“Charges” means the charges raised under or in connection with this Contract from time to time, which shall be calculated in a manner that is consistent with Schedule 5 (Schedule of Prices) and the eligible cost guidance.

“Commencement Date” means the date identified in Section 1 Form of Contract.

“Commercially Sensitive Information” the information listed in Section 4 (Special Conditions) comprising the information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business of which the Supplier has indicated to FCDO that, if disclosed by FCDO, would cause the Supplier significant commercial disadvantage of material financial loss.

“Confidential Information” means all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of either party, including all intellectual property rights, together with all information derived from any of the above, and any other information clearly being designated as being confidential (whether or not it is marked “confidential”) or which ought reasonably be considered to be confidential.

“Contract” means this agreement between FCDO and the Supplier consisting of this Section 2 (Standard Terms and Generals) and any attached Schedules and Appendices

“Contract Amendment Letter” means the form set out in Appendix A.

“Contract Officer” means the person named in Section 4 who is responsible for all contractual aspects of the Contract.

“Contracts Finder” means the Government’s publishing portal for public sector procurement opportunities.

“Control” means control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and **“Controlled”** shall be construed accordingly;

“Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer” take the meaning given in the GDPR.

“Data Protection Legislation” (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy.

“Data Protection Impact Assessment”: an assessment by the Data Controller of the impact of the envisaged processing on the protection of Personal Data.

“Data Loss Event”: any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

“Data Subject Access Request”: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

“DPA 2018” means the Data Protection Act 2018

“Default” means any breach of the obligations of the Supplier (including but not limited to including abandonment of this Contract in breach of its terms) or any other default (including material Default), act, omission, negligence or statement of the Supplier, of the Supplier Personnel howsoever arising in connection with or in relation to the subject-matter of this Contract and in respect of which the Supplier is liable to FCDO;

“Delivery Chain” means all of the Supplier’s Sub-Contractors, Supplier Providers and partners involved in delivering a specific good, service or change for the purposes of the Services provided under this Agreement, down to the end beneficiary;

“FCDO Background IPR” means:

- a) IPRs owned by FCDO before the Commencement Date, including IPRs contained in any of FCDO's know-how, documentation, software, processes and procedures;
- b) IPRs created by FCDO independently of this Contract; and/or
- c) Crown Copyright which is not available to the Supplier otherwise than under this Contract;

“FCDO Data” means (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Supplier by or on behalf of FCDO; or (ii) which the Supplier is required to generate, process, store or transmit pursuant to this Contract; or (b) any Personal Data for which FCDO is the Data Controller.

“FCDO System” FCDO's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by FCDO or the Supplier in connection with this Contract which is owned by FCDO or licensed to it by a third party and which interfaces with the Supplier System or which is necessary for FCDO to receive the Services;

“Dispute” any dispute, difference or question of interpretation arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Variation Procedure or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;

“Dispute Resolution Procedure” means the dispute resolution procedure set out in Clause 47;

“DOTAS” means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

“Employee Liabilities” means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:

- a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- b) unfair, wrongful or constructive dismissal compensation;
- c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- d) compensation for less favourable treatment of part-time workers or fixed term employees;
- e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by FCDO or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Sub-Contractor if such payment should have been made prior to the Service Transfer Date;
- f) claims whether in tort, contract or statute or otherwise;
- g) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

“Employment Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;

“Employment Business” means an employment agency is an organization which matches employers to employees. In all developed countries there is a publicly funded employment agency and multiple private businesses which also act as employment agencies.

“Environmental Information Regulations” means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;

“Ethical Walls” means a process for avoiding conflicts of interest by limiting disclosure of information to certain individuals within an organisation, thereby building a metaphorical wall between the holders of information and colleagues who represent interests or hold opinions which conflict.

“Euro Compliant” means that:

- (i) the introduction of the euro within any part(s) of the UK shall not affect the performance or functionality of any relevant items nor cause such items to malfunction, end abruptly, provide invalid results or adversely affect FCDO’s business;
- (ii) all currency-reliant and currency-related functions (including all calculations concerning financial data) of any relevant items enable the introduction and operation of the euro; and
- (iii) in particular each and every relevant item shall, to the extent it performs or relies upon currency-related functions (including all calculations concerning financial data):
 - (a) be able to perform all such functions in any number of currencies and/or in euros;
 - (b) during any transition phase applicable to the relevant part(s) of the UK, be able to deal with multiple currencies and, in relation to the euro and the national currency of the relevant part(s) of the UK, dual denominations;
 - (c) recognise accept, display and print all the euro currency symbols and alphanumeric codes which may be adopted by any government and other European Union body in relation to the euro;
 - (d) incorporate protocols for dealing with rounding and currency conversion;
 - (e) recognise data irrespective of the currency in which it is expressed (which includes the euro) and express any output data in the national currency of the relevant part(s) of the UK and/or the euro; and
 - (f) permit the input of data in euro and display an outcome in euro where such data, supporting FCDO’s normal business practices, operates in euro and/or the national currency of the relevant part(s) of the UK.

“Equipment” means any equipment, computer hardware or software, materials, goods and vehicles and associated services necessarily required for the implementation of the Services, which the Supplier cannot reasonably be expected to provide, which are financed or provided by FCDO for use by the Supplier.

“Exit Management” services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Supplier to FCDO and/or a Replacement Supplier.

“Exit Plan” the plan produced and updated by the Supplier during the Term in accordance with Terms of Reference and Clause 16;

“Expiry Date” means:

- (a) the end date of the Initial Period or, if exercised, the end date of any Extension Period; or
- (b) if this Contract is terminated before the date specified in (a) above, the earlier date of termination of this Contract;

“Extension Period” means such period or periods up to a maximum of the number of years in total as may be specified by FCDO, pursuant to Clause 4.2 and in Section 4 (Special Conditions);

“Financial Limit” means the amount specified in Section 1 (Form of Contract) and is the maximum amount of Charges paid by FCDO and which FCDO has agreed are duly payable under this Contract for the receipt of the Services.

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation.

“Force Majeure Event” any event outside the reasonable control of either Party affecting its performance of its obligations under this Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, government or regulatory bodies, fire, flood, storm

or earthquake, or disaster but excluding any industrial dispute relating to the Supplier or the Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf or any other failure in the Supplier's or a Sub-Contractor's supply chain;

"Force Majeure Notice" a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;

"Former Supplier" means a supplier supplying services to FCDO before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any Sub-Contractor of such supplier (or any Sub-Contractor of any such Sub-Contractor);

"GDPR" the General Data Protection Regulation (*Regulation (EU) 2016/679*).

"General Anti-Abuse Rule" means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions.

"Good Industry Practice" at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like FCDO, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;

"Halifax Abuse Principle" means the principle explained in the CJEU Case C-255/02 Halifax and others.

"HM Government Cyber Essentials Scheme" means the HM Government Cyber Essentials Scheme as further defined in the documents relating to this scheme published at <https://www.gov.uk/government/publications/cyber-essentials-scheme-overview>

"IATI" means the International Aid Transparency Initiative standard and is a technical publishing framework allowing data to be compared. It is designed to report forward-looking aggregate budget information for the reported organisations, and planned future budgets to recipient institutions or countries.

"ICT Environment" means the FCDO System and the Supplier System;

"Information" has the meaning given under Section 84 of the Freedom of Information Act 2000; including all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);

"Initial Period" means the initial term of this Contract from the Commencement Date to the end date of the initial term stated in Section 4 (Special Conditions);

"Intellectual Property Rights" or "IPRs" means

- (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semiconductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;
- (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and

all other rights having equivalent or similar effect in any country or jurisdiction;

"IPR Claim" means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to FCDO (including any claims arising from the publication of the Project Specific IPRs as open source) in the fulfilment of its obligations under this Contract

"Joint Control" means Personal Data which under the Control of Joint Controllers in accordance with GDPR Article 26;

"Joint Controllers" means where two or more Controllers jointly determine the purposes and means of processing;

"Key Personnel" means the individuals (if any) identified as such in Section 4 (Special Conditions);

"Key Performance Indicators" or "KPIs" means a set of quantifiable measures that FCDO and Supplier will use to measure the performance of the Services provided by the Supplier under the Contract (as defined in Section 3 Terms of Reference).

"Law" means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;

"LED" means Law Enforcement Directive (*Directive (EU) 2016/680*)

“Licensed Software” all and any Software licensed by or through the Supplier, its Sub-Contractors or any third party to FCDO for the purposes of or pursuant to this Contract, including any Supplier Software, Third Party Software and/or any Specially Written Software;

“Losses” means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and **“Loss”** shall be interpreted accordingly;

“Malicious Software” any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;

“Milestone” an event or task described in the Implementation Plan which, if applicable, shall be completed by the relevant Milestone Date;

“Milestone Payment” a payment identified in Section 5 to be made following the issue of a Milestone Achievement Certificate;

“Occasion of Tax Non-Compliance” means:

- (a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:
 - i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud evasion.

“Open Book Data” means complete and accurate financial and non-financial information which is sufficient to enable FCDO to verify the Charges already paid or payable and Charges forecast to be paid during the Term, including details and all assumptions relating to costs.

“Overhead” means those amounts which are intended to recover a proportion of the Supplier’s or the Sub-Contractor’s (as the context requires) indirect corporate costs;

“Parties” and **“Party”** have the meanings respectively given in Section 1 of this Contract;

“Performance Indicators” means the Key Performance Indicators and the subsidiary Performance Indicators;

“Personal Data” means personal data (as defined in the Data Protection Act 1998) which is Processed by the Supplier or any Sub-Contractor on behalf of FCDO or a Central Government Body pursuant to or in connection with this Contract;

“Process” has the meaning given to it under the Data Protection Legislation but, for the purposes of this Contract, it shall include both manual and automatic processing and **“Processing”** and **“Processed”** shall be interpreted accordingly;

“Processor Personnel” means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement.

“Programme Name” means the name given to the programme to which this Contract relates as identified in Section 1 (Form of Contract);

“Prohibited Act” has the meaning;

- (a) to directly or indirectly offer, promise or give any person working for or engaged by FCDO a financial or other advantage to:

- (i) induce that person to perform improperly a relevant function or activity; or
- (ii) reward that person for improper performance of a relevant function or activity;

- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;

- (c) an offence:

- (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);

- (ii) under legislation or common law concerning fraudulent acts; or
- (iii) defrauding, attempting to defraud or conspiring to defraud FCDO; or
- (d) any activity, practice or conduct which would constitute one of the offences listed under
- (e) above if such activity, practice or conduct had been carried out in the UK;

“Project” means a set of co-ordinated activities, with definite starting and finishing points, undertaken by an individual or team to meet specific objectives within defined time, cost and performance parameters

“Project Officer” means the person named in Section 4 who is responsible for issuing instructions and dealing with all correspondence in connection with the technical aspects of the Contract;

“Project Specific IPRs” means:

- a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Contract and updates and amendments of these items including (but not limited to) database schema; and/or
- b) IPR in or arising as a result of the performance of the Supplier’s obligations under this Contract and all updates and amendments to the same,

but shall not include the Supplier Background IPR;

“Projected Profit Margin” means the profit the Supplier expects to achieve over the Term as set out in Schedule 5 (Schedule of Costs);

“Protective Measures”: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

“Register” means a register which sets out full details of:

- (a) any assets used by the Supplier in connection with the provision of the Services, including details of:
 - (i) make, model and asset number;
 - (ii) ownership and status as whether the assets are used exclusively for the provision of the Services;
 - (iii) condition and physical location; and
 - (iv) use (including technical specifications); and
- (b) Sub-Contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;

“Regulations” means the Public Contracts Regulations 2015 as amended or replaced from time to time;

“Regulatory Bodies” means those government departments, regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of FCDO and “Regulatory Body” shall be construed accordingly;

“Relevant Requirements” all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;

“Relevant Tax Authority” means HM Revenue & Customs, or, if applicable, a Tax Authority in the jurisdiction in which the Supplier is established.

“Relevant Transfer” means a transfer of employment to which the Employment Regulations applies;

“Relevant Transfer Date” means, in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;

“Replacement Services” any services which are the same as or substantially similar to any of the Services and which FCDO receives in substitution for any of the Services following the expiry or termination or partial termination of this Contract, whether those services are provided by FCDO internally and/or by any third party;

“Replacement Sub-Contractor” means a Sub-Contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any Sub-Contractor of any such Sub-Contractor);

“Replacement Supplier” any third party service provider of Replacement Services appointed by FCDO from time to time;

“Request for Information” a request for information or an apparent request under the FOIA, the Environmental Information Regulations and associated codes of practice;

“Security Policy” means HMG’s security policy, as updated periodically by the Cabinet Office, which can be accessed at <https://www.gov.uk/government/collections/government-security>, or as notified to the Supplier from time to time;

“Service Transfer” means any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-Contractor;

“Service Transfer Date” means the date of a Service Transfer;

“Services” means the services set out in the Terms of Reference (Section 3).

“Sexual Abuse” means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions, and all sexual activity with someone under the age of 18, regardless of local age of majority or consent under the laws of the territory in which it takes place and regardless of any mistaken belief (by the relevant individual) as to the age of a child;

“Sexual Exploitation” means any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes. Includes profiting monetarily, socially, or politically from sexual exploitation of another;

“Sexual Harassment” means unwelcome sexual advances (also but not exclusively without touching). It includes requests for sexual favours, or other verbal or physical behaviour of a sexual nature, which may create a hostile or offensive environment.

“Sites” any premises (including FCDO premises, the Supplier’s premises or third party premises):

(a) from, to or at which:

(i) the Services are (or are to be) provided; or

(ii) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or

(b) where:

(i) any part of the Supplier System is situated;

(ii) any physical interface with FCDO System takes place;

“Software” Specially Written Software, Supplier Software and Third Party Software;

“Specially Written Software” means any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-Contractor or other third party on behalf of the Supplier) specifically for the purposes of this Contract, including any modifications, configuration, customisation, or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Contract;

“Staffing Information” means in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as FCDO may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement, gender and place of work;
- (b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries, bonuses and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and

- (j) any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;

“Staff Vetting Procedure” means HMG’s procedures and departmental policies for the vetting of Personnel whose role will involve the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measures, including, but not limited to, the provisions of the Official Secrets Act 1911 to 1989.

“Sub-Contract” means any contract or agreement (or proposed contract or agreement) to which a third party:

- a) provides the Services (or any part of them);
- b) provides facilities or goods and services necessary for the provision of the Services (or any part of them); and/or
- c) is responsible for the management, direction or control of the provision of the Services (or any part of them);

“Sub-Contractor” means any person other than the Supplier, who is a party to a Sub-Contract and the servants and agents of that person;

“Sub-processor”: any third Party appointed to process Personal Data on behalf of that Processor related to this Agreement.

“Successor Body” means a body which is not a Central Government Body or if a body which is not a Central Government Body succeeds FCDO;

“Supplier” means the person(s), partnership(s) or company (ies) with whom this Contract is placed and as identified in Section 1 (Form of Contract);

“Supplier Background IPRs” means;

- (a) Intellectual Property Rights owned by the Supplier before the Effective Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or
- (b) Intellectual Property Rights created by the Supplier independently of this Agreement, which in each case is or will be used before or during the Term for designing, testing implementing or providing the Services but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;

“Supplier Personnel” means any person (including Key Personnel) instructed pursuant to this Contract to undertake any of the Supplier's obligations under this Contract, including the Supplier's employees, agents and Sub-Contractors.

“Supplier Provider” means persons engaged and/or controlled by or on behalf of the Supplier pursuant to any activities undertaken by the Supplier under this Agreement.

“Supplier Software” means any software which is proprietary to the Supplier (or an Affiliate of the Supplier which is or will be used by the Supplier or any Sub-Contractor for the purposes of providing the Services or is embedded in and in respect of such other software as required to be licensed in order for FCDO to receive the benefit of and/or make use of the Services;

“Supplier System” the information and communications technology system used by the Supplier in implementing and performing the Services including the Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding FCDO System);

“Tender” means the tender submitted by the Supplier to FCDO a copy of which is annexed or referred to in Schedule 4 (Tender);

“Term” means the term of this Contract from the Commencement Date until the Expiry Date;

“Termination Notice” means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract on a specified date and setting out the grounds for termination;

“Third Party IPRs” means Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software;

“Third Party Software” means any software which is proprietary to any third party (other than an Affiliate of the Supplier) or any open source which is or will be used by the Supplier for the purposes of providing the Services)

“Transferring FCDO Employees” those employees of FCDO to whom the Employment Regulations will apply on the Relevant Transfer Date;

“Transferring Former Supplier Employees” in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date;

“Transferring Supplier Employees” means those employees of the Supplier and/or the Supplier’s Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date;

“Valid Invoice” means an invoice issued by the Supplier to FCDO and containing the information set out in Clause 22.4;

“Variation” means a properly executed variation to the Contract in compliance with Clause 38;

“Variation Procedure” means the procedure set out in Clause 38;

“VAT” means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and

“Working Day” means any day other than a Saturday, Sunday or public holiday in England and Wales.

SCHEDULE 2: STAFF TRANSFER

1. DEFINITIONS

In this Schedule 2, the following definitions shall apply:

“Admission Agreement”	An admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into by the Supplier where it agrees to participate in the Schemes in respect of the Services;
“Eligible Employee”	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement;
“Fair Deal Employees”	those Transferring FCDO Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal (and, in the event that Part B of this Schedule 2 applies, any Transferring Former Supplier Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal);
“Former Supplier”	a supplier supplying services to FCDO before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any Sub-Contractor of such supplier (or any Sub-Contractor of any such Sub-Contractor);
“New Fair Deal”	the revised Fair Deal position set out in the HM Treasury guidance: <i>“Fair Deal for staff pensions: staff transfer from central government”</i> issued in October 2013 including any amendments to that document immediately prior to the Relevant Transfer Date;
“Notified Sub-Contractor”	a Sub-Contractor identified in the Annex to this Schedule 2 to whom Transferring FCDO Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
“Replacement Sub-Contractor”	a Sub-Contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any Sub-Contractor of any such Sub-Contractor);
“Relevant Transfer”	a transfer of employment to which the Employment Regulations applies;
“Relevant Transfer Date”	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
“Schemes”	the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 2 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the Designated Stakeholder Pension Scheme and “alpha” introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014;
“Service Transfer”	any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-Contractor;
“Service Transfer Date”	the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;

“Supplier's Final Supplier Personnel List”	a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Service Transfer Date;
“Supplier's Provisional Supplier Personnel List”	a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;
“Transferring FCDO Employees”	those employees of FCDO to whom the Employment Regulations will apply on the Relevant Transfer Date;
“Transferring Former Supplier Employees”	in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; and
“Transferring Supplier Employees”	those employees of the Supplier and/or the Supplier's Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date.

2. INTERPRETATION

Where a provision in this Schedule 2 imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-Contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to FCDO, Former Supplier, Replacement Supplier or Replacement Sub-Contractor, as the case may be.

PART A**TRANSFERRING FCDO EMPLOYEES AT COMMENCEMENT OF SERVICES****1. RELEVANT TRANSFERS**

1.1 FCDO and the Supplier agree that:

1.1.1 the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring FCDO Employees; and

1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between FCDO and the Transferring FCDO Employees (except in relation to any terms disapplying through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Notified Sub-Contractor and each such Transferring FCDO Employee.

1.2 FCDO shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring FCDO Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) FCDO; and (ii) the Supplier and/or any Notified Sub-Contractor (as appropriate).

2. FCDO INDEMNITIES

2.1 Subject to Paragraph 2.2, FCDO shall indemnify the Supplier and any Notified Sub-Contractor against any Employee Liabilities arising from or as a result of:

2.1.1 any act or omission by FCDO in respect of any Transferring FCDO Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring FCDO Employee occurring before the Relevant Transfer Date;

2.1.2 the breach or non-observance by FCDO before the Relevant Transfer Date of:

(a) any collective agreement applicable to the Transferring FCDO Employees; and/or

(b) any custom or practice in respect of any Transferring FCDO Employees which FCDO is contractually bound to honour;

2.1.3 any claim by any trade union or other body or person representing the Transferring FCDO Employees arising from or connected with any failure by FCDO to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;

2.1.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

(a) in relation to any Transferring FCDO Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and

(b) in relation to any employee who is not a Transferring FCDO Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from FCDO to the Supplier and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.

2.1.5 a failure of FCDO to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring FCDO Employees arising before the Relevant Transfer Date;

- 2.1.6 any claim made by or in respect of any person employed or formerly employed by FCDO other than a Transferring FCDO Employee for whom it is alleged the Supplier and/or any Notified Sub-Contractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and
 - 2.1.7 any claim made by or in respect of a Transferring FCDO Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring FCDO Employee relating to any act or omission of FCDO in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor (whether or not a Notified Sub-Contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:
- 2.2.1 arising out of the resignation of any Transferring FCDO Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier and/or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
 - 2.2.2 arising from the failure by the Supplier or any Sub-Contractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by FCDO as a Transferring FCDO Employee claims, or it is determined in relation to any person who is not identified by FCDO as a Transferring FCDO Employee, that his/her contract of employment has been transferred from FCDO to the Supplier and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 2.3.1 the Supplier shall, or shall procure that the Notified Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to FCDO; and
 - 2.3.2 FCDO may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of receipt of the notification by the Supplier and/or any Notified Sub-Contractor, or take such other reasonable steps as FCDO considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by FCDO, the Supplier shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3.2:
- 2.5.1 no such offer of employment has been made;
 - 2.5.2 such offer has been made but not accepted; or
 - 2.5.3 the situation has not otherwise been resolved,
- the Supplier and/or any Notified Sub-Contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Supplier and/or any Notified Sub-Contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law, FCDO shall indemnify the Supplier and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or procures that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Paragraph 2.6:
- 2.7.1 shall not apply to:
 - (a) any claim for:
 - (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
 - in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or
 - (b) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and
- 2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Supplier and/or any Notified Sub-Contractor (as appropriate) to FCDO within 6 months of the Commencement Date.
- 2.8 If any such person as is referred to in Paragraph 2.3 is neither re-employed by FCDO nor dismissed by the Supplier and/or any Notified Sub-Contractor within the time scales set out in Paragraph 2.5 such person shall be treated as having transferred to the Supplier and/or any Notified Sub-Contractor and the Supplier shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under applicable Law.

3. SUPPLIER INDEMNITIES AND OBLIGATIONS

- 3.1 Subject to Paragraph 3.2 the Supplier shall indemnify FCDO against any Employee Liabilities arising from or as a result of:
- 3.1.1 any act or omission by the Supplier or any Sub-Contractor in respect of any Transferring FCDO Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring FCDO Employee whether occurring before, on or after the Relevant Transfer Date;
 - 3.1.2 the breach or non-observance by the Supplier or any Sub-Contractor on or after the Relevant Transfer Date of:
 - (a) any collective agreement applicable to the Transferring FCDO Employees; and/or
 - (b) any custom or practice in respect of any Transferring FCDO Employees which the Supplier or any Sub-Contractor is contractually bound to honour;
 - 3.1.3 any claim by any trade union or other body or person representing any Transferring FCDO Employees arising from or connected with any failure by the Supplier or any Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
 - 3.1.4 any proposal by the Supplier or a Sub-Contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring FCDO Employees to their material detriment on or after their transfer to the Supplier or the relevant Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring FCDO Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
 - 3.1.5 any statement communicated to or action undertaken by the Supplier or any Sub-Contractor to, or in respect of, any Transferring FCDO Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with FCDO in writing;
 - 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring FCDO Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (b) in relation to any employee who is not a Transferring FCDO Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from FCDO to the Supplier or a Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
 - 3.1.7 a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring FCDO Employees in respect of the period from (and including) the Relevant Transfer Date;

- 3.1.8 any claim made by or in respect of a Transferring FCDO Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring FCDO Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from FCDO's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- 3.1.9 a failure by the Supplier or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above.
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of FCDO whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from FCDO's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring FCDO Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between FCDO and the Supplier.

4. INFORMATION

The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to FCDO in writing such information as is necessary to enable FCDO to carry out its duties under regulation 13 of the Employment Regulations. FCDO shall promptly provide to the Supplier and each Notified Sub-Contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

- 5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 5.2 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by FCDO relating to pensions in respect of any Transferring FCDO Employee as set down in:
 - 5.2.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
 - 5.2.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
 - 5.2.3 HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
 - 5.2.4 the New Fair Deal.
- 5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Variation Procedure.

6. PENSIONS

The Supplier shall, and/or shall procure that each of its Sub-Contractors shall, comply with the pensions provisions in the following Annex.

ANNEX TO PART A: PENSIONS**1. PARTICIPATION**

- 1.1 The Supplier undertakes to enter into the Admission Agreement.
- 1.2 The Supplier and FCDO:
 - 1.2.1 undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;
 - 1.2.2 agree that the arrangements under paragraph 1.1 of this Annex include the body responsible for the Schemes notifying FCDO if the Supplier breaches any obligations it has under the Admission Agreement;
 - 1.2.3 agree, notwithstanding Paragraph 1.2.2 of this Annex, the Supplier shall notify FCDO in the event that it breaches any obligations it has under the Admission Agreement and when it intends to remedy such breaches; and
 - 1.2.4 agree that FCDO may terminate this Contract in the event that the Supplier breaches the Admission Agreement:
 - (a) and that breach is not capable of being remedied; or
 - (b) where such breach is capable of being remedied, the Supplier fails to remedy such breach within a reasonable time and in any event within 28 days of a notice from FCDO giving particulars of the breach and requiring the Supplier to remedy it.
- 1.3 The Supplier shall bear its own costs and all costs that FCDO reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes including without limitation current civil service pensions administrator on-boarding costs.

