



Foreign, Commonwealth
& Development Office



CONTRACT FOR SUPPLIER SERVICES

Section 1 - FORM OF CONTRACT

CONTRACT FOR : Partnership for Learning for All in Nigeria (PLANE)
PURCHASE ORDER NUMBER : PO 10076

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 : DAI Global UK Limited ("**Supplier**")
whose principal place of business, or, where the Supplier is a company, whose registered office is situate at Block C, Westside, London Road, Hertfordshire, HP3 9TD,

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

WHEREAS:

- A.** FCDO requires the Supplier to provide the Services to FCDO Nigeria (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

September 2020



Foreign, Commonwealth
& Development Office



The Services shall commence on 1st September 2021 and the end date of the Initial Period shall be 31st August 2028 .

4. Financial Limit

Payments under this Contract shall not, in any circumstances, exceed £95,000,000.

5. Programme Name

The Programme Name to which this Contract relates is Partnership for Learning for all in Nigeria (PLANE).

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

Name:

Position:

Signature:

Date:


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

Name:

Position:

Signature:

Date:



Foreign, 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 issues 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 disapplied 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

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 **£100,000** 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 £10m in respect of any one occurrence, the number of occurrences being unlimited.

4.TERRITORIAL LIMITS

4.1.1 Worldwide

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 N/A

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 £10m in respect of any one claim and in the aggregate per annum.

4.TERRITORIAL LIMITS

- 4.1 Worldwide

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 N/A

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



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. a)	<u>Ethical Behaviour</u> 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>	Updated documentation submitted once annually	Contract Terms and Conditions Clause 28	Tender evaluation Periodic spot checks Compliance checks
a)	IATI compliance for Supply Partner and their delivery chain Supply Partners			
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

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1. Introduction

The United Kingdom Department for International Development manages the majority of the United Kingdom's development assistance to developing countries and leads the United Kingdom's work to end poverty, building a safer, healthier, more prosperous world. FCDO's approach to international development is focused on working effectively with others to deliver results, transparency and value for money of UKAid. In Nigeria, the UK works in partnership with Government of Nigeria at Federal level and in selected states and regions, in alignment with other development partners.

There are 3 windows in FCDO's new flagship basic education programme in Nigeria: Partnership for Learning for All in Nigeria (PLANE), in line with the approved business case of the programme¹. FCDO is procuring a service provider ("Supplier") to manage and deliver the largest component (window 1) of a new flagship basic education programme in Nigeria: The PLANE Business case sets out an ambition for the PLANE contract to directly support improved learning of foundational skills for at least 1.5 million children in Kano, Kaduna and Jigawa states (KKJ) and indirectly benefit 8,000,000 in those states and nationally. The broader PLANE programme will also support children affected by conflict in Borno and Yobe states (Window 2) and will support community engagement to help children learn (window 3).²

These Terms of Reference sets out FCDO's expectations for the Supplier to contribute to the delivery of the proposed outcome of PLANE. The PLANE Outcome is that **more inclusive and effective education systems (will) deliver foundational skills**³ (whereby) state and non - state basic education providers enable better learning outcomes, including for marginalised groups of children. PLANE will work in targeted locations in Nigeria as set out in the business case and in this ToR.

These ToR establishes the scope of the programme (section 7); expected services the Supplier will deliver across outputs (section 3); expectations of the technical and other expertise required to deliver the contract (section 7); how the contract will be managed, including the Payment by Results mechanism (section 10), and how the contract will be expected to work with other FCDO programmes and other components of the PLANE programme (section 14).

2. Context

An overview of the context of basic education in Nigeria is provided in the PLANE business case and opportunities for reform are highlighted. This ToR has been drafted following national and state level elections in Nigeria, which will bring some continuity in some cases, but also some change in leadership and policies at Federal, state and local government levels. New Federal and state leadership – the President, Vice

¹ A window refers to a component of the programme as explained in the appraisal case of the PLANE Business case. See FCDO Nigeria PLANE Business case and Annexes, on the FCDO portal

² The estimates for pupils benefitting from direct support in KKJ under the PLANE contract includes ensuring provision of a minimum package of teaching and learning materials. Borno and Yobe figures are not included in the PLANE contract. The national "reach" figure includes non-direct beneficiaries of PLANE through work in KKJ, Federal, the South East and South West. For more information on windows 2 and 3, see the PLANE business case and annexes and Annex C in this ToR.

³ The FCDO Global Education Policy and the PLANE Business Case defines foundational skills as literacy and numeracy, as well as transferable skills including communication, creativity and problem-solving

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President and Governors – broadly stated commitments to education in their inauguration speeches in May and June 2019. While the extent of likely reforms is not yet clear at the time of writing this ToR and Federal Ministers, Commissioners and Chairs of the State Universal Boards for Basic Education (SUBEBs) have not yet been appointed in many of PLANE's targeted locations, FCDO Nigeria believes that the Theory of Change for PLANE remains relevant in the post-2019 elections context. The background section (Section 13) provides an overview of emerging updates in the Nigerian context relevant to the Theory of Change of PLANE.

3. Objective

The objective of the PLANE contract is to contribute to the delivery of the Outcome of PLANE which is - **More inclusive and effective education systems (will) deliver foundational skills** (whereby) state and non - state basic education providers enable better learning outcomes, including for marginalised groups of children.

The PLANE Theory of Change and structure sets out 3 windows in the Programme:

Window One: Getting the Foundations right - a systems approach. More focused teaching and learning, improved governance (for state and non-state education delivery) and increased use of data and evidence – This contract

Window Two: Education in Emergencies. Support to help marginalised children affected by conflict learn foundational skills, and support to recovery of systems – *out of scope of this contract, but important for contract to coordinate & collaborate with this component of PLANE*

Window Three: Community support to learning⁴. Improving inclusion and learning for marginalised children – *out of scope of this contract, but important for contract to coordinate & collaborate with this component of PLANE.*

In addition to the 3 windows, there is a FCDO internal component which includes FCDO provision of an independent supplier of evaluation, learning and verification services in relation to PLANE and the wider Human Development portfolio. This service will be known as Development Evaluation, Learning and Verification (DELVe) – *out of scope of this contract, but important for contract to coordinate & collaborate with this component of FCDON's HD portfolio.*

The contract, Window 1 is the largest component in the overall PLANE programme and is expected to provide appropriate technical and other expertise, goods and materials to enable the delivery of 3 Intermediate Outcomes -

- i. **Intermediate Outcome 1: More focused teaching and learning:** whereby more competent teachers teach foundational skills better in performance driven schools and colleges, to benefit marginalised children
- ii. **Intermediate Outcome 2: Better Managed Systems (state and non-state):** which use resources (human, financial and other) more efficiently and effectively to support schools and teachers and enable children to learn foundational skills, including marginalised groups

⁴ Also called Community engagement in this ToR

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- iii. **Intermediate Outcome 3: Focus on results:** Whereby the use of evidence and effective communication becomes embedded in ways of working, to deliver improved performance, in state and non-state systems

To enable delivery of the Intermediate Outcomes, the contract is expected to provide services and goods to deliver against the following 4 Output areas⁵:

- i. **Output 1: Teaching and Learning:** Evidence based teaching & learning approaches & materials⁶ in use, in better managed schools & colleges (~50-60 % of overall budget)
 - **Indicative interventions:** *teaching and learning Hausa, numeracy and English, including appropriate teaching and learning materials (TLM); more effective head teachers and teachers continuing professional development (CPD) including appropriate certification systems; performance focused schools which address the needs of marginalised children; performance focused colleges of education, with greater focus on foundational skills; more effective learning assessment systems for foundational skills; more effective curriculum, schemes of work and TLMs in use for teaching and learning foundational skills*
- ii. **Output 2: Governance of state systems:** Improved planning, personnel management and public financial management practices, to deliver foundational skills (~20-30 % of overall budget)
 - **Indicative interventions:** *Improved recruitment, deployment and management of teachers and education personnel⁷; Improved government procurement and distribution of teaching and learning materials; Improved management of public finances, including regular monitoring of education plans, budgets and expenditure; Effective approach to planning, budgeting and delivery in priority areas to address foundational skills – use of the Roadmap/Delivery approach; Increased expenditure to enable greater participation, retention, quality learning and transition in primary and from primary to junior secondary, especially for marginalised groups*
- iii. **Output 3: Governance of non-state systems:** Improved management and performance of non-state sector in delivering foundational skills (~10% of overall budget)
 - **Indicative interventions:** *Effective support and regulatory frameworks for low cost private schools; Strengthen effectiveness of low - cost private school associations; Promote use of evidence and information sharing to enable greater investment in low cost private*

⁵ There will be a need to learn from previous and existing FCDON education programmes – see PLANE BC, Annexes, note on FCDO PLANE portal listing documents to read; also ref. Inception requirements no. iv below.

⁶ Approaches and Materials should be inclusive - paying attention to gender, special education needs & disabilities and promote peace and tolerance in teacher training, materials used and in the classroom. promote peace and tolerance.

⁷ Ensuring inclusion and gender issues are taken into account

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schools; Promote effective models of public private partnership; Provide support to enable more effective management of Integrated Quranic schools

- iv. **Output 4: Use of Evidence and Communication:** Effective generation, communication & use of evidence informs citizen engagement and service delivery (~10 % of overall budget)
 - **Indicative interventions:** *Use of appropriate monitoring tools and approaches including real-time reporting and dashboards across PLANE outputs and in government systems; Effective process and performance reviews and studies across all utputs; Improve national capacity in government - policy, legislature and in academia - to gather and use evidence; Support use of strategic communication, including social media and media engagement, with state and non-state actors to improve service delivery; Enable appropriate record keeping, knowledge management, reporting and communications procedures and products across all PLANE Outputs and in government systems*

Table 1, under Section 8 below provides more detailed information on indicative activities associated with these indicative interventions in the places PLANE will work.

Other interventions that can contribute to meeting programme objectives may emerge during the life of the project and as PLANE is a flexible and adaptive programme, there may be scope to implement additional interventions, where there is evidence as to their value in delivering on the Outputs and Outcomes within the scope of this contract, and where there is significant demand from government and other stakeholders.

Section 9 below explains the PLANE Contract model which has been designed to enable flexibility and adaptiveness in the programme.

