

Dear Sir/Madam,

**Notice of Contract Award Decision - Tender Reference:** Medical Devices Distributor Mapping in Brazil 2023

Thank you for your Tender dated 20 January 2023 (as amended by your clarifications, Best and Final Offer dated 26 January 2023 for the provision of a market research mapping the health distributors market in Brazil, providing a list the key distributors and warming them up by scheduling strategic meetings with DIT Life Sciences Team in Brazil.

I am pleased to inform you that the Secretary of State for Foreign, Commonwealth and Development Affairs (the Authority) has made the decision to award the contract to Brogini Partners Assessoria Empresarial Ltda.

This letter (Award Letter) and its Annexes set out the terms of the contract. For the purposes of the Contract, the Authority and the Contractor agree as follows:

- 1) The specification of the Services to be supplied is as set out in Annex D the Supplier's proposal dated 26 January 2023.
- 2) The charges for the Services shall be as set out in Annex D the Supplier's proposal dated 26 January 2023.
- 3) The Contract period begins on 31st January 2023 and ends on 30th of March 2023 with the possibility of extension if agreed by the Authority and the Contractor.
- 4) The Authority may elect to pay for the Services by Contractor invoice via credit transfer or by Government Procurement Card. The payment will be made in 2 installments: 50% in a partial delivery and 50% at the final delivery.
- 5) If the Parties agree to adopt payment by invoice, then all invoices must be sent, quoting a valid purchase order number (PO Number), by e-mail to [xxxxxxxxxx](#) Within 10 working days of receipt of your countersigned copy of this letter, we will send you a unique PO Number. You must be in receipt of a valid PO Number before submitting an invoice. To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, PO Number item number (if applicable) and the details (name and telephone number) of your Customer contact (i.e. Contract Manager). Non-compliant invoices will be sent back to you, which may lead to a delay in payment. The Authority pays into its Contractors bank

accounts by credit transfer.


Please proceed with the performance of the contract in accordance with its terms and acknowledge this award of Contract to you by completing the sections under the signature and returning a copy to this office.

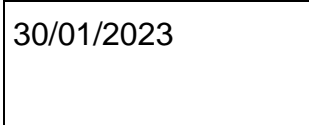
Thank you for your interest in this Tender and we look forward to working with you on this contract.

Yours faithfully

XXXXXXXXXXXXXXXXXX

Head of Trade São Paulo

Date: 

  
30/01/2023

## SHORT CONTRACT CONDITIONS

*These conditions shall not apply where the supply of goods or services is subject to the terms of a framework contract between the Contractor and the Authority or any other government department or agency. These short form conditions of contract shall not take precedence over or replace any existing Contractual agreements between the Contractor and the Authority.*

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- A FCDO Supplier Code of Conduct
- B Processing, Personal Data and Data Subjects Schedule
- C Request for Quotation
- D Supplier's Proposal (Best and Final offer dated 27.01.2023)

## 1. INTERPRETATION

### 1.1 In these terms and conditions:

- "Agreement" means the contract between (i) the Customer acting as part of the Crown and (ii) the Supplier constituted by the Supplier's countersignature of the Award Letter and includes the Award Letter and Annexes;
- "Authority" "Authority" means the Secretary of State for Foreign, Commonwealth and Development Affairs and includes the Authority's Representative. In this Contract, the Authority is acting as part of the Crown.
- "Authority's Representative" means the individual authorised to act on behalf of the Authority for the purposes of the Contract;
- "Condition" means a clause in the Contract;
- "Confidential Information" means the terms of this Contract, together with all information in whatever form and on whatever media of either party which relates to the business, affairs, trade secrets, products, services, marketing plans, software, databases, know-how, personnel, customers or suppliers of either party (as the case may be), whether marked as confidential or which otherwise may reasonably be regarded as the confidential information of a party and which is disclosed or acquired at any time whether before or after the Contract Commencement Date as a result or in anticipation of this Contract;