2. FUTURE SERVICE BENEFITS

- 2.1 The Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of Schemes for service from (and including) the Relevant Transfer Date.
- 2.2 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to FCDO, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by FCDO in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes on the date the Eligible Employees ceased to participate in the Schemes.
- 2.3 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

3. FUNDING

- 3.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 3.2 The Supplier shall indemnify and keep indemnified FCDO on demand against any claim by, payment to, or loss incurred by, the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

4. PROVISION OF INFORMATION

The Supplier and FCDO respectively undertake to each other:

- 4.1 to provide all information which the other Party may reasonably request concerning matters referred to in this Annex and set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
- 4.2 not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

5. INDEMNITY

The Supplier undertakes to FCDO to indemnify and keep indemnified FCDO on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

6. EMPLOYER OBLIGATION

The Supplier shall comply with the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff.

7. SUBSEQUENT TRANSFERS

The Supplier shall:

- 7.1 not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the Service Transfer Date;
- 7.2 provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or FCDO may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal; and
- 7.3 for the applicable period either:
 - 7.3.1 after notice (for whatever reason) is given, in accordance with the other provisions of this Contract, to terminate the Agreement or any part of the Services; or
 - 7.3.2 after the date which is two (2) years prior to the date of expiry of this Contract, ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or FCDO, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of FCDO (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

8. BULK TRANSFER

- 8.1 Where the Supplier has set up a broadly comparable pension scheme in accordance with the provisions of paragraph 2.2 above of this Annex, the Supplier agrees to:
 - 8.1.1 fully fund any such broadly comparable pension scheme in accordance with the funding requirements set by that broadly comparable pension scheme's actuary or by the Government Actuary's Department;
 - 8.1.2 instruct any such broadly comparable pension scheme's actuary to, and to provide all such co-operation and assistance in respect of any such broadly comparable pension scheme as the Replacement Supplier and/or FCDO may reasonably require, to enable the Replacement Supplier to participate in the Schemes in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;
 - 8.1.3 allow, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such broadly comparable pension scheme into the Schemes on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal, for the avoidance of doubt should the amount offered by the broadly comparable pension scheme be less than the amount required by the Schemes to fund day for day service ("the Shortfall"), the Supplier agrees to pay the Shortfall to the Schemes; and
 - 8.1.4 indemnify FCDO on demand for any failure to pay the Shortfall as required under Paragraph 8.1.3 above.

PART B**TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF SERVICES****9. RELEVANT TRANSFERS**

9.1 FCDO and the Supplier agree that:

- 9.1.1 the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and
- 9.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Notified Sub-Contractor and each such Transferring Former Supplier Employee.

9.2 Subject to Paragraph 6, FCDO shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and FCDO shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

10. FORMER SUPPLIER INDEMNITIES

10.1 Subject to Paragraphs 2.2 and 6, FCDO shall procure that each Former Supplier shall indemnify the Supplier and any Notified Sub-Contractor against any Employee Liabilities arising from or as a result of:

- 10.1.1 any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;
- 10.1.2 the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Former Supplier Employees; and/or
 - (b) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;
- 10.1.3 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
- 10.1.4 a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
- 10.1.5 any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Sub-Contractor as appropriate may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and

- 10.1.6 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.
- 10.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
- 10.2.1 arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
- 10.2.2 arising from the failure by the Supplier and/or any Sub-Contractor to comply with its obligations under the Employment Regulations.
- 10.3 If any person who is not identified by FCDO as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by FCDO as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 10.3.1 the Supplier shall, or shall procure that the Notified Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to FCDO and, where required by FCDO, to the Former Supplier; and
- 10.3.2 the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier and/or the Notified Sub-Contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 10.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or FCDO, the Supplier shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 10.5 If by the end of the 15 Working Day period specified in Paragraph 2.3.2:
- 10.5.1 no such offer of employment has been made;
- 10.5.2 such offer has been made but not accepted; or
- 10.5.3 the situation has not otherwise been resolved,
- the Supplier and/or any Notified Sub-Contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 10.6 Subject to the Supplier and/or any Notified Sub-Contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, FCDO shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 10.7 The indemnity in Paragraph 2.6:
- 10.7.1 shall not apply to:
- (a) any claim for:
- (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or

- (b) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and

10.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Supplier and/or any Notified Sub-Contractor (as appropriate) to FCDO and, if applicable, the Former Supplier, within 6 months of the Commencement Date.

10.8 If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Sub-Contractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the Supplier or Notified Sub-Contractor and the Supplier shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under the Law.

11. SUPPLIER INDEMNITIES AND OBLIGATIONS

11.1 Subject to Paragraph 3.2, the Supplier shall indemnify FCDO and/or the Former Supplier against any Employee Liabilities arising from or as a result of:

11.1.1 any act or omission by the Supplier or any Sub-Contractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date;

11.1.2 the breach or non-observance by the Supplier or any Sub-Contractor on or after the Relevant Transfer Date of:

- (a) any collective agreement applicable to the Transferring Former Supplier Employee; and/or
- (b) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-Contractor is contractually bound to honour;

11.1.3 any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

11.1.4 any proposal by the Supplier or a Sub-Contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

11.1.5 any statement communicated to or action undertaken by the Supplier or a Sub-Contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with FCDO and/or the Former Supplier in writing;

11.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

- (a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
- (b) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Sub-Contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;

11.1.7 a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date;

- 11.1.8 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- 11.1.9 a failure by the Supplier or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above.
- 11.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.
- 11.3 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

12. INFORMATION

The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to FCDO and/or at FCDO's direction, the Former Supplier, in writing such information as is necessary to enable FCDO and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. Subject to Paragraph 6, FCDO shall procure that the Former Supplier shall promptly provide to the Supplier and each Notified Sub-Contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

13. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

- 13.1 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by FCDO relating to pensions in respect of any Transferring Former Supplier Employee as set down in:
 - 13.1.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
 - 13.1.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
 - 13.1.3 HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
 - 13.1.4 the New Fair Deal.
- 13.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Variation Procedure.

14. PROCUREMENT OBLIGATIONS

Notwithstanding any other provisions of this Part B, where in this Part B FCDO accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that FCDO's contract with the Former Supplier contains a contractual right in that regard which FCDO may enforce, or otherwise so that it requires only that FCDO must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

15. PENSIONS

The Supplier shall, and shall procure that each Sub-Contractor shall, comply with the pensions provisions in the following Annex.

ANNEX TO PART B: PENSIONS**1. PARTICIPATION**

- 1.1 The Supplier undertakes to enter into the Admission Agreement.
- 1.2 The Supplier and FCDO:
 - 1.2.1 undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;
 - 1.2.2 agree that the arrangements under paragraph 1.1 of this Annex include the body responsible for the Schemes notifying FCDO if the Supplier breaches any obligations it has under the Admission Agreement;
 - 1.2.3 agree, notwithstanding Paragraph 1.2.2 of this Annex, the Supplier shall notify FCDO in the event that it breaches any obligations it has under the Admission Agreement and when it intends to remedy such breaches; and
 - 1.2.4 agree that FCDO may terminate this Contract for material default in the event that the Supplier breaches the Admission Agreement:
 - (a) and that breach is not capable of being remedied; or
 - (b) where such breach is capable of being remedied, the Supplier fails to remedy such breach within a reasonable time and in any event within 28 days of a notice from FCDO giving particulars of the breach and requiring the Supplier to remedy it.
- 1.3 The Supplier shall bear its own costs and all costs that FCDO reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes including without limitation current civil service pensions administrator on-boarding costs.

2. FUTURE SERVICE BENEFITS

- 2.1 If the Supplier is rejoining the Schemes for the first time, the Supplier shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 2.2 If staff have already been readmitted to the Schemes, the Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 2.3 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to FCDO, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by FCDO in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes on the date the Eligible Employees ceased to participate in the Schemes.
- 2.4 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

3. FUNDING

- 3.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 3.2 The Supplier shall indemnify and keep indemnified FCDO on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

4. PROVISION OF INFORMATION

The Supplier and FCDO respectively undertake to each other:

- 4.1 to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
- 4.2 not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

5. INDEMNITY

The Supplier undertakes to FCDO to indemnify and keep indemnified FCDO on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

6. EMPLOYER OBLIGATION

The Supplier shall comply with the requirements of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff.

7. SUBSEQUENT TRANSFERS

The Supplier shall:

- 7.1 not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the Service Transfer Date;
- 7.2 provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or FCDO may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and
- 7.3 for the applicable period either
 - 7.3.1 after notice (for whatever reason) is given, in accordance with the other provisions of this Contract, to terminate the Agreement or any part of the Services; or
 - 7.3.2 after the date which is two (2) years prior to the date of expiry of this Contract,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or FCDO, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of FCDO (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

8. BULK TRANSFER

- 8.1 Where the Supplier has set up a broadly comparable pension scheme in accordance with the provisions of paragraph 2.2 above of this Annex, the Supplier agrees to:
 - 8.1.1 fully fund any such broadly comparable pension scheme in accordance with the funding requirements set by that broadly comparable pension scheme's actuary or by the Government Actuary's Department;
 - 8.1.2 instruct any such broadly comparable pension scheme's actuary to, and to provide all such co-operation and assistance in respect of any such broadly comparable pension scheme as the Replacement Supplier and/or FCDO may reasonably require, to enable the Replacement Supplier to participate in the Schemes in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;
 - 8.1.3 allow, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such broadly comparable pension scheme into the Schemes on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal, for the avoidance of doubt should the amount offered by the broadly comparable pension scheme be less than the amount required by the Schemes to fund day for day service ("the Shortfall"), the Supplier agrees to pay the Shortfall to the Schemes; and
 - 8.1.4 indemnify FCDO on demand for any failure to pay the Shortfall as required under Paragraph 8.1.3 above.

PART C**NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES****1. PROCEDURE IN THE EVENT OF TRANSFER**

- 1.1 FCDO and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of FCDO and/or any Former Supplier.
- 1.2 If any employee of FCDO and/or a Former Supplier claims, or it is determined in relation to any employee of FCDO and/or a Former Supplier, that his/her contract of employment has been transferred from FCDO and/or the Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 1.2.1 the Supplier shall, and shall procure that the relevant Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to FCDO and, where required by FCDO, give notice to the Former Supplier; and
- 1.2.2 FCDO and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Supplier or the Sub-Contractor (as appropriate) or take such other reasonable steps as FCDO or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in Paragraph 1.2.2 is accepted (or if the situation has otherwise been resolved by FCDO and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the fifteen (15) Working Day period specified in Paragraph 1.2.2:
- 1.4.1 no such offer of employment has been made;
- 1.4.2 such offer has been made but not accepted; or
- 1.4.3 the situation has not otherwise been resolved,
- the Supplier and/or the Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2. INDEMNITIES

- 2.1 Subject to the Supplier and/or the relevant Sub-Contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, FCDO shall:
- 2.1.1 indemnify the Supplier and/or the relevant Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any employees of FCDO referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
- 2.1.2 subject to paragraph 3, procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-Contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.2 If any such person as is described in Paragraph 1.2 is neither re-employed by FCDO and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-Contractor within the fifteen (15) Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Sub-Contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-Contractor shall, comply with such obligations as may be imposed upon it under Law.
- 2.3 Where any person remains employed by the Supplier and/or any Sub-Contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall indemnify FCDO and any Former Supplier, and shall procure that the Sub-Contractor shall indemnify FCDO and any Former Supplier, against

any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-Contractor.

2.4 The indemnities in Paragraph 2.1:

2.4.1 shall not apply to:

- (a) any claim for:
 - (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or
- (b) any claim that the termination of employment was unfair because the Supplier and/or any Sub-Contractor neglected to follow a fair dismissal procedure; and

2.4.2 shall apply only where the notification referred to in Paragraph 1.2.1 is made by the Supplier and/or any Sub-Contractor to FCDO and, if applicable, Former Supplier within 6 months of the Commencement Date.

3. PROCUREMENT OBLIGATIONS

Where in this Part C FCDO accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that FCDO's contract with the Former Supplier contains a contractual right in that regard which FCDO may enforce, or otherwise so that it requires only that FCDO must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

PART D

EMPLOYMENT EXIT PROVISIONS

1. PRE-SERVICE TRANSFER OBLIGATIONS

- 1.1 The Supplier agrees that within twenty (20) Working Days of the earliest of:
- 1.1.1 receipt of a notification from FCDO of a Service Transfer or intended Service Transfer;
 - 1.1.2 receipt of the giving of notice of early termination or any Partial Termination of this Contract;
 - 1.1.3 the date which is twelve (12) months before the end of the Term; and
 - 1.1.4 receipt of a written request of FCDO at any time (provided that FCDO shall only be entitled to make one such request in any six (6) month period),
- it shall provide in a suitably anonymised format so as to comply with the DPA, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by FCDO.
- 1.2 At least thirty (30) Working Days prior to the Service Transfer Date, the Supplier shall provide to FCDO or at the direction of FCDO to any Replacement Supplier and/or any Replacement Sub-Contractor:
- 1.2.1 the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
 - 1.2.2 the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).
- 1.3 FCDO shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-Contractor.
- 1.4 The Supplier warrants, for the benefit of FCDO, any Replacement Supplier, and any Replacement Sub-Contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in Paragraph 1.1, the Supplier agrees, that it shall not, and agrees to procure that each Sub-Contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of FCDO (not to be unreasonably withheld or delayed):
- 1.5.1 replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
 - 1.5.2 make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);
 - 1.5.3 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
 - 1.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
 - 1.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
 - 1.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-Contractor shall promptly notify, FCDO or, at the direction of FCDO, any Replacement Supplier and any Replacement Sub-Contractor of any notice to terminate employment given by the Supplier or

relevant Sub-Contractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.

- 1.6 During the Term, the Supplier shall provide, and shall procure that each Sub-Contractor shall provide, to FCDO any information FCDO may reasonably require relating to the manner in which Services are organised, which shall include:
 - 1.6.1 the numbers of employees engaged in providing the Services;
 - 1.6.2 the percentage of time spent by each employee engaged in providing the Services;
 - 1.6.3 the extent to which each employee qualifies for membership of any of the Schemes or any broadly comparable scheme set up pursuant to the provisions of paragraph 2.2 of the Annex (Pensions) to Part A of this Schedule 2 or paragraph 2.3 of the Annex (Pensions) to Part B of this Schedule 2 (as appropriate); and
 - 1.6.4 a description of the nature of the work undertaken by each employee by location.
- 1.7 The Supplier shall provide, and shall procure that each Sub-Contractor shall provide, all reasonable cooperation and assistance to FCDO, any Replacement Supplier and/or any Replacement Sub-Contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-Contractor shall provide, to FCDO or, at the direction of FCDO, to any Replacement Supplier and/or any Replacement Sub-Contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:
 - 1.7.1 the most recent month's copy pay slip data;
 - 1.7.2 details of cumulative pay for tax and pension purposes;
 - 1.7.3 details of cumulative tax paid;
 - 1.7.4 tax code;
 - 1.7.5 details of any voluntary deductions from pay; and
 - 1.7.6 bank/building society account details for payroll purposes.

2. EMPLOYMENT REGULATIONS EXIT PROVISIONS

- 2.1 FCDO and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Contract or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-Contractor. Such change in the identity of the Supplier of such Services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. FCDO and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-Contractor (as the case may be) and each such Transferring Supplier Employee.
- 2.2 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (but not including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-Contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-Contractor.
- 2.3 Subject to Paragraph 2.4, where a Relevant Transfer occurs the Supplier shall indemnify FCDO and/or the Replacement Supplier and/or any Replacement Sub-Contractor against any Employee Liabilities arising from or as a result of:

- 2.3.1 any act or omission of the Supplier or any Sub-Contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date;
- 2.3.2 the breach or non-observance by the Supplier or any Sub-Contractor occurring on or before the Service Transfer Date of:
- (a) any collective agreement applicable to the Transferring Supplier Employees; and/or
 - (b) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-Contractor is contractually bound to honour;
- 2.3.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- 2.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
 - (b) in relation to any employee who is not identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to FCDO and/or Replacement Supplier and/or any Replacement Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- 2.3.5 a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
- 2.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-Contractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List for whom it is alleged FCDO and/or the Replacement Supplier and/or any Replacement Sub-Contractor may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
- 2.3.7 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by FCDO and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.
- 2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-Contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
- 2.4.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-Contractor to occur in the period on or after the Service Transfer Date; or
 - 2.4.2 arising from the Replacement Supplier's failure, and/or Replacement Sub-Contractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 If any person who is not identified in the Supplier's Final Supplier Personnel List claims, or it is determined in relation to any person who is not identified in the Supplier's Final Supplier Personnel List that his/her contract of employment has been transferred from the Supplier or any Sub-Contractor to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
- 2.5.1 FCDO shall procure that the Replacement Supplier shall, or any Replacement Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
 - 2.5.2 the Supplier may offer (or may procure that a Sub-Contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-

Contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

- 2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-Contractor, FCDO shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-Contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 2.7 If after the fifteen (15) Working Day period specified in Paragraph 2.5.2 has elapsed:
- 2.7.1 no such offer of employment has been made;
 - 2.7.2 such offer has been made but not accepted; or
 - 2.7.3 the situation has not otherwise been resolved
- the Replacement Supplier and/or Replacement Sub-Contractor, as appropriate may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
- 2.8 Subject to the Replacement Supplier and/or Replacement Sub-Contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.9 The indemnity in Paragraph 2.8:
- 2.9.1 shall not apply to:
 - (a) any claim for:
 - (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-Contractor; or
 - (b) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-Contractor neglected to follow a fair dismissal procedure; and
 - 2.9.2 shall apply only where the notification referred to in Paragraph 2.5.1 is made by the Replacement Supplier and/or Replacement Sub-Contractor to the Supplier within six (6) months of the Service Transfer Date.
- 2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Supplier or any Sub-Contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-Contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee.
- 2.11 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Personnel List before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- 2.11.1 the Supplier and/or any Sub-Contractor; and
 - 2.11.2 the Replacement Supplier and/or the Replacement Sub-Contractor.

- 2.12 The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to FCDO and any Replacement Supplier and/or Replacement Sub-Contractor, in writing such information as is necessary to enable FCDO, the Replacement Supplier and/or Replacement Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. FCDO shall procure that the Replacement Supplier and/or Replacement Sub-Contractor, shall promptly provide to the Supplier and each Sub-Contractor in writing such information as is necessary to enable the Supplier and each Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.13 Subject to Paragraph 2.14, where a Relevant Transfer occurs FCDO shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-Contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:
- 2.13.1 any act or omission of the Replacement Supplier and/or Replacement Sub-Contractor in respect of any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee;
 - 2.13.2 the breach or non-observance by the Replacement Supplier and/or Replacement Sub-Contractor on or after the Service Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List; and/or
 - (b) any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List which the Replacement Supplier and/or Replacement Sub-Contractor is contractually bound to honour;
 - 2.13.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
 - 2.13.4 any proposal by the Replacement Supplier and/or Replacement Sub-Contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List on or after their transfer to the Replacement Supplier or Replacement Sub-Contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Supplier's Final Supplier Personnel List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
 - 2.13.5 any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-Contractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
 - 2.13.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-Contractor, to the Replacement Supplier or Replacement Sub-Contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
 - 2.13.7 a failure of the Replacement Supplier or Replacement Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List in respect of the period from (and including) the Service Transfer Date; and
 - 2.13.8 any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any

such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations.

- 2.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-Contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-Contractor (as applicable) to comply with its obligations under the Employment Regulations.

ANNEX TO SCHEDULE 2: LIST OF NOTIFIED SUB-CONTRACTORS

REDACTED

SCHEDULE 3: INSURANCE REQUIREMENTS

1.OBLIGATION TO MAINTAIN INSURANCES

- 1.1 Without prejudice to its obligations to FCDO under this Contract, including its indemnity obligations, the Supplier shall for the periods specified in this Schedule 2 take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 (Required Insurances) and any other insurances as may be required by applicable Law (together the “**Insurances**”). The Supplier shall ensure that each of the Insurances is effective no later than the Commencement Date.
- 1.2 The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent Contractor in respect of risks insured in the international insurance market from time to time.
- 1.3 The Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.
- 1.4 The Supplier shall ensure that the public and products liability policy shall contain an indemnity to principals clause under which FCDO shall be indemnified in respect of claims made against FCDO in respect of death or bodily injury or third party property damage arising out of or in connection with the Services and for which the Supplier is legally liable.

2.GENERAL OBLIGATIONS

- 2.1 Without limiting the other provisions of this Contract, the Supplier shall:
 - 2.1.1 take or procure the taking of all reasonable risk management and risk control measures in relation to the Services as it would be reasonable to expect of a prudent Contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
 - 2.1.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
 - 2.1.3 hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

3.FAILURE TO INSURE

- 3.1 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 3.2 Where the Supplier has failed to purchase any of the Insurances or maintain any of the Insurances in full force and effect, FCDO may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances, and FCDO shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

4.EVIDENCE OF POLICIES

- 4.1 The Supplier shall upon the Commencement Date and within 15 Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to FCDO, that the Insurances are in force and effect and meet in full the requirements of this Framework Schedule 2. Receipt of such evidence by FCDO shall not in itself constitute acceptance by FCDO or relieve the Supplier of any of its liabilities and obligations under this Agreement.

5.AGGREGATE LIMIT OF INDEMNITY

- 5.1 Where the minimum limit of indemnity required in relation to any of the Insurances is specified as being "in the aggregate":
 - 5.1.1 if a claim or claims which do not relate to this Contract are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Supplier shall immediately submit to FCDO:
 - (a) details of the policy concerned; and

- (b) its proposed solution for maintaining the minimum limit of indemnity specified; and
- 5.1.2 if and to the extent that the level of insurance cover available falls below that minimum because a claim or claims which do not relate to this Contract are paid by insurers, the Supplier shall:
- (a) ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Contract; or
 - (b) if the Supplier is or has reason to believe that it will be unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified, immediately submit to FCDO full details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified.

6. CANCELLATION

- 6.1 The Supplier shall notify FCDO in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.

7. INSURANCE CLAIMS

- 7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Contract for which it may be entitled to claim under any of the Insurances. In the event that FCDO receives a claim relating to or arising out of the Services or this Contract, the Supplier shall co-operate with FCDO and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- 7.2 Except where FCDO is the claimant party, the Supplier shall give FCDO notice within twenty (20) Working Days after any insurance claim in excess of £0.00 relating to or arising out of the provision of the Services or this Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by FCDO) full details of the incident giving rise to the claim.
- 7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from FCDO any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

ANNEX 1: REQUIRED INSURANCES**PART A: THIRD PARTY PUBLIC & PRODUCTS LIABILITY INSURANCE****1.INSURED**

1.1 The Supplier

2.INTEREST

2.1 To indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay as damages, including claimant's costs and expenses, in respect of accidental:

2.1.1 death or bodily injury to or sickness, illness or disease contracted by any person;

2.1.2 loss of or damage to property;

happening during the period of insurance (as specified in Paragraph 5 of this Annex 1 to this Schedule 2) and arising out of or in connection with the provision of the Services and in connection with this Contract.

3.LIMIT OF INDEMNITY

3.1 Not less than £10,000,000.00 in respect of any one occurrence, the number of occurrences being unlimited, but £10,000,000.00 any one occurrence and in the aggregate per annum in respect of products and pollution liability.

4.TERRITORIAL LIMITS

4.1.1 Global

5.PERIOD OF INSURANCE

5.1 From the Commencement Date for the Term and renewable on an annual basis unless agreed otherwise by FCDO in writing.

6.COVER FEATURES AND EXTENSIONS

6.1 Indemnity to principals clause.

7.PRINCIPAL EXCLUSIONS

7.1 War and related perils.

7.2 Nuclear and radioactive risks.

7.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured during the course of their employment.

7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.

7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.

7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.

7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.

7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

8. MAXIMUM DEDUCTIBLE THRESHOLD

8.1 Not to exceed £0.00 for each and every third-party property damage claim (personal injury claims to be paid in full).

PART B: PROFESSIONAL INDEMNITY INSURANCE**1.INSURED**

1.1 The Supplier

2.INTEREST

2.1 To indemnify the Insured for all sums which the Insured shall become legally liable to pay (including claimants' costs and expenses) as a result of claims first made against the Insured during the Period of Insurance by reason of any negligent act, error and/or omission arising from or in connection with the provision of the Services.

3.LIMIT OF INDEMNITY

3.1 Not less than £10,000,000.00 in respect of any one claim and in the aggregate per annum.

4.TERRITORIAL LIMITS

4.1 Global

5.PERIOD OF INSURANCE

5.1 From the date of this Contract and renewable on an annual basis unless agreed otherwise by FCDO in writing (a) throughout the Term or until earlier termination of this Contract and (b) for a period of 6 years thereafter.