4. The Recipient

The Supplier will be accountable to FCDO, the funding entity and contracting party. PLANE will provide support to the following recipients in targeted locations:

- Government institutions directly and indirectly involved in the delivery of basic education at Federal, state and local level
- Non-state education providers including Private School Associations
- Teacher education institutions and regulators
- Teachers and Headteachers, including their unions where appropriate
- Pupils, parents and community members

5. Geographic focus and Ways of working with Government

a. Geographic focus

At its commencement, the contract will deliver in 6 different “places” – at the federal level (Abuja), as well in targeted states (Kano, Kaduna, Jigawa) and will work through

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a regional approach in the South West (Lagos) and in the South East (Enugu)⁸. FCDO reserves the right to change or add geographic focus within the lifetime of the programme as it is possible that the context will change in Nigeria over the programme lifetime. For example, following an annual or mid-term review, the contract may be required to flex into delivering services in the North East states of Borno and Yobe in line with needs, opportunities and access. The contract may also be asked to work in other states/regions in Nigeria if required. Decisions on changes in geographic scope and any adaptations to budgets, will be made in consultation with the supplier.

A state-specific and region-specific approach will be required whereby significant attention is paid to ensure that interventions in each state take note of the particularities of each Place. Targets will be set at the level of the place (state, region, federal) and these will feed into the overall programme targets. This approach means that a top-down and “one size fits all” approach will not be appropriate for PLANE.

b. PLANE ways of working to incentivise governments

The PLANE business case sets out an approach to guide the extent of support to different FCDO partner states. Specifically, it mentions that PLANE will be informed by demonstrable commitments from states in deciding the extent of support to be provided and where to work.⁹

Firstly, PLANE pays attention to the need for criteria and standards to guide implementation. a) On criteria - FCDO and the supplier, in consultation with governments, will agree and set criteria to guide the selection of local governments (and schools) that will benefit from PLANE support. Agreeing and setting criteria involves having a shared understanding of FCDO expectations as a partner of government and also an understanding of the conditions in which PLANE support could be utilised most effectively. For example, in selecting where to work in states, attention must be given to leadership (e.g. the local government Education Secretary & headteachers are selected on merit for their positions); merit based teacher recruitment policies should be in place and be operational in the system; governments should pay demonstrable attention to the quality of the school environment (including availability of water and toilets; availability of classrooms and teachers) and other criteria which will be discussed with states and finalised in the Inception phase of the programme (section 8). In essence, PLANE requires government to provide an enabling environment in terms of people and locations, to help the programme's interventions to support institutions and people have a greater chance of success. b) On standards - with regard to support to Teaching and Learning, PLANE will provide a “minimum package” of appropriate Teaching **and** Learning materials for foundational skills, with funds from the PLANE contract, in selected locations supported by the programme, while supporting governments to ensure that education systems provide such materials in a more efficient and effective way.

Secondly, the PLANE BC allows for higher levels of support (in the form of technical assistance and materials) to be provided to states which demonstrate higher levels of “political will”. The BC says that to assess the level of political will, FCDO and the Supplier will be informed by political economy analysis and will track states political will and commitments. On the basis of a positive trajectory of political will and

⁹ See PLANE business case, “Ways of working and essential partnerships”, pages 33-35 e

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commitments, the Supplier can propose to carry out additional work in states over time, carrying out new interventions (such as support to the Delivery approach under Output 2) or expanding the scale of existing interventions. Support from PLANE should incentivise greater commitment to basic education service delivery from government.

The PLANE contract model with its use of the Intervention mechanism (see Section 9 and Annex B) is designed to support FCDO and the Supplier to enable this kind of incentivisation. The Supplier will be expected to submit appropriate justification in the Interventions proposal template including contextual evidence (such as evidence of government commitment) for the Interventions that are proposed. During the inception phase, PLANE's approach to incentivisation of government will be communicated by FCDO and the Supplier, with the governments in the places PLANE will work in, so that they know that the extent of support the Supplier will propose and that they will receive, will be dependent on their demonstrated commitment.

The FCDO Nigeria (FCDON) programme team considered other approaches to promote incentivisation of government through the PLANE contract, such as earmarking funds under a separate incentive mechanism, but decided against this for the following reasons – i) to reduce the complexity of contract management and ii) because the Contract model has specifically been designed to enable flexibility and adaptability of programming and when utilised appropriately, can and should be used to incentivise states. In practice, the contract model allows FCDO support through PLANE contracted funds (under the flexible facility), to “pile in” support to more serious-minded partner states¹⁰ – in effect provide disproportionate (compared to population levels) support in the form of technical assistance and materials to partner states and other places, depending on demonstrable improvements delivered by government. This approach will be reviewed at a minimum annually, in annual reviews and particularly during the mid-term evaluation, to determine its effectiveness in incentivising governments to take necessary steps to improve foundational skills.

6. Budget and Timeframe

a. Contract timeline

The contract will run for an initial term of up to 7 years from September 2021 to finish by August 2028.

The maximum programme budget for the initial term is £95m.

The programme will include formal break points as follows –

- At the end of the Inception period (See section 8)
- Before the end of FY 2022/23, noting the need for treasury approval to fund the contract beyond this point.¹¹
- At the mid point of the programme (2024/25) when there will be an independent technical review of the implementation to inform future programming.

¹⁰ Funds could be prioritised under the Flexible facility in the PLANE contract to enable this “piling in”. Note the explanation of the flexible facility in section 7 and the explanation of the contract model and Intervention based mechanism in section 9 and Annex B of this ToR.

¹¹ This is not a formal technical review point. As *Her Majesty's Treasury approval has been granted up to end FY 2022/23, at the point of Contract Award, funds for the contract are only available up to that point. FCDO will seek Treasury approval beyond 2022/23 in the first year of the contract.*

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The programme is designed to comprise of 3 phases:

- i. The Inception Phase – 7 months (September 2021 – March 2022)
- ii. Implementation Phase – 70 months (April 2022 – January 2028)
- iii. Exit and Closure Phase – 7 months (February 2028 – August 2028)

b. Scale down and Scale up/Extension options

The contract will include the option to extend by up to an additional 24 months in duration and £25m in value as FCDO may seek to scale up or extend the programme's budget and time in the following circumstances:

- Where the programme has been demonstrated to have a strong impact and has the potential to yield better results;
- In the case of significant expansion of the scope of work, e.g. significant scale of delivery required in new locations.

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

- Poor performance by the Supplier
- Shortage of funds
- Political economy reasons

A Political economy reason is 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 that it is not possible to make a reasonable adjustment to the programme in an appropriate timeframe.

7. Scope of services: Management and Technical requirements

The Supplier will be expected to provide appropriately skilled personnel and systems to ensure appropriate strategies and effective day to day management of the programme.

The Supplier will be responsible for effective due diligence of all delivery partners, internal monitoring and reviews, financial management, risk management, logistics/operations, administration procurement, including developing technical specifications, developing agreements and processing payment.¹² The Supplier will establish project offices and will (in collaboration with Core subs, defined below), recruit, motivate and retain appropriate personnel to deliver on the Interventions, outputs and outcomes associated with the PLANE contract.

The Supplier will be responsible for effective engagement, communication, coordination and collaboration with stakeholders including Government of Nigeria at

¹² Note that FCDO no longer uses a procurement agent, so the Supplier will be responsible for procurement of goods and materials under PLANE so should ensure appropriate expertise to do this as part of the Core Team or/and Extended team.

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various levels, other components of PLANE, other FCDON programmes, other FCDO education programmes and other partners and projects working in basic education in Nigeria. FCDO will require the Supplier to adhere to reporting requirements, facilitate programme meetings (including with FCDO and other stakeholders) and deliver on interventions and activities that meet the needs of the recipients of PLANE.

a. Management Overview & Requirements of Core team and Extended team

While not a requirement, it is likely that PLANE will be implemented by a Primary Supplier (a “lead”) that manages a consortium of specialist “subs” who have expertise in particular Output areas.

The lead is referred to interchangeably as the “Supplier” in this Terms of Reference. The lead will be responsible for ensuring the effective management and implementation of PLANE, with the subs providing their specialist technical expertise to deliver the programme’s objectives. The lead may also provide (some of) the technical expertise required itself. The lead will be accountable to FCDO for the delivery of the Terms of Reference. The lead will take responsibility for programme governance, consortium management (where applicable), financial management, technical and financial reporting, risk management, and administrative tasks such as drafting agreements, processing payments, and ensuring FCDO compliance including legal and tax compliance (including among subs).

PLANE is a flexible programme that can adapt its interventions over time, during implementation. To enable this flexibility while providing a level of certainty to subs, different classifications can be considered, for example:

- **Core subs** – Suppliers that provide the technical expertise required to deliver on one or more Output areas throughout the duration of PLANE.
- **Associate subs** – Suppliers that can be called in to provide specialist, intervention-specific input as required by the programme.

The subs will form a part of the bid, their expertise will be evaluated as part of the bid and they will be named in the contract. Once the contract has been signed, any changes to subs will be subject to review and justification and can only be approved by FCDO through a contract amendment.

b. The Core Team

The Supplier will specify a “Core team” (including Core subs) in its bid, which will be responsible for overseeing adherence to these Terms of Reference and overall management of the programme across all outputs and places. The Core team should consist of **all** long term staff required to deliver the programme and should include the following expertise:

- i. **Senior Leadership Team:** To include (but may not be limited to), the Programme Director, Team Lead and Deputy Team Lead, Senior Operational Manager (including Finance), Senior M&E lead.
 - Responsible for overall technical strategy and overall management of the programme in line with the ToR

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- Responsible for overall contract and budget management, management of risks including fiduciary risks; management of subs ; ensuring that the results of monitoring and lesson learning feed into programme implementation; procurement, logistical and administrative oversight; overall management of relationships with other FCDO programmes and key external partners including Government of Nigeria.
 - The Team Lead is the overall lead for the programme responsible for overseeing the delivery of interventions, management of staff, ensuring a strong working relationship between the lead Supplier and the subs, ensuring appropriate performance management and ongoing management to deliver the programme, with support from the Deputy Team Lead. The Team Lead is the key focal point for FCDO.
 - The M&E lead is responsible for the programme's M&E strategy and management, working with the Output leads and the Place leads and directly managing M&E officers in the places. The M&E lead will be the focal point for coordination and collaboration with the supplier of independent evaluation, learning and verification services (DELVe).
- ii. **Management Team:**
- Responsible for developing and managing the workplan; developing the Interventions proposal templates in collaboration with relevant stakeholders in the places; managing and ensuring technical delivery; managing and ensuring appropriate monitoring and reporting and feedback loops into the programme; responsible for managing relationships in the different places; ensuring appropriate communications and knowledge management both internally within the project and with external stakeholders in the different places.
 - Responsible for providing leadership of outputs (including Core subs as appropriate) – developing and delivering the strategic direction for their Output; designing Intervention types; ensuring appropriate technical inputs into each Place; ensuring consistency between the interventions proposed in the different places and the overarching ToC and objectives of PLANE
 - Responsible for providing leadership of places – leadership of places must combine strategic, management and technical expertise. Place leads will be the key point of contact for FCDO on issues relating to each place (with the TL/DTL copied in). Places leads will manage relationships with Government and other critical stakeholders in each place, to deliver interventions in line with PLANE Outputs and Outcomes.
- iii. **Output teams:** Long term staff required to provide technical expertise **in each of the 4 Output areas** – to ensure development and delivery of Interventions in line with Outputs and Outcomes.
- iv. **Place teams:** Long term staff based in or responsible for each place – to ensure the delivery of interventions, including appropriate engagement at state **and** local government level; should include expertise in areas required such as M&E, Operations, Finance, Admin, etc.