"Contractor"	means the supplier of the Goods or Services;
"Contract"	means the agreement between the Authority and the Contractor consisting of these Conditions together with any amendments and/or additions thereto as specified on the Purchase Order;
"Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer"	take the meaning given in the GDPR;
"Credit transfer"	is a payment instruction from the Authority to its bank or payment service provider to transfer an amount of money to another account.
"Crown Body"	means any department, office or agency of the Crown "FOIA" means the Freedom of Information Act 2000;
"DPA 2018"	means the Data Protection Act
"Data Loss Event"	means any event that results, or may result, in unauthorised access to Personal Data held by the Processor 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 Protection Legislation"	means (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"	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
"Data Subject Request"	means 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;
"Gateway"	means a review which may be conducted by or for a government department into whether or not a programme, project or any activity is making progress in line with agreed objectives;
"GDPR"	means the General Data Protection Regulation ( <i>Regulation (EU) 2016/679</i> );
"Goods"	means anything which the Contractor supplies to the Authority under the Contract including any materials provided as part of the Service;
"A GPC (Government Procurement Card)"	is a credit card used for purchasing and/or payment;
"Intellectual Property Rights"	means patents, trademarks, service marks, copyright, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto;
"Joint Controllers"	means where two or more Controllers jointly determine the purposes and means of processing
"LED"	means the Law Enforcement Directive ( <i>Directive (EU) 2016/680</i> )

"Law"	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Processor is bound to comply;
"Notice"	means information from either Party to the other Party about a particular action that has been taken;
"Party"	means a Party to this Agreement;
"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
"Protective Measures"	means 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.
"Purchase Order"	means the form, on the other side of these Conditions or attached separately, which the Authority sends to the Contractor setting out the Authority's specific requirements, the contract terms which apply to the Goods and/or Services and any documents referred to therein;
"Regulatory Body"	means any organisation/authority that is authorised to set directions for or monitor standards set out in law;
"Services"	means all the services (including any works) which the Contractor provides to the Authority under the Contract;
"Sub-processor"	means any third Party appointed to process Personal Data on behalf of that Processor related to this Agreement;
"The Crown"	means any central government department of the United Kingdom, or a Devolved Administration, or any other body which is legally defined as a Crown Body.

## 2. SUPPLY OF GOODS

- 2.1 The Contractor shall supply the Goods specified in the Contract. Goods may be returned at the Contractor's expense if they do not correspond with the Contract and/or any sample provided.
- 2.2 All Goods shall be transported at the Contractor's risk and delivered, carriage paid, in the quantities and at the time and place specified in the Purchase Order. Where no delivery time is stipulated by the Authority the Goods and/or provision of Services shall be made within ten working days of receipt of the order by the Contractor.
- 2.3 The Authority may notify the Contractor of a change in the specified delivery time/date up to 24 hours before delivery.
- 2.4 The Contractor shall provide a delivery note with all deliveries as well as other appropriate documentation and/or copies of proof of deliveries as reasonably requested by the Authority. Such documentation must clearly show the Authority's Purchase Order number and date.
- 2.5 If the Contractor requires packaging to be returned, it will be returned at the Contractor's expense.

### 3. SUPPLY OF SERVICES

- 3.1 The Contractor shall perform the Services in the manner and exercising that degree of skill, care, diligence, which would reasonably and ordinarily be expected from a skilled and experienced person engaged in providing the same or similar services as the Contractor in the same or similar circumstances as are relevant for the purposes of the Contract.
- 3.2 Where no delivery time is specified by the Authority the Services shall be provided within 60 days of receipt of the order by the Contractor unless otherwise agreed between the parties.
- 3.3 The Contractor shall make good at its own expense any defects in the Service and/or workmanship which exist or may appear up to 3 months after completion of the Service.



- 3.4 Where applicable, the Contractor must provide the Authority with a copy of its insurance certificate under the Construction Industry Tax Deduction Scheme before commencing the Services.

### 4. SUBJECT MATTER OF THE CONTRACT AND CONTRACT PERIOD

- 4.1 This Contract is for a market research mapping the health distributors market in Brazil, providing a list the key distributors and warming them up by scheduling strategic meetings with DIT Life Sciences Team in Brazil.
- 4.2 The Contract period begins on 31<sup>st</sup> January 2023 and ends on 31<sup>st</sup> of March 2023 with the possibility of extension if agreed by the Authority and the Contractor.

### 5. TITLE AND RISK

- 5.1 The title and risk in any Goods shall pass to the Authority upon acceptance by the Authority, in accordance with [Condition 6 \(Acceptance\)](#).

### 6. ACCEPTANCE

- 6.1 The Authority shall not be deemed to have accepted the goods until one of its officers has been afforded a reasonable opportunity to examine them.

### 7. PAYMENT

- 7.1 The Authority may elect to pay for the Services by Contractor invoice via credit transfer or by Government Procurement Card.
- 7.2 The price that the Authority shall pay for the Goods and/or Service is as set out on the Purchase Order and unless otherwise stated incorporates all incidental costs (except for VAT) incurred by the Contractor in providing the Goods and/or Service including but not limited to administration, collection, transport, packaging and disposal. For the avoidance of doubt, unless otherwise stated, all prices are exclusive of VAT.