6.COVER FEATURES AND EXTENSIONS

6.1 Retroactive cover to apply to any claims made policy wording in respect of this Contract or retroactive date to be no later than the Commencement Date.

7.PRINCIPAL EXCLUSIONS

7.1 War and related perils

7.2 Nuclear and radioactive risks

8.MAXIMUM DEDUCTIBLE THRESHOLD

8.1 Not to exceed £0.00 each and every claim.

PART C: UNITED KINGDOM COMPULSORY INSURANCES

1.GENERAL

- 1.1 The Supplier shall meet its insurance obligations under applicable Law in full, including, UK employers' liability insurance and motor third party liability insurance.

SCHEDULE 4: TENDER

1. GENERAL

- 1.1 This Schedule 4 sets out a copy of the Supplier's Tender.
- 1.2 Subject to Clause 1.4, in addition to any other obligations on the Supplier under this Contract, the Supplier shall provide the Services in accordance with the Tender.

APPENDIX A. CONTRACT AMENDMENT LETTER

Foreign, Commonwealth and Development Office
Abercrombie House
Eaglesham Road
EAST KILBRIDE
Glasgow
G75 8EA

Telephone: East Kilbride 01355 84 4000
Directline: 01355 84 [

File Ref: [
Date: [

Contract Amendment No: [

CONTRACT FOR: [

CONTRACT NUMBER: [

With reference to the Contract dated [], both Parties have in principle agreed to the following variation[s] to the Contract [:
[

- 2. [These/This amendment[s] relate[s] to [
- 3. Please confirm in writing by signing and returning one copy of this letter, within 15 working days of the date of signature on behalf of FCDO that you accept the variation[s] set out herein.
- 4. The Contract, including any previous variations, shall remain effective and unaltered except as amended by this letter.
- 5. Words and expressions in this letter shall have the meanings given to them in the Contract.

Signed by an authorised signatory for and on behalf of the
Secretary of State for Foreign,
Commonwealth and Development Affairs

Name: [

Position:

Signature:

Date: [

Signed by an authorised signatory for and on behalf of the Supplier

Name: [

Signature:

Date:

APPENDIX B



Foreign, Commonwealth
& Development Office



FCDO Supply Partner Code of Conduct

Principles

FCDO aims to create an inclusive culture of best practice with the delivery partners with whom it engages and which receive UK taxpayers' funds. All Supply Partners should adhere to the overarching principles of the Supply Partner Code of Conduct (hereafter "the Code").

Overarching Principles for Supply Partners

- ✓ **Act responsibly and with integrity**
- ✓ **Be transparent and accountable**
- ✓ **Seek to improve value for money**
- ✓ **Demonstrate commitment to poverty reduction and FCDO priorities¹**
- ✓ **Demonstrate commitment to wider HMG priorities²**

FCDO Supply Partner responsibilities

Supply Partners and their subcontractors (delivery chain partners) should ensure they have read and understood the Code and their required compliance level and seek clarification from FCDO where necessary. In particular, it is important that the Supply Partners and their subcontractors (delivery chain partners) understand any risks and have systems in place to manage them. The 3 compliance levels are:

Compliance Level 1 - Supply Partners with an individual contract value of £1m or above, or two or more contracts/grants with FCDO with a combined value of £5m or above;

Compliance Level 2 - Supply Partners with an individual contract value below £1m, or two or more contracts /grants with FCDO with a value of less than £5m;

Compliance Level 3 - Supply Partners with an individual Contract value, or component of a Contract/Grant, with a value below the EU contracting threshold. At this level Supply Partners are required to adhere to the overarching Code principles and recognise, mitigate and manage risks. These Supply Partners will not be monitored against the contractual KPIs.

Scope

This Code forms part of FCDO's standard contractual terms and conditions and full compliance and annual verification via a signed declaration, to be found at Annex 1b, is mandatory for contracted Supply Partners.

Adherence to the Code at the appropriate level is also a requirement for FCDO direct and delivery chain Supply Partners in receipt of funding. FCDO will monitor Supply Partners in six priority areas as set out below using a set of Key Performance Indicators (KPIs) as referenced in Annex 1a and 1b.

1. Value for Money and Governance

Key Performance Indicators KPI 1 a - c

Value for Money and financial transparency is an essential requirement of all FCDO commissioned work. All Supply Partners must seek to maximise development results, whilst driving cost efficiency, throughout the life of commissioned programmes. This includes budgeting and pricing realistically and appropriately to reflect delivery requirements and levels of risk over the life of the programme. It also includes managing uncertainty and change to protect value in the often challenging environments that we work in.

Supply Partners must demonstrate that they are pursuing continuous improvement and applying stringent financial management and governance to reduce waste and improve efficiency in their internal operations and within the delivery chain. FCDO expects Supply Partners to demonstrate openness and honesty and to be realistic about capacity and capability at all times, accepting accountability and responsibility for performance along the full delivery chain, in both every-day and exceptional circumstances.

Specific requirements include:

- ✓ Provision of relevant VfM and governance policies and a description of how these are put into practice to meet FCDO requirements (e.g. Codes on fraud and corruption, due diligence);
- ✓ A transparent, open book approach, which enables scrutiny of value for money;
- ✓ Strict adherence to all UK and in-country government tax requirements;
- ✓ Processes for timely identification and resolution of issues and for sharing lessons learned which might be requested by FCDO at any time.

2. Ethical Behaviour

Key Performance Indicators KPI 2 a- f

FCDO Supply Partners and their delivery chain partners act on behalf of the UK government and interact globally with country governments, other aid donors and their delivery partners, many stakeholders including citizens and directly and indirectly with aid beneficiaries. These interactions must therefore meet the highest standards of ethical and professional behaviour in order to uphold the reputation of the UK government.

Arrangements and relationships entered into, whether with or on behalf of FCDO, must be free from bias, conflict of interest or the undue influence of others. Particular care must be taken by Supply Partner and delivery chain staff who:

- a) are directly involved in the management of a programme or procurement of services; or
- b) who engage with i) frontline FCDO staff ii) other deliverers of aid iii) beneficiaries (of aid)

Where those in a) and b) could be susceptible to undue negative or detrimental influence.

Supply Partners and their delivery chain partners must declare to FCDO where there may be instances or allegations of previous unethical behaviour by an existing or potential staff member or where there is a known or suspected conflict of interest. Where a potential or existing staff member has been employed by FCDO or the Crown in the

¹ <https://www.gov.uk/government/organisations/department-for-international-development/about#priorities>

² <https://www.gov.uk/government/organisations/hm-treasury/about#priorities>

preceding two years Supply Partners and their delivery chain partner must provide proof of compliance with the HMG approval requirements under the Business Appointment Rules.

Supply Partners and their delivery chain partners must have the following policies and procedures in place:

- ✓ Development and proof of application and embedding of a Staff Recruitment, Management and Retention policy (which must address circumstances where there may be potential or actual conflict of interest and embedding of a Whistleblowing Policy)
- ✓ Ongoing monitoring of potential or existing personal, business or professional conflict of interest and their mitigation and management
- ✓ Ethical training for every staff member and staff updates in ethical working practices suitable to the development sector (e.g. UN Global Compact principles) including awareness of modern day slavery and human rights abuses
- ✓ Procedures setting out how, staff involved in FCDO funded business, can immediately report all suspicions or allegations of aid diversion, fraud, money laundering or counter terrorism finance to the FCDO Counter Fraud and Whistleblowing Unit (CFWU) at reportingconcerns@fcdo.gov.uk or on +44(0)1355 843747.

3. Transparency and Delivery Chain Management

Key Performance Indicators KPI 3 a – f

FCDO requires full delivery chain transparency from all Supply Partners. All direct Supply Partners and their delivery chain partners must adhere to wider HMG policy initiatives including the support and capacity building of micro, small and medium sized enterprises (MSMEs), prompt payment, adherence to human rights and modern slavery policies and support for economic growth in developing countries.

FCDO recognises the critical value that downstream delivery partners contribute. Direct Supply Partners must engage their delivery chain partners in a manner that is consistent with FCDO's treatment of its direct Supply Partners. This includes, but is not limited to: appropriate pricing of services; fiduciary and financial risk management processes; applying transparent and responsive measures where delivery chain partners underperform against the KPI areas; taking a zero tolerance approach to tax evasion, corruption, bribery and fraud in subsequent service delivery or in partnership agreements. Direct Supply Partners must cascade the principles of the Code throughout their delivery chain to ensure FCDO ethical behaviour standards are embedded and maintained.

Specific requirements for direct Supply Partners include:

- ✓ Provide assurance to FCDO that the policies and practices of their delivery chain Supply Partners and affiliates comply with the Code;
- ✓ Maintaining and sharing with FCDO up-to-date and accurate records of all downstream partners in receipt of FCDO funds and/or FCDO funded inventory or assets. This should map how funds flow from them to end beneficiaries and identify risks and potential risks along the delivery chain;
- ✓ Ensuring delivery chain partner employees are expressly notified of the FCDO 'reporting concerns' mail box³ found on FCDO's external website and of the circumstances in which this should be used;
- ✓ Publication of FCDO funding data in accordance with the International Aid Transparency Initiative (IATI)⁴
- ✓ Supply Partners shall adhere to HMG prompt payment policy and not use restrictive exclusivity agreements with sub-partners.

³ <https://www.gov.uk/government/organisations/department-for-international-development/about#reporting-fraud>

⁴ <http://www.aidtransparency.net/>

4. Environmental issues

Key Performance Indicators KPI 4 a – b

FCDO Supply Partners must be committed to high environmental standards, recognising that FCDO's activities may change the way people use and rely on the environment, or may affect or be affected by environmental conditions. Supply Partners must demonstrate they have taken sufficient steps to protect the local environment and community they work in, and to identify environmental risks that are imminent, significant or could cause harm or reputational damage to FCDO.

Commitment to environmental sustainability may be demonstrated by:

- ✓ Formal environmental safeguard policies in place;
- ✓ Publication of environmental performance reports on a regular basis
- ✓ Membership or signature of relevant environmental Codes, both directly and within the delivery chain such as conventions, standards or certification bodies (e.g. the Extractive Industries Transparency Initiative⁵).

5. Terrorism and Security

Key Performance Indicators KPI 5 a – d

FCDO Supply Partners must implement due diligence processes to provide assurance that UK Government funding is not used in any way that contravenes the provisions of the Terrorism Act 2000, and any subsequent regulations pursuant to this Act.

FCDO Supply Partners must maintain high levels of data security in accordance with the Data Protection Act 1998 and any subsequent regulations pursuant to this Act, or new Act and with the General Data Protection Regulation (Directive 95/46/EC).

Specific requirements:

- ✓ Development and proof of application and embedding of a comprehensive Terrorism and Security Policy
- ✓ Development and proof of application and embedding of personal data processing processes within a Data Protection Policy
- ✓ FCDO Supply Partners must safeguard the integrity and security of their IT and mobile communications systems in line with the HMG Cyber Essentials Scheme⁶. Award of the Cyber Essentials or Cyber Essential Plus badges would provide organisational evidence of meeting the UK Government-endorsed standard;
- ✓ All FCDO Supply Partners who manage aid programmes with a digital element must adhere to the global Principles for Digital Development⁷, which sets out best practice in technology-enabled programmes
- ✓ Ensure that FCDO funding is not linked to terrorist offences, terrorist activities or financing.

6. Safeguarding, Social Responsibility and Human Rights

Key Performance Indicators: KPI 6 a – d

Safeguarding, social responsibility and respect for human rights are central to FCDO's expectations of its Supply Partners. Supply Partners must ensure that robust procedures are adopted and maintained to eliminate the risk of poor human rights practices within complex delivery chain environments funded by FCDO. These practices include sexual exploitation, abuse and harassment; all forms of child abuse and inequality or discrimination on the basis of race, gender, age, religion, sexuality, culture or disability. Supply Partners must place an emphasis on the control of

⁵ <https://eiti.org/>

⁶ <https://www.gov.uk/government/publications/cyber-essentials-scheme-overview>

⁷ <http://digitalprinciples.org/>

these and further unethical and illegal employment practices, such as modern day slavery, forced and child labour and other forms of exploitative and unethical treatment of workers and aid recipients. FCDO will expect a particular emphasis on the management of these issues in high risk fragile and conflict affected states (FCAS), with a focus on ensuring remedy and redress if things go wrong.

Specific requirements:

- ✓ Development and proof of application and embedding of a Safeguarding Policy;
- ✓ Delivery of Social Responsibility, Human Rights and Safeguarding training throughout the delivery chain;
- ✓ Compliance level 1 Supply Partners must be fully signed up to the UN Global Compact⁸;
- ✓ Practices in line with the International Labour Organisation (ILO) 138⁹ and the Ethical Trading Initiative (ETI) Base Code¹⁰ are to be encouraged throughout the delivery chain;
- ✓ Policies to embed good practice in line with the UN Global Compact Guiding Principles 1 & 2 on business and human rights throughout the delivery chain are required, as detailed in Annex 2;
- ✓ Compliance level 1 Supply Partners to submit a Statement of Compliance outlining how the organisation's business activities help to develop local markets and institutions and further how they contribute to social and environmental sustainability, whilst complying with international principles on Safeguarding and Human Rights labour and ethical employment, social inclusion and environmental protection;
- ✓ Overarching consideration given to building local capacity and promoting the involvement of people whose lives are affected by business decisions.

⁸ <https://www.unglobalcompact.org/what-is-gc/mission/principles>

⁹ http://ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138

¹⁰ <http://www.ethicaltrade.org/eti-base-code>

Compliance KPIs and contractual checking mechanisms - FCDO Contracts

Maintaining standards of assurance and driving sustainable improvements, in connection with the Code's principles through Supply Partner relationships is a key focus for FCDO.

Supply Partner and delivery chain compliance checking processes will take place in accordance with the agreed compliance levels and the specific contractual clauses down the delivery chain, FCDO shall undertake compliance checks.

Where appropriate, a plan setting out the Code of Conduct delivery methodology for the Supply Partner arrangements during the contract term may be jointly developed with FCDO during Contract mobilisation.

Contract Checks and Compliance KPIs		KPI target	Specific Contractual link	Checking mechanism
i.	Declaration of acceptance of the FCDO Supply Partner Code of Conduct	Annual declaration submitted by contracted Supply Partner on behalf of delivery chain	Contract Terms and Conditions Clause 5.1 and Clause 7.7	Declaration of acceptance at the applicable level of compliance with each of the 6 sections received
	ii. Declaration of sign up to the UN Global Compact	Annual declaration submitted by the direct Supply Partner	Standard Selection Questionnaire (SSQ)	Declaration of applicable sign up / application received
1.	<u>VfM and Governance standards</u>			
a)	Economic and governance policies in practice	Annual updated documentation provided (copy of Policies with detailed annual financial breakdown relating to contract)	Terms and Conditions Clauses 13, 14 & 15	Annual contract review/programme management Audit checks Compliance checks
b)	VfM being maximised over the life of a contract 1. By confirmation of annual profit level fluctuations since tender submittal 2. by timely identification and resolution of issues 3. ensuring lessons learned are shared	Updated documentation submitted once annually	Contract T&Cs Clauses 15 & 20 Terms of Reference Terms of Reference	Compliance checks Annual contract review/programme management Compliance checks Annual contract review/programme management Compliance checks

c)	<u>Tax Declaration (HMRC format)</u> <ul style="list-style-type: none"> Tax the organisation paid on profits made in the last 3 years, and in which countries Compliance with relevant country level tax regulations fully understood and met 	Annually updated documentation submitted by contracted supplier and on behalf of delivery chain partners	Terms and Conditions Clauses 15, 23 & 24 Terms of reference	Annual return Compliance checks
2.	<u>Ethical Behaviour</u>			
a)	Recruitment policy (which must address circumstances where there may be potential or actual conflict of interest)	Updated policy documentation submitted once annually by contracted supplier and on behalf of delivery chain partners	Terms and Conditions Clauses 6, 51 & 54	Annual return Compliance checks
b)	Ongoing conflict of interest, mitigation and management	As 2a. above	Terms and conditions Clause 54	Annual return Compliance checks
c)	Refresher ethical training and staff updates (including disclosure restrictions on FCDO confidential information)	Copy of training logs provided Delivery in accordance with training programme in place	Terms and conditions Clause 6, 29, 51 & 54	Annual return Compliance checks
d)	A workforce whistleblowing policy	Continuous workforce awareness maintained Policy in place	Terms and Conditions Clause 48	Annual return Compliance checks
e)	1. Procedures setting out how, staff involved in FCDO funded business, can immediately report all suspicions or allegations of aid diversion, fraud, money laundering or counter terrorism finance to the Counter Fraud and Whistleblowing Unit (CFWU) at reportingconcerns@fcdo.gov.uk or on +44(0)1355 843747 2. Employees working on FCDO Contracts fully aware of the FCDO external website reporting concerns mailbox	Continuous awareness maintained Procedure in place Continuous awareness maintained	Terms and Conditions Clauses 6, 48 & 54 Terms and Conditions Clause 48	Annual return Compliance checks Annual return Compliance checks
f)	Declarations of direct or subcontractor staff members proposed to work on FCDO funded business if employed by FCDO or the Crown in the preceding two years Supply Partners and their subcontractors must provide proof of compliance with the HMG approval requirements under the	Details submitted as applicable	Terms and Conditions Clause 48 HMG business appointment rules	Annual return Compliance checks Contract management

	business appointment rules			
3.	<u>Transparency and Delivery Chain Management</u>			
a)	IATI compliance for Supply Partner and their delivery chain Supply Partners	Updated documentation submitted once annually	Contract Terms and Conditions Clause 28	Tender evaluation Periodic spot checks Compliance checks
b)				
c)	Up to date and accurate records of all delivery chain Supply Partners	Updated documentation submitted in accordance with Clause 26.7	Contract Terms & conditions Clause 9 & 28 Tender submittal – delivery chain	Annual return Compliance checks Contract management
d)	Policies and practices for the management of delivery chain partners and affiliates aligned to the FCDO Supply Partner Code of Conduct	Updated documentation submitted annually	Contract Terms & conditions Clause 7	Contract management processes Periodic spot checks Compliance checks
e)	Tax evasion, bribery, corruption and fraud -statements of assurance provided	Updated documentation submitted once annually	Contract Terms and Conditions 23 & 24	Periodic and annual return spot checks Compliance checks
f)	All delivery chain partner employees working on FCDO Contracts fully aware of the FCDO reporting concerns mailbox	Updated documentation submitted once annually	Contract Terms & Conditions Clause 48	Periodic and annual return spot checks
	HMG prompt payment policy adhered to by all delivery chain partners	Updated documentation submitted once annually	Contract Terms & conditions 7	HMG spot checks Compliance checks Annual return
4.	<u>Environmental Issues</u>			
a)	1.Steps in place to identify environmental risks (e.g. by maintaining a risk register) Ensuring legislative requirements are being met 2. Formal context specific environmental safeguarding policies in place to ensure legislative requirements are being met	Updated documentation submitted once annually	Contract Terms & Conditions Clause 53 and ToRs	Contract management Periodic and annual return spot checks Compliance checks
b)	Published annual environmental performance reports	Updated documentation submitted once annually	Contracts ToRs	Periodic and annual return spot checks
5.	<u>Terrorism and Security</u>			
a)	Up to date status declaration regarding the reporting of terrorist offences or offences linked to terrorist activities or financing	Updated documentation submitted if and when changes	Standard Selection Questionnaire (SSQ)	Annual return Spot checks Compliance checks Annual contract review

		identified since tender submittal		
b)	Certification at or above the level set out in the tender submittal	Updated documentation submitted if changes identified since tender submittal	Standard Selection Questionnaire (SSQ)	Annual return Compliance checks
c)				
d)	Data managed in accordance with FCDO Security Policy and systems in accordance with the HMG Cyber Essentials Scheme	Updated documentation submitted if changes identified since tender submittal	Contract T&Cs Clause 32 & 33	Compliance checks
	Best practice global Principles for Digital Development in place	Updated documentation submitted if changes identified since tender submittal	Terms of reference (TORs)	Annual contract review Compliance checks
6.	<u>Safeguarding, Social Responsibility and Human Rights</u>			
a)	Provision of a current internal document demonstrating good practice and assuring compliance with key legislation on international principles on labour and ethical employment	Confirmation of UN Global Compact Membership	Standard Selection Questionnaire	Tender evaluation Annual return Compliance checks
b)	Agreed level of measures in place and cascaded to assure the prevention of actual, attempted or threatened sexual exploitation or abuse or other forms of inequality or discrimination by employees or any other persons engaged and controlled by the Supply Partner to perform any activities relating to FCDO funded work. Robust procedures for the reporting of suspected misconduct, illegal acts or failures to investigate in place	Updated documentation submitted once annually	Contract T&Cs Clause 50	Tender evaluation, Compliance checks
c)	Recognition of the ILO standards Membership of Ethical Trading Initiative (ETI)	Membership number		Compliance checks
d)	1.Principles cascaded to employees and delivery chain partners via an internal policy or written outline of good practice service delivery approaches to Human Rights and Safeguarding reflecting UN Global Compact Principles 1 & 2	Updated documentation submitted annually Updated documentation submitted if and	Contract T&Cs Clause 50	Annual return Compliance checks Annual checks

	<p>2. Number and details of any organisational safeguarding allegations reported</p> <p>3. Level of commitment in relation to the Contract evident in delivery practices in line with the workplace and community guidance provided in the FCDO Supply Partner Code of Conduct Annex 2</p>	<p>when changes identified since tender submittal</p> <p>Updated documentation submitted annually</p>		<p>Compliance checks</p> <p>Tender evaluation</p> <p>Compliance checks</p>
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Contractual Annual Compliance Declaration

Prior to Contract Award and thereafter on an annual basis at the end of each financial year, the Supply Partner is required to submit a Compliance Declaration in connection with the management of any FCDO Contract in place and on behalf of their delivery chain partners. Supply Partners should be aware that spot check compliance monitoring will take place to verify responses.

Supply Partner Compliance Declaration**Key:****Contractual Requirement:**

X denotes full compliance 1 required

O denotes reduced compliance level 2, unless otherwise stipulated in contractual Terms of Reference

Compliance Level 1

Supply Partners with an individual contract value of £1m or above, or two or more contracts funded by FCDO with a combined value of £5m or above.

Compliance Level 2

Supply Partners with an individual contract value below £1m, or two or more contracts funded by FCDO with a value of less than £5m.

Compliance Level 3

Supply Partners with an individual contract value or component of a contract funded by FCDO with a value below the EU Threshold. At this level Supply Partners are required to adhere to the overarching Code principles and recognise, mitigate and manage risks but will not be monitored against the contractual KPIs.

KPI Compliance Area		Supply Partner Compliance Level		Commentary	CEO Signatory	Signature & date of signing
		1	2			
1.	<u>VfM and Governance standards</u>					
a)	Evidence of how economic and governance policies work in practice	X	O			
b)	VfM maximisation over contract life					
	1. Annual confirmation of % profit on contract	X	X			
	2. timely identification and resolution of issues	X	X			
	3. ensuring lessons learned are shared	X	O			
c)	<u>Tax Declaration (HMRC format)</u>					
	Comply with all tax requirements	X	X			
2.	<u>Ethical Behaviour</u>					
a)	Adherence to agreed conflict of interest management procedures	X	X			
b)	Evidence of workforce ethical training updates taking place	X	X			

c)	Confirmation of direct and delivery chain partner compliance with the HMG approval requirements under the Business Appointment Rules.	X	X			
d)	Confirmation and full evidence of awareness of an up to date workforce whistleblowing policy	X	X			
e)	Procedures in place and full evidence of awareness of how, staff involved in FCDO funded business, can immediately report all suspicions or allegations of aid diversion, fraud, money laundering or counter terrorism finance to the Counter Fraud and Whistleblowing Unit (CFWU) at reportingconcerns@fcdo.gov.uk or on +44(0)1355 843747	X	X			
f)	HMG Business appointment rules followed - Conflict of Interest(COI) declarations made for direct or delivery chain staff members proposed to work on FCDO funded business if employed by FCDO or the Crown in the preceding two years.	X	X			
3.	<u>Transparency and Delivery Chain Management</u>					
a)	Supply Partner and delivery chain partners IATI compliant	X	O			
b)	Provision of up to date and accurate records of all delivery chain Supply Partners provided within the required frequencies, including annual contractual spend on SME's, women owned businesses and modern apprenticeships in place	X	O			
c)	Verification that policies and practices for the management of delivery chain Supply Partners are aligned to the FCDO Supply Partner Code of Conduct i.e. by demonstrating delivery chain governance arrangements in place	X	O			
d)	Assurance there has been no change to previous statements provided in relation to tax evasion, bribery, corruption and fraud	X	X			
e)	Confirmation that all delivery chain Supply Partners' employees working on FCDO Contracts are fully aware of the FCDO external website reportingconcerns mailbox	X	X			
f)	Confirmation of adherence to HMG prompt payment policy with all their delivery chain Supply Partners	X	O			
4.	<u>Environmental Issues</u>					
a)						

b)	Environmental risks identified (e.g. by maintaining a risk register) with formal context specific environmental safeguarding policies in place	X	O			
	Annual published environmental performance reports	X	O			
5.	<u>Terrorism and Security</u>					
a)	Up to date status declaration regarding the reporting of terrorist offences or offences linked to terrorist activities or financing	X	X			
b)	No engaged employees or delivery chain partner personnel appears on the Home Office Prescribed Terrorist Organisations List	X	X			
c)	Data is managed in accordance with FCDO security policy and systems are in accordance with the HMG cyber essentials scheme	X	X			
d)	Adherence to the best practice global principles for digital development	X	O			
6.	<u>Safeguarding, Social Responsibility and Human Rights</u>					
a)	Provision of a document demonstrating current organisational good practice and assuring compliance with key legislation on international principles on labour and ethical employment (to include Modern Day Slavery Act 2015 compliance detail)	X	O			
b)	Organisational procedures in place directly, and within the delivery chain:					
	1.To prevent actual, attempted or threatened sexual exploitation and abuse or other forms of inequality or discrimination by employees or any other persons engaged and controlled by the Supply Partner to perform any activities relating to FCDO funded work 2.For reporting suspected misconduct, illegal acts or failures to investigate actual attempted or threatened sexual exploitation or abuse	X X	X X			
c)	Current membership of UN Global Compact	X	O			
	Current membership of ETI	O	O			
d)	1.Evidence of cascade to employees of an internal policy or written outline of good practice service delivery approaches to Human Rights and Safeguarding reflecting UN Global Compact Principles 1&2 demonstrating an appropriate level of commitment in relation to the Contract	X	O			
		X	X			

	2.Numbers and details of organisational safeguarding allegations reported	X	O			
	3. Examples of delivery practice that demonstrate commitments in line with workplace and community in line with UN Global Compact Principles 1 & 2 (Annex 2)					

UN Global Compact – Human Rights

Principle 1: businesses should support and respect the protection of internationally proclaimed Human Rights

Principle 2: businesses should ensure they are not complicit in Human Rights abuse

Organisations should do this by giving attention to vulnerable groups including women, children, people with disabilities, indigenous groups, migrant workers and older people.