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Note that the structure and proposed workings of the Core Team proposed by the supplier, including the individuals/subs proposed and the SLT members proposed will be evaluated in the Technical Award criterion (T3).

The Supplier should seek to demonstrate Value for Money in the proposed structure and workings of the Core Team. While FCDO requires the Supplier to propose a Core Team to include all long-term staff required to deliver the programme, FCDO recognises that not all positions have to be full time and that there is possibility of “double-hatting” for some roles.

The Core team will manage the “Flexible Facility”. The flexible facility will be the means by which all of the interventions are funded (excluding inputs from the core team but including inputs from the extended team). The contract budget will be split between the core team and the flexible facility. All other costs not associated with delivering interventions will be classed as core team costs. This includes office costs, core team staff costs, travel and expenses etc (see volume 2 for description of how core team costs are calculated). PLANE’s interventions will be funded from this Flexible Facility, including – costs of delivering programme activities for beneficiaries including costs of capacity building; procurement of teaching and learning materials for teachers and students; and appropriate technology to implement interventions and ensure adequate monitoring of results; any grant financing that could be required under the PLANE contract. **The Flexible Facility will also include the costs associated with funding the Extended team** (Associate subs), including their fees and expenses.

c. The Extended team

FCDO expects that the supplier will deploy appropriate strategic, technical and management/oversight, operational and administrative expertise within long-term staff in the Core Team as set out above.

They will be supported by drawing on a technical consultant pool (including Associate subs), which can be called upon to contribute specific (time-bound) technical inputs to contribute to successful implementation. The Extended technical team (Associate subs) should provide technical inputs which are not being provided by the Core Team (consisting of long-term staff across the Outputs and places) and which are necessary for the delivery of Interventions across all Outputs and places.

This expertise will be cut across various technical areas and may include but not be limited to expertise in the following areas associated with the delivery of the outputs: subject specific expertise at targeted levels of education; curriculum reform; learning assessment; public financial management; procurement under the PLANE contract; public procurement by government; expertise to optimise production and distribution of teaching and learning materials; specific expertise in special education needs; education financing; specific evaluation expertise; specific expertise required to implement the delivery approach; specific technology expertise, amongst others. The extended team may also include advisers embedded within government systems for timebound periods to help with delivery of particular results.

FCDO expects that the Core **and** Extended Team should have sufficient levels of expertise to deliver across all 4 named Outputs. The Supplier is at liberty to propose

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additional expertise which may not have been named by FCDO, which they believe will be important to deliver PLANE Outputs and Outcomes.

Note that the structure and proposed workings of the extended team will be evaluated in the Technical Award criterion (T4).

An organisational structure is not provided in this ToR as FCDO expects suppliers to propose their own structure to demonstrate an optimal combination of strategic, management and technical expertise across the Lead and Subs, and Core and Extended teams, to plan and deliver Interventions across the 4 Outputs in the different places, and to monitor and communicate – with the optimal balance of international and national expertise.

Note that the fee rates associated with the Core Team and Extended team will be evaluated as part of the Commercial Award criterion (C4).

8. The Requirement

a. Inception Phase Requirements

The Supplier shall deliver the following key milestones in the inception phase. It is expected that the supplier robustly takes on lessons learned, including materials and approaches where appropriate from previous FCDO education programmes and ongoing FCDO education and other programmes. The supplier will be expected to engage closely with the Government of Nigeria (at all levels), other development partners, and other FCDO programmes in the inception period, to ensure FCDO's work is complementary where the evidence suggests it is important to do so (See Sections 12 – 15 and Annex C).

- i. Set up of the programme teams and offices in appropriate locations.
- ii. Refined and updated (from the bidding stage) assessments of the places (see section 5) to validate understanding of the challenges and entry points.
- iii. Refined and updated (from the bidding stage) Stakeholder Engagement and Communications plan drawing from political analysis, conflict analysis, gender and social inclusion analysis (also drawing from other FCDO programmes) – required to inform the workplan and interventions.
- iv. Review of prior work of FCDO Nigeria education programmes – ESSPIN, DEEPEN, EDOREN, TDP and existing work (which will still be ongoing during PLANE contract inception period) – GEP3, RANA, EiE work including TaRL Borno, the PLANE Bridging Intervention implementing TaRL in the North West – and effective handover of relevant approaches and materials from previous and existing programmes. (See acronyms list, background section 13 and Annex B of this ToR; also see PLANE BC & Annexes)
- v. Prioritise initiation of urgent Interventions. These include 1) Ensuring that the supplier is in a position to support teaching and learning interventions in schools in the academic year commencing academic year 2021/22; 2) Provide technical assistance to state and federal government on urgent budgeting/planning/oversight processes to enable better outcomes in foundational skills (such as support to the final stages of Nigeria's application to the Global Partnership for Education)

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- vi. Refined and updated (from the bidding stage) approach to how results will be delivered along the results chain, to include – an updated Theory of Change with clear results chain, Results Framework/Logframe and targets for each place, culminating in the overall Results Framework (building on what was submitted as part of the technical proposal), finalised VFM strategy - submit these to FCDO for review and sign off.
- vii. Refined and updated (from the bidding stage¹³) Monitoring and Evaluation (M&E) approach, to include - M&E strategy and manual, approaches to measuring key indicators in the logframe and for the PBR KPIs; VFM strategy including setting up appropriate templates and record keeping protocols to gather data for VFM reporting purposes preparation of tools for surveys for baseline data, engagement with the external validator, DELVe¹⁴; set up systems to manage the Results Framework; Establish programme dashboards for monitoring and tracking progress and delivery, including real-time reporting where appropriate
- viii. Engage and share information on the refined theory of change and M&E approach with FCDO's independent suppliers of independent evaluation, learning and verification services (DELVe), to enable DELVe to conduct a review and refine the design of the DELVe services.
- ix. Agreement between FCDO, government and the supplier on ways of working including selection of the Interventions to prioritise in each place, selection of local governments to work in, agreement with governments on minimum standards for local governments, teachers and schools that PLANE will support; communication to government of the contract KPIs and associated monitoring requirements
- x. Validate the requirements for the Payment by Results Mechanism agree reporting, submission and approval protocols involving the supplier, DELVe and FCDO; refine and operationalise templates for reporting, tracking indicators and utilising Intervention schedules (for reporting on KPIs, see Section 10; for managing the contract using the Intervention Based Mechanism, see Sections 10, Annex B and Intervention Schedule draft proforma in tender pack)
- xi. Refined and updated Scope of Work - what the programme will deliver (from the bidding stage), with a) a detailed workplan and budget for Year 1, and b) a high level outline of interventions and financials projections for the rest of the programme. This should be done for federal level and each targeted place (state and region); in consultation with federal, state and local government, as well as other development partners (in the places); following analysis of the needs (in line with implementation phase requirements). This will be submitted to FCDO for review and sign off.
- xii. Refined and updated (from the bidding stage) partnerships plan – capturing agreement on coordination mechanisms and ways of working between the contract and other PLANE components, the DELVe supplier, other FCDO projects, other development partners and projects, and government (federal, state, local).
- xiii. Refined and updated (from the bidding stage¹⁵) risk register, delivery chain risk maps, approach to safeguarding, including of vulnerable beneficiary groups, and monitoring and reporting mechanisms for these.

¹⁴ See Section 15

¹⁵ Note the requirement to include in your proposal, those elements highlighted in section 8a.

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- xiv. Submission of interventions proposal templates and Intervention schedules for the first set of Interventions under the Implementation workplan (see Sections 9 and 10b).
- xv. Submission of the inception report (with 2 weeks for FCDO to review and respond to Inception Report) and required annexes.
- xvi. Implement an appropriate system for document sharing and approval purposes with FCDO.
- xvii. Meet with FCDO at a minimum, every month during inception phase and other meetings with external stakeholders where required, in line with the programme governance and oversight requirements (see Section 12).

b. Implementation Phase Requirements

PLANE must ensure the use of evidence to inform the selection of interventions and ongoing implementation. The programme design also emphasises the need to operate in demand led, flexible and adaptive ways. This means that when there is strong evidence to support particular interventions, the programme will have effective advocacy, communication and engagement techniques to influence decision making. For the Interventions to be effective in contributing to the achievement of the programme outcomes, appropriate consultation with relevant stakeholders in different places will be critical.

FCDO appreciates that working in this way means that, particularly for the Interventions to improve governance systems, it is not always clear from the beginning, exactly *how* interventions should be implemented (and exactly what activities should be implemented) to achieve the Outcomes. FCDO therefore expects the Supplier to i) draw on the existing evidence base (national and international) of what works, in selecting the Interventions and the activities under them, and in proposing how they should be implemented, ii) use strong monitoring systems to understand how what is being implemented is working (or not) and iii) demonstrate how programme interventions are drawing on an understanding of the context and are being modified and improved based on the learning being generated, to improve the likelihood of delivery of the Outcomes. The Supplier will be directly responsible for the delivery of the individual Interventions (and the activities associated with them), noting the sequencing and linked nature of some Interventions. These Interventions will be proposed and approved through an Intervention schedule mechanism (see explanation of Contract Model below in Section 9 and Annex B).

Examples of the interventions and indicative activities are set out in Table 1 below. This list is not prescriptive or exhaustive as the Supplier can propose appropriate Interventions and activities to deliver the Outputs and Outcomes.

Note that the Supplier's understanding of the context (T1) and appropriate interventions and activities to deliver (T2) will be evaluated as part of the technical criteria in the bid.