#### Payment against invoice

- 7.3 The Contractor shall submit an invoice within 28 days of supplying the Goods or Services to the satisfaction of the Authority. The invoice must show the amount of VAT payable, bear the Authority's relevant purchase order number and be sent to the invoicing address defined in the contract award letter.
- 7.4 The Authority shall pay the Contractor within 30 days of receipt of an undisputed invoice by payment direct to the Contractors bank account as a credit transfer.

### 8. WARRANTIES AND ACKNOWLEDGEMENTS Supply of Goods

- 8.1 The Contractor warrants that the Goods which it is providing correspond to the description and/or sample given to the Authority by the Contractor and all other warranties, conditions or terms relating to the fitness for purpose, quality or condition of the Goods implied by statute or common law apply in relation to this Contract and may not be excluded.
- 8.2 The Contractor warrants that title to the Goods is free from all encumbrances and that the Contractor has the right to sell the same.

#### **Supply of Services**

- 8.3 The Contractor warrants that the Services which it provides under the Contract correspond to the Authority's requirements and is consistent with the standards that are referred to in [Condition 3.1 \(Supply of Services\)](#) and any other standards which may be implied by statute or common law that apply to this Contract may not be excluded.

## **9. REMEDIES Supply of Goods**

- 9.1 If the Contractor does not deliver Goods on time the Authority may terminate the Contract and claim losses from the Contractor.
- 9.2 If the Contractor delivers faulty Goods to the Authority, the Authority may within a reasonable time period (at least 3 months from the date of delivery):
- (a) notify the Contractor of the defect in such Goods and
  - (b) may request the Contractor to replace, repair or reinstate the Goods within such time period as is reasonable in the circumstances (no less than 24 hours).
- 9.3 Where the Contractor fails to comply with a request made under [Condition 9.2\(b\) above \(Supply of Goods\)](#), the Authority shall be entitled to a full refund and may cancel any further deliveries due at the Contractor's expense.

### **Supply of Services**

- 9.4 If the Contractor provides defective Services the Authority may require that they put this right within a reasonable specified time. Where the Contractor fails to comply with such a request within the specified time the Authority may carry out the remedial measures itself or through another contractor and recover any costs incurred from the Contractor. Any costs and expenses incurred may be set off against any monies owing to the Contractor.

## **10. PREVENTION OF CORRUPTION**

- 10.1 The Authority may terminate this Contract and recover all its losses if the Contractor, their employees or anyone acting on the Contractor's behalf corruptly offers, gives or agrees to give to anyone any inducement or reward in respect of this or any other Authority contract (even if the Contractor does not know this has been done); or commits an offence under the Bribery Act 2010.

## **11. OFFICIAL SECRETS ACTS**

- 11.1 The Contractor shall take all reasonable steps to ensure that all persons employed by him or by any subcontractor in connection with the Contract are aware of the Official Secrets Acts 1911 to 1989, and understand that these Acts apply to them during and after performance of any work under or in connection with the Contract.

## **12. CONFIDENTIALITY**

- 12.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOI Act, the content of this Contract is not Confidential Information. The Authority 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 FOI Act. Notwithstanding any other term of this Contract, the Contractor gives consent to the Authority to publish the Contract in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of the FOI Act redacted) including from time to time agreed changes to the Contract, to the general public.
- 12.2 The Authority may consult with the Contractor to inform its decision regarding any exemptions but the Authority shall have the final decision in its absolute discretion.
- 12.3 The Contractor shall assist and cooperate with the Authority to enable the Authority to publish this Agreement.
- 12.4 [Condition 12.2 \(Confidentiality\)](#) shall not apply to the extent that:
- (a) such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations 2004 pursuant to Condition 19.1 (Disclosure of Information);
  - (b) such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - (c) such information was obtained from a third party without obligation of confidentiality;
  - (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or



- (e) it is independently developed without access to the other party's Confidential Information.
- 12.5 The Contractor may only disclose the Authority's Confidential Information to the persons it has employed or engaged who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such persons are aware of and shall comply with these obligations as to confidentiality.
- 12.6 The Contractor shall not, and shall procure that the persons it has employed or engaged do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Contract.
- 12.7 At the written request of the Authority, the Contractor shall procure that those persons it has employed or engaged identified in the Authority's notice sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 12.8 Nothing in this Contract shall prevent the Authority from disclosing the Contractor's Confidential Information:
  - (a) to any Crown Body or Overseas Governments. All Crown Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies on

the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body;