Organisations should comply with all laws, honouring international standards and giving particular consideration to high risk areas with weak governance.

Examples of how suppliers and partners should do this are set out below:

In the workplace

- by providing safe and healthy working conditions
- by guaranteeing freedom of association
- by ensuring non-discrimination in personnel practices
- by ensuring that they do not use directly or indirectly forced labour or child labour
- by providing access to basic health, education and housing for the workers and their families, if these are not provided elsewhere
- by having an affirmative action programme to hire victims of domestic violence
- by making reasonable accommodations for all employees' religious observance and practices

In the community

- by preventing the forcible displacement of individuals, groups or communities
- by working to protect the economic livelihood of local communities
- by contributing to the public debate. Companies interact with all levels of government in the countries where they operate. They therefore have the right and responsibility to express their views on matters that affect their operations, employees, customers and the communities of which they are a part
- through differential pricing or small product packages create new markets that also enable the poor to gain access to goods and services that they otherwise could not afford
- by fostering opportunities for girls to be educated to empower them and also helps a company to have a broader and more skilled pool of workers in the future, and
- perhaps most importantly, a successful business which provides decent work, produces quality goods or services that improve lives, especially for the poor or other vulnerable groups, is an important contribution to sustainable development, including human rights
- If companies use security services to protect their operations, they must ensure that existing international guidelines and standards for the use of force are respected

**Contract Section 3: Terms of Reference
Education Research in Conflict and Protracted Crisis (ERICC)**

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A Executive Summary:

1. In October 2018, the former Department for International Development (DFID), now the Foreign, Commonwealth and Development Office (FCDO), approved an investment of up to £26.5m to fund new rigorous and operationally-relevant research on the most effective approaches to education provision in conflict and protracted crisis contexts.
2. The Foreign, Commonwealth and Development Office (FCDO) has awarded IRC UK and their consortium of institutions/organisations with a combination of academic, operational and managerial expertise to deliver aspects of the programme until at least November 2024, with a budget of £15.8 million, and an anticipated extension option of up to 72 months¹ (and budget for the extension option of up to £20.5 million). The IRC UK consortium includes academic institutions, civil societies and commercial organisations². IRC UK will fulfil the role of the ERICC Research Programme Consortium (RPC) within the broader ERICC programme structure (see Figure 1). IRC UK will be referred to as “The Supplier” or “The Supplier/consortium” throughout the remainder of this document.
3. The Education Research in Conflict and Protracted Crisis (ERICC) programme will have four Components. The Supplier will deliver Components 1 - Research on the most effective approaches to education provision in conflict and protracted crisis and 2 - In-country operational support. Component 3 - Promoting Research uptake across FCDO and the international community will be delivered by an organisation awarded an accountable grant.³ Component 4 - Knowledge Systems Strengthening will be delivered by the British Academy. While those organisations will be responsible for the regular operational delivery of Components 3 and 4, the Supplier will work in close collaboration with them. Cognisant of the interdependencies between all four Components, the Supplier, in order to fulfil its obligations under this contract and to achieve the overall vision of ERICC, will make positive contributions to Components 3 and 4.
4. These Terms of Reference set out the ambition for, and requirements of the Supplier. It includes details and delivery expectations for the Supplier to design and deliver a programme of research, build a community of practice, and to foster significant uptake of the research findings, ultimately promoting **better education outcomes** in regions affected by conflict and protracted crises. Whilst the programme is funded by FCDO, the outputs and outcomes are also for governments, policy makers and implementing organisations operating in crisis and conflict affected countries, with the ultimate beneficiaries being those using education systems in crisis and conflict affected countries.
5. **The objective** of the ERICC programme is to deliver and maximise uptake of new, operationally and policy relevant evidence on **the most effective approaches to**

¹ Other extension options are retained, see paragraph 95 and Section E below.

² As set out in later sections, the Supplier/consortium will be composed of three main elements – a programme management team, a Research Directorate and a number of country research teams/hubs. The contract budget of £15.8m over 3 years will cover all three elements.

³ As set out in the Business Case, this organisation is envisaged as being the Inter Agency Network for Education in Emergencies (INEE). However, this role will be negotiated and agreed following the award of the ERICC RPC.

education provision in conflict and protracted crisis contexts. ERICC's focus can include formal, non-formal, and informal education sectors. The main focus of the research should be on basic education (i.e. primary and lower secondary levels) in order to align it with FCDO priorities and programming. However, research may additionally cover a wider range of age groups, including from pre-primary to youth, secondary and higher education⁴, particularly where this is aligned with FCDO priorities and programming at the country level.

6. Consequently, **the vision** of the ERICC programme is to expand and strengthen the evidence base for education in emergencies – enabling at-scale, in-depth and longitudinal research in a range of contexts in order to close critical evidence gaps and develop new approaches to conducting rigorous research in challenging contexts. It will provide operationally and policy-relevant evidence to support bold reform in the provision of education in conflict- and crisis-affected contexts. These Terms of Reference demonstrate both FCDO's recognition of the challenges of education research and service provision in conflict and protracted crisis context, and FCDO's commitment to support the Supplier in the achievement of this ambitious and pathfinding programme.

7. To achieve this ambitious vision, the programme will be **led by a Research Director**, a world class academic. They will inspire and mobilise global education and multidisciplinary research communities to come together and deliver practical solutions to benefit an estimated 75 million children whose education is affected by conflict and protracted crises. Nearly half of these children – 37 million – are out of school at the primary and lower secondary level. The Research Director, supported by the Supplier, will also be a global force – working with existing structures and actors to help mobilise and coordinate partners such as UN agencies and multilaterals, the Global Partnership for Education, Education Cannot Wait, Building Evidence in Education (BE2), the Global Education Cluster and FCDO among others during this period of unprecedented displacement.

8. The **focus of the research programme** will be to produce high quality, rigorous and operationally-relevant research that addresses key issues in relation to education in conflict and protracted crisis. It will develop a global reputation and will be a pathfinder, developing new methodologies and approaches to conducting rigorous research in challenging contexts. It will be underpinned by a realistic theory of change – based on that set out in the Business Case and Annex C of this document – that links the production of evidence to shifts in policy and programmes. The research design will be informed by six themes (outlined in Annex A). These are: political settlements; accountability; cost-effective delivery; quality and learning; protection and inclusion (including a focus on girls' education); and data, monitoring and evaluation. These have been identified through stakeholder consultation and formed the basis of a series of evidence reviews and guidance notes produced for DFID (now FCDO) in 2018⁵. The research questions developed for the programme will produce evidence that addresses these themes and the attached indicative questions (see also Annex A).

⁴ The education focus will be agreed with FCDO and should align with FCDO priorities and programming (i.e. basic education), but could include formal, non-formal, informal, etc, as well as additionally covering a wider range of levels from 3 to 25 years old.

⁵ This document, titled "Education in Emergencies Guidance Note" is an Additional Document, which forms part of the Invitation to Tender Pack and can be downloaded via the FCDO Supplier Portal.

9. An ambitious programme delivery model is envisaged. The Supplier will be solely responsible for the delivery of two Components⁶:

- **Research on the most effective approaches to education provision in conflict and protracted crises (Component 1):** focusing on expanding and strengthening the evidence base, as well as research uptake and dissemination. This includes developing an overall intellectual framework, defining an ambitious and rigorous approach to researching the selected questions and themes, conducting research across six contexts affected by conflict and protracted crises, and engaging in evidence synthesis, curation and consolidation. This Component will also involve developing and delivering strategies for research uptake and dissemination – both at the global and national level – and engaging with a diverse community of researchers on education in emergencies, conflict and protracted crisis, with the Research Director acting as the face of the ERICC programme.
- **Operational in-country support (Component 2):** focusing on strengthening the impact of education programming supported by FCDO and partner organisations through three mechanisms. Firstly, the provision of expert technical advice to FCDO country offices, implementation partners and in-country partners - either by Country Research Team staff or in-close coordination with them. This mechanism should link to existing and forthcoming FCDO technical assistance resources for education, such as those being implemented through the EdTech Hub and upcoming What Works Hub⁷. Secondly, the provision of small-scale research linked to programme design or evaluation (including replication and implementation science studies). Thirdly, the provision and management of grants to pilot, scale up and support education programmes in line with lessons learnt. This last mechanism should be allocated at least half the funding for Component 2. Operational in-country support will be informed by the evidence produced by research in Component 1 and feedback loops for learning will be established between these two Components.

10. **Programme Delivery and management:** The Supplier will deliver the programme through a Programme Management Team, a Research Directorate and a number of Country Research Teams/Hubs. The Programme Management Team will oversee, for example, cross-programme management, finance, delivery, risk management, internal communications, commissioning and coordination of country research and stakeholder engagement. It will also contain a communications team responsible for working with the Research Directorate and Country Research Teams/Hubs to deliver research uptake and dissemination strategies. One possible model for delivery is set out in **Figure 1** on the following page, however, alternative combinations and models may be proposed. The Supplier will establish and maintain effective governance, with clearly defined roles, responsibilities and processes for reporting and decision-making, regardless of delivery model.

⁶ The Supplier will additionally make positive contributions to Components 3 and 4 of the wider programme.

⁷ FCDO's What Works Hub is currently under development and is expected to begin work in early 2021, with some components – including the Global Education Evidence Advisory Panel – potentially activated earlier.

11. The success of this complex programme will depend, in part, on collaborative working across the different elements and components. To this end, the Supplier will work collaboratively and ensure strong relations, cooperation and coordination across a range of partners involved in delivering the overall ERICC programme. The Supplier will set out and operate a clear governance structure to achieve this, utilising Agile Ways of Working and other collaborative methodologies. Partners for collaboration will include (but will not be limited to):

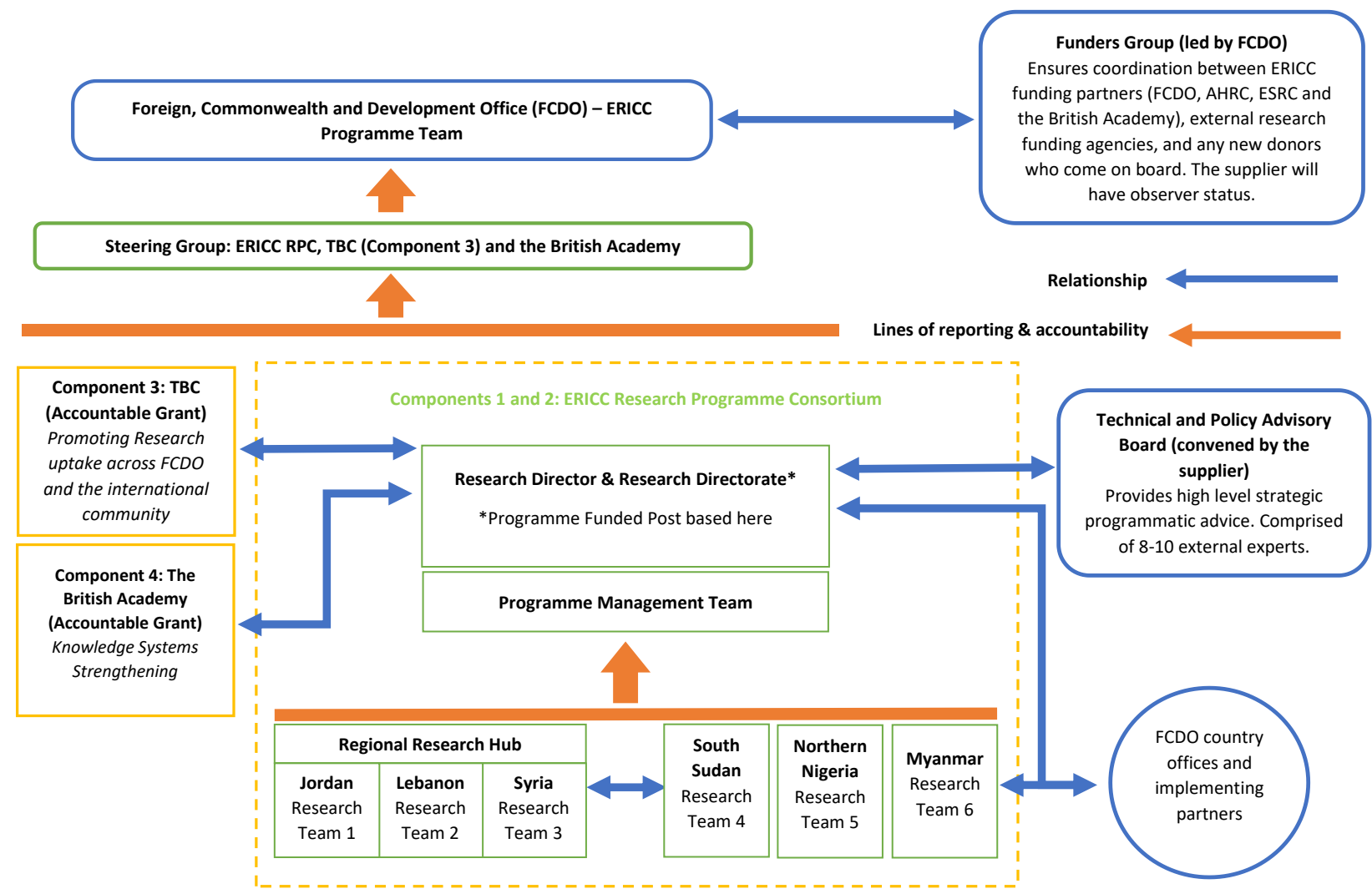
- Funding partners (FCDO, the British Academy, the Arts and Humanities Research Council (AHRC) and the Economic and Social Research Council (ESRC) – who are implementing complementary research calls on education in emergencies through the Global Challenges Research Fund (GCRF)
- ERICC programme partners responsible for regular delivery of Components 3 and 4
- FCDO country offices and implementing partners

12. Programme success will also depend on working collaboratively within the Supplier. To this end, the Supplier will be responsible for ensuring a strong and consistent level of collaboration throughout the life cycle of the programme between all the members of the Supplier (intellectual, operational and managerial).

13. The Supplier will implement and maintain a programme governance structure and a clear, effective coordination mechanism across the programme partners (i.e. The Supplier and organisations involved in delivering Components 3 and 4). This will include clear lines of responsibility and frameworks for decision making chains of reporting and a mechanism to address bottlenecks between partners. During the Inception Period, the Supplier will also enter into written agreements with the British Academy (and/or the other institutions sub-contracted to deliver Component 4) and the organisation selected to implement Component 3 that, subject to compliance with the relevant requirements of Contract Section 2 Clause 33.2, establish the latter two organisations as Sub-processors for GDPR purposes. The Supplier will also implement a Steering Group – shown reporting to FCDO ERICC Programme Team in the possible delivery model outlined at Figure 1 – or similar body that will bring together representatives from all of the programme partners and will report directly to FCDO.

14. The Supplier will execute a programme delivery model - either as outlined at Figure 1 or as proposed by the Supplier - that enables lessons to be shared across partners and contexts, including through joint evidence, synthesis, events and conferences which will contribute to strengthening in the impact on changing practice. Additionally, the Supplier will convene a Technical and Policy Advisory Board, which will provide strategic technical and policy advice to the programme. Full details on this Technical and Policy Advisory Board are provided at paragraph 85.

Figure 1: Possible delivery model for the ERICC programme



B Impact, outcome, scope and Components:

15. The expected impact of the programme is: *Stronger evidence-based policies and better value-for-money programmes in conflict and protracted crisis.*

16. ERICC's expected outcomes are:

1. strengthened education programmes in FCDO focal countries/regions;
2. a rigorous body of evidence on what works for education in conflict and protracted crisis;
3. decision makers access and use evidence on education in conflict and protracted crisis;
4. knowledge systems strengthened for research on education in conflict and protracted crisis.

17. The scope of the programme: Six focal countries/regions have been identified for the research – Northern Nigeria⁸, South Sudan, Myanmar and the Syria Region (comprising Jordan, Lebanon and Syria). Any alternative contexts must be justified in terms of their contribution to achieving the aims of the ERICC programme and must also be both: (i) affected by either conflict or protracted crises, and (ii) a FCDO partner country. In contexts suffering from multiple conflicts/protracted crises bidders should set out which they would propose to focus on. Note that the scope of the research can also include cross-borders research, as outlined in Paragraph 19. The Supplier has proposed the following countries within their bid; Syria, Lebanon, Jordan, Myanmar and Bangladesh, Nigeria, South Sudan and justifies clearly how these arrangements are optimal for achieving the aims of the ERICC programme.

18. If, due to instability or other changes in the context, research cannot be initiated or continued in one or several of the agreed focal countries/regions, reserve countries may be introduced as alternatives, subject to advanced discussion and agreement with FCDO. Additionally, research may be expanded to new areas of the agreed focal countries in the event of emerging conflicts/crises – again subject to consultation and agreement with FCDO.

19. The scope of the research may include, where appropriate and agreed with FCDO, across-borders research⁹; comparative research/lesson learning across regions and within countries, research on Internally Displaced Persons (IDPs), refugees and/or host communities¹⁰; and education provision that is formal, non-formal or informal. The main focus of the research should be on basic education (i.e. primary and lower

⁸ Suppliers proposing to conduct research in Nigeria must include a focus on Northern Nigeria but may also propose research in other conflict-/crisis-affected areas of the country.

⁹ Chiefly, the research programme targets the six focal countries/regions. However, FCDO expects some of the research to look at cross-borders issues such as across-borders recognition of teaching qualifications and international accreditation of certified education, the certification of learning achievements for IDP and refugee children, understanding the dynamics and possible tensions between home and hosting country systems. For further details please see the "Education In Emergencies Guidance Note". This document is an Additional Document, which forms part of the Invitation to Tender Pack and can be downloaded via the FCDO Supplier Portal.

¹⁰ Bearing in mind that the groups covered by the programme may vary across the focal countries, depending on the nature of the emergency and (protracted) crisis.

secondary levels) in order to align it with FCDO priorities and programming. However, research may additionally cover a wider range of age groups (covering all levels from 3 to 25 years old), particularly where this is aligned with FCDO priorities and programming at the country level.

20. ERICC's four Components are:

Component 1: Research on the most effective approaches to education provision in conflict and protracted crisis (60-65% of RPC budget)

21. The resources allocated to Component 1 reflect FCDO's recognition of the challenges encountered by large-scale rigorous research on education provision in conflict and protracted crisis. However, it is also a recognition that finding approaches that will overcome these challenges is vital to advancing the field and that producing such cutting-edge research is possible. Consequently, ERICC, spearheaded by a world-class Research Director, will expand and strengthen the evidence base for education in emergencies – conducting at-scale, in-depth and longitudinal research in a range of contexts to close critical evidence gaps and developing new approaches to conducting rigorous research in challenging contexts. This will require the Supplier to engage closely with a diverse community of researchers on education in emergencies, conflict and protracted crisis. During the Inception Phase and throughout the life of the programme, the FCDO ERICC programme team and relevant FCDO advisors will work with the Supplier to foster connections and to support them in establishing an ambitious yet realistic research agenda that will allow the Supplier to deliver on the vision of the programme.

22. Research design: The Supplier will be responsible for setting an overall intellectual framework and research approach for the programme, including the overarching conceptual framework, research questions, research methodologies, theory of change¹¹ and high-level risk management plan¹², with the Research Directorate leading this process. The research design will include the selection criteria and justifications for any alternative focal countries selected by the Supplier.

23. The Supplier will also develop Country Research Plans for the focal countries/regions at the bid stage and will then be responsible for working closely with FCDO and in-country implementation partners to finalise these during the Inception Phase. This process will be led by the Country/Regional research teams, with plans then being signed off by the Research Directorate and the FCDO ERICC programme team.

24. It is anticipated that much of the research will focus on analysing or informing FCDO-funded programming¹³, so as to identify how to best provide education in both conflict and protracted crisis contexts. The development of the research framework will align with the overarching focus on understanding “what works” for education provision in these contexts, but also the “how” and “why”, so as to enable learning across

¹¹ The Theory of Change will be based upon that that outlined in the ERICC Business Case and Annex C of this document.

¹² This will be further developed in the Inception Phase into a full risk matrix in FCDO format and mitigation strategy, as well as research contingency plans for the various focal countries.

¹³ In agreement with the FCDO country office, the programme may engage with programmes funded by others where it will assist in answering research questions and inform future FCDO programming.

contexts and the development of a detailed understanding of whether and how research findings and approaches to provision can be integrated into programming across a range of contexts.

25. The research framework will also set out how the Supplier will approach the challenges and opportunities created by the COVID-19 pandemic and national education responses, including how they will link with the FCDO EdTech Hub COVID-19 response. The research framework should include the potential for conducting research on the ongoing education responses in focal countries and learning from approaches adopted globally in response to the crisis, including issues of learning (e.g. through EdTech and remote approaches) and protection during school closures; approaches to ensuring children return to school (particularly girls and those from marginalised groups) and accelerated learning programmes once schools re-open; and more long-term development of system strength and crisis resilience. The Country Research Plans developed at the bid stage should also identify where there may be the potential to begin rapid start-up of research on these issues during the Inception Phase.

26. Research questions: The Supplier will develop a research framework that will include a set of overall research questions that will address the key evidence gaps in the field and help to inform programming for education in conflict and protracted crises, in line with ERICC's intended impact. The research framework and questions should be informed by the six priority research themes that FCDO has identified through extensive stakeholder engagement and gap analysis, and justified in terms of the potential of the framework to close priority gaps in the existing evidence base and to produce evidence that addresses the identified themes and the attached indicative questions (see Annex A).

27. The research themes and questions to be focussed on in the different focal countries and contexts will need to be tailored to suit the country (or sub-national) context and take into account potential political sensitivities. It is not expected that all research themes will be explored in all geographies. The research themes and questions proposed for the different focal countries and contexts will be proposed at bid stage as part of the Country Research Plans. These need to build on existing research and policy demands in the country context, drawing on the Supplier knowledge and publicly available information on FCDO priorities and programmes. Country Research Plans should also show a clear awareness of the key challenges of operating in the focal context in question, as well as FCDO red lines, which define the parameters of engagement and programming in the relevant country or context (e.g. restrictions on financial or technical engagement with certain actors). The Supplier will refine the Country Research Plans during the Inception Phase based on consultation between the Supplier and FCDO advisors – including a group convened by the FCDO ERICC Programme Team and FCDO country offices (where appropriate) – including tailoring of research themes and questions, as well as the proposed approach to engaging in country and with specific FCDO or partner programmes. These plans will be signed off by the ERICC Research Directorate and FCDO ERICC Programme Team and must abide by FCDO red lines.

28. Southern and in-country partners involved in the consortium should play a leading role in the development of Country Research Plans – including research themes and questions at the country level - and the Supplier will be responsible for ensuring an

effective, sincere and equal partnership between southern- and northern-based researchers. The Supplier is also encouraged to use participatory approaches and engagement with conflict/crisis-affected communities when developing country-level research questions and the focus of specific studies.

29. Research themes and questions are subject to alteration or refinement by mutual agreement between FCDO, the Technical and Policy Advisory Board and the Supplier over the lifetime of the programme, with final sign-off from FCDO.

30. A number of indicative research questions are set out in Annex A. The indicative research questions are envisaged to contribute towards the overall objectives and vision of ERICC. However, the Supplier is expected, during the development of the research framework, to outline the links between the framework and the research themes, five key research questions from the business case, and the indicative research questions.