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Table 1: Table of Indicative Interventions & Activities in PLANE contract¹⁶

Output	Level of government			
	Local ¹⁷	State	Federal	Region ¹⁸
Management Services	<ul style="list-style-type: none"> Day to day management of the programme including intervention development and implementation, financial and fiduciary risk management, management of delivery partners including related due diligence, risk management, internal monitoring, logistics and administrative duties; Operations and Procurement Use of technology and innovation across all Output as appropriate. Appropriate record keeping across all Outputs Ensure that attention is paid to the sequencing and linkages between Interventions and Outputs where required. Ensure appropriate engagement with other PLANE components (outside the contract), other development partner projects, government and other key stakeholders as appropriate to select and effectively implement interventions in each place 			
1: Improved Teaching & Learning in Performance focused schools & Colleges	<p>Indicative interventions under this Output include (but are not limited to):</p> <ul style="list-style-type: none"> Teaching and Learning Hausa, including appropriate TLMs and more effective CPD and certification systems Teaching and Learning English, including appropriate TLMs and more effective CPD and certification systems Teaching and Learning Numeracy, including appropriate TLMs and more effective CPD and certification systems Performance focused schools which address the needs of marginalised children Performance focused Colleges of Education, with greater focus on foundational skills More effective learning assessment systems for foundational skills 			

¹⁶ Suppliers should note that the Interventions and activities listed here are **indicative** – to give all Suppliers an opportunity to envision the type and range of programming that may occur under the PLANE contract. Suppliers should not feel restricted by this **indicative** list and are free to propose Interventions and activities that are not set out in this ToR, where there is some evidence to suggest that they will support the delivery of outputs and outcomes. Suppliers should note that the contract model promotes the need to ensure stakeholder demand and political will to support interventions and activities.

¹⁷ Suppliers are expected to take a “whole of Local Government Area (LGA)” approach to targeting – working in all schools in a selected LGA rather than in selected schools only. Suppliers are expected to align programming at ward level and LGA level with other FCDO and other donor supported interventions, e.g. health, water and sanitation and livelihoods/economic development interventions (see updated contextual information in Section 13 and information on other FCDO programmes in Annex C)

¹⁸ PLANE's regional focus will be in the South West and South East regions in line with FCDON Geographic footprint. Other states may also benefit from PLANE through their engagement with the support being provided to the SW and SE.

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<p>▪ More effective curriculum, SoW and TLMs in use for teaching and learning foundational skills</p> <p><i>Prioritise activities in (order of importance) – KKJ & Federal; Regions</i> <i>For schools in KKJ, the focus will be on existing public pre-primary and primary schools in the first instance; over the life of the programme, there could be support to government regulated non-formal schools and Junior secondary schools</i> <i>In the Regions, the focus will be first - support to improving standards and regulation of non-government schools; support may also be provided to help government improve its own planning and delivery in public schools</i> <i>On Pre-service, the focus will be on Colleges of Education; over the life of the programme, there could be support to the NTI and Universities also – with a focus on foundational skills</i></p>				
Targeted technical assistance to targeted LGAs in KKJ to	Targeted technical assistance to KKJ states	Targeted technical assistance to	<p>▪ Enable peer learning between KKJ and other states in Northern Nigeria on improved teaching and learning in schools and colleges</p> <p>▪ Support peer learning activities in South West and South East regions on evidence based teaching and learning approaches in public schools</p>	
<ul style="list-style-type: none"> ▪ Support selected LGA teacher development systems to deliver better teaching and learning in Hausa literacy, English literacy and numeracy ▪ Support the use of appropriate tools (including technology) for monitoring, support and record keeping ▪ Develop and use appropriate and sustainable approaches to engage and motivate teachers, in the light of the behaviours, attitude and norms in the profession ▪ PLANE Output 1 to provide a minimum package of materials for teachers and learners in selected schools, working with LGA and LGEA systems ▪ PLANE Output 1 to support the use of appropriate screening tools 	<ul style="list-style-type: none"> ▪ Support State teacher development systems to enable head teacher leadership and management; and teaching and learning in Hausa literacy, English literacy and numeracy, in pre-primary and primary schools in selected LGAs – working with State Ministries and relevant MDAs including SUBEB ▪ Support to Junior Secondary where it addresses the needs of marginalised groups may be considered in time – this will require evidence of demand and political will from government and approval from FCDO. ▪ Develop and implement Continuing Professional Development and Certification for teachers, with appropriate tools (including technology) for 	<ul style="list-style-type: none"> ▪ Federal Ministry of Education and relevant MDAs – UBEC, NCCE, TRCN and NMEC – to enable improved federal and national guidelines on teacher development – pre & in-service ▪ Support improved assessment of learning and to support curriculum reform, focused on foundational skills ▪ Other Abuja based agencies - e.g. Nigerian Governors Forum (NGF) to support peer learning on evidence based teaching and learning in schools & colleges, nationally where appropriate 		

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	<p>for Special Educational Needs and Disability (SEND), gathering data and also providing support where possible</p> <ul style="list-style-type: none"> Strengthen targeted LG engagement with civil society, SBMC and community efforts to support schools, improve teaching and learning and support marginalised children (note linkage with PLANE Output 6, which is outside the scope of this contract) 	<p>monitoring, support and management of data¹⁹.</p> <ul style="list-style-type: none"> Support data collection at school, LGA and state level on SEND and support approaches to better support SEND children Selected Colleges of Education to support stronger focus on foundational literacy and numeracy in pre-service training systems Strengthen targeted states engagement with civil society, SBMC and community efforts to support schools, improve teaching and learning and support marginalised children (note linkage with PLANE Output 6, outside the scope of the contract) 		
2: Improved governance of state systems	<p><i>Indicative interventions under this Output include (but are not limited to):</i></p> <ul style="list-style-type: none"> <i>Improved recruitment, deployment and management of teachers and education personnel</i> <i>Improved government procurement and distribution of teaching and learning materials</i> <i>Improved institutional arrangements and improved management of public finances, including regular monitoring of education plans, budgets and expenditure</i> <i>Effective participatory approach to planning, budgeting and delivery in priority areas to address foundational skills – including use of the Roadmap/Delivery approach</i> <i>Increased expenditure to enable greater participation, retention, quality learning and transition in primary and from primary to junior secondary, especially for marginalised groups</i> <i>Improved government (LGA and State) engagement with community and civil society organisations on teaching and learning, procurement, planning and budgeting, and participation of marginalised children</i> 			

¹⁹ Note existing efforts of FCDO TDP and RANA in this regard – build on, refine and expand existing approaches to CPD, Certification and monitoring, including the “Basic Education Professional Development Database” (BEPDD) which was piloted under TDP in 1 LGA each in KJ states in 2018/19.

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<p><i>* Prioritise activities in (order of importance) – KKJ & Federal; Regions</i></p> <p><i>* Need to engage with broader FCDO Governance programme, PERL and any successor FCDO Governance programmes</i></p> <p><i>*Need for lesson learning alongside FCDO Health Programme, LAFIYA</i></p>				
<p>Targeted technical assistance in targeted LGAs in KKJ, to</p> <ul style="list-style-type: none"> ▪ LGAs and LGEAs to support synergy of (bilateral, multilateral and other) development partner funded efforts on basic education ▪ Strengthen synergy between LGAs and LGEAs ▪ Support improved and inclusive selection, recruitment, deployment and management of teachers and education management and support personnel at local level ▪ Monitor (quarterly and annually) the use of public finances to support teaching and learning at LG and school level ▪ Strengthen efforts at local government level, to monitor critical indices that contribute to improved teaching and learning – such as quality of the school environment, use of instructional time in the school day, availability of teaching and learning materials, student attendance, teacher attendance and 	<p>Targeted technical assistance to KKJ</p> <ul style="list-style-type: none"> ▪ State Ministries of Education and relevant agencies to lead synergy of (bilateral, multilateral and other) development partner funded efforts on basic education ▪ Strengthen states efforts to better select, recruit, deploy and manage head teachers, teachers and education management and support personnel ▪ Strengthen states procedures and processes to enable teaching and learning materials to reach schools and to be used ▪ Strengthen states procedures and processes to improve the flow of funds at state and local government levels to support teaching and learning, including for marginalised groups of children and, including operational funding for local governments and schools ▪ Strengthen states procedures to monitor (quarterly and annually) the use of public finances to support teaching and learning ▪ Strengthen states efforts to monitor critical indices across local governments, that contribute to improved teaching and learning – such as quality of the school environment, use of instructional time in the school day, availability of teaching and learning materials, student attendance, 	<p>Targeted technical assistance to</p> <ul style="list-style-type: none"> ▪ Federal Ministry of Education and relevant MDAs to support synergy of development partner funded efforts on basic education ▪ TRCN to support the roll out of a new Teacher Career Path, working with states, including support to appropriate processes and systems to enable this ▪ Strengthen leadership and governance at federal level and between Federal and states – e.g. at Federal level, support greater synergy between Vice President's Office, National Assembly, Nigeria Governors Forum and other relevant agencies - in line with PLANE's objectives ▪ Strengthen financing, budget and planning systems, particularly between Federal and states – to improve disbursement, utilisation and expenditure to support delivery of foundational skills (with reference to the Universal Basic Intervention Funds and other Federal government funds) 	<ul style="list-style-type: none"> ▪ Enable peer learning on improved governance of state systems, between the targeted KKJ states and other states in Northern Nigeria ▪ Support peer learning activities in South West and South East regions on how to improve the governance of non-state systems 	

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	<p>progression in children's learning over time</p> <ul style="list-style-type: none"> ▪ Strengthen planning, budgeting and delivery processes at LG level ▪ Strengthen targeted LG engagement with civil society and community efforts to support schools, improve teaching and learning and support marginalised children (note linkage with PLANE Output 6, outside the scope of the contract) 	<p>teacher attendance and progression in children's learning over time</p> <ul style="list-style-type: none"> ▪ Strengthen planning and budgeting procedures, including supporting the need to prioritise delivery in targeted aspects – using a Roadmap approach, Delivery Approach or other, in at least one state (picking up lessons from the FCDON Health Programme, LAFIYA) – this support to be provided in line with political will demonstrated by state leadership (see PLANE Business case, page ▪ Strengthen states engagement with civil society and community efforts to support schools, improve teaching and learning and support marginalised children (note linkage with PLANE Output 6, outside the scope of the contract) ▪ Provide support to operationalise relevant national policies on teacher career path, inclusive education, gender, disability, social protection. ▪ The Supplier will be responsive to the changing needs of government for technical support and should determine the specific type of technical assistance and agencies to be supported in consultation with FCDO and the State Government. A mixed approach can be used whereby the majority of support could come from technical advisers directly employed by the Programme and in some cases, advisers may be directly 	<ul style="list-style-type: none"> ▪ Strengthen procurement and distribution systems, particularly between Federal and states – to improve the availability of materials to support teaching and learning of foundational skills ▪ The Supplier will be responsive to the changing needs of government for technical support and should determine the specific type of technical assistance and agencies to be supported in consultation with FCDO and the State Government. A mixed approach can be used whereby the majority of support could come from technical advisers directly employed by the Programme and in some cases, advisers may be directly embedded in Government agencies. All technical support will be agreed, (with clear ToR for embedded advisers), between the supplier, state(s) and FCDO. 	
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		embedded in Government agencies. All technical support will be agreed, (with clear ToR for embedded advisers), between the supplier, state(s) and FCDO.		
3: Improved Governance of non-state systems	<p><i>Indicative interventions under this Output include (but are not limited to):</i></p> <ul style="list-style-type: none"> ▪ <i>Effective support and regulatory frameworks for low cost private schools</i> ▪ <i>Strengthen effectiveness of low cost private school associations</i> ▪ <i>Promote use of evidence and information sharing to enable greater investment in low cost private schools</i> ▪ <i>Promote effective models of public private partnership</i> ▪ <i>Provide support to enable more effective management of Integrated Quranic schools</i> <p><i>* Prioritise activities in (order of importance) – Regions; Federal, KKJ</i></p>			
		<p>Targeted technical assistance to</p> <ul style="list-style-type: none"> ▪ KKJ states to better gather, manage and use data associated with non-state providers, including Integrated Quranic schools and private schools ▪ Share lessons emerging from the South re. improving the regulatory and monitoring of non-state education and provide support for the piloting of new approaches in KKJ, drawing on lessons from DEEPEN and other approaches. ▪ Support government to strengthen their approach to supervision of non-state providers including considering the use of a grading system and self-assessment tools. 	<p>Targeted technical assistance to</p> <ul style="list-style-type: none"> ▪ Federal Ministry of Education and relevant departments and MDAs to engage more closely with developments in the non-state sector ▪ Promote lesson learning across states and regions to improve the overall regulatory and monitoring efforts of non-state education, including gathering and use of data, including working with other development partners where appropriate ▪ Support government to strengthen the networks of non-state providers where appropriate 	<p>Targeted technical assistance to</p> <ul style="list-style-type: none"> ▪ States in the South West and South East regions ▪ Support states in the South West and South East to improve the tools, guidelines and monitoring approaches for more effective regulatory frameworks for non-state education – including the work to