- (b) to any consultant, contractor or other person engaged by the Authority or any person conducting a Gateway or other assurance review;
- (c) for the purpose of the examination and certification of the Authority's accounts; or
- (d) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
- 12.9 The Authority shall use all reasonable endeavours to ensure that any Crown Body, employee, third party or sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to [Condition 12.8 \(Confidentiality\)](#) is made aware of the Authority's obligations of confidentiality.
- 12.10 Nothing in this [Condition 12 \(Confidentiality\)](#) shall prevent either party from using any techniques, ideas or know-how gained during the performance of this 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 Intellectual Property Rights.
- 12.11 In the event that the Contractor fails to comply with this [Condition 12 \(Confidentiality\)](#), the Authority reserves the right to terminate the Contract by notice in writing with immediate effect.
- 12.12 The provisions under this [Condition 12 \(Confidentiality\)](#) are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

### 13. INTELLECTUAL PROPERTY RIGHTS.

- 13.1 Intellectual Property Rights in the Services and any Deliverables that are specifically developed or created for the Authority will be vested in the Authority (save that the Contractor will retain ownership of any Contractor Proprietary Materials which become imbedded in such Deliverables, which will be licensed in accordance with the provisions of [Condition 13.3 \(Intellectual Property Rights\)](#)). The Contractor agrees to (and will procure that its personnel acting as consultants will) assign and hereby assigns (including by way of future assignment in the case of copyrights) to the Authority with full title guarantee all of its worldwide rights, title and interest (whether present, future, vested or contingent) in and to such Intellectual Property Rights, including moral rights, for the full term thereof.
- 13.2 The Contractor will execute all such documents and undertake any and all such acts, including but not limited to obtaining assignments of Intellectual Property Rights from personnel of the Contractor to the Contractor as may from time to time be required in order to vest the rights assigned pursuant to [Condition 13.1 \(Intellectual Property Rights\)](#) above properly in the Authority.
- 13.3 Where the Deliverables contain any Contractor Proprietary Material, then the Authority will be granted a perpetual, non-exclusive, transferable, worldwide, royalty free licence in respect of such Contractor



Proprietary Material, to the extent necessary to use such Deliverables (including for the purposes of their adaptation, modification and/or reproduction).

- 13.4 The Contractor warrants, represents and undertakes that its provision of Services and Deliverables under this Contract will not infringe any Intellectual Property Rights of which a third party is the proprietor and that the Contractor is free to grant the licence set out in [Condition 13.1 \(Intellectual Property Rights\)](#). The Contractor agrees to indemnify and hold harmless the Authority against any and all liability, loss, damage, costs and expenses (including legal costs) which the Authority may incur or suffer as a result of any claim of alleged or actual infringement of a third party's Intellectual Property Rights by reason of either its or the Contractor's possession or use in any manner of any Deliverables or Services.

#### **14. FORCE MAJEURE**

- 14.1 Neither Party shall be liable for failure to perform its obligations under the contract if such failure results from circumstances beyond that Party's reasonable control. Strike action by a Party's staff is not a Force Majeure event.

#### **15. ENVIRONMENTAL REQUIREMENTS**

- 15.1 In providing the Goods or Services the Contractor shall comply with the Department's environmental policy, which is to conserve energy, water and other resources, reduce waste and 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.
- 15.2 All written outputs, including reports, produced in connection with the Contract shall (unless otherwise specified) be produced on recycled paper containing at least 80% post consumer waste and used on both sides where appropriate.

- 15.3 Maximum use must be made of recycled materials in the manufacture of crates, pallets, boxes, cartons, cushioning and other forms of packaging.

- 15.4 Packaging must be capable of recovery for reuse or recycling.

#### **16. HEALTH, SAFETY AND SECURITY**

- 16.1 The Contractor shall ensure that all of the Contractor's staff who have access to or are employed on the Authority's premises comply with the Authority's health, safety and security procedures and instructions and complete any additional security clearance procedures required by the Authority when working at the Authority's premises.

#### **17. ASSIGNMENT**

- 17.1 The Contractor shall not sub-contract or transfer, assign, charge, or otherwise dispose of the Contract or any part of it without the prior written consent of the Authority.