31. Research methods: The Supplier will be required to define an ambitious and rigorous approach¹⁴ to researching the questions and themes, including a combination of complementary quantitative and qualitative methods, as well as comparative research (both within and across country and regional contexts) and methodological innovation. Building Evidence in Education (BE2) global guidelines on impact evaluations¹⁵, qualitative methods¹⁶ and cost measurement¹⁷ are expected to be used.

32. Research methodologies at the focal country/regional level will be designed in consultation with FCDO¹⁸ during the Inception Phase and signed off (or later modified) as part of country/regional level research plans. As noted above, these will need to abide by FCDO red lines for the context in question and take into account the challenges of operating in the specific focal context.

33. Outputs of the research should be high quality and include articles published in top peer reviewed journals (See Footnote 32 on assessing journals). To ensure high and consistent standards for publications, all outputs will be peer reviewed and research outputs will also – as a minimum – be expected to achieve a Medium rating when assessed under the framework for assessing the quality of single studies set out in the BE2 “Assessing the Strength of Evidence in the Education Sector” guidance note¹⁹. The Supplier will utilise a strong peer review process, differentiated by audience and type of product with FCDO being consulted on the selection of peer reviewers. The design of the peer review process should be rigorous, but appropriate for the nature of

¹⁴ Please refer to “Assessing the Strength of Evidence in the Education Sector.” This is an Additional Document, which forms part of the Invitation to Tender Pack and can be downloaded via the FCDO Supplier Portal.

¹⁵ This document, titled “Generating Evidence in Education Impact Evaluations” is an Additional Document, which forms part of the Invitation to Tender Pack and can be downloaded via the FCDO Supplier Portal

¹⁶ This document, titled “Guidance Note on Qualitative Research Considerations for Best Practice” is an Additional Document, which forms part of the Invitation to Tender Pack and can be downloaded via the FCDO Supplier Portal

¹⁷ This document, titled “Cost Measurement Guidance Note” is an Additional Document, which forms part of the Invitation to Tender Pack and can be downloaded via the FCDO Supplier Portal

¹⁸ During research design, FCDO expects the Supplier to engage with country partners in collaborative co-designing process in order to factor country offices’ concerns, priorities, and strategic plans.

¹⁹ Refer to Section G – Performance Management for full details

the output being produced. At a minimum, all research outputs should undergo double-blind peer review by two appropriate experts. For more policy focused outputs, this may be relaxed to a single reviewer. During Inception, the Supplier will develop clear guidelines for reviewers that should be aligned with those used for major academic journals and publishers (e.g. Elsevier, or the Journal on Education in Emergencies). Taken together, the research outputs of ERICC should seek to build a coherent body of evidence on what works to deliver improved education outcomes for children affected by conflict and crisis.

34. Gender, disability and social inclusion: FCDO is interested in understanding beneficiary impact of its programming and how to maximise impact on the most marginalised. A focus on gender, disability and social inclusion should be mainstreamed throughout the programme. The DFID Strategic Vision for Gender Equality 2018²⁰ stresses the urgency of protecting and empowering girls and women in conflict, protracted crises and humanitarian emergencies, as well as the central role of education to achieve this goal.

35. The ERICC programme will play an important role in supporting the commitment the UK government has made to stand up for the right of every girl in the world to receive 12 years of quality education. To this end, the programme will champion new research on girls' education in conflict- and crisis-affected setting and the research framework will be aligned with this commitment so as to generate rigorous evidence on how to support education provision for marginalised girls.

36. Understanding "what works" to reach marginalised girls will be a key element of the research theme on protection and inclusion and the programme will mainstream the analysis on gender and marginalisation across all research themes and projects and will ensure that its research disaggregates by key metrics (e.g. gender and disability). Against this ambition, the programme is expected to link with other girls' education programmes in the FCDO (see paragraph 95).

37. Furthermore, DFID's Strategy for Disability Inclusive Development²¹ 2018 – 23 emphasises that through all our programmes, and especially education in emergencies, we will pay particular attention to disability, recognising that people with disabilities are disproportionately impacted by conflict and disasters. Inclusive education is one of four pillars to achieve this strategy, ensuring that all children with disabilities can access a quality education that enables them to learn and thrive, including children who are currently out of school. We therefore expect a strong focus on gender issues and marginalised groups, including those who experience violence, girls, traumatised and disabled children. Such focus is crucial to achieve the vision of ERICC, since more than half of all people with disabilities, including war related disabilities, live in countries affected by conflict and natural disasters²². The Supplier will clearly articulate in the research framework how the conduct and methodologies of the research will promote principles of inclusion.

²⁰ This document, titled "DFID Strategic Vision Gender Equality" is an Additional Document, which forms part of the Invitation to Tender Pack and can be downloaded via the FCDO Supplier Portal

²¹ This document, titled "DFID Strategy for Disability Inclusive Development 2018-23" is an Additional Document, which forms part of the Invitation to Tender Pack and can be downloaded via the FCDO Supplier Portal.

²² Ibid

38. Delivering the research: The Supplier is expected to deliver the vast majority of the research. Approximately 70% of the research must be delivered directly by the Supplier consortium, with approximately 30% being open to commissioning (e.g. research commissioned beyond the consortia, calls for proposals²³ etc.). The Supplier will identify in-country partners for each of their proposal focal countries/regions, which must be either based in the focal countries/regions or have relevant experience of working in them, as well as being capable of delivering on the proposed research. Given the importance of contextual knowledge and in-country expertise, FCDO requires the Supplier /consortium to include and/or sub-contract research organisations and/or partners that are based and/or registered in the Global South (i.e. outside of OECD countries). These southern partners²⁴ do not necessarily have to be based and/or registered within the focal countries, provided they can demonstrate sufficient experience in working within at least one of the focal countries. As noted above, these partners should play a leading role in the development, delivery and adaptation of research plans. The Supplier may add additional partners and individuals during the course of the programme, where this will contribute to the delivery of high-quality research and with agreement from FCDO.

39. The Supplier has the flexibility to commission research from any organisations outside of the consortia – up to a value of 30% of the research budget – where this represents the best option for accessing necessary expertise and delivering high-quality research. Paragraph 76 below outlines expectations for utilisation of market expertise.

40. Research dissemination and uptake: The Supplier is expected to be the public face of the ERICC programme and will lead engagement with academics, policymakers and practitioners, as well as working with existing bodies to reinforce and expand the global community of practice and ensure the research produced by ERICC is disseminated and taken up by key stakeholders. The Supplier will be supported in this work by an organisation contracted through an accountable grant, as set out in Component 3.

41. The Supplier will develop and implement a research uptake and dissemination strategy, focusing on stakeholders in the focal countries/regions, as well as a global uptake and dissemination strategy. These strategies will then be further developed, refined and agreed during the Inception Phase with the organisation leading the accountable grant under Component 3, including a clear division of labour and responsibilities across the different organisations, and with the FCDO, to ensure that the strategies abide by FCDO red lines (e.g. non-engagement with proscribed actors) and include a clear approach to addressing issues that may cause reputational, fiduciary, safeguarding, contextual, delivery, or operational harm to FCDO. The development of the final strategies should also be made in close liaison with aligned global actors such as Education Cannot Wait, the Global Partnership for Education, Building Evidence in Education (BE2) and the Global Education Cluster, as well as aligned national actors,

²³ Calls for proposals could cover research on specific themes linked to the ERICC research framework, including research outside of the focal countries/regions where it will contribute to the aims of the ERICC programme.

²⁴ Southern partners may include country offices of international NGOs in focal countries, where they have a long track record of delivery and can demonstrate that they are embedded in the context.

such as national Education Clusters, Working Groups or Hubs. Both strategies should include four strands:

- stakeholder engagement, including stakeholder mapping during Inception to identify the main organisations and processes which influence policy making in a specific area;
- targeted communication plans to ensure research and evidence outputs reach key decision-makers at national and international levels and in appropriate formats;
- Monitoring and evaluation of uptake;
- A theory of change for achieving impact

42. The uptake and dissemination strategies developed by The Supplier are expected to include innovative approaches that will target diverse audiences (to include other donors and organisations, as well as conflict- and crisis-affected communities, including those involved in the research) through a variety of media (video content/podcasts etc) and to make use of new and social media platforms. The strategies will also involve participation in key national and international policy and practitioner meetings. All approaches should have clear operational and policy relevance, in terms of their media and targeting of key stakeholders.

43. Curation, synthesis and consolidation of research findings will be crucial for ensuring uptake and broad-based dissemination. This will involve the selection of ERICC research outputs to showcase and promote, as well as the development of new research outputs that will be designed to engage with different stakeholder groups and draw learning from across the different contexts and research projects covered by ERICC (including synthesis, comparative analysis, thematic analysis etc.) It is envisaged that country research teams/hubs will lead this process for their focal country/region, while the Research Directorate sets the overall intellectual framework and consolidates learning from across all six country/regional research teams. This work should include attempts to disentangle and link locally-relevant questions and findings with universal ones. It is also expected that ERICC will link into wider FDCO's evidence synthesis and dissemination platforms in education, such as the What Works Hub for the education sector, so as to give evidence on education in emergencies greater reach into its constituent sectors.

44. The Supplier will work with the organisation chosen to implement Component 3 to explore the need for a digital resource for outputs. If there is found to be a need for the outputs to be hosted digitally they should then investigate where this platform could be hosted (i.e. on an existing platform or a new independent platform). The Supplier will set standards and agree on inclusion criteria for ERICC research outputs. Any outputs must link to existing online resource hubs for education in emergencies, as well as FCDO's What Works Hub and BE2 to ensure best value for money in avoiding duplication of databases and synthesis platforms.

45. To maximise ease of dissemination and uptake, all outputs must be written in a 'plain English' style that can be readily understood by development generalists. Research should be translated to local languages that are pertinent to the uptake of the research by the target audience.

46. A key task for ensuring dissemination and uptake will be to establish country level partnerships early on to build ownership with those most deeply embedded in the country context. This will also support uptake of research findings throughout the programme, especially FCDO implementing partners or country government departments and officials²⁵. This will require **political economy analysis** and understanding of both the drivers of change and potential enabling factors and constraints to success. A strong knowledge of existing analytical work and connections to the stakeholders best placed to produce this will be vital.

47. FCDO advisers will assist with introductions during the Inception Phase and The Supplier is expected to work closely with the providers of activities under Component 3 and 4. However, the Supplier will also leverage existing connections and networks that will enable them to perform these functions. It is envisaged that this process will be led by the country research teams/hubs in-country and will include working closely with decision makers and education providers in-country and organising community of practice events. The Supplier will ensure on-the-ground practitioners who often lack the means to take part in international events are reached for dissemination and uptake purposes.

48. The Supplier will organise an annual conference for knowledge sharing between selected policymakers, practitioners and academics from different disciplines, which will be funded from the budget for Component 1. The annual conference will deliver extensive engagement with a wide range of stakeholders from the Global South. For this purpose, innovative approaches to organising an inclusive annual conference are expected – particularly in the context of the COVID-19 pandemic. Provision should also be made in the budget to allow FCDO education advisors in focal countries to attend where they and their programmes are closely engaged with ERICC. The Supplier will need to liaise closely with organisations such as the British Academy, INEE, ECW, FCDO education advisors in focal countries, and the Research Councils (e.g. AHRC and ESRC) when organising the conference.

49. The research will also inform the operational support provided by the Supplier under Component 2, either within or across focal country contexts.

50. Capacity building: The Supplier will provide capacity building to the researchers and research institutes that form the consortium or are sub-contracted by it, with costs falling under the budget for Component 1. The design of capacity building activities should be particularly cognisant of the needs of southern partners and sub-contractors in focal countries/regions and be focused on knowledge exchange, developing skills that will contribute to the effectiveness of the ERICC programme, building sustained research capacity in focal countries and enabling a more equal and effective partnership between researchers. In the context of the capacity building work, the Supplier will engage with the British Academy and institutions involved in delivering Component 4 (see later section). The capacity building work will then be further developed, refined and agreed during the Inception Phase.

²⁵ Bearing in mind that such engagement might not be possible in all of the countries targeted by ERICC programme.

51. Flexibility and learning: Given the potential for instability and rapid changes in the context in focal countries, the Supplier and FCDO will need to work together to ensure flexibility in the design and delivery of research. This may involve shifting research to reserve countries or sub-national regions, delays in conducting research or shifting the focus of research to new themes or questions as the situation evolves. Such decisions will be taken subject to consultation with FCDO and the Technical and Policy Advisory Board, with final sign off from FCDO. In order to facilitate this process, the Supplier will develop and agree contingency research plans with FCDO during the Inception Phase, in line with the programme risk matrix. The Supplier will also gather internal learning on how these adaptive processes and ways of working have functioned in practice over the lifetime of the programme, so as to allow FCDO and the Supplier to improve their processes and approaches. This should form a prominent part of the learning strategy that the Supplier will develop in the Inception Phase.

Component 2: In-country operational support (25-30% of RPC budget)

52. Component 2 is intended to provide direct support to FCDO country offices, implementing partners and in-country partners (including members of bodies such as the Local Education Groups, Education Working Groups, Education Clusters etc.) to enable them to strengthen the impact of their education programming. The Supplier will provide this support through three mechanisms: expert technical advice, small-scale research and programme piloting, scale-up & strengthening grants. The Supplier will allocate at least half of the Component 2 budget to programme piloting, scale-up and strengthening grants. The Supplier is also expected to establish internal learning mechanisms that can serve as feedback loops between the research produced under Component 1 and the operational support provided under Component 2.

53. Expert technical advice: This form of support is envisaged as being delivered through a demand-driven call-down mechanism for FCDO Education Advisors, implementation partners and in-country partners in ERICC focal countries. The Supplier will establish mechanisms for receiving requests for support, prioritising them and delivering the services requested. The Supplier will also need to conduct outreach to raise awareness of these resources. The Supplier proposed these mechanisms in their bids, alongside draft criteria for prioritisation, and these will then be finalised in the Inception Phase following engagement with the FCDO ERICC programme team. Requests for support should be aligned with the ERICC research framework and the key questions outlined within it. Operational support under this element may be provided to FCDO country offices, FCDO-funded programmes, implementation partners, or in-country partners. It is anticipated that the expert technical advice will be provided by the relevant Country Research Teams/Hubs, but the Supplier may also make use of other relevant expertise within the consortium or additionally commissioned external expertise. At a minimum, the relevant Country Research Teams/Hubs will be consulted on the form and content of the expert technical advice to be delivered in the focal country in question. The expert technical advice will also be informed by the evidence produced by research in Component 1 and could include (singly or in combination) the provision of:

- technical expertise to support the integration of research into programme design;
- design and development of replication studies and/or evaluations for relevant programmes;

- problem-driven analysis of specific delivery bottlenecks and implementation science;
- small-scale follow-up studies to investigate findings emerging from other research programmes and/or programme evaluations;
- development of metrics and measures for programme monitoring, evaluation and learning;
- capacity building/training on specific issues

54. Small scale research: This form of support is envisaged as being delivered through a second demand-driven call-down mechanism for FCDO country offices, implementation partners and in-country partners outside of the ERICC focal countries. It is intended to assist in the design, development and adaptation of education programmes, and may include research activities focused on replication and implementation science studies. The Supplier will establish mechanisms for receiving requests for support, prioritising them and delivering the services requested. The Supplier will also need to conduct outreach to raise awareness of these resources. Suppliers will propose these mechanisms in their bids, alongside draft criteria for prioritisation, and these will then be finalised in the Inception Phase following engagement with the FCDO ERICC programme team. Requests for support should be aligned with the ERICC research framework and the research outputs produced should contribute to answering the key questions outlined within it. Support under this mechanism may be delivered by appropriately qualified Supplier/consortium personnel or by additionally commissioned external expertise.

55. Programme Piloting, Scale-up and Strengthening grants: The Supplier will establish a grant making mechanism to allocate funds to FCDO country offices, implementing partners and in-country partners in ERICC focal countries to support the cost of piloting, scaling up and adapting education programmes. It is envisaged that grant funding could cover expenses such as convening costs, funding additional expert technical advice, programme staff time and procuring necessary materials. Suppliers will propose grant making mechanisms in their bids, alongside draft evaluation criteria and details of the activities/resources that will be eligible for funding. These will then be finalised in the Inception Phase following engagement with the FCDO ERICC programme team. The grant making mechanism should include the submission of proposals by eligible partners and the evaluation of proposals by a Review Panel that will include – at a minimum – the Programme Funded Post and relevant members of the Technical and Policy Advisory Board. All grants will then be signed off by the FCDO ERICC Programme Team. Key evaluation criteria should include the potential for the proposed activities and/or resources to either: (i) have a significant impact on programme effectiveness that will substantially improve the delivery of outcomes, or (ii) enable rigorous research on questions aligned to the ERICC research framework that cannot easily be researched through other approaches or opportunities. Programme Piloting, Scale-up and Strengthening grants should be allocated half of the budget allocated to Component 2 and it is envisaged that the Supplier will make provision for three rounds of grants, with a maximum grant value of £300,000. The Supplier may propose alternative approaches and structures for designing and approving these grants, but must demonstrate why these would be more effective in terms of delivering programme impact and maximising the potential for synergies between Component 1 and 2. These proposals will then be finalised in the Inception Period with engagement from the FCDO ERICC programme team. The maximum grant value may also be

exceeded for exceptional proposals with agreement from the FCDO ERICC Programme Team.

56. The Supplier will deliver the in-country operational support after agreeing on priorities and mechanism design with FCDO, including an approach to ensure that outreach and provision of support abides by FCDO red lines across the various focal contexts (e.g. avoiding engagement with proscribed groups or engaging in politically sensitive activities). In preparation for the delivery of this support, the Supplier will address the proportion and types of support that they expect to deliver utilising Supplier/consortium personnel – including the roles that will be played by different consortium partners – and any forms of support that they expect to deliver using additionally commissioned external expertise. Paragraph 76 below outlines expectations for utilisation of market expertise.

57. The Supplier will also be responsible for proactively conducting outreach to ensure that eligible partners and potential recipients of support are aware of what the ERICC consortium is providing under Component 2 and how to access it. During the Inception Phase, the Supplier will develop a short output or manual for circulation to partners setting out the different types of support, key engagement points and how to apply for/access the support under Component 2.

58. In delivering the services that comprise Component 2, the Supplier will be required to work with a number of key FCDO stakeholders, including programme implementing partners. The Supplier will be required to establish and manage relationships with these stakeholders, to build trust and achieve access to information that will enable the effectiveness of the Component.

59. During the Inception Phase the Supplier will refine measures designed at bid stage to mitigate anticipated stakeholder concerns about engaging with Component 2 activities and will submit these to FCDO for approval. Supplier-designed measures will include protocols for addressing and mitigating any potential conflicts of interest that may arise from the operation of Component 2. These should address a range of identified possible conflicts, including at a minimum:

59.1. That the delivery of technical expertise and small-scale research will require the Supplier, its constituent organisations and sub-contractors to engage closely with existing programmes that may be implemented by a range of partners. This could lead to sensitivities around how data gathered through the Supplier's work with programme implementing partners is handled and used, particularly where the programme is exempt from publicly disclosing sensitive information or sending information to other countries due to confidentiality or security concerns.

59.2. That the provision of technical expertise and small-scale research to FCDO country offices, advisors or implementing partners on issues related to programme design or adaption may give the Supplier, its constituent organisations and/or sub-contractors a competitive advantage should they seek to subsequently tender for an opportunity which stems from the tributary technical assistance or small-scale research. The Supplier will be responsible for refining and submitting for FCDO approval an Engagement

Summary Reporting process and accompanying standard Engagement Summary Report template, which will be used to provide publishable summary detail on the services provided/research delivered at the closing of each distinct assignment. Engagement Summary Reports will detail the scope of work completed, applicable findings, advice or technical assistance delivered to FCDO or implementing partners and - subject to the relevant data protection and management provisions of this Contract and applicable laws - data collected in the delivery of the project. The Supplier will be responsible for identifying and notifying FCDO of any sensitive or protected data included and/or omitted from Engagement Summary Reports upon submission. The Supplier will be responsible ensuring Engagement Summary Reports are of sufficient quality and completeness to enable a streamlined process of approval and publishing by FCDO. In rare and extreme circumstances, individuals or organisations providing technical expertise and small-scale research support may be barred from tendering for related FCDO opportunities.

59.3. That the selection and prioritisation of operational support under Component 2 may favour programmes or initiatives that could benefit the Supplier, its constituent organisations and/or sub-contractors. The Supplier will be required to demonstrate that the prioritisation criteria for technical expertise and small-scale research applications are designed and applied in an impartial manner that avoids these issues. Similarly, the process of evaluating proposals for Programme Piloting, Scale-up and Strengthening Grants must be demonstrated to be fair, impartial and independent. The protocols must also set out clearly how to address conflicts of interest related to those charged with evaluating proposals and applications for support under Component 2.

60. Given the ongoing global education crisis resulting from the COVID-19 pandemic, the Supplier will ensure that a minimum version of the expert technical advice mechanism is operational by the end of the second month following contracting and will ensure that full versions of all three mechanisms are established with 6-8 months of contracting.

61. FCDO will also undertake to work closely with the Supplier and implementation partners that may be involved in ERICC research under Component 1 or receive operational support under Component 2 in order to facilitate links and broker agreements on how to proceed and apply the protocols in terms of conflict of interest.

62. The Supplier will ensure a close connection between the provision of operational support and the research in specific contexts, so as to deepen the links between researchers and key stakeholders, as well as establish internal learning mechanisms that can serve as real-time feedback loops between the research produced under Component 1 and the operational support provided under Component 2.

63. The Supplier will also link the expert technical advice mechanism to existing and upcoming technical assistance resources for education being implemented by FCDO, including the EdTech Hub and What Works Hub.

Component 3: Promoting Research uptake across FCDO and the international community – this Component will be delivered under an accountable grant agreement²⁶ (Approx. £1.2m – not available to RPC but provided to demonstrate scale)

64. FCDO will contract an organisation to deliver Component 3 through an accountable grant mechanism. This will occur after the contracting of the ERICC RPC Supplier and the bulk of the resources under Component 3 will be allocated to dedicated staff and/or staff time for the ERICC programme at the contracted organisation.

65. The Supplier will work closely with the organisation contracted to deliver Component 3 as the success of ERICC's vision depends on complementarity between all Components. The two organisations will work together to develop and deliver the global uptake and dissemination strategy and will agree a clear division of roles and responsibilities between them. The organisation contracted to deliver Component 3 is expected to lead on global dissemination of ERICC research, outputs and opportunities, as well as providing support to the Supplier on stakeholder engagement in-country. This role is intended to include:

- Global dissemination of ERICC research, outputs and opportunities to stakeholders and practitioners
- Dissemination of opportunities and events related to ERICC
- Co-production of non-academic outputs with the Supplier to maximise impact (e.g. webinars, blogs, podcasts etc.)
- Co-production of capacity building tools and training opportunities with the Supplier

66. The accountable grant will also involve providing specific support to the Supplier to enable it to achieve the expected outcomes of the programme. This will include:

- Support to the Supplier in organising and holding the annual conference and in-country events (e.g. consultation on agenda/focus; dissemination of opportunities; assistance in identifying/contacting stakeholders and participants)
- Providing inputs to support stakeholder engagement, particularly during the Inception Phase (e.g. preliminary stakeholder mapping in focal countries/regions, connecting ERICC researchers to key communities of practice etc.).
- Supporting the uptake strategy of the Supplier through conducting capacity building workshops for organisations involved in implementing EiE programmes

67. Work on the accountable grant under Component 3 will align with the priorities and conditions set out for the Supplier's dissemination approach outlined in Component 1, and the Supplier will ensure their governance arrangements include a clear approach to coordination and engagement with the accountable grant organisation. This will

²⁶ The Supplier will additionally make positive contributions to Component 3.

include furnishing the organisation responsible for Component 3 with information and the sharing of research outputs generated by the Supplier under Component 1.

Component 4: Knowledge Systems Strengthening (KSS) – this Component will be delivered under an accountable grant agreement.

68. The regular operational delivery of this Component will be delivered by the British Academy. However, the Supplier is expected to coordinate and work closely with the British Academy as the success of ERICC's vision depends on complementarity between all Components. The British Academy will run an innovative fellowship and institutional strengthening programme in parallel with research and uptake activities, in focal countries or countries in close proximity to them. This will generate opportunities for cross country and cross-disciplinary learning and knowledge sharing.

69. The Knowledge Systems Strengthening Component will have three main objectives:

1. Building Global South institutional capacity: To develop a coordinated and strategic institutional approach to education research through tailored activities including building capacity for policy dialogue supported by research chairs.
2. Investing in people: To strengthen the capacity of early career researchers in the Global South to undertake and build their careers in education research through fellowship awards, research training, mentoring and networking opportunities.
3. Building communities of practice: To develop selected Global South institutions into institutional hubs, in order to promote new research partnerships, share best practice, and support research training.

70. The main activities that will be undertaken to achieve these objectives include:

1. Institutional strengthening programme with tailored institutional strengthening activities for three institutions – in focal countries or countries in close proximity to them – working closely with appointed research chairs;
2. Fellowship programme on education research in conflict and protracted crisis to develop early career researchers in partnership with UK colleagues;
3. Research mobility, alumni, networking and uptake funding to facilitate links between colleagues in the region and with counterparts in the UK to develop the connections and partnerships to solidify a growing community of excellence.