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		<ul style="list-style-type: none"> Promote the use of evidence and support new approaches to enable the non-state sector contribute (with minimum standards) to addressing the needs of marginalised children 		<p>support a grading system for schools and supervision of schools.</p> <ul style="list-style-type: none"> Strengthen the effectiveness of associations of non-states schools, including use of self-assessment tools by schools Promote the use of evidence and support new approaches to enable the non-state sector contribute to addressing the needs of marginalised children Gather and share evidence that may lead to innovative new models for public-private partnerships in basic education
4: Use of evidence & Effective Communications	<p><i>Indicative interventions under this Output include (but are not limited to):</i></p> <ul style="list-style-type: none"> <i>Use of appropriate monitoring tools and approaches including real-time reporting and dashboards across PLANE Outputs and in government systems</i> <i>Effective process and performance reviews and studies across all Outputs</i> <i>Improve national capacity in government - policy, legislature and academia - to gather and use evidence</i> 			

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<ul style="list-style-type: none"> ▪ Support use of strategic communication, including social media and media engagement, with state, non-state/private sector and civil society to improve service delivery ▪ Enable appropriate record keeping, knowledge management, reporting and communications procedures and products across all PLANE Outputs and in government systems <p><i>* Interventions across all Outputs and places</i></p>			
Targeted technical assistance to	Targeted technical assistance to	Targeted technical assistance to	
<ul style="list-style-type: none"> ▪ Ensure effective monitoring across all Outputs within the contract ▪ Support use of data from schools and communities at school and local government level, including use of school report cards drawing on the Annual School Census and the Integrated School Development index and on other monitoring. ▪ Support appropriate knowledge management and strategic communication systems at local level 	<ul style="list-style-type: none"> ▪ Ensure effective monitoring, knowledge management, and communications work across all Outputs within the contract ▪ Ensure monitoring and reporting on Value for Money – of both FCDO spend and government spend - across all outputs ▪ Enable synergy between monitoring approaches between PLANE Window 1 (the contract) and PLANE Window 3 (Support to communities) and PLANE Window 2 (Support to EiE and resilience) ▪ Support communications products associated with education surveys, plans & expenditure, including use of school, LGA and state report cards on selected indicators ▪ Ensure synergy with efforts of other development partners with regard to joint reviews of the sector ▪ Work to enable civil society and media to obtain and use evidence to make demands to push on accountability – coordinate with other FCDO programmes and non-FCDO programmes to enable this, as appropriate 	<ul style="list-style-type: none"> ▪ Ensure effective monitoring across all Outputs within the contract ▪ Enable synergy between monitoring approaches between PLANE Window 1 (the contract) and PLANE Window 3 (Support to communities) and PLANE Window 2 (Support to EiE and resilience) ▪ Support communication products associated with monitoring of education plans and budgets ▪ Ensure synergy with efforts of other development partners with regard to joint reviews ▪ Work to enable civil society and media to obtain and use evidence to make demands to push on accountability – coordinate with other FCDO programmes and non-FCDO programmes to enable this, as appropriate ▪ Support appropriate knowledge management and strategic communication systems to 	<ul style="list-style-type: none"> ▪ Work to enable civil society and media to obtain and use evidence to make demands to push on accountability – coordinate with other FCDO programmes and non-FCDO programmes to enable this, as appropriate ▪ Support academics and policy makers and other stakeholders – such as legislators, civil society and media to work collaboratively on research, evidence and communications to improve the quality of basic education.

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		<ul style="list-style-type: none"> ▪ Support appropriate knowledge management and strategic communication systems at state level – with relevant departments and agencies to strengthen use of data by decision makers ▪ Consider an embedded adviser in government to support on use of evidence & comms 	<p>support foundational skills at Federal level – with relevant departments and agencies</p> <ul style="list-style-type: none"> ▪ Consider an embedded adviser in government or the NGF to support on use of evidence and comms 	<ul style="list-style-type: none"> ▪ Share information and promote peer learning to improve knowledge management and strategic communication systems re. foundational skills & basic education.
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c. Exit and Closure Phase Requirements

Unless extended, the final full academic year of implementation will end in July/August 2027. An exit plan, including sustainable transition of all funded activities, and a strategy for the disposal of assets, will be developed by the Supplier and agreed with FCDO 12 months before the end of the contract. The Exit Plan will cover sustainability, exit or handover strategies for each intervention, including for multiple linked interventions that will require a consolidated or coordinated exit. The supplier will effectively manage the disposal of the assets as per the agreed disposal

The implementation of the Exit plan will be reviewed monthly with the FCDO SRO and Programme team for the last 7 months of the Programme – the formal exit phase.

9. Contract Model (See Interventions proposal template and process for FCDO approval at Annex B)

FCDO does not expect Interventions to be proposed in a top down fashion. The PLANE contract model requires Interventions to be both Output & Place specific (see Sections 8, 9 and Annex B). While Interventions across places may be similar, this bottom-up approach allows for greater place specificity and attention to political will and stakeholder demand in each place, in line with the PLANE Theory of Change.

a. Overview of Intervention Based Mechanism

The Supplier will be responsible for developing and implementing the Interventions (and the activities associated with them) that will deliver the PLANE contract Outputs and Outcomes through an Intervention-based mechanism, in line with the high level annual workplan.

Interventions will be identified for each Place, by Output, allowing for Place-specificity in the development of Interventions. It is expected that Interventions will originate from the Supplier's Place teams with strong input from the Supplier's Output leads and technical inputs where required. Oversight and sign off of Interventions proposed will be provided by the Programme's Senior Leadership Team who then submit the Interventions proposal templates to the FCDO SRO and Programme team. The proposed Interventions (and the activities under them) will emerge from an attention to the use of evidence of what works to deliver the Output and Outcomes, and attention to the views of a range of stakeholders at Place level, including Government and other relevant groups and attention to the extent of "political will" in the state (The Intervention-based mechanism allows for greater levels of support to be provided depending on the extent of stakeholder support and political will (see Section 5 above). Additionally, FCDO will communicate expectations around expected Interventions as required through the management of the Programme, using quarterly meetings or at exceptional points.

b. Submission and approval process for Interventions

The process for approval of work under the PLANE contract involves several steps –

Step 1. Submission of draft annual workplan alongside the draft Results Framework (log frame) – both Place-specific, for the upcoming year. The supplier must undertake

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workplan development in strong consultation with stakeholders in the relevant places including other FCDO funded, other donor funded programmes and government. Development of workplans must not be an internal project exercise.

Step 2. Submission of Interventions proposal templates in line with the expectations of the Intervention based mechanism (by Output and by place). As there are 6 places and 4 Outputs, the total number of Interventions proposal templates that can be received at any one time will be no more than 24.

Step 3. Feedback, recommended changes and approval from FCDO of annual workplan, Results Framework and Intervention packages. Interventions proposal templates must be submitted to FCDO at least 2 months prior to the planned Intervention start date, allowing FCDO time to review and the Supplier to make amendments to feed into the final Intervention schedules before commencement of the Interventions.²⁰

Step 4. Upon approval of the Interventions proposal templates by the FCDO SRO, the Supplier will better define the budget and resourcing requirements in greater detail and complete the “Intervention schedule” (see Template at Annex B and Intervention Schedule in pro-forma in the PLANE tender pack).

Step 5. The Intervention schedule will be reviewed by the FCDO programme team and authorised by the FCDO SRO prior to the commencement of the Intervention.

It is expected that the majority of Interventions proposal templates will be submitted at the start of the project year and will request approval for minimum one year-long interventions (and activities under them). For these “standard interventions”, there should be a relatively strong evidence base, demand amongst stakeholders should be high, political will strong and implementation, relatively straightforward. Where the evidence base is less robust and the Supplier may be seeking to catalyse demand and where the activities may change significantly over time in response to implementation realities, the Supplier can propose shorter time durations. As sufficient information on evidence and demand for the Intervention will need to be provided at the point of submission of Interventions proposal templates, FCDO notes that not all Interventions proposal templates will be submitted at the start of the project year. FCDO will accept submission where required at quarterly points during the Implementation phase of the contract.

When the Interventions proposal templates are submitted and approved, the Supplier will then complete a more detailed Intervention Schedule which will set out:

- i. Details of the activities to be carried out under the Intervention
- ii. Articulation of how the Intervention fits in with the Results Chain and Theory of Change; articulation of how the work will “benefit” specific outputs / outcomes and associated indicators to “benefit”.
- iii. Proportion of time of the Core team to be deployed to this Intervention
- iv. Details of the expertise from the Extended team to be deployed by the Supplier (in line with the expert bands information in the commercial proposal)

²⁰ Exact timelines for submission, review and feedback of Interventions proposal templates and schedules between the Supplier and FCDO will be agreed during the Inception period.

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- v. Expenses related to the delivery of the activity, broken down into operational expenses and expenses directly supporting technical work, called Programme Support Expenses

The Supplier's teams will implement the activity as set out in the terms of the Intervention schedule.