#### **18. SUB-CONTRACTING**

- 18.1 Nothing in the Contract shall be construed to create a partnership, joint venture, agency or employer/employee relationship between the parties.
- 18.2 In carrying out the Services the Contractor will be acting as principal and not as the agent to the Authority. Accordingly:
- (a) The Contractor will not (and will procure that its agents and servants do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the Authority, and
  - (b) Nothing in this Contract will impose any liability on the Authority in respect of any liability incurred by the Contractor to any other person but this will not be taken to exclude or limit any liability of the Authority to the Contractor that might arise by virtue of either a breach of this Contract or any negligence on the part of the Authority, its staff or agents.
- 18.3 Where the Contractor enters into a sub-contract for the provision of any part of the Services, the Contractor shall ensure that a term is included in the sub-contract which requires the Contractor to pay all sums due to the sub-contractor within a specified period, not exceeding 30 days from the date of receipt of a valid invoice as defined by the terms of that sub-contract.

18.4 The sub-contract shall also include a provision enabling the Authority to have the ability to directly enforce the benefit of the sub-contract under the Contracts (Rights of Third Parties) Act 1999, obligations in respect of security and secrecy, intellectual property and audit rights for the benefit of the Authority corresponding to those placed on the Contractor, but with such variations as the Authority reasonably considers necessary. The Contractor shall not include in any sub-contract any provision the effect of which would be to limit the ability of the Sub-contractor to contract directly with the Authority or a replacement provider of Services.

18.5 For the avoidance of doubt, in this Contract all persons engaged by the Services Provider and used under this

Contract (whether permanent or temporary) will be used as part of the Services provision offered by the Service

Provider. Any and all persons engaged by the Services Provider shall sign terms of engagement with the Service Provider and shall not be deemed to have an employment or co-employment relationship with the Authority. In respect of its staff and all other persons engaged by it to deliver the Services under the Contract, the Services Provider is responsible for ensuring the payment of remuneration, for making statutory deductions and for payment of all statutory contributions in respect of earnings related National Insurance and the administration of income tax (PAYE) which is applicable by law. All Parties shall adhere to all employment legislation.

## **19. DISCLOSURE OF INFORMATION**

19.1 To enable compliance with the Freedom of Information Act 2000 and the Environmental Information Regulations 2004, the Authority reserves the right to disclose information about this Contract pursuant to a valid request for information.

19.2 The Contractor shall not disclose any information relating to the Contract or the Authority's activities without the prior written consent of the Authority, which shall not be unreasonably withheld. Such consent shall not be required where the information is already in the public domain, is in the possession of the Contractor without restriction as to its disclosure, or is received from a third party who lawfully acquired it and is under no obligation restricting its disclosure.

19.3 The Authority is subject to the Data Protection Act 1998 and under the provisions of that Act it is a Data Controller and the Contractor is a Data Processor. To ensure that the Authority complies with its obligations under the Data protection Act 1998, the Contractor agrees:



- (a) to process Personal Data only in accordance with instructions from the Authority and only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;
- (b) to take appropriate organisational steps to protect the Personal Data from unauthorised or unlawful access or use, accidental loss, destruction, damage, alteration or disclosure.
- (c) to take reasonable steps to ensure the Contractor's Staff understand that the Personal Data is confidential and the importance of maintaining this confidentiality.
- (d) to obtain the Authority's consent in writing before transferring Personal Data to any sub-contractors or anyone else involved in providing the Services.

## **20. DISCRIMINATION**

- 20.1 The Contractor shall not unlawfully discriminate either directly or indirectly on protected characteristics such as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age. The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of all relevant legislation including the Equality Act 2010 or other relevant or equivalent legislation, as amended from time to time.