71. The Supplier will include the selected Global South institutions and KSS Fellows as key stakeholders when developing and implementing research, uptake activity and establishing communities of practice. A mechanism will also be agreed during the Inception Phase through which ERICC researchers and partners – particularly those in the Global South – will be able to engage with community of practice events and benefit from the capacity building opportunities. This could include participants in the Fellowship programme working with the ERICC RPC, ERICC researchers participating in the Fellowship programme and establishing close links between ERICC partner organisations and the alumni/networking resources established under Component 4. The Supplier will set out their proposed approach to engaging with the British Academy, selected institutions and activities under Component 4 in their bid.

72. The British Academy is expected to launch the initial call for Research Chairs and institutional strengthening grants in the Autumn of 2020. The selection of the institutions is expected to be completed by June 2021 to allow activities to begin from September 2021.

C Requirements

Programme structure and responsibilities

73. The following section summarises the requirements for the three main elements of the programme: (1) the Research Director and Research Directorate, (2) the Programme Management team, and (3) the Country Research Teams/Hubs. The Supplier will supply suitable expertise to deliver the programme that fulfil these requirements.

74. Research Director and Research Directorate:

- The ERICC programme requires a Research Director who will be able to provide intellectual leadership within the consortium, while being a credible and charismatic advocate for the research amongst both the academic community and broader community of policymakers and practitioners working on education in emergencies. They should have a global reputation able to command respect with the wider education aid architecture. Their work on this programme will reshape the landscape of research for education in conflict and provide the basis for transforming how education is delivered in conflict- and crisis-affected contexts. The Research Director will therefore be a world class academic with a strong reputation and extensive experience of research on education in emergencies, conflict or displacement, both in terms of a record of academic publications and engaging directly with policymakers and practitioners. Co-Directors may be appointed where this will strengthen the delivery of these functions. In all instances, the Supplier will deploy strong governance arrangements to avoid bottlenecks in delivery and decision making, and ensure clear, consistent and accountable leadership and direction.
- The programme will also require a leadership group – referred to as the Research Directorate – that will be led by the Supplier and should include representatives from any selected Sub-contractors, as well as senior academics, researchers and experienced practitioners that are able to bring insights from a range of perspectives, including diverse methodological and disciplinary backgrounds, and experience of delivering education programmes in conflict- and crisis-affected contexts. The Research Directorate will play an important role in challenging and shaping the intellectual direction and research plans of the consortium, as well as working with Research Director to champion and support the achievement of ERICC's vision. The Research Director and Research Directorate will be expected to:
 - Be the face of the ERICC programme – leading engagement with academics, policymakers and practitioners at the global level to act as champions for the programme and its research, as well as contributing to

the global community of practice. This will include representing the programme in key forums, at relevant conferences, workshops and major global events, as well as contributing to the delivery of the global uptake and dissemination strategy, focusing on engaging and influencing key global stakeholders;

- Provide coherent intellectual leadership;
- Develop a research framework and a research uptake and dissemination strategy for the full programme, with interim milestones;
- Provide a challenge function for country level research to ensure rigour and encourage cutting-edge research on key questions;
- Sign off on country research plans for all focal countries/regions in consultation with FCDO;
- Sign off on annual work plans for operational support for all countries/regions in consultation with FCDO;
- Produce think pieces, research/policy papers and blogs;
- Lead on curating, consolidating and synthesising findings across the programme (including comparative analysis, thematic analysis etc.) resulting in the production of world class academic publications and policy-relevant outputs on key cross-cutting themes.

75. A significant proportion of the Research Director's time is expected to be dedicated to the ERICC consortium and they will be considered Key Personnel in the contract, with a requirement that they report to the Supplier. Any Co-Directors will also be considered Key Personnel. The Supplier will ensure that the Research Director, any Co-Directors and the Research Directorate will be able to ensure a high level of commitment, consistent intellectual leadership, and will also ensure the availability of these key staff during key moments and junctures in the life cycle of the programme.

76. FCDO expects the Supplier to provide the programme with personnel with significant relevant expertise for the entire programme duration. FCDO recognises that availability of expertise is dynamic and that expertise working on other projects at bid stage, may become available throughout the programme duration. FCDO expects the Supplier will survey the market for notable external expertise that could present opportunities to commission research or technical assistance outputs, in order that the ERICC programme can harness the highest quality expertise in the market.

77. Programme Management: The programme requires Programme Management personnel that adhere to the highest standards in the field, in particular when delivering research or education programmes in fragile contexts or those affected by conflict and protracted crises. The team will include a Programme Director and programme managers with expertise in managing research, as well as academics with the expertise to work on policy-relevant issues and who are open to new ways of doing research. The proposed structure has this as a central body, but the Supplier may propose alternative structures (e.g. a central programme manager plus separate programme manager in each regional/country research hub). Any alternative arrangements must be justified in terms of how they will produce clear benefits for achieving the aims of the ERICC programme and will fulfil the roles and requirements for programme management as set out here and below. FCDO expects the Supplier to operate an agile and adaptive programme management approach. This will enable lesson learning, internal

consultation, team building, and responsiveness to demand. Programme management personnel are expected to:

- Provide programme management and coordination, including ensuring excellent financial management and adaptive/flexible programming;
- Ensure strong coordination and collaboration between Supplier members, including ensuring cross-country learning;
- Be familiar with the legal, policy, and risk considerations for all selected research countries, to ensure that the programme remains compliant with local laws, FCDO red lines and relevant UK policies and law. This is particularly relevant for FCAS contexts when thinking about proscribed actors and sanctions.
- Commission and manage additional academic expertise, as and if required;
- Commission and manage additional expertise in delivering education programmes in conflict and crisis settings, as and if required, in order to deliver operational support in focal countries/regions.
- Work with Country Research Teams/Hubs to establish strong in-country network, to engage with national governments within the priority countries and with FCDO country offices and the wider sector;
- Organise regular Technical and Policy Advisory Board meetings (this cost is expected to include travel for board members to attend regular board meetings);
- Develop and implement a learning strategy across the consortium to capture and share knowledge gained from research and operational experiences. This learning strategy should also aim to validate learning, improve performance and scale up successes drawing on innovative methodologies such as lean start-up and real-time feedback.
- Organise the annual conference, in cooperation with the British Academy and other partners;
- Organise country travel, and insurance

The Supplier will implement and maintain a programme governance structure and a clear, effective coordination mechanism across the programme partners (i.e. the Supplier and organisations involved in delivering Components 3 and 4). This will include clear lines of responsibility and frameworks for decision making, chains of reporting and a mechanism to address bottlenecks between partners. As an element of this structure, the Supplier will implement a Steering Group – shown reporting to FCDO ERICC Programme Team in the possible delivery model outlined at Figure 1 – or similar that will bring together representatives from all of programme partners and will report directly to FCDO.

78. Country Research Teams/Hubs: The programme requires Country Research Teams/Hubs with experience of delivering and/or researching education programmes in the focal countries. Consortium partners or proposed organisations to be sub-contracted with such capacity will be named for each of the focal countries/regions. Additional partner organisations and/or sub-contractors may be added over the lifetime of the programme subject to agreement of FCDO. The Supplier will provide partners with the requisite expertise and with suitably strong networks, connections and experience in the focal countries/regions. Country research teams/hubs responsibilities will include:

- Being the face of ERICC in the country/region - leading stakeholder engagement and relationship management within the country/region; including with national governments, implementation partners etc., as well as engaging with academics and researchers to develop stronger communities of practice for education in conflict and crisis research in the context;
- Developing country/regional research plans, in close cooperation with FCDO;
- Developing annual work plans for operational support at the country/regional level, in close cooperation with FCDO;
- Conducting in-country research to deliver on agreed research plans (or commissioning where necessary), including the production of world class academic publications and policy-relevant outputs;
- Provide operational support to FCDO country offices and implementation partners in line with agreed work plans (or commission where necessary);
- Produce think pieces, research/policy papers and blogs;
- Lead on synthesis of research findings within their country/region;
- Develop targeted dissemination and uptake plans at the country/regional level

79. The Supplier will provide a Country Research Director (CRD) to lead in-country research and stakeholder engagement for each Country Research Team/Hub. They will act as the face of the ERICC programme in the focal country and will substantively engage with a range of stakeholders, as well as providing intellectual and organisational leadership for the Country Research Teams/Hubs. FCDO anticipates that CRDs will need to spend at least 50% of their time on ERICC but are open to a range of models (including Co-Directors) provided the Supplier can justify how their approach would strengthen the delivery of these functions, avoid bottlenecks in delivery and decision making, and deliver clear, consistent and accountable leadership for the Country Research Teams/Hubs. CRDs and any Co-Directors should be named in the bid where possible but may also be recruited during the Inception Phase with agreement from FCDO²⁷.

80. Suppliers are required to set out the roles, fee rates and time allocations associated with each of these elements (Research Directorate, Programme Management team and Country Research Teams/Hubs) in their proposal²⁸. However, in order to ensure an adaptive and flexible programme, FCDO are open to changes in time allocations across roles during the course of the programme where FCDO assesses that they will improve the functioning of the programme and do not affect overall budgets.

81. Quality control: The Supplier will implement and maintain a clear approach to assessing the quality of research plans and ensuring that the research programme is coherent and meets minimum standards for rigorous evidence. This quality control mechanism should be independent of the programme and involve peer review processes as set out in earlier sections. All research plans will need to be assessed as meeting minimum quality requirements before the programme moves from Inception Phase to Implementation Phase.

²⁷ Suppliers should note that even where a CRD is not named, they will be required to include a fee rate for the post in the budget and that this fee rate cannot then be exceeded.

²⁸ Note that no information on prices, fee rates or costs should be detailed in Technical Proposals. This information must feature only in the Commercial Proposal.

82. Communication: The Supplier will deliver the capacity to promote research findings amongst a diverse group of stakeholders in order to influence policy. Responsibilities include:

- Facilitation of learning across the programme, including with ESRC, AHRC, British Academy and the organisation contracted to deliver Component 3, including identifying opportunities for joint networking and knowledge sharing events;
- Building a multi-disciplinary community of practice on education in conflict and crisis, by connecting practitioners and academics working across sectors;
- Research uptake at the focal country/region level – i.e. work to ensure the impact of research findings on programmes and policy;
- External communications on programme objectives, approach and findings
- Ensuring publications and communications adhere to risk management protocols across the different focal contexts – to be developed in consultation with FCDO – to avoid sharing potentially sensitive information (e.g. programme locations, supplier names, programme names etc.)
- Knowledge sharing, for example, events and blogs;
- Carrying out user research to determine the need for a programme website and – if there is such a need – developing and maintaining a website in accordance with the provisions set out in Section K “Digital Spending”;
- Work with programme partners and external stakeholders (such as ECW, GPE, BE2, the Global Education Cluster etc.) to develop global dissemination and uptake plans, including developing approaches to allow the community to come together, communicate and disseminate evidence globally, in an accessible manner;
- Organising, advertising and conducting the annual conference.

83. Funders Group: FCDO will establish a Funders Group to ensure coordination between funding partners (FCDO, AHRC, ESRC and the British Academy). The Supplier will have observer status in that group and should plan programme management activities in order to be responsive to any direction that may be issued following Funder’s Group meetings.

84. The Supplier is also expected to ensure that ESRC and AHRC are involved in steering and decision making as they are delivering related research outputs through GCRF calls. The Supplier will also ensure solid links are established with other relevant research programmes, including – but not limited to – the FCDO’s Research on Improving Systems of Education (RISE), THRIVE (Unlocking Children’s potential to thrive), the EdTech Hub and What Works Hub programmes; research being undertaken by FCDO regional research hubs and country offices; and research led or financed by Education Cannot Wait (ECW) through its Acceleration Facility which supports the development of global public goods. This engagement may involve intellectual dialogue or more direct collaboration where opportunities to mutually add value are identified.

85. Technical and Policy Advisory Board: The Supplier will be required to establish a Technical and Policy Advisory Board comprised of approximately 8-10 external experts, including FCDO senior staff and representatives from funding partners. The Supplier

will propose board members and terms of reference for the board, and these will then be finalised with FCDO during Inception. Board members are expected to be representatives of key stakeholders in the education in conflict and crisis research space. This includes other donors that are funding research as well as implementers and academic institutions. It will be important to get the right mix of expertise and understanding of how ERICC fits within the broader education in conflict and crisis community and utilise the Board as an opportunity for improved stakeholder collaboration. Board members will provide high level strategic programmatic advice and perform a challenge function for the RPC. Board members are expected to include representatives from Education Cannot Wait, UNICEF Innocenti, GPE Knowledge and Innovation Exchange (KIX), European Commission (DEVCO) and Dubai Cares. Funding for any remuneration or expenses for the Technical and Policy Advisory Board will need to come from the RPC budget.

86. Steering group: The Supplier will establish a steering group in order to coordinate the delivery of the four Components of the overall ERICC programme. This group should include high level representation from the Supplier and the organisations delivering Components 3 and 4. It should meet on at least an annual basis, as well as having clear mechanisms for coordinating reporting to FCDO and addressing bottlenecks and delivery issues between partners.

87. Partnerships: the Supplier will be proactive in seeking partnerships to expand the reach of the programme and will develop and implement a partnership strategy to engage with key external partners and seek additional funding for ERICC from other donors with support from FCDO. Additional funding raised from partners is intended to augment the coverage and impact of ERICC research, for example through research in additional focal countries, expansion or extension of research in existing focal countries, additional evidence synthesis or knowledge systems strengthening activities.

88. FCDO staffing: The Supplier will be managed by the Education Research Team within FCDO. The Programme Responsible Owner (PRO) for this programme will sit in FCDO and will be the decision maker on the programme. A FCDO programme funded secondee will sit within the Supplier for 80% time, providing a valuable resource. 20% of the post time will be reserved for FCDO. Suppliers should include the costs of hosting the programme funded post (e.g. provision of office space etc.) within the budget for Component 1, while all other associated costs (e.g. salary, pension, travel etc.) will be financed by FCDO through the broader ERICC budget. Upon commencing of the contract, it is envisaged that this post will sit with the Research Directorate and focus on Component 1. However, the Supplier may propose a range of models if they believe alternatives would improve the functioning of the post. The programme funded secondee has been recruited by FCDO and will initially sit with the British Academy, in order to minimise the gap before they can take on their responsibilities with the Supplier. Key responsibilities for the programme funded secondee will be agreed with the Supplier but are expected to include:

- Technically engage with the Supplier and Technical and Policy Advisory Board on the programme's and the research's strategic direction;
- Support the Supplier on in-country engagement with national governments to ensure government buy in and participation throughout the process;

- Engage with the research teams; meet with the Country Research Directors to ensure alignment and coordination with the Research Councils, the British Academy and other in-country programming;
- Ensure linkages with FCDO in-country education advisers and FCDO research hubs;
- Ensure linkages with the international aid architecture, in particular with Education Cannot Wait (ECW) and the Global Partnership for Education (GPE). The secondee should also explore opportunities to co-host events and co-produce research in order for research findings to feed into ECW projects and ECW research under Acceleration Fund;
- Identify opportunities for the Supplier to engage with decision makers, practitioners and the academic community;
- Provide technical oversight and quality assurance of research;
- Participate in the Review Panel to determine nature and scale of operational support to selected interventions;
- Consolidate learning from the research process on an ongoing basis and share with the Supplier, FCDO and other partners as relevant.

Inception Phase:

89. **Research Design:** during the Inception (12 months), the Supplier will:

- Refine, building on that proposed at bid stage, an overarching research framework, including the overarching conceptual framework, research questions, research methodologies, theory of change and high-level risk management plan,
- Select and agree Country Research Directors for each of the country research teams/hubs (FCDO expect at least 4 Country Research Directors to be proposed at bid stage)
- Refine and further develop Country Research Plans (based on the outline CRPs developed at bid stage) for each of the focal countries/regions – including research questions, research methodologies, context-level risk management plans and revisions to context-level engagement plans to ensure that they abide by FCDO red lines in the context – with agreement and sign off by the Research Directorate and FCDO
- Refine, building on those proposed at bid stage, plans for how the research uptake and dissemination strategy will be implemented at the focal country/region level, as well as the theory of change at this level
- Refine, building on those proposed at bid stage, the mechanisms for providing operational support at the focal country/region level, identifying key needs and junctures with FCDO and developing & disseminating a manual/output to partners detailing the nature of the operational support and how to access it.
- Agree a global uptake and dissemination strategy with the programme partner delivering Component 3
- Agree engagement plans with the British Academy and the institutions selected for support under Component 4
- Refine, building on those proposed at bid stage, engagement plans with stakeholders and implementing partners

- Implement and maintain a clear methodology for assessing and assuring the quality of research and ensuring that the research programme is coherent and meets minimum standards for rigorous evidence.
- Implementation of initial global country level research where possible, particularly in reference to lesson learning from COVID-19 response.
- Implementation of minimum version of provision of technical expertise under Component 2 (2 months).
- Establishment and launch of full versions of all 3 mechanisms under Component 2 (6-8 months).
- Refine and adapt key programme plans (i.e. the Research Framework, Country Research Plans, plans for providing operational support, the research uptake and dissemination strategy, and plans for engagement across Components) following FCDO confirmation of any programme cost extension, with revised plans being agreed and signed off by the Research Directorate and FCDO

Implementation Phase:

90. During the Implementation Phase (Year 2-3), the Supplier will conduct and publish rigorous research in line with the agreed Country Research Plans and plans developed under Component 1; engage in stakeholder engagement and communications activities in line with the agreed research uptake and dissemination strategies; and provide FCDO and implementation partners with ongoing operational support under Component 2. The Supplier will also engage with the organisations and institutions delivering Components 3 and 4 in line with plans developed and agreed in the Inception Phase. All activities during this Phase should support the achievement of the overall intended impact and objectives of the ERICC programme.

Timeframe

91. The ERICC contract will start 1st December 2021 and run until 30th November 2024, for a total of 36 months. There will be a 12-month Inception Phase and the final 6 months of the contract will include a focus on synthesis and uptake of findings and emerging findings.

92. Table 1 below indicates the prospective timeline for the project. The Supplier is expected to consider the requirements carefully and propose how they expect to meet it. The Supplier will also identify focal countries and issues where there may be the potential to begin rapid start-up of research during the Inception Phase, particularly in reference to lesson learning from the COVID-19 response.

Table 1: Project timeline

Activity	Length	Description
Inception	Year 1 (12 months) December 2021 – November 2022	<i>All activities set out in the Deliverables section below. Component 1 – Implementation of initial global country level research where possible, particularly in reference to lesson learning from COVID-19 response.</i>

		<i>Component 2 – Implementation of minimum version of provision of technical expertise (2 months). Establishment and launch of full versions of all 3 mechanisms (6-8 months).</i>
Implementation of the research programme and the operational support	Years 2 – 3 (18 months) December 2022 – May 2023)	<p><i>Component 1 – Focus on rigorous research at the country level alongside ongoing synthesis and stakeholder engagement activities.</i></p> <p><i>Component 2 – Focus on provision of technical expertise and small-scale research, alongside a series of calls for proposals for piloting, scale-up & strengthening grants.</i></p> <p><i>Linking with Components 3 and 4 to support stakeholder engagement and dissemination & update activities, as well as broader action to achieve the intended Impact and Objectives of the programme.</i></p>
Synthesis and uptake	Year 3 (6 months) June 2024 – November 2024	<p><i>Component 1 – Focus on synthesis, review of lessons, and achieving uptake and dissemination of findings (globally and in focal countries).</i></p> <p><i>Component 2 – Focus on provision of technical support and small-scale research based on key findings.</i></p> <p><i>Linking with Components 3 and 4 to achieve impact and dissemination plans, as well as improving sustainability of research efforts.</i></p>

D Deliverables

93. The proposed payment milestones and deliverables for Inception Phase activities related to Components 1 & 2 and programme management are as follows:

Component 1	<ul style="list-style-type: none"> • Development of an overarching research framework • Appointment of Country Research Directors for each of the country research teams/hubs • Agreement of research plans for all focal countries/regions with the Research Directorate and FCDO ERICC programme team, including needs analysis, literature review, research questions, methods, budgets, ethical considerations and ways of working/engagement with stakeholders and implementing partners. Process will ensure final plans are aligned with FCDO red lines, relevant UK policy, law and sanctions, and national laws for the respective focal countries and contexts.
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	<ul style="list-style-type: none"> • Contingency research plans are developed in line with the risk matrix • Technical and Policy Advisory Board established including key stakeholders • Gender, equity and social inclusion strategy • Agreement of a publication strategy and peer review processes and guidelines. As noted in footnote 30, these strategies should include supplementary indicators to help in the inclusion of southern academic organisations' research uncaptured by 'impact factor', 'H-Index' and other journal rankings indicators. • Agreement of a global dissemination and uptake strategy with the programme partner delivering Component 3 • Carry out user research on the need for a programme website and establish one if necessary • Develop clear plans for the in-country and regional dissemination of knowledge and research • Implementation of initial global country level research where possible, particularly in reference to lesson learning from COVID-19 response. • Adapted Research Framework and Country Research Plans following FCDO confirmation of any programme cost extension • Adapted research uptake and dissemination strategy, and plans for engagement across Components, following FCDO confirmation of any programme cost extension. • Inception Phase report, including lessons learnt
Component 2:	<ul style="list-style-type: none"> • Develop an approach for delivering operational support and put in place protocols for sub-contracting where required, including approaches for due diligence, conflict of interest etc. • Develop a report which addresses the proportion and types of support that are expected to be delivered utilising "internal" Supplier/consortium personnel and that are expected to be delivered using additionally commissioned external expertise, as well as the roles that will be played by key organisations within the consortium.

	<ul style="list-style-type: none"> • Develop an initial plan for operational support at the focal country/region level, identifying key needs and junctures with FCDO. • Develop and disseminate a short output or manual to partners setting out the different types of support, key engagement points and how to apply for/access the support under Component 2. • Develop protocols for addressing and mitigating any conflicts of interest that may arise from the operation of Component 2. • Implementation of minimum version of provision of technical expertise under Component 2 (2 months). • Establishment and launch of full versions of all 3 mechanisms under Component 2 (6-8 months). • Adapted plans for providing operational support through the three mechanisms following FCDO confirmation of any programme cost extension
Programme Management:	<ul style="list-style-type: none"> • Agreed governance structure including details of oversight and sign off on key products. • Funding mechanism agreed to receive additional resources from external partners. • Monitoring and reporting strategy, including log frame agreed with FCDO • Agreement on milestones and payment-releasing deliverables based on agreed research plans and structure of operational support • Delivery Model: Detailed description of how different consortium members will work together, with clear rationale for virtual and/or physical aspects of coordination and communication. This should include ways of working with other partners in the broader ERICC programme, including the British Academy and programme partner delivering Component 3. • Agree written agreements with the British Academy and the organisation selected to implement Component 3 regarding GDPR and data sharing

	<ul style="list-style-type: none"> • Agree on a learning strategy across the consortium²⁹ • Agree engagement plans with the British Academy and the institutions selected for support under Component 4 • Partnership strategy: Clear approach and ways of working to engage with key external partners (e.g. ECW, GPE, BE2 and the Global Education Cluster) and seek additional funding from other donors. • Risk matrix in FCDO format and mitigation strategy, to be reported against quarterly, as outlined above. • Yearly breakdown of spend profile • Develop necessary policies in relation to Due Diligence and Safeguarding (i.e. safeguarding, whistleblowing, human resources, risk management, the code of conduct, and governance and accountability). • Develop full list of personal data types to be gathered under the contract
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E Budget and contract management

94. The contract will be awarded up to November 2024 – anticipated to be for 36 months – with a budget for that duration of £15.8 million inclusive of all applicable taxation.

95. The contract includes the option for programme cost extensions of up to an additional 72 months (giving a maximum programme duration of 108 months) and up to an additional £20.5 million for additional programme activities. This would be granted solely at FCDO's discretion. These funds could be used for extension of the research, additional country studies, evidence synthesis, dissemination and uptake activities or knowledge systems strengthening work.

96. During the Inception Phase, and subject to budget availability, FCDO may consider an initial programme extension of up to £4 million and 36 months. This would be part of the aggregate options outlined at paragraph 95.

97. Additionally, synergies between the ERICC programme and the planned Girls' Education Africa Facility may lead to the option for an extension to the ERICC contract of up to £4.5 million. This funding would be for activities aligned with the Girls' Education Africa Facility and covering their country contexts in Sub-Saharan Africa. Activities could include additional research focused on barriers to girls' education in

²⁹ Learning here refers to an internal or 'inward-looking' process to gather knowledge and feedback into the processes of the consortium with the aim of improving the internal dynamics of knowledge production, teamwork, coordination, etc. This is in contrast to monitoring and evaluation, and other knowledge-sharing that is "outward looking" and targeted at external stakeholders.

conflict settings, establishing research teams and studies in additional countries, and the provision of demand-led research support to FCDO education advisors and implementing partners in Girls' Education Africa Facility target countries. This would also be part of the aggregate options outlined at paragraph 95.

98. FCDO may scale up or extend the programmes budget and time in any of the following circumstances:

- Where the programme has demonstrated a strong impact and has the potential to yield better results
- Expansion of the scope of work
- Where other donors want to contribute funds to the programme

99. The Supplier should be able to take onboard additional funding throughout the course of the programme, should other donors choose to invest. Additional funding should add value to the on-going activities of ERICC. For example, expanding to additional countries and where this would not distract from or prevent the completion of work agreed with FCDO.