In developing the Interventions proposal template and subsequently, the Intervention schedule, the Supplier must take into account the identified needs, the political will associated with the Intervention, what activities other development partners are delivering, the global evidence base, the findings from the ongoing monitoring and lesson learning carried out by the Supplier's Core team, and the learning coming from the independent monitoring, evaluation and learning contract.

There is no pre-defined ceiling to the value of each Intervention. However, each Intervention (along with its associated activities) will be expected to demonstrate value for money and will require approval from FCDO before work can begin. Any changes to the Intervention Schedule must be formally recorded and approved by the FCDO SRO.

For the avoidance of doubt the overall contract value includes the costs of all the Interventions (and the activities under them). The contract will be subject to an annual contract amendment to reconcile budget and spend.

10. Payment by Results (PbR) and Key Performance Indicators (KPIs)

A payment by results approach will be used to enable effective delivery of the PLANE contract. Key Performance Indicators (KPIs) will link delivery against specified indicators to an agreed payment schedule.

- **Payment by Results Overview**

The objectives of the Payment by Results framework are:

- i. **Efficiency** - Facilitating greater measurement of and focus on key results, thus enabling better decision making about how to achieve them through more efficient allocation of resources.
- ii. **Flexibility & Adaptability** - Allowing the Supplier space for adaptive use of inputs and processes. The PbR framework should incentivise the Supplier to be proactive in adapting its approach based on latest evidence and data, in ways which can deliver on outputs and Outcomes.
- iii. **Accountability** - The PbR framework should complement the contractual review points to incentivise continual, high quality performance by the Supplier.

The Payment by Results framework will have Key Performance Indicators (KPIs) linked to delivery during the inception phase, implementation phase and exit/closure phase.

- **PbR during PLANE Inception**

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Inception KPIs – these will relate to the expected deliverables to be completed by the programme in the first 6 months of inception (see Section 8 above).

Inception phase KPIs will be assessed in month 3 and month 6 of the Inception phase. There will be no amount retained in the 7th and final month of Inception as a bridge to the Implementation phase.

The Inception KPIs are as follows:

KPIs due on the last calendar day of month 3 and month 6 of the Inception period (KPIs equally weighted) – to be submitted and approved by FCDO	
ID	Inception KPIs (all on a Pass/Fail Basis) – due by end of Month 3
I-KPI 1	100% of Core Team positions mobilised ²¹ (including remote working where necessary) – Delivery chain map, organisation chart and ways of working between consortium partners established (where applicable)
I-KPI 2	Place assessments (including on budgets and expenditure in key areas, political economy analysis and conflict analysis and review and categorisation of Special Educational Needs and Disability (SEND) needs) conducted to inform Theory of Change and Interventions. Initial place assessments, to be updated fully after first six months of delivery and conducted remotely where necessary
I-KPI 3	Key stakeholder engagement and communications plan developed, including approach to beneficiary engagement and feedback mechanisms
I-KPI 4	Development and agreement on ways of working between other PLANE components, with DELVe and with other external partners – PLANE contract partnerships Plan
I-KPI 5	Review of approaches and materials from previous FCDO and other development partner projects and articulation of what the PLANE contract proposes to keep/ adopt or modify. This review will include review of available learning materials from RANA, AENN, KaLMA and other projects as well as the production/procurement of select materials for inception trainings.
I-KPI 6	Conduct any required study visits with government partners from different places where feasible
I-KPI 7	(1) Initial scenario-based implementation plan to ensure prioritised intervention areas during inception especially considering COVID-19 impacts. (2) Piloting of instructional trainings in primary years 1-2, including baseline assessments for selected schools.
KPIs due on the last calendar day of month 6 of the Inception contract (KPIs equally weighted)	
ID	Inception KPIs (all on a Pass/Fail Basis) – due by end of Month 6
I-KPI 8	Completion of handover approaches from Bridging Intervention, GEP3 and RANA, where feasible.
I-KPI 9	Work-planning sessions held (remotely if required) with key stakeholders in each place, including beneficiary groups - for all Outputs, including discussion of Interventions and progress milestones
I-KPI 10	Theory of Change (ToC) developed in detail with Results Chains and establishing assumptions and what will be monitored. Active engagement with

²¹ FCDO would expect some extended team positions to also be identified and in place where required to deliver on specific tasks, e.g. M&E, but the payment linked KPI refers to Core Team mobilisation.

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	FCDO's Independent M&E provider, DELVe, to elaborate the ToC and evaluation questions.
I-KPI 11	Results Framework / Logframe developed in detail, agreed by FCDO + supplied to FCDO's Independent M&E provider, DELVe
I-KPI 12	M&E approach & tools developed - to report against The Theory of Change and in line with the Results Framework Indicators, including against Outcome KPIs and for VFM reporting. Agreed by FCDO and supplied to FCDO's Independent M&E provider, DELVe. ²²
I-KPI 13	Approach to programme baselines agreed with government partners for baseline activities to be carried out in Month 7 or upon school re-openings.
I-KPI14	Inception report including reporting on results achieved, financials, risks and mitigations; Finalised Theory of Change with Results Chain and initial implementation plan for first six months of delivery.
I-KPI16	Interventions proposal templates for all Interventions submitted in (up to 24) packages across all places, along with Expected Progress markers

Fees at risk – Inception

The Supplier must link an element of payment to the successful achievement of KPIs. The maximum value of this element at risk will be equal to a fixed percentage of the aggregated value of **all** fees charged for all staff contracted by the Supplier and subs during the KPI assessment period, inclusive of long term and short-term personnel.

The % of fees to be put at risk will be mandated at 40%. The Supplier will implement a fee retention model. In its monthly invoices, the Supplier will reduce the invoice total by the total fees multiplied by the 40% of fees put at risk every month of Inception. At each KPI assessment date (after month 3 and month 6), these fees will be paid if all KPIs are met.

Worked example – Inception KPIs

The Supplier puts 40% of fees at risk against Inception KPIs as mandated by FCDO. The table below shows the fee retention and invoice amounts, assuming all Inception KPIs are met by the Supplier when assessed at the end of Month 3 and Month 6.

Inception Month	Total Fees & Expenses	Expense s	Fees	Fees retained	Fees released	Monthly Invoice Total
1	£200,000	£100,000	£100,000	- £40,000	£0	£160,000
2	£200,000	£100,000	£100,000	- £40,000	£0	£160,000
3	£200,000	£100,000	£100,000	- £40,000	£0	£160,000
4	£200,000	£100,000	£100,000	- £40,000	£120,000	£160,000+ £120,000 (Months 1-3 fees retained) = £280,000

²² FCDO expects the provider of DeLVE services to be in place by the start of the PLANE contract inception.

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5	£200,000	£100,000	£100,000	- £40,000	£0	£160,000
6	£200,000	£100,000	£100,000	- £40,000	£0	£160,000
7	£200,000	£100,000	£100,000	None	£120,000	£200,000+ £120,000 (retention for Months 4-6) = £320,000
Total (Inception)	£1,400,000	£700,000	£700,000	- £240,000	£240,000	£1,400,000

• **PbR during PLANE Implementation**

The supplier is expected to monitor progress against implementation and capture learning on what is and is not working and feed this back into implementation. Quarterly meetings (at a minimum) provide an opportunity for review. FCDO will review the quality of delivery with a strong emphasis not simply on progress against plans but an emphasis on how the programme is learning and improving.

The Payment linked KPIs for PLANE are as follows:

1. **Contract management KPIs** – relates to the quality of delivery of the contract in 5 selected areas – quality of reporting; financial management; performance of team; partnership and collaboration; innovation
 - Contract management KPIs will be assessed every quarter.
2. **Progress KPIs** will relate to the Progress demonstrated on delivery of Outputs and towards Outcomes
 - Progress KPIs will be assessed once during the year, after 2 quarters/at the 6 month point.
3. **Outcome KPIs** will relate to known outcome level results that will be achieved by the programme over its full duration – selected Intermediate Outcome indicators (assessed annually) and Outcome indicators (assessed at mid-point and at the end of the programme)
 - Annual Outcome KPIs will be first assessed at the end of four quarters/ after the first academic year in Implementation and subsequent years, in the years when Mid Term and End of Programme KPIs are not assessed for payment (i.e.2023, 2024, 2026, 2027. The Mid Term and End of Programme KPIs will be assessed in 2025 and 2028.²³

Note that the KPIs are a selected set of deliverables to be associated with specific payments. These deliverables do not represent the totality of FCDO's expectations of the Programme. The Supplier will still be expected to deliver against **other** expectations including – expectations in the contract, the SRM Scorecard (see Annex C), delivery against indicators in line with the Results Framework (see draft in PLANE

²³ The PLANE tender documents includes a payment schedule in the budget proforma which sets this out clearly for the Supplier.

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Business Case Annexes), which will be assessed at Annual Reviews and will result in annual scoring for the Programme²⁴.

Fees at Risk – Implementation

The Supplier will link an element of payment to the successful achievement of KPIs. The maximum value of this element at risk will be equal to a fixed percentage of the aggregated value of all fees charged for staff contracted by the Supplier and subs during the KPI assessment period, inclusive of long term and short-term personnel.

A fixed percentage of fees will be put at risk during the Implementation phase, against Contract Management, Progress and Outcome KPIs. The total percentage will be a total of 15% of fees in any given month – split as follows (minimum in each category)

- 5% Contract Management (retained monthly, released quarterly),
- 10% Progress (retained monthly from Month 1 – Month 6, released in the 7th month)
- 10% Outcome (retained monthly from Month 7 – Month 12, released in the 13th month)

For the Outcome % - in the years 2023, 2024, 2026 and 2027 – payment will be made against delivery of the Annual Outcome KPIs. In 2025, payment will be made against delivery of the Mid Term KPIs and in 2028, payment will be made against delivery of the End of Programme KPIs (see Table of KPIs below).

The Supplier will implement a fee retention model. In its monthly invoices, the Supplier will reduce the invoice total by the total fees multiplied by the 5% of fees monthly put at risk for the Contract Management KPIs plus the 10% monthly put at risk for the Progress first and then the Annual Outcome KPIs. At each KPI assessment date (after months 3, 6, 9 and 12), these fees will be released if the relevant KPIs are met.

Assessing Contract Management KPIs²⁵

The Contract management KPIs will be 5% of fees, retained every month.

ID	Contract management KPIs & Weighting	Description & Weighting	Target for each quarter
CM – KPI 1	Quality of monitoring and reporting (1%)	Monitoring being used to improve programme; Quality of Quarterly reporting, including VFM	Judged by FCDO to (at a minimum) meet requirements in line with the scoring of the Strategic Relationship Management (SRM) performance scorecards ²⁶ (minimum score 4)

²⁴ Annual reviews will consider the full programme results framework including progress on all output and outcome indicators, including but not limited to the Outcome indicators associated with the Outcome KPIs.