## **21. CONFLICT OF INTEREST**

- 21.1 The Contractor shall establish and maintain appropriate business standards, procedures and controls to ensure that no conflict of interest arises between Services undertaken for the Authority and that undertaken for other clients or the provision of Goods for the Authority and that undertaken for other clients. The Contractor shall avoid knowingly committing any acts which are likely to result in any allegation of impropriety against the Authority, including conflicts of interest which are likely to prejudice his independence and objectivity in performing the Contract, however this might arise.
- 21.2 The Contractor shall notify the Authority immediately of any circumstances it becomes aware of which give rise or potentially give rise to a conflict with the Contractor's provision of the Goods or Services and shall advise the Authority of how they intend to avoid such a conflict arising or remedy such situation.
- 21.3 Where a potential or actual conflict of interest arises, the Contractor shall subject to any obligations of confidentiality it may have to third parties provide all information and assistance reasonably necessary (at the Contractor's cost) that the Authority may request of the Contractor in order to avoid or resolve the conflict of interest and shall ensure that at all times they work together with the Authority with the aim of avoiding a conflict or remedy a conflict.
- 21.4 Where it considers further or extensive action is necessary to identify and/or manage a conflict of interest the Authority shall have the right to require that the Contractor puts in place "Ethical Walls" and will ensure and satisfy the Authority that all information relating to the Contract and to the Services and Deliverables completed pursuant to it (to include all working papers, draft reports in both tangible and intangible form) are not shared or made available to other employees, contractors or agents of the Contractor and that such matters are not discussed by the relevant staff with other employees, contractors or agents of the Contractor.
- 21.5 In the event of a failure to maintain the "Ethical Walls" as described in [Condition 21.4 \(Conflict of Interest\)](#) arising during the course of this Contract, the Authority reserves the right to immediately terminate the Contract on giving written notice to the Contractor and to pursue the Contractor for damages.
- 21.6 If the Contractor's staff breach this Conflict of Interest Condition, the Contractor undertakes to keep the Authority fully and effectively indemnified in respect of all costs, losses and liabilities arising from any wrongful disclosure or misuse of the Confidential Information by the Contractor's staff. This indemnity shall be without prejudice to any other rights or remedies, including injunctive or other equitable relief, which the Authority may be entitled to, but for the avoidance of doubt shall be subject to the limitations of liability (including without limitation the cap on liability) set out in this Contract.

## **22. LOSS OR DAMAGE**

- 22.1 The Contractor shall, without delay and at the Contractor's own expense, reinstate, replace or make good to the satisfaction of the Authority, or if the Authority agrees, compensate the Authority, for any loss or damage connected with the performance of the Contract, except to the extent that such loss or damage is caused by the neglect or default of the Authority. "Loss or damage" includes but is not limited to loss or damage to property, personal injury, sickness or death and loss of use suffered as a result of any loss or damage.

## **23. RECOVERY OF SUMS FROM CONTRACTOR**

- 23.1 Whenever under the Contract any sum or sums of money shall be recoverable from or payable by the Contractor to the Authority, that amount may be deducted from any sum then due, or which at any later time may become due, to the Contractor under the Contract or under any other contract with the Authority or with any department, agency or office of Her Majesty's Government.

## **24. TERMINATION**

- 24.1 If the Contractor fails to fulfil its obligations under the Contract, the Authority may terminate the Contract immediately by written notice and, in accordance with [Condition 23 \(Recovery Of Sums From Contractor\)](#) may recover from the Contractor any reasonable costs necessarily and properly incurred by the Authority as a consequence of termination.
- 24.2 Without prejudice to [Condition 23.1 \(Recovery Of Sums From Contractor\)](#), the Authority shall at any time have the right to terminate the Contract or reduce the quantity of Goods or Services to be provided by the Contractor by giving the Contractor one month's written notice. During the period of notice the Authority may direct the Contractor to perform all or any of the work under the Contract. Where the Authority has invoked either of these rights, the Contractor may claim reasonable costs which it has incurred necessarily and properly as a result of the termination or reduction provided that the claim shall not exceed the total cost of the Contract. The Contractor's claim for reasonable costs shall not include loss of profit and consequential losses.
- 24.3 Termination or reduction under this provision shall not affect the rights of the parties to the Contract that may have accrued up to the date of termination.

## **25. INSURANCE**

- 25.1 Where relevant and/or required by law, the Contractor shall put in place and maintain an adequate level of insurance cover in respect of all risks that may be incurred by him in the performance of this Contract.

## **26. NOTICES**

- 26.1 A Notice may be served by the Authority on the Contractor in the following ways:
- (a) By delivery to the Contractor's place of business or any other address to which the Parties have agreed previously and recorded in writing that a Notice can be sent; or
  - (b) By sending it by facsimile to the Contractor; or
  - (c) By ordinary first class post to the Contractor's last known place of business or registered office.
- 26.2 A notice shall be deemed served at the time of delivery, after four hours for a facsimile, or on the second working day after posting.

## **27. VARIATIONS TO THE CONTRACT**

- 27.1 The Parties may agree a variation to the Contract but this will not be effective until it has been recorded in writing and signed by the Contractor and a senior officer of the Authority requiring the Services and/or Goods. This Condition does not affect the Authority's sole right in [Condition 24.2 \(Termination\)](#) to reduce the quantity of Goods or Services which it requires under the Contract.