100. FCDO reserves the right to scale down or discontinue this programme at any point in line with the Terms and Conditions. Scaling down is at FCDO's discretion, and may occur for a number of reasons, including but not limited to:

- Shortage of funds;
- Political economy reasons; such as a change in the situation of the security, government stability, corruption, or delays in key, necessary government engagement in the specific areas in question which are such that they affect the effective delivery in the specific areas (rather than generally) in a way and it is not possible to make a reasonable adjustment to the programme in an appropriate timeframe.
- Broader compliance issues, such as the management of risks and passing of due diligence and in-country vetting

101. Reflection Points: These will be taken every 6 months throughout the lifetime of the programme. These will serve as a time for open and frank reflection between the Supplier and FCDO on progress and lessons learned over the preceding 6 months with a view to adapting the delivery approach if needed. The aim is that these reflection points will enable a successful adaptive programme management approach.

102. In consideration of progress, constraints and advice from FCDO's internal consultations, the FCDO programme team may reallocate contract funds to improve project management and delivery.

F Payment

103. The Inception Phase will link 100% of payment to outputs, with the Supplier to propose payment milestones – drawing on the deliverables set out in Section D. These will be agreed with FCDO and may then be adjusted by mutual consent. Payments will be made quarterly in arrears. Outputs for which payment is sought must be submitted at least 15 days in advance of the end of the quarterly payment period, to allow for FCDO

review of those outputs. Payment will only be made when Inception Phase outputs are accepted by FCDO as satisfying the requirements outlined in this document and as being of sufficient quality to achieve the programme Outcomes and Impact.

104. Following Inception, payments for the Implementation Phase will be based on different mechanisms for each programme Component.

- For Component 1, payment will be made via a hybrid mechanism comprising monthly reimbursement of fees and expenses, with 10% of fees to be retained and paid quarterly, subject to the production and FCDO acceptance of deliverables, in line with method for assessing the quality of outputs defined at sections B and G. Expenses for Component 1 will be reimbursed on actuals on a monthly basis.
- For Component 2, monthly payments will be made reimbursing fees and expenses, with fees payable based on the those agreed at award stage and expenses reimbursed on actuals.

105. The Supplier will be required to outline the costs attributed to the achievement of each output, and within this, and should also show how the cost is attributed to each country, and the activities undertaken to deliver it. Payment for goods or equipment and the procurement services will form part of the Contract.

G Performance Management

106. Assessing the quality of outputs: FCDO expects the Supplier to deliver outputs that meet standards of quality commensurate with the ambition of the programme and that will ensure the programme Outcomes and Impact are achieved. FCDO will regularly assess the quality of outputs produced by the Supplier.

107. During the Inception Phase, all Deliverables will be reviewed by FCDO. Inception deliverables comprise various strategies, plans and approaches that will guide delivery of the programme during the Implementation Phase and thus the quality of these outputs is expected to have a significant impact on the success of the programme. FCDO will therefore review these deliverables to ensure that these adhere to the programme's high standards. Acceptance of Inception Deliverables submitted by The Supplier will be confirmed only after FCDO has completed the above described quality review and found submitted deliverables to be of acceptable quality. FCDO will require 15 days to review Inception deliverables.

108. During the Implementation Phase, FCDO will review deliverables on a quarterly basis.

109. For deliverables under Component 1, FCDO expects the Supplier to provide FCDO with reports detailing internal Quality Assurance reviews conducted on all deliverables submitted as complete within the quarterly period. These should include details on the peer review process undertaken for the deliverables (e.g. summary comments from peer reviewers and author responses). At a minimum, all research outputs should undergo double-blind peer review by two appropriate experts. For more policy focused outputs, this may be relaxed to a single reviewer. The research produced

by The Supplier should be of high quality³⁰ and should be supplemented with a clear monitoring mechanism to assess the impact of the research in the selected countries.

110. At the start of each quarter FCDO will identify a sample of deliverables that it will review in the quarter. FCDO will perform an assessment to verify that deliverables are meeting expected standards of quality and that the Supplier's internal Quality Assurance measures are consistent with those expectations.

111. FCDO will use the framework for assessing the quality of single studies set out in the BE2 "Assessing the Strength of Evidence in the Education Sector" guidance note³¹ as the benchmark for the quality of research. The Research outputs submitted by the Supplier must achieve a "Medium" rating as a minimum in order to be accepted by FCDO as delivered. As noted above, this will be assessed based on a sample of research outputs. All sampled research outputs must meet the minimum standard in order to trigger release of the 10% retained quarterly payment, with payment rolling over to the next month in the event of below expectation quality of sampled outputs, to be paid only when the Supplier has remedied below expectation quality outputs and FCDO assesses them to meet minimum quality standards. FCDO will require 20 days to review such deliverables and the Supplier will ensure submission in sufficient time to enable review.

112. Assessing the quality of Operational Support outputs: Outputs and activities under Component 2 will be assessed against the inputs, activities and/or objectives specified in the Terms of Reference for each operational support project commissioned.

113. Assessing achievement of ERICC's Outcomes - Key Performance Indicators: Key Performance Indicators (KPIs) will be finalised in the Inception Phase by agreement between FCDO and the Supplier, building on those outlined at paragraph 111 and Annex D as a minimum. These will ensure that the assessment of performance is undertaken as transparently as possible and to ensure that there is clarity of roles and responsibilities.

114. The outcome of the programme will be measured by the following Key Performance Indicators (other measures may be included, but these are key):

- **High quality education research programme** delivering published research papers in leading journals for relevant disciplines (e.g. education, economics, political economy, development studies etc.)³².

³⁰ Indicators of quality can include the 'impact factor' and the 'H-Index'. However, FCDO recognises that journal rankings do not always include publications from southern academic organisations or those that feature in online journals. Therefore, during the Inception Phase, the Supplier and FCDO will agree on other indicators that can help in forming a comprehensive picture about what constitute high quality research. These indicators will as a minimum include the assessment detailed on Paragraph 111.

³¹ This document, titled "Assessing the Strength of Evidence in the Education Sector" is an Additional Document, which forms part of the Invitation to Tender Pack and can be downloaded via the FCDO Supplier Portal.

³² FCDO will assess and approve whether intended journals for publication are considered "leading", at

- **Peer reviewed synthesis and evidence papers** that bring the findings of the ERICC research together in the context of the wider evidence base.
- **Policy papers** highlighting policy, strategy and implementable programme options for developing countries to pursue.
- **Citation metrics** – including academic citations and broader web references to ERICC outputs
- **Number and quality of impact stories** demonstrating changes in policy or practice in the six focal countries that are directly attributable to ERICC research, policy recommendations, operational support and/or stakeholder engagement.
- **Number of active engagements** with international or national stakeholders where ERICC evidence or analysis is presented or discussed
- **Number of research or policy events** where ERICC evidence or analysis is presented or discussed
- **Testimonies** that demonstrate how stakeholders value ERICC research outputs and operational support as a source of high quality evidence and expert advice for education in conflict and protracted crisis

115. Performance assessment will also monitor compliance with expectations outline at section H of these Terms of Reference regarding Research Ethics.

116. Monitoring, evaluation and learning costs will be attributed to the Component (of 1 and 2) in which the need for such MEL activities originated. This may result in a spread of MEL costs across both Components 1 & 2.

117. Review Points: There will be one formal review point at the end of Year One (at month 12). This will involve a review of Inception Phase deliverables, including those outlined at Section D: Deliverables. If satisfactory then move to Implementation Phase.

118. FCDO will retain the option to specify additional Review Points in the event that any contract extension option is taken up. This will not be limited to a single instance.

119. FCDO reserves the right to revise or terminate any specific research components (e.g. research on a specific theme or in a specific country) if the work is not progressing as projected, where there are compliance issues (i.e. challenges with the management of risks and conduct of due diligence etc.) or when remedial efforts have failed to improve research implementation to FCDO's satisfaction.

its discretion. FCDO considers that matching research papers to leading journals based on content offers an opportunity to maximise the uptake of the research and consequently maximise each papers contribution to the programme Outcome and Impact. For additional information about the publication in leading journals and relevant disciplines, see for example Scimago Journal & Country Rank (subject: Social Sciences – subject category: Education)

<https://www.scimagojr.com/journalrank.php?area=3300&category=3304>

120. While recognising the inherent difficulties in research delivery, FCDO will actively encourage contingency planning to maintain timely progress. Dependent on project progress and direction FCDO reserves the right to redistribute funds between components– for example moving funds between sub-themes; and between directly delivered components and research competitions.

121. Due to the flexible and adaptive nature of the programme, the Contract must have adequate provision for variation to adapt to changes that occur during the life of the Programme. FCDO shall, as a condition of proceeding after the review points, have the right to request changes to the Contract, including the Services, the Terms of Reference and the Contract Price to reflect lessons learned, or changes in circumstances, policies or objectives relating to or affecting the Programme.

122. The FCDO ERICC programme team will be led by the FCDO programme PRO with support from a programme manager. The FCDO programme team will meet with the Supplier's Research and Programme Directors quarterly to discuss issues around programme coherence, performance, and progress against the log frame and theory of change, and programme-level value for money (VfM) and risk management, including responding to changes in context and new opportunities, such as national, regional or global policy processes that the programme should engage with.

123. Performance, as described throughout Section G and these Terms of Reference - will be assessed regularly at quarterly Performance Management Group (PMG) meetings and as part of FCDO annual reviews of the programme and any process evaluations procured independently. FCDO and the Supplier will meet as required to review performance and results

124. The Supplier will maintain regular dialogue with FCDO's programme PRO to ensure compliance with all terms and conditions set out in the agreement and guided by FCDO's Procurement and Commercial Department (PCD); best practice financial management, including timely and accurate financial forecasting and invoicing and cost control; and effective contract management, including early notification on any proposed changes to the contract, before formal agreement is sought from FCDO.

125. FCDO will separately contract and fund an independent evaluation of the programme to run alongside it and provide regular feedback on progress. The scope of this evaluation will be agreed with the Supplier by the end of the first year of the programme. FCDO anticipate that the evaluation will be conducted in phases and will cover the model of delivery (RPC), the knowledge systems strengthening approach, the research process and research impact in one or two countries. The Supplier will be required to collaborate with the Independent Evaluation Supplier, including providing access to programme management information and outputs.

H Research Ethics

126. Researchers, evaluators and implementing agencies should also recognise that 'despite the growing body of research that explores the educational challenges in crisis contexts, considerable gaps remain in knowledge about how to assess and mitigate research risks and maintain high ethical standards while conducting research in these

situations'³³. Against this backdrop, the Supplier must put in place robust safeguarding procedures in accordance with FCDO's Due Diligence and Safeguarding measures outlined in Section M on Risk Management.

127. The Supplier will deliver the programme ensuring adherence to the following considerations:

- The safety of respondents and the research team is paramount. It should be reflected in all decision making and monitored closely;
- Information gathering and documentation must be done in a manner that is methodologically sound, transparent, and builds on current experience and good practice;
- Protecting confidentiality of individuals is essential to ensuring no harm to respondents and data quality, and to ensure this the Supplier shall not transfer any Personal Data to any third parties without written approval from FCDO and the informed consent of the data subjects in question (see below) and will ensure that all Personal Data collected will only be retained for the duration of the contract (up to a maximum of nine years), and then deleted. The Supplier may retain anonymised data sets beyond this period, and share these with third parties, as it does not constitute Personal Data.
- Anyone providing information for use by the ERICC programme must provide informed, written consent before they provide any information. Where signed written consent forms are not appropriate, for example with participants who cannot read, the information set out below can be provided verbally and consent given verbally, comprehension checked and recorded. In either case, informed consent must be given in full understanding of the identity of the Controller, the Processor and any Sub-processors, as well as the types of Personal Data being collected, the nature and purpose of the processing, who the collected data will be shared with (including that this may include direct quotes where this is the case) and the duration of processing. The text should also clarify that all Personal Data collected will only be retained for the duration of the contract (up to a maximum of nine years), and then deleted. Requests for consent must also abide by other relevant considerations as required by applicable law. The individuals in question must be informed that they have the right to withdraw any consent they may have previously given for any of their data to be processed, that any data collected will be destroyed at the point when the individual withdraws their consent and clarify that that any data pre-dating the point when the individual withdraws their consent can still be processed, but not from the point of withdrawing consent. The Supplier should also put in place a clear, easy and accessible process for the individuals in question to withdraw their consent, and inform them of this process in the initial written declaration of consent. They must also be informed that they have the right to ensure that data collected about them remains accurate and up to date at all times. They should also be informed that they have the right to object to the data processing (and the processes for doing so). All this information must be provided in a language and manner that is understood by the individuals in question. The Supplier will ensure that

³³ This document, titled "Data Collection and Evidence Building to Support Education in Emergencies" is an Additional Document, which forms part of the Invitation to Tender Pack and can be downloaded via the FCDO Supplier Portal. (See Part.5, chapter.30, pages 116-118)

individuals can refuse to consent without detriment. The Supplier will also be responsible for ensuring that records are kept of who has consented, when and what they were told.

- Ensuring vetting and due diligence of those coming in to contact with beneficiaries and respondents, in positions of considerable influence, or tasked with handling money – including ensuring proscribed actors are not present during information gathering (interviews, focus groups, surveys etc.)

128. Specifying and ensuring compliance with ethical standards should form a part of research design, preparation of research teams, and delivery. All personnel involved in research delivery, should be carefully selected and receive specialised training and on-going support in research ethics. This should include due care and attention in relation to interviewing respondents – and particularly children – who have been through traumatic experience or who are living in a crisis-affected context.

129. Allied to ensuring best practice in research ethics, we expect the Supplier to ensure that clear ethical standards in research management are established, communicated, complied with, and monitored, including in relation to financial management and people management by all agents involved in research delivery and all recipients of UK aid funds.

130. The Supplier will be required to have written protocols for research/evaluation ethics and ethical clearance³⁴ and to demonstrate adherence to relevant protocols and FCDO research and ethical guidelines. During Implementation, ethical review to ensure adherence with these protocols will be the responsibility of an appropriate Ethical Review Committee, established by the Supplier that may include, for example, representatives with expertise in research ethics, safeguarding and experience in delivering education programmes in conflict-affected contexts. Suppliers should also comply with national ethics boards and research review processes in the focal countries, where applicable.

131. All research should be planned, conducted and published in a conflict-sensitive manner with close coordination with FCDO and implementation partners to minimise the risk of inflaming volatile situations in conflict-affected settings or damaging relations between FCDO and national stakeholders³⁵.

I Research Capacity Building

132. The Supplier will link northern and southern organisations and/or researchers, and other stakeholders, to design and implement a high-quality programme and achieve the programme's outputs and outcomes and make progress towards impact. This includes ensuring appropriate visibility and credit is given for their contribution, in addition to delivering appropriate capacity building activities under Component 1.

³⁴ Suppliers should utilise or benchmark against widely accepted existing ethical codes for education research (e.g. the British Education Research Association Ethical Guidelines for Educational Research).

³⁵ This is a high priority in contexts of active conflicts where an engagement with any party should strictly adhere to the rules of conducting conflict-sensitive research. In the Inception Phase, Suppliers should present an outline of key risks and ethical considerations to the FCDO Country office to ensure that all contextual, fiduciary, operational, safeguarding, and reputational risks have been appropriately considered in the design of Country Research Plans prior to research being undertaken.

133. ERICC's Component 4 is dedicated to research capacity building. The Supplier will actively engage and collaborate with the British Academy who will implement this Component to maximise programme impact.

134. Targeted orientation and training of policy makers and other targeted audiences for specific research streams may be included in the research uptake strategy to engage stakeholders and facilitate policy uptake.

J Reporting Requirements

135. FCDO conducts Annual Reviews of all programmes to assess progress against the objectives contained in the log frame, ensure that the programme is on track, and consider if any adjustments should be made. The Supplier will be expected to produce Annual Reports that set out key information on the programme and its performance against objectives for that year, which will then form the basis of the Annual Review.³⁶

136. The Supplier will produce a draft log frame as part of their bid, which will then be revised and agreed with FCDO during the Inception Phase.

137. The Supplier will be required to deliver effective financial management and will need to demonstrate Value for Money at all stages of the programme. This will include demonstrating that administrative costs can be minimised and that programme activities are designed to maximise cost effectiveness. The research programme will be expected to report on value-for-money measures integrated into the programme and this will be assessed during FCDO Annual Reviews.

138. The Supplier will provide FCDO with performance monitoring reports ("Performance Monitoring Reports") in accordance with the process and timescales agreed which shall contain, as a minimum, the following information:

- details of compliance with its obligations under Section 2, (Terms and Conditions) Clause 7.8.2
- details of compliance with any additional obligations set out in Section 3 (Terms of Reference);
- details of compliance with any additional obligations set out in Section 4 (Special Terms);
- details of compliance with its obligations under Annex 1b of Section 2 (Contractual Annual Compliance Declaration); and
- such other details as FCDO may reasonably require from time to time.

139. "Performance Monitoring Reports" should be provided 14 days in advance of scheduled Performance Management Meetings.

³⁶ This document, titled "Reviewing and Scoring Projects" is an Additional Document, which forms part of the Invitation to Tender Pack and can be downloaded via the FCDO Supplier Portal. The document provides details about the Annual Review process and types of information that will need to be included in the annual report

140. Performance Management Group meetings will be held once a quarter and will be fully minuted by the Supplier. The prepared minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the FCDO Project Officer and any other recipients agreed at the relevant meeting. The minutes of the preceding Performance Management Group meeting will be agreed and signed by both the Supplier's Contract Officer and the FCDO's Project Officer at each meeting.

141. In order to assess the level of performance of the Supplier, FCDO may undertake satisfaction surveys in respect of the Supplier's provision of the Services and FCDO shall be entitled to notify the Supplier of any aspects of their performance of the provision of the Services which the responses to the satisfaction surveys reasonably suggest are not in accordance with this Contract.

142. In addition to these formal reporting processes, the Supplier is expected to be in regular communication with FCDO as required to ensure effective programme delivery. This may take the form of email and telephone communication.

K Digital Spending

143. All digital³⁷ content produced by the Supplier is subject to UK government digital principles as set out by the Government Digital Service (GDS). All digital developments should:

- Put the needs of users first
- Learn from and improve these services over time
- Be freely available for other FCDO programmes to use
- Adhere to the Principles for Digital Development
- For more information see:
 - <https://www.gov.uk/designprinciples>
 - <https://www.gov.uk/service-manual/service-standard>
 - FCDO Digital Guidance for Partners and Suppliers³⁸

144. The Supplier should consider the use of digital elements to maximise value for money while ensuring the programme remains inclusive and fully accessible. Any proposed digital elements will require approval in line with FCDO's Smart Rules.

145. The Supplier should not propose unnecessary bespoke systems or tools to implement and instead make use of existing and freely available systems and tools in all aspects of the programme where possible.

L Transparency, data protection and open access

Transparency

³⁷ Digital is defined as any service provided through the internet to citizens, businesses, civil society or non-government organisations. This includes, but is not limited to, information services, websites and transactional services. This includes services provided by others but funded by FCDO.

³⁸ This document, titled "FCDO Digital Guidance for Partners and Suppliers" is an Additional Document, which forms part of the Invitation to Tender Pack and can be downloaded via the FCDO Supplier Portal.

146. FCDO has transformed its approach to transparency, reshaping our working practices and pressuring others across the world to do the same. FCDO requires Suppliers receiving and managing funds to release open data on how this money is spent, in a common, standard, reusable format and to require this level of information from immediate sub-contractors, sub-agencies and partners.

147. It is a contractual requirement for all Suppliers to comply with this, and to ensure they have the appropriate tools to enable routine financial reporting, publishing of accurate data and providing evidence of this to FCDO. Further information is available from: www.aidtransparency.net

148. In certain countries, there may be programmes and/or research that is exempted from these provisions where there are safeguarding risks associated with data release. The application of these provisions to any of the research undertaken for ERICC will be discussed as part of the development of country research plans at the Inception Phase.

General Data Protection Regulations (GDPR)

149. Please refer to the details of the GDPR relationship status and personal data (where applicable) for this project as detailed in App A and the standard clause 33 in Section 2 of the contract.

Open Access

150. Publications and research outputs should be made available open access in accordance with FCDO Research Open and Enhanced Access Policy³⁹ (Component 1 – 3).

M Risk management

Risk Register

151. FCDO and the Supplier will share a joint risk register, which the Supplier will update on a quarterly basis in consultation with FCDO, although where identified as necessary for particular contexts in CRPs, this could be refreshed more frequently. The risk register should cover fiduciary, reputation, safeguarding, operational, delivery and external context risks.

Conflict and Fragility

152. The Supplier should ensure due consideration is given to impact on the local socio-political context, in order to minimise negative impact and ensure that no harm is done. These considerations should be reflected in the approach to publications and communications, the engagement strategies developed by the Supplier in the Country Research Plans, and should be integrated into the high-level risk management plan and all context-level risk management plans that will be developed or adapted during the Inception Phase.

Duty of Care (DoC)

³⁹ This document, titled “FCDO Research Open and Enhanced Access Policy” is an Additional Document, which forms part of the Invitation to Tender Pack and can be downloaded via the FCDO Supplier Portal.

153. Overall, we have assessed DoC as high risk because of the contexts in which the research will be conducted in conflict and crisis affected contexts, security situation could be volatile and subject to change at short notice. However, the programme covers a range of contexts with greater or lesser risk levels, as well as the potential for escalation (or de-escalation) during the lifetime of the programme. The Supplier should therefore be comfortable working in these environments and should be capable of deploying to any areas required within the research programme in order to deliver the Contract (subject to travel clearance being granted).

154. Suppliers are required to carry out a risk assessment (of foreseeable risks) and are required to provide evidence that they have the capability to take on and effectively manage their DoC Responsibilities throughout the life of the agreement. FCDO DoC risk assessments for each country are included in the Invitation to Tender pack.

155. The Supplier is responsible for the safety and well-being of their Personnel (as defined in FCDO's agreement with the Supplier, Section 2 of the Contract) and Third Parties affected by their activities under this contract, including appropriate security arrangements. They will also be responsible for the provision of suitable security arrangements for their domestic and business property.

156. FCDO will share available information with the Supplier on risk assessments, security status and developments in-country where appropriate.

157. The Supplier is responsible for ensuring appropriate safety and security briefings for all their Personnel working under this contract and ensuring that their Personnel register and receive briefing as outlined above. Travel advice is also available on the FCDO website and the Supplier must ensure they (and their Personnel) are up to date with the latest positions.

158. The Supplier is responsible for ensuring that appropriate arrangements, processes and procedures are in place for their Personnel, taking into account the environment they will be working in and the level of risk involved in delivery of the Contract (such as working in dangerous, fragile and hostile environments, etc.). The Supplier must ensure their Personnel receive the required level of training.

Due Diligence and Safeguarding

159. The Supplier will need to put in place procedures to abide by FCDO Due Diligence requirements, including the enhanced due diligence policies launched in October 2018. The [policy](#)⁴⁰ contains six areas that must be covered (safeguarding, whistleblowing, human resources, risk management, the code of conduct, governance and accountability) and the lead Supplier will be responsible for ensuring that appropriate safeguarding standards are cascaded down the delivery chain. FCDO would expect to see evidence the standards have been shared and that partners are clear about expectations by the mid-point of the Inception Phase at the latest. Further to

⁴⁰ The FCDO Enhanced Due Diligence: Safeguarding for external partners can be accessed on the following link:
<https://www.gov.uk/government/publications/dfid-enhanced-due-diligence-safeguarding-for-external-partners>

this, the Supplier will be responsible for vetting and screening downstream and local partners to ensure they – or individuals working for them – are not on sanctions lists or members of proscribed groups. The FCDO may provide support and information to assist in this process.

Conflicts of Interest

160. The Supplier will produce and operate robust protocols and procedures for identifying and mitigating any potential conflicts of interest, particularly in terms of the tendering of calls for proposals, contracting out elements of the research or operational assistance, and the selection of Country Research Directors for the country research teams/hubs. These protocols will be agreed with FCDO.

161. In addition to the provisions of the previous paragraph, the Supplier will also devise a clear method for addressing any conflicts of interests that might arise if the Supplier delivers research/technical assistance, within the framework of Component 2, that could influence a programme (or future programme design) that is also being delivered (or tendered for) by the ERICC Supplier or members of the consortium. In such a case, the clearance of FCDO (programme team and PCD) will be required.

N Other requirements

Gender Equality

162. International Development (Gender Equality) Act 2014: The programme will be required to consider any implications that its work might have on gender inequality, and seriously consider implementing any adaptations that can reasonably be made to improve gender equality. The programme will also disaggregate data by gender, and by other social inclusion indicators such as age, disability, etc.

Environmental Considerations

163. The Supplier should ensure due consideration is given to the environmental impact of all work undertaken to deliver the programme, in terms of minimising any direct negative impact.

164. Specific attention to minimising operational impacts on the environment and global climate of those undertaking the research.

Branding

165. All research outputs will acknowledge FCDO support in a way that is clear and explicit and which complies with [Guidance on using the UK Aid logo](#)⁴¹. If press releases on work which arises wholly or mainly from the project are planned this should be in collaboration with FCDO Communications Department. An approach for UK aid branding will be integrated into each CRP, to be agreed with FCDO.