²⁵ Contract management KPIs will be defined in greater detail during the inception period.

²⁶ These are selected aspects in the SRM scorecard against which payment will be made. The Supplier will still be assessed against the full SRM scorecard (see Annex D).

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			[Pass/Fail]
CM – KPI 2	Financial management (1%)	Management of annual budget; Adherence to monthly forecast (under 3% variance)	Judged by FCDO to (at a minimum) meet requirements in line with SRM Scoring (minimum score 4) [Pass/Fail]
CM – KPI 3	Performance of team (1%)	Quality of team; appropriate expertise of personnel; no Core Team position left vacant for more than one month	Judged by FCDO to (at a minimum) meet requirements in line with SRM Scoring (minimum score 4) [Pass/Fail]
CM – KPI 4	Partnership and collaboration (1%)	Agreed ways of working and positive working relationships with FCDO, other PLANE components and external partners	Judged by FCDO to (at a minimum) meet requirements in line with SRM Scoring (minimum score 4) [Pass/Fail]
CM – KPI 5	Innovation (1%)	Supplier uses innovative solutions, drawn from evidence and drives process efficiencies, including appropriate use of technology	Judged by FCDO to (at a minimum) meet requirements in line with SRM Scoring (minimum score 4) [Pass/Fail]

Contract management KPIs will be assessed by the FCDO team quarterly and released after the 3rd, 6th, 9th and 12th month of each implementation year. Contract management KPIs will be assessed as either pass (100%) or fail (0%) for that quarter. There will be no opportunity to “carry over” retained fees relating to Contract Management KPIs from one quarter to the next.

Assessing Progress KPIs

The Progress KPIs will be 10% of fees, retained monthly for the first 6 months of the implementation year. These will be weighted according to Outputs.

The Progress KPIs will be proposed by the Supplier alongside the Annual workplan and Interventions proposal templates, at the end of the Inception phase (month 6) and subsequently at the end of each Project Year, for the following Project year. The supplier will be expected to propose Progress KPIs which demonstrate significant “Progress” for that particular Output at that particular time, in terms of relevance to delivery of overall Output and Outcomes of PLANE. Progress KPIs should represent significant shifts or improvement and should demonstrate the extent to which the supplier is having an impact on systems.

When submitted, FCDO will review the Supplier’s proposed progress markers alongside the work plan, Results Framework and proposed Interventions proposal templates to determine whether what the Supplier proposes is appropriate and provides sufficient “stretch”. FCDO reserves the right to recommend alternative

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progress markers that are seen to be more significant in delivering on Outputs and Outcomes and which provides sufficient “stretch”²⁷.

The table below explains the weighting of Progress KPIs by Output, the minimum expected number of Progress markers suppliers should propose and gives one appropriate and one inappropriate example of a progress marker for each Output.

Output	Weighting	No of Progress KPIs expected to cover Months 1-6 of the Project Year (Equally weighted within Output)	Assessment & Validation	Example of an appropriate progress marker	Example of an inappropriate progress marker
1	45%	At least 3 proposed	Evidence of change, e.g. in new government guidelines (not simple reports of activities carried out) Payment will be made upon validation by FCDO or/and independent M&E provider, DELVe	Effective school support visits (SSVs) taking place in at least 50% of schools in targeted LGAs in at least 2 partner states	(Report of) Training sessions held with head teachers & school support officers across all LGAs in all partner states on Effective SSVs.
2	25%	At least 2 proposed		Inclusive recruitment policy agreed by government and legislators and in use/being implemented, in at least 2 partner states	(Report of) Stakeholders workshop on recruitment policy
3	15%	At least 1 proposed		Revised guidelines for recognition and registration of non-state schools agreed in State Ministries/SUBEBs in at least 3 states in South West Region	(Report of) Sensitisation of South West Governors and Commissioners through DAWN Commission on need for improved guidelines for non-state schools
4	15%	At least 1 proposed		School report cards (with agreed indicators) visible and in use in at least 50% of schools in targeted LGAs in at least 2 partner states	(Report of) Workshop with Local Government Education secretaries on the use of school report cards

²⁷ The PLANE contract model allows for flexibility. Progress markers should not be seen as locking in delivery against a set workplan if circumstances change. The Supplier should use quarterly meetings with FCDO to provide updates on implementation and the workplan. Where there is **strong evidence** of a change in circumstances, an alternative progress marker can be proposed if the initial progress marker is no longer valid.

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The Progress KPIs allow for partial achievement (0-100%), whereby 20% achievement will attract 20% of payment hitherto paid to be released, 50% of payments attracts 50% payment etc.

Within 7 calendar days of the end of the 2nd quarter (month 6), the Supplier will submit evidence of achievement of the Progress KPIs which were agreed at the start of the Project year. FCDO will assess the (level of) achievement and will draw on information from the third-party monitor (where applicable), information from monitoring visits, including beneficiary feedback, and FCDO will provide a written judgement of the (extent to which) each agreed Progress marker has been met. If the full Progress KPI is not met at the 6 month point, the supplier will be able to re-submit the remaining areas that were not met in the following quarter for FCDO assessment at subsequent quarterly points.

Assessing Outcome KPIs

The Outcome KPIs will involve 10% of fees retained monthly for the second 6 months of the implementation year (Months 7-12). These will be weighted as set out in the table below.

There are 3 types of Outcome KPIs in the PLANE contract –

- iv. Annual Outcome KPIs – assessed annually (except in years where Mid Term and End of Programme KPIs are assessed)
- v. Mid Term KPIs – assessed at mid-term (2025)
- vi. End of Programme KPIs – assessed in the final full year of the programme (2028)

The Supplier will be required to provide a process to monitor and report on these Outcome KPIs, including appropriate reporting tools (including use of technology where appropriate) which should be aligned with broader monitoring and reporting in state systems. The Outcome KPIs will first be assessed for the purposes of Payment by Results at the end of or soon after the first academic year of implementation (i.e. in June/July 2023 or September/October 2023²⁸). The Supplier will submit a self-assessment with accompanying evidence to FCDO and the Third Party Verifier within 7 calendar days of the end of the 4th quarter of the project year. The Outcome KPIs will be assessed and confirmed independently by the Third Party Verifier, which will provide an independent assessment of performance. The Supplier will work closely with the Third Party Verifier to ensure agreement on the templates for submission and the methodologies used to verify performance.

The Outcome KPIs allow for partial achievement (0-100%) at the point of submission, whereby 20% achievement will attract 20% of payment hitherto paid to be released, 50% of payments attracts 50% payment etc. Whereby 90% of the Outcome is achieved, FCDO will pay out the full (100% retained amount). As the Outcome KPIs are assessed at specific points in time, non-achievement of Outcome KPIs cannot be carried over to another period.

In the technical proposal, the supplier will propose appropriate definitions and tools associated with the measurement of these Outcome KPIs and also propose any

²⁸ This is for teachers and children who have benefitted from the first academic year with PLANE support. The timing of assessments will be agreed during the inception phase, alongside the agreements on the programme's baseline and M&E framework.

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recommendations to FCDO where modifications could be considered. During the Inception period, these Outcome KPIs along with reporting tools and approaches to data collection, will be discussed and finalised between the Supplier and FCDO, drawing on baseline and other information and with input from the 3rd party verifier, DeLVE.

The Supplier and FCDO will have the opportunity to renegotiate the Outcome KPIs at the end of the first full year of implementation and in advance of the 2nd year, and every 12 months thereafter. Renegotiation will only occur where evidence emerging from monitoring suggests that renegotiation is needed and this can involve targets going up. Agreement of changes will be by written agreement between FCDO and the Supplier. In the event that no agreement can be reached, the existing Outcome KPIs will continue to be enforced.

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PLANE Outcome KPIs	Indicators and Measurement	Weighting	Measurement & Assessment	Timing/Frequency
PLANE Intermediate Outcomes (Measured annually in 2023, 2024, 2026, 2027)				
IO KPI 1	<ul style="list-style-type: none">At least 50% of children in targeted locations attaining at least one level higher than baseline in literacy	25%	Sample based testing in schools supported by PLANE (averaged for all primary grades and all partner states) Submit self-assessment to FCDO & DELVe in August; Verification and approval by FCDO by end September.	Annual Baseline in Oct/Nov; end-line in June/July)
IO KPI 2	<ul style="list-style-type: none">At least 50% of children in targeted locations attaining at least one level higher than baseline in numeracy	25%		
IO KPI 3	<ul style="list-style-type: none">+10% increase (as a proportion of baseline) in student attendance	25%		
IO KPI 4	<ul style="list-style-type: none">+10% increase (as a proportion of baseline) in teacher attendance	25%		
PLANE Mid Term Outcomes (Measured in 2025)				
MT KPI 1	<ul style="list-style-type: none">50% of children in Primary 4 in targeted locations have basic literacy skills	20%	Sample based, assessed by programme, validated by independent evaluator (averaged across different states)	At mid-point – 2024/25 school year
MT KPI 2	<ul style="list-style-type: none">50% of children in Primary 4 in targeted locations have basic numeracy skills	20%		
MT KPI 3	<ul style="list-style-type: none">+10% increase in primary completion rates in partner states	20%	Annual School Census Data (averaged from different states)	
MT KPI 4	<ul style="list-style-type: none">+20% improvement in teacher competency compared with baseline	20%	Sample based, assessed by programme, validated by independent evaluator (averaged across foundational skills areas and partner states)	

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MT KPI 5	<ul style="list-style-type: none"> +10% increase in aggregate basic education budget performance (expenditure) compared with 2020 levels (for each state) 	20%	States audited accounts (averaged across states)	
PLANE End of Programme Outcomes (Measured in 2028)				
EP KPI 1	<ul style="list-style-type: none"> 75% of children in Primary 6 in targeted locations have basic literacy skills 	20%	Assessed by independent evaluator (averaged for partner states)	At endpoint – 2027/28 academic year
EP KPI 2	<ul style="list-style-type: none"> 75% of children in Primary 6 in targeted locations have basic numeracy skills 	20%		
EP KPI 3	<ul style="list-style-type: none"> +20% increase in transition rates from primary to junior secondary school 	20%	Annual School Census data (averaged for partner states)	
EP KPI 4	<ul style="list-style-type: none"> +20% improvement in teacher competency compared with midline levels 	20%	Sample based, assessed by programme, validated by independent evaluator (averaged across foundational skills areas and across partner states)	
EP KPI 5	<ul style="list-style-type: none"> +5% increase in total basic education expenditure as a proportion of total state expenditure compared to midline year. 	20%	States accounts (averaged across states)	

Notes:

- FCDO proposes that payments are linked to the averages of achievement against these KPIs, **in targeted locations**.
- Data for reporting to be gathered by the supplier and validated by the independent M&E provider
- Data to be disaggregated by disability, gender and location in reporting. For indicators associated with pupils and teachers, 50% should be girls/ female where possible
- The intention of the IO KPIs is to emphasise the need for children to make progress from one level of learning to the next.
- Suppliers are expected to submit information on - tools for assessment and reporting** (e.g. tools that would track childrens' progress from one level of learning, in literacy and in numeracy, to the next), and on definitions of the above indicators (e.g. basic literacy skills, basic numeracy skills).
- Suppliers should note the expectations of FCDO for the PLANE contract to build capacity of state personnel and state systems to focus on results, provide data to inform policy and implementation, as well as citizen engagement and accountability (within the scope of the PLANE contract). Data from the PLANE contract will also inform community engagement (under PLANE window 3).