## **28. GENERAL**

- 28.1 These Conditions shall apply to the exclusion of all other terms and conditions including any terms and conditions which the Contractor may seek to apply under any purchase order, confirmation of order, invoice, delivery note or similar document.
- 28.2 The Contractor shall be deemed to have accepted the terms and conditions of the Contract by delivering the Goods and/or Service.
- 28.3 Time for delivery of Goods and/or provision of the Service shall be of the essence of the Contract.
- 28.4 If either Party does not enforce any one or more of the terms or conditions of this Contract this does not mean that the Party has given up the right at any time subsequently to enforce all terms and conditions of this Contract.
- 28.5 The Authority shall in no circumstances be liable for any claim, loss or damage whether arising in contract, tort (including negligence) or otherwise, for consequential, economic, special or other indirect loss and shall not be liable for any losses calculated by reference to profits, contracts, business, goodwill, income, production or accruals whether direct or indirect and whether or not arising out of any liability of the Contractor to any other person.

## **29. DISPUTE RESOLUTION**

- 29.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract before taking any legal action.

## **30. LAW**

- 30.1 The Contract shall be governed by and interpreted in accordance with the law of England and Wales and the Parties submit to the exclusive jurisdiction of the courts of England.

## **31. TRANSPARENCY**

- 31.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOI Act, the content of this Contract is not Confidential Information. The Authority 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 FOI Act. Notwithstanding any other term of this Contract, the Contractor gives consent to the Authority to publish the Contract in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of the FOI Act redacted) including from time to time agreed changes to the Contract, to the general public.
- (a) The Authority may consult with the Contractor to inform its decision regarding any exemptions but the Authority shall have the final decision in its absolute discretion.
- (b) The Contractor shall assist and cooperate with the Authority to enable the Authority to publish this Agreement.

## **32. DATA PROTECTION**

- 32.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor unless otherwise specified in the [Processing, Personal Data and Data Subjects Schedule at Annex B.1](#). The only processing that the Processor is authorised to do is listed in the [Processing, Personal Data and Data Subjects Schedule at Annex B.1](#) by the Controller and may not be determined by the Processor.
- 32.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 32.3 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.

32.4 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 [Processing, Personal Data and Data Subjects Schedule at Annex B.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:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) 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 the [Processing, Personal Data and Data Subjects Schedule at Annex B.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 condition;
    - (b) are subject to appropriate confidentiality undertakings with the Processor or any Subprocessor;
    - (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:
  - (i) 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;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) 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



- (iv) 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.

32.5 Subject to [Condition 32.6 \(Data Protection\)](#), the Processor shall notify the Controller immediately if it:

- (a) receives a Data Subject Request (or purported Data Subject 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.

32.6 The Processor's obligation to notify under [Condition 32.5 \(Data Protection\)](#) shall include the provision of further information to the Controller in phases, as details become available.

32.7 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 [Condition 32.5 \(Data Protection\)](#) (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 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.

32.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this condition. 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; or





- (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 32.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 32.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 32.11 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 condition 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.
- 32.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 32.13 The Controller may, at any time on not less than 30 Working Days' notice, revise this condition by replacing it with any applicable controller to processor standard conditions or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 32.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller 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 Safeguarding

- 33.1 For the purposes of this Clause 33, "**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),
- 33.2 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.

- 33.3 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 33.1.
- 33.4 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](mailto:reportingconcerns@fcdo.gov.uk) or +44 (0)1355 843747, and where necessary, the Appropriate Authorities.
- 33.5 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.
- 33.6 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.
- 33.7 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.
- 33.8 Failure by the Supplier to:
- 1) Put in place preventative measures to eliminate and/or reduce the risk of Serious Misconduct; or
  - 2) Fully investigate allegations of Serious Misconduct; or
  - 3) Immediate 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 effect.

## **FCDO Supplier Code of Conduct**

### **Annex A**

#### **1. What we expect from our Suppliers**

- 1.1 Version 2 of the [Government Supplier Code of Conduct](#) ("the Code") sets out the standards and behaviours expected of suppliers who work with government.
- 1.2 The FCDO (henceforth known as "the Authority") expects its Suppliers and its Suppliers' Subcontractors to meet the standards set out in the Code. In addition, The FCDO expects its suppliers and its suppliers' subcontractors to comply with the standards set out in this Schedule.
- 1.3 The Supplier acknowledges that the Authority may have additional requirements in relation to corporate social responsibility. The Supplier and the Suppliers' Subcontractors shall comply with such corporate social responsibility requirements as the Authority may notify to the Supplier from time to time.