O Background

⁴¹ This document, titled “UK Aid Branding Guidance” is an Additional Document, which forms part of the Invitation to Tender Pack and can be downloaded via the FCDO Supplier Portal.

166. A record number of people are displaced from their homes due to conflict and protracted crises and two billion people live in countries affected by fragility, conflict and violence⁴². Of the estimated 75 million children whose education is affected by conflict and protracted crises, nearly half of them – 37 million – are out of school at the primary and lower secondary level⁴³. It is hard to track how much those who are in school are learning, but the data we have indicates that overall learning levels are low and that the quality of schooling is a contributing factor. With the average length of displacement now lasting 17 years⁴⁵, generations of children risk missing out on education and its long-term benefits.

167. The COVID-19 outbreak will add to the challenges faced by already fragile education systems in conflict-affected states and has also demonstrated the vulnerabilities and gaps in preparedness of education systems globally in the face of pandemics. UNESCO estimates as of August 2nd, 2020 suggested that 60.5% of the world's student population are affected by school closures – including some 1.05 billion learners who are out of school across 109 countries. This is a protracted crisis where governments – and particularly those in fragile and conflict-affected states – will require expert advice and support on minimising the disruption to children's education and an opportunity to learn from the wide array of approaches and initiatives that are being adopted by education systems across the world.

168. The ERICC programme will play an important role in supporting the commitment the UK government has made to stand up for the right of every girl in the world to receive 12 years of quality education. Girls in conflict-affected countries are two and a half times more likely to be out of school than their counterparts in non-conflict contexts and are also more likely than boys to discontinue their education in times of crisis. The programme will be aligned with the DFID (now) FCDO Strategic Vision for Gender Equality 2018 and any forthcoming FCDO commitments on Girls' Education. The programme will also address the challenges of education provision for people with disabilities, reflecting commitments in the DFID (now FCDO) Strategy for Disability Inclusive Development 2018 – 23 and the fact that more than half of all people with disabilities live in countries affected by conflict and natural disasters.

169. Although international momentum has been growing around tackling the challenge of education in emergencies, there is a **critical lack of high-quality evidence on 'what works'** for education in these contexts to ensure quality education for all. The lack of evidence impedes global efforts to deliver education programmes in some of the world's poorest countries.

170. ERICC is an instrumental programme to fill this evidence gap and to achieve the UK's long-term efforts to support education in conflict and protracted crises. As such, it

⁴² This document, titled "Fragility, Conflict, and Violence" is an Additional Document, which forms part of the Invitation to Tender Pack and can be downloaded via the FCDO Supplier Portal.

⁴³ This document, titled "Education Cannot Wait: Proposing a fund for education in emergencies" is an Additional Document, which forms part of the Invitation to Tender Pack and can be downloaded via the FCDO Supplier Portal.

⁴⁴ This document, titled "Education in emergencies and protracted crises: Toward a strengthened response" is an Additional Document, which forms part of the Invitation to Tender Pack and can be downloaded via the FCDO Supplier Portal.

⁴⁵ Ibid.

will support the commitment made in **DFID's (now FCDO) 2018 Education Policy**⁴⁶ to support children whose education has been disrupted by conflict and crisis, as well as informing **FCDO's education portfolio**, which has begun to shift to focus more on fragile contexts. Most of the children supported by FCDO's education programmes **live in fragile states** (9.3 million children), including 4.1 million living in states with a high level of fragility⁴⁷.

171. Research produced by ERICC is intended to support commitments made in **The New Deal for Engagement in Fragile States**⁴⁸ and in the **Grand Bargain**⁴⁹, including to support nationally-owned and led development plans and greater aid effectiveness in fragile situations. It should also contribute to developing more joined-up ways of working across humanitarian, development and peacebuilding actors to integrate their approaches and achieve collective outcomes, as well as encouraging a shift away from conventional humanitarian responses towards more long-term, conflict-sensitive approaches. These are commitments and lessons reflected in the **New Ways of Working** (NWOW) initiative⁵⁰, the **2016 Bilateral Development Review**⁵¹, the **Building Stability Framework**⁵² and the **UK Humanitarian Reform Policy**⁵³.

172. ERICC is also intended to engage with existing and upcoming FCDO education research programmes, including the Research on Improving Systems of Education (RISE), THRIVE (Unlocking Children's potential to thrive), the Education Technology Research and Innovation Hub, the International Partnership for Education Reform (IP4ER) and research being undertaken at country level, and with Education Cannot Wait (ECW) through its Acceleration Facility which supports the development of global public goods. This engagement may involve intellectual dialogue or more direct collaboration where opportunities to mutually add value are identified. Additionally, where relevant, ERICC is expected to engage with FCDO Regional Research Hubs in the coordination and alignment of research plans and activities.

⁴⁶ This document, titled "DFID Education Policy Get Children Learning" is an Additional Document, which forms part of the Invitation to Tender Pack and can be downloaded via the FCDO Supplier Portal.

⁴⁷ This document, titled "Single Departmental Plan - Results Achieved by Sector in 2015-2019 – Education" is an Additional Document, which forms part of the Invitation to Tender Pack and can be downloaded via the FCDO Supplier Portal.

⁴⁸ This document, titled "A New Deal for engagement in fragile states" is an Additional Document, which forms part of the Invitation to Tender Pack and can be downloaded via the FCDO Supplier Portal.

⁴⁹ The Grand Bargain (official website) <https://interagencystandingcommittee.org/grand-bargain>

⁵⁰ The New Way of Working (official website) <https://www.un.org/jsc/content/new-way-working>

⁵¹ This document, titled "the Bilateral Development Review 2016" is an Additional Document, which forms part of the Invitation to Tender Pack and can be downloaded via the FCDO Supplier Portal

⁵² This document, titled "Building Stability Framework 2016" is an Additional Document, which forms part of the Invitation to Tender Pack and can be downloaded via the FCDO Supplier Portal

⁵³ This document, titled "Saving Lives, Building Resilience, Reforming the System the UK Government's Humanitarian Reform Policy" is an Additional Document, which forms part of the Invitation to Tender Pack and can be downloaded via the FCDO Supplier Portal

Annex A: Research themes and indicative questions

Theme ⁵⁴	Description	Indicative research questions
Political settlements⁵⁵	Establishing consensus between governments, multi-lateral, bi-lateral and I/NGOs on inclusion of education in the crisis response. This involves maximising international commitments and resolutions to forge effective national and regional education-in-emergencies (EiE) responses.	<p><i>What works to align stakeholder incentives to prioritise and effectively coordinate education provision in crisis preparations and response?</i></p> <p><i>What works to ensure education interventions are conflict sensitive and minimise the risk of doing harm?</i></p>
Accountability	Strengthening education systems (including state and non-state) to ensure equitable and effective education services for all children and young people, and avoiding the unnecessary establishment of ad hoc, temporary or parallel delivery systems.	<p><i>What works to strengthen accountability and national capacity (state and non-state providers) to address education needs?</i></p> <p><i>What works to support conflict and crisis affected populations to reintegrate into</i></p>

⁵⁴ Evidence briefs for each of these themes are Additional Documents, which form part of the Invitation to Tender Pack and can be downloaded via the FCDO Supplier Portal.

⁵⁵ In contexts of 'active conflict', this theme may be difficult to research and should only be undertaken with sign off from FCDO after careful consideration of conflict sensitivities and mitigation strategies. Note that this theme should not be considered in the Syria context and that engagement with the regime by the researchers will not be permitted, beyond negotiation for access permits. Similarly, only non-state or Syrian Interim Government systems would be considered for research on strengthening education systems in the Syria context.

		<i>education systems during return or when the crisis has passed⁵⁶?</i>
Cost-effective delivery	Promoting good value for money through effective coordination with all partners – humanitarian and development – and the financing, designing and implementing of education programmes in a cost-effective manner.	<i>How can the comparative advantage of each stakeholder be maximised and coordination improved?</i> <i>What works for designing and implementing education programmes that maximise value for money?</i>
Quality and learning	Ensuring education is of good enough quality, responsive and relevant to the needs of affected children and young people. This includes addressing key issues of teachers, language of instruction, and learning assessment and accreditation, in changing and often volatile contexts.	<i>What is the role of education in conflict and protracted crisis and what does quality education look like in these contexts?</i> <i>What works to develop, support and sustain an effective teaching workforce in the context of conflict and protracted crisis?</i>

⁵⁶ It will be important to consider demand side issues when addressing this question – In North East Nigeria, for example, there is a distrust of western education based on religious beliefs- how can trust in the system be built to create demand for education during and post conflict? How can we ensure that the momentum for demand for education is sustained post conflict?

Protection and inclusion	Ensuring schools and other places of learning are safe and inclusive spaces offering protection for all children. Girls are particularly vulnerable in times of crisis, often experience violence and more likely than boys to discontinue their education. Boys also face specific challenges in accessing education, particularly adolescent boys. Children with disabilities are highly likely to be excluded.	<i>How to protect children and provide psychosocial support to ensure that children can learn?⁵⁷</i> <i>What works to reach the most marginalised, including girls, boys and those with disabilities?</i>
Data, Monitoring and Evaluation	Supporting the establishment of coherent and reliable systems to secure information and data to inform programme design, monitor performance, and track children's participation and attainment.	<i>How can reliable data be collected and used for monitoring and adaptable programming?</i> <i>What works to support coherent systems for data collection that avoid duplication and promote data usage?</i>

Note – These indicative questions were developed based on five research questions set out in the ERICC business case:

- 1. How to embed education in emergency programming from the start and move from emergency to recovery and sustainable provision?*
- 2. How to design and implement education programmes that maximise value for money?*
- 3. How to protect children and provide psychosocial support to ensure that children can learn?*
- 4. How to sustain an effective teaching workforce?*
- 5. How to reach the most marginalised?*

⁵⁷ Equally important, we expect this research question to address modalities to support teachers to recover from trauma. In Syria, FCDO's research suggests that for teachers to support child's recovery, they should be offered a significant psychological support.

Annex B: Glossary of terms:

Lean start-up: is a product development and innovation methodology. It is used to test, rigorously measure, validate and scale start-up ventures. More recently the principles are being used to scale new innovations in the development sector (increasingly referred to as 'Lean Impact'). The principles of 'Lean' experimentation are simple: **build** the minimum amount needed to your hypotheses, **measure** early and often to get feedback on your innovation/intervention, reflect and **learn**, pivot and plan the next hypotheses to validate. See www.leanstartup.com and leanimpact.org.

Agile ways of working: Agile project management advocates a number of tools and techniques that assist in smoothing the flow of work within and between teams, splitting large pieces of work into smaller deliverable pieces and prioritising value to the beneficiary. Cross-functional teams who make their work visible ('working in the open') are able to identify what is most valuable, deliver it as early as possible and learn through fast feedback and iteration.

Adaptive Programming: recognises that with some of the challenges we are trying to address in development, where we know the outcomes we want to achieve, we may not know the solution to achieve the outcomes at scale. It recognises uncertainty and adopts a deliberately experimental approach, testing possible solutions, with rapid feedback loops to identify where progress can be made, and flexibility to adjust our strategy accordingly.

Community of Practice: A group of people who share a concern or a passion for something they do, and learn how to do it better as they interact regularly. In this case those with a passion to improve learning for all through the use of technology in education systems globally.

Real-time: for the purpose of this programme, real-time is defined as the need to develop a system/model that disseminates learning and evidence in a manner which allows regular, timely feedback to inform the process/approach.

Annex C: Theory of Change

This section builds upon and further develops the Theory of Change that is set out in the ERICC Business Case document. It should form the basis for the theory of change developed by the Supplier in their research framework.

The Theory of Change is based on seven broad assumptions that the ERICC programme will build on or challenge. These assumptions will contribute to the overall goals of:

- stronger evidence-based education policies and
- better value for money programmes:

This section unpacks these assumptions into a number of detailed sub-assumptions. the Supplier should use these particularly to inform the design of their organisational structure and planning for the Inception period.

Assumption 1: It is feasible to conduct high quality rigorous research in conflict and protracted crisis contexts with the right tools and methods⁵⁸ assuming that:

- 1.1 The context is safe to conduct high quality and rigorous research
- 1.2 There are no major disruptions that undermine research (e.g. repeated mass displacements that prevent data collection)
- 1.3 If the context changes, it will not undermine the quality of research
- 1.4 If the context changes, research teams are able to adapt and respond
- 1.5 Research teams can maintain relationships with key stakeholders that enable research to take place
- 1.6 Country-level theories of change include a learning component to keep track of the context and inform research approach in country and at the level of the ERICC programme Theory of Change

Assumption 2: The supplier market is large enough to result in the selection of high quality researchers able to conduct research in complex contexts:

Selection and incentivisation of consortium:

- 2.1 An effective consortium is forged, and the comparative advantages of its constituent members are fully realised.
- 2.2 Strong governance arrangements are established early to ensure clear accountability lines for rapid decision making over resources and responsibilities.
- 2.3 The consortia has a clear ethos for building collaborations across its core members and with its in-country partners
- 2.4 The supplier market, especially in focal countries, has the incentive to engage with the programme

⁵⁸ In the pursuit of such research, DFID has commissioned, for example in 2019, Integrity to conduct research to improve the quality of teaching and learning inside Syria. The in-depth review of the learning environment for Grade 2 and Grade 3 children in areas of Syria not controlled by the Government of Syria (GoS) included a data collection period of eight weeks resulting in nearly 6000 records, sourced across three governorates from approximately 300 schools. This study represents the first wide-scale analysis since the start of the Syrian conflict of how teacher practice and learning spaces influence child learning and wellbeing in Syria. The rigour in its framing and flexibility in its delivery allowed the successful delivery of the study. This study is an example of how to balance limited resources and high ethical expectations to secure data from the most reliable sources: the end users of assistance funds. For further details please see Research to improve the quality of teaching and learning inside Syria This document, titled “Research to Improve the Quality of Learning Inside Syria” is an Additional Document, which forms part of the Invitation to Tender Pack and can be downloaded via the FCDO Supplier Portal

- 2.5 The programme design incorporates routes to bring in expertise outside the formal consortium
- 2.6 The consortium has the incentives to identify and contract Southern partners
- 2.7 FCDO systems are able to adapt and integrate Southern partners as consortium members or Sub-contractors, due to:
 - a. Southern partners fulfilling FCDO guidelines, or
 - b. The Supplier having the incentives and resources to provide necessary capacity building if and when Southern partners lack the capacity to deliver and/or fulfil FCDO guidelines.

Knowledge and incentives to engage at country level

- 2.8 A mapping of Southern institutions and researchers results in the identification of high-quality research partners in focal countries
- 2.9 Assisted by the outcomes of the mapping, the successful consortium has extensive knowledge of partners in focal countries and the ability to identify and contract them
- 2.10 Partners in the focal countries face no restrictions in engaging with the consortium

Assumption 3: Relationships between researchers and decision makers can be maintained and strengthened through the efforts of the RPC, with facilitation from FCDO and other key networks over time;

Research:

- 3.1 Continuity of policy priorities in the focal countries
- 3.2 Supply of research responds to policy makers' demands
- 3.3 Research is translated into meaningful and policy relevant output

Researchers:

- 3.4 Researchers either have existing or work to cultivate close and regular access to policymakers in the country
- 3.5 The relationship is productive, lead to exchange between the two groups and the production of relevant research

The Supplier/RPC:

- 3.6 The RPC is adaptable and responsive to country level research needs and policy priorities
- 3.7 The RPC can balance country-level needs with the programme research framework and FCDO priorities
- 3.8 The RPC has the political savviness to navigate relationships with key decision makers/stakeholders,
- 3.9 The RPC creates clear protocols on how to maintain and strengthen relationships with decision makers. This includes clear guidelines about the publication and dissemination of (sensitive) research findings

Decision makers:

- 3.10 The RPC has the ability to identify (with FCDO) the key and relevant decision makers, that can be engaged under FCDO policy, to build relationships at different levels of government⁵⁹
- 3.11 Decision makers that can be engaged under FCDO policy, are continuously engaged and continue to have access to research process and output where safe for beneficiaries and respondents:

⁵⁹ Decision makers can also be non-government officials such as member of UN organisations in the focal country, Local Education Group members, etc

- a. In terms of the process: decision makers are consulted on the design of the research⁶⁰
 - b. Research outputs are shared with decision makers
- 3.12 Close engagement, throughout the life-cycle of the research project, secures decision makers' buy-in and provide the conditions to conduct further research

Donors:

- 3.13 Clear brokerage lines are established, and engagement plans are put in place (e.g. through FCDO, RPC and Country Research Teams/Hubs)
- 3.14 The researchers build trust with the education sector group, or donor stakeholders based at country level including FCDO's education advisers
- 3.15 Researchers – and all RPC personnel – engage positively with FCDO country offices, abide by FCDO red lines and comply with relevant policies and laws at all stages of the programme

Assumption 4: Researchers and practitioners can work effectively together to identify and agree areas for programme improvement;

- 4.1 Practitioners (e.g. FCDO country offices, implementing partners and other in-country partners) have a sense of **ownership** over the process and the **capacity to identify** priority areas for programme improvement
- 4.2 Practitioners have the **capacity and incentives to implement** programmes' improvement activities
- 4.3 Structures are created to allow cooperation and engagement between researchers and practitioners in relation to in-country operational support
- 4.4 Researchers have clear framework on how engaging with programmes fits with ERICC research agenda
- 4.5 RPC has clear '**ways of working**' in terms of research (comp.1) and operational support (comp.2) interaction as well as FCDO's brokering role
- 4.6 Consortia has a clear **communication strategy** to market operational support and ensure uptake with support from FCDO
- 4.7 The Supplier delivers, and FCDO approve, an approach to handling potential or perceived conflicts of interest that ensures high ethical standards while enabling researchers and practitioners to engage in a manner that contributes to the aims of the ERICC programme

Assumption 5: Research findings can effectively influence programmes and policy;

- 1.2 Building on the previous assumptions that research:
 - a) Secures country-level **buy-in and political influence with relevant policy makers**
 - b) Have a good understanding of the political economy and build **ownership** of a broad range of actors (*e.g. national governments, FCDO country offices, relevant stakeholders: such as multilateral, and implementation partners*)
 - c) Key stakeholders have the **incentives** to engage with the research process
 - d) Key stakeholders have the **capacity** to act on research outcome
 - e) Key stakeholders **prioritise** evidence-based policies.
- 1.3 Research findings can be operationalised

⁶⁰ Balancing engagement with decision makers, and maintaining the integrity and confidentiality of the research

- 1.4 Researchers collaborate with implementers to generate implementation plans with clear entry-points for improvement
- 1.5 Implementers have the capacity or access to resources that enable them to act on research's recommendations
- 1.6 A clear cost-benefit analysis is integrated into the implementation plans

Assumption 6: The programme function is able to effectively influence policy makers through sustained relationships and targeted uptake activities, such as approachable briefs and events;

- 6.1 The RPC demonstrates a clear understanding of the global landscape of research cooperation and research in international development in focal countries/region with a **focus on the practice-policy divide**
- 6.2 The RPC develops a strategy for 'policy entrepreneurship' among country research teams/hubs and centrally with the aim of transforming policy ideas into policy innovations and, where useful, disrupt status quo policy arrangements.
- 6.3 The RPC mobilises, supports and maintains in-country multi-stakeholders advocacy coalitions
- 6.4 Country research teams/hubs are able to navigate changing contexts and respond to changing priorities.
- 6.5 Where necessary, FCDO has the ability to broker, maintain and balance these relationships

Assumption 7: The programme function is able to effectively strengthen knowledge systems through fellowship and institutional support.

- 7.1 During Inception Phase, the British Academy conducts a scoping study of previous and existing knowledge systems strengthening fellowship and research training programmes (e.g. Strengthening Research and Knowledge Systems⁶¹) and other relevant programmes (e.g. SPHEIR⁶², etc)
- 7.2 The British Academy conducts research for the design of the fellowship and the institutional support component
- 7.3 The fellowship programme is responsive to the needs of researchers and institutions.
- 7.4 Appropriate opportunities for the acquisition and development of junior researchers' research skills are identified⁶³
- 7.5 This will guarantee 'local ownership' and a comprehensive strengthening of the knowledge systems.
- 7.6 Challenges with the knowledge systems are well-defined
- 7.7 Solutions are co-developed with the selected institutions and scholars

⁶¹ For example, FCDO's INASP's Strengthening Research and Knowledge Systems (SRKS) programme in 24 countries in the Global South <https://devtracker.fcdo.gov.uk/projects/GB-1-203962>

⁶² For example, the Strategic Partnerships for Higher Education Innovation and Reform (SPHEIR) <https://devtracker.fcdo.gov.uk/projects/GB-1-203166>

⁶³ ERICC Business Case - Page 17 stresses that while joint research by established academics and those from the Global South is a way of developing skills, it is not considered sufficient for addressing the systemic lack of capacity

Annex D: Log Frame minimum indicators

These indicators are intended to be a minimum set to capture key information on programme performance. These indicators – or appropriate variations on them – should be integrated into the Supplier’s log frame along with additional supporting indicators aligned with the Suppliers delivery model and operational design and the cadence of their delivery.

Outcome 1: Strengthened education programmes in FCDO focal countries/regions

- Number of high-quality impact stories demonstrating changes in policy or practice in the six focal countries that are directly attributable to ERICC research, policy recommendations, operational support and/or stakeholder engagement⁶⁴.
- Number of testimonies that demonstrate how stakeholders value ERICC operational support as a source of high quality evidence and expert advice for education in conflict and protracted crisis
- Number of satisfactorily completed projects under the expert technical advice and small scale research mechanisms of Component 2

Outcome 2: A rigorous body of evidence on what works for education in conflict and protracted crisis

- Number of published peer-reviewed articles in leading journals for relevant disciplines (e.g. education, economics, political economy, development studies etc.)
- Number of research outputs/working papers published that address the key research themes and questions set out in the ERICC research framework
- Number of research synthesis products published by the Research Directorate and/or Country Research Teams/Hubs
- Number of policy papers published highlighting policy, strategy and implementable programme options for key stakeholders (i.e. national governments, donors, international agencies etc.) to pursue.
- Number of ERICC outputs cited in academic journal articles, books and book chapters

Outcome 3: Decision makers access and use evidence on education in conflict and protracted crisis

- Number of active engagements with international or national stakeholders where ERICC evidence or analysis is presented or discussed
- Testimonies that demonstrate how stakeholders value ERICC research outputs as a source of high quality evidence for education in conflict and protracted crisis
- Number of ERICC conferences/workshops/conference panels organised which attract an influential audience of decision makers and thought leaders

⁶⁴ Impact stories should clearly set out the changes in question, the challenge they address, how they are anticipated to improve education outcomes, their link to ERICC activities or outputs, and supporting evidence for attribution (e.g. testimony from decision makers or other key stakeholders).

- Number of research or policy events where ERICC evidence or analysis is presented or discussed
- Number of ERICC outputs cited in non-academic publications
- Number of downloads of ERICC outputs

Outcome 4: Knowledge systems strengthened for research on education in conflict and protracted crisis

- Number of Southern or Southern-based researchers that have received capacity building through the ERICC programme
- Number of research capacity building events jointly organised by the ERICC RPC and institutions selected to implement Component 4

Annex E: Redacted business case

For more background to this programme please refer to the Business Case including references, hosted on the FCDO Supply Partner portal.

Appendix A: of Contract Section 3 (Terms of Reference) Schedule of Processing, Personal Data and Data Subjects

This schedule must be completed by the Parties in collaboration with each-other before the processing of Personal Data under the Contract.

The completed schedule must be agreed formally as part of the contract with FCDO and any changes to the content of this schedule must be agreed formally with FCDO under a Contract Variation.

Description	Details
Identity of the Controller and Processor for each Category of Data Subject	<p>The Parties acknowledge that for the purposes of the Data Protection Legislation, the following status will apply to personal data under this contract:</p> <ol style="list-style-type: none"> 1) The Parties acknowledge that Clause 33.2 Protection of Personal Data and 33.4 (Section 2 of the contract) shall not apply for the purposes of the Data Protection Legislation as the Parties are independent Controllers in accordance with Clause 33.3 in respect of the Personal Data necessary for the administration and/ or fulfilment of this contract. This is expected to include, but is not limited to: <ul style="list-style-type: none"> • Personal Data of individuals who are surveyed, interviewed, consulted or otherwise engaged for the purpose of gaining understanding of their identity, views/opinions and experiences in the performance of the Contract • Personal Data of FCDO Staff 2) For the avoidance of doubt the Supplier shall provide anonymised data sets for the purposes of reporting on this project, and therefore FCDO shall not be a Processor in respect of Personal Data necessary for the administration and/ or fulfilment of this contract. <p>The Supplier will be required to have written protocols for research/evaluation ethics and ethical clearance and to demonstrate adherence to relevant protocols and FCDO research and ethical guidelines (as detailed at Terms of Reference paragraph 130).</p>
Subject matter of the processing	
Duration of the processing	
Nature and purposes of the processing	
Type of Personal Data [and Special Categories of Personal Data]	
Plan for return and destruction	(UNLESS requirement under EU or European member state law to preserve that type of data)

of the data once processing complete.	
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