#### **2. Equality and Accessibility**

- 2.1 Without prejudice to the generality of its rights and obligations under each Contract, the Supplier shall support the Authority in fulfilling its public sector equality duty under S149 of the Equality Act 2010 by ensuring, so far as reasonably practicable, that it (the Supplier) fulfils its obligations under each Contract in way that has due regard to the need to:
  - 2.1.1 Eliminate discrimination, harassment or victimisation and any other conducted that is prohibited under the 2010 Act; and
  - 2.1.2 Advance equality of opportunity and foster good relations between those who share a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.

#### **3. Modern Slavery, Child Labour and Inhumane Treatment**

The "Modern Slavery Helpline" refers to the point of contact for reporting suspicion, seeking help or advice and information on the subject of modern slavery available online at <https://www.modernslaveryhelpline.org/report> or by telephone on 08000 121 700.

- 3.1 The Supplier:
  - 3.1.1 Shall not use, or allow its Subcontractors to use, forced, bonded or involuntary prison labour;
  - 3.1.2 Shall not require any Supplier staff or Subcontractor staff to lodge deposits or identify papers with the Employer or deny Supplier staff freedom to leave their employer after reasonable notice;
  - 3.1.3 Warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world.
  - 3.1.4 Warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offenses anywhere around the world.

3.1.5 Shall make reasonable enquires to ensure that its officers, employees and Subcontractors have not been convicted of slavery or human trafficking offences anywhere around the World.

3.1.6 Shall have and maintain throughout the term of each Contract its own policies and procedures to

ensure its compliance with the Modern Slavery Act 2015 and shall include in its contracts with its subcontractors anti-slavery and human trafficking provisions;

3.1.7 Shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under a Contract;

3.1.8 Shall prepare and deliver to the FCDO at the commencement of each Contract and updated on a frequency defined by the Authority, a slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business;

3.1.9 Shall not use, or allow its employees or Subcontractors to use, physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Subcontractors;

3.1.10 shall not use, or allow its Subcontractors to use, child or slave labour;

3.1.11 shall report the discovery or suspicion of any slavery or trafficking by it or its Subcontractors to the Authority and Modern Slavery Helpline.

#### **4. Income Security**

4.1 The Supplier shall:

4.1.1 Ensure that that all wages and benefits paid for a standard working week meet, at a minimum, national legal standards in the country of employment;

4.1.2 Ensure that all workers are provided with written and understandable information about their terms and conditions of employment, and in particular in respect of wages, before they enter employment, and about the particulars of their wages for the pay period concerned each time that they are paid;

4.1.3 Not make deductions from wages as a disciplinary measure except

(a) Where permitted by law; and

(b) Upon express permission of the worker concerned.

4.1.4 Record all disciplinary measures taken against Supplier Staff throughout the term of each contract; and

4.1.5 Ensure that Supplier Staff are engaged under a recognised employment relationship established through national law and practice.

#### **5. Working Hours**

5.1 The Supplier shall:

5.1.1 Ensure that the working hours of Supplier staff comply with national laws, and any collective agreements;

5.1.2 Ensure that the working hours of Supplier staff, excluding overtime, are defined by contract, and do not exceed 48 hours per week unless the individual has lawfully agreed so in writing;

5.1.3 Ensure that overtime is used responsibly, taking into account:

- (a) The extent;
- (b) Frequency; and
- (c) Hours worked

By reference to individuals and the Supplier staff as a whole;

5.2 The total hours worked by an individual in any seven-day period shall not exceed 60 hours, unless the criteria set out in paragraph 5.3 are satisfied.

5.3 Working hours may exceed 60 hours in any seven-day period only where all of the following are met:

5.3.1 This is allowed by national law;

5.3.2 This is expressly authorised by a collective agreement freely negotiated with a workers' organisation representing a significant portion of the workforce;

5.3.3 Appropriate safeguards are taken to protect the workers' health and safety; and

5.3.4 The employer can demonstrate that exceptional circumstances apply.

5.4 All Supplier Staff shall be provided with at least one (1) day off in every seven (7) day period or, where allowed by national law, two (2) days off in every fourteen (14) day period.

## 6. Sustainability

6.1 The Supplier shall meet the applicable [Government Buying Standards](#) applicable to

Deliverables.