Worked example – Implementation KPIs

The Supplier puts 15% of fees at risk against Contract Management (5%) and Progress and Outcome KPIs (10%) for Months 1-6 and Months 7-12 respectively). The table below shows the fee retention and invoice amounts, assuming all Contract Management, Progress and Outcome KPIs are met by the Supplier at the end of Month 12 of implementation.

Implem-Entation Month	Total Fees & Expenses	Expenses	Fees	Fees retained – Contract management KPIs (5%)	Fees retained – Progress KPIs (10%)	Fees retained – Outcome KPIs (10%)	Fees released	Monthly Invoice Total
1	£300,000	£150,000	£150,000	- £7,500	- £15,000	n/a	£0	£277,500
2	£300,000	£150,000	£150,000	- £7,500	- £15,000	n/a	£0	£277,500
3	£300,000	£150,000	£150,000	- £7,500	- £15,000	n/a	£0	£277,500
4	£300,000	£150,000	£150,000	- £7,500	- £15,000	n/a	£22,500 (£7,500 * 3)	£277,500 + £22,500 = £300,000
5	£300,000	£150,000	£150,000	- £7,500	- £15,000	n/a	£0	£277,500
6	£300,000	£150,000	£150,000	- £7,500	- £15,000	n/a	£0	£277,500
7	£300,000	£150,000	£150,000	- £7,500	n/a	- £15,000	£22,500 +£90,000 = £112,500	£277,500 +£112,500 = £390,000
8	£300,000	£150,000	£150,000	- £7,500	n/a	- £15,000	£0	£270,000
9	£300,000	£150,000	£150,000	- £7,500	n/a	- £15,000	£0	£270,000
10	£300,000	£150,000	£150,000	- £7,500	n/a	- £15,000	£22,500	£277,500 + £22,500 = £300,000
11	£300,000	£150,000	£150,000	- £7,500	n/a	- £15,000	£0	£277,500
12	£300,000	£150,000	£150,000	- £7,500	n/a	- £15,000	£0	£277,500
13	£300,000	£150,000	£150,000	- £7,500	- £15,000	n/a	£22,500 +£90,000 = £112,500	£277,500 +£112,500 = £390,000

Fees at risk during Exit and Closure phase

During the exit and closure phase, the payment mechanism will revert to 40% of fees linked to close out KPI's which will be proposed by the Supplier and agreed with FCDO in the preceding year to the close out phase.

11. Reporting Requirements

The supplier is required to deliver the following reports:

Inception Report

- i. Page limit: Maximum of 50 A4 pages (both sides) minimum font size 11

- ii. Submission: By email to the FCDO SRO to be submitted 7 days after the end of the 6 months of Inception.
- iii. The content should be in line with the requirements for the Inception phase set out above (see Sections 8 and 10) and should include summary of progress and achievements against Inception Phase KPIs including - Set up of the programme teams; effective handover of previous and current FCDO education initiatives; Initiation of some of the implementation phase requirements, particularly priority activities.

In line with the requirements set out for the Inception period and the Inception KPIs set out above, the following will also be expected alongside the Inception report:

- i. Finalised and agreed Theory of Change and Results Chain
- ii. Finalised and agreed Results Framework with indicators for Outputs and Outcomes and targets, for each Place
- iii. Finalised and agreed implementation strategy (how the programme will deliver) including M&E
- iv. Finalised and agreed of the Scope of Work (what the programme will deliver) for the programme lifetime
- v. Value for Money Strategy and Action Plan
- vi. An indicative budget for the life of the programme together with a detailed annual budget for the first year of operation.
- vii. Initial risk matrix with mitigation measures
- viii. Annual workplan, Interventions proposal templates and Progress KPIs for Implementation Year 1

Quarterly reports:

- i. Page limit: Technical Report maximum of 30 A4 pages (both sides) minimum font size 11. Financial Report maximum of 6 A4 pages (both sides) minimum font size 11.
- ii. Submission: Using agreed document management system, available for access by the FCDO SRO and Programme team, on or before the 7th working of the month following the end of the quarter (month 4, 7, 10, 13).

The quarterly report content should include :

- iii. Technical report
- iv. Narrative on interventions activities in the past quarter including a summary of progress in each Place; progress towards Output and Outcome indicators and a couple of individual case stories
- v. Summary of work completed against approved Intervention schedules
- vi. Progress against annual review / audit / scorecard / other recommendations
- vii. Tabulated summary showing progress against work-plan targets / logframe outputs / outcomes, payments by results (PbR) approach and KPIs, for each Place and in total
- viii. Summary of planned work and key priorities for next quarter, including record of any Interventions proposal templates in the pipeline
- ix. Update of risk matrix including risks of delivery partners, with appropriate mitigation measures
- x. Any feedback or recommendations for FCDO to take action
- xi. Submission of Interventions proposal templates, when required
- xii. Financial / value for money report
 - i. Reconciliation of the previous quarter's expenditure

- ii. Value for money report on the previous quarter, broken down by the 4 Es (economy, effectiveness, efficiency and equity), including bench-marks, cost comparisons, cost savings, and examples of value for money
- iii. Leverage of additional resources for basic education services from Government of Nigeria (Federal, State, local) or others
- iv. Highlight any variances from forecast for the previous quarter, and explanations for these variances
- v. Breakdown of spend by state and output, including summary of invoices paid (and amounts retained) to date.

Alongside the 2nd quarter report, the Supplier will provide evidence of having met the agreed Progress KPIs (see Section 10 above). Evidence ideally should not be in the form of a report meant for FCDO but should be evidence of change occurring within the system which can be monitored by FCDO or/and a 3rd party supplier.

Annual reports:

- i. Page limit: Technical report maximum of 40 A4 pages (both sides) minimum font size 11. Financial report maximum of 6 A4 pages (both sides) minimum font size 11.
- ii. Submission: Using agreed document management system, available for access by the FCDO SRO and Programme team, on or before the 7th day of the month after the final month of the Project year (Month 13th).

The content for the Annual report should include the:

Technical report

- iii. Narrative on interventions activities in the past year. This should include a summary of progress of each activity towards overall contract outputs / outcomes and theory of change.
- iv. Updates from any monitoring, evaluation and learning, and how the programme is being adapted to take account of any findings
- v. Summary of work against each activity schedule
- vi. Progress against annual review / audit / scorecard / other recommendations
- vii. Tabulated summary showing progress against work-plan targets / logframe outputs / outcomes, payments by results (PBR) approach and KPIs, for each Place and in total. This should include an updated Results Framework with results achieved, and quantitative and qualitative report of progress against logframe indicators
- viii. Summary of key risks and how these were mitigated
- ix. Summary of strategic priorities, work-plan and programme priorities for next year, including possible Interventions proposal templates in the pipeline
- x. An updated risk matrix including delivery partners with mitigation measures
- xi. Any feedback or recommendations for FCDO
- xii. To be responsive to any other reports required from time to time by FCDO.

Financial / value for money report

- i. Reconciliation of the previous year's expenditure
- ii. Value for money report on the previous year, broken down by the 4 Es (economy, effectiveness, efficiency and equity), including cost savings, and examples of value for money
- iii. Leverage of additional resources for basic education services from Government of Nigeria (Federal, state, local) or others for the year
- iv. Highlight costs against benchmarks for the year, and trends with time

- v. Highlight any variances from forecast budget for the year, and explanations for these variances
- vi. Breakdown of spend by state and output for the year
- vii. A detailed forecast spend for the upcoming year
- viii. To submit an Annual Audited Statement (AAS) of its operations, showing how FCDO funds have been utilised annually, through the life of the programme.

Alongside the Annual report, the Supplier will provide evidence of having met the agreed Annual Outcome (or Mid Term or End of Programme) KPIs (see Section 10 above). Evidence ideally should not be in the form of a report to FCDO but should be evidence of change occurring within the system which can be monitored by FCDO or/and a 3rd party supplier.

Asset Register

- i. To maintain an accurate and up to date asset register and report promptly any case of missing or damaged programme assets.
- ii. To provide a regularly updated asset register of all programme assets, including missing or damaged programme assets, which can be verified by FCDO or/and auditors annually.
- iii. To provide an asset disposal plan to be agreed with FCDO prior to the final 12 months of the programme.
- iv. The supplier will effectively manage the disposal of the assets as per the agreed disposal plan to be completed before the closure date.

End of Programme report

- i. Page Limit: Maximum of 40 A4 pages (both sides) minimum font size 10.
- ii. Submission: Using agreed document management system, available for access by the FCDO SRO and Programme team, before Programme closure
- iii. Content: The report should include a summary of achievements and progress against impact, outcomes and outputs. This should include:
 - i. Summary of programme expenditure
 - ii. Summary of programme achievements, and a review of the overall impact of the programme
 - iii. Summary of what worked well and lessons learned.
- iv. More detail on the project closure report will be provided nearer the time

12. Oversight Requirements

vii. Governance of the PLANE Contract

Formal responsibility for programme direction and results will lie with the Supplier, under oversight and approval supervision of the FCDO SRO and Programme team. The PLANE Senior Leadership team and Management team will meet with the FCDO programme team on (as least) a quarterly basis as a Programme Management Board (PMB). The objective of the Programme Management Board is to oversee and ensure the effectiveness of operations; discuss achievements, challenges and risks; discuss progress in the implementation of agreed Interventions and forward look and address any issues that arise.

Beyond this quarterly meeting, FCDO may meet with the Senior Leadership team or/and Specific leads in the team on technical matters that arise. FCDO reserves the

right to action PLANE Place or Output team leads, ensuring that the Senior Leadership team is informed to enable appropriate support to ensure urgent matters that arise are appropriately prioritised.

The main contact for the programme will be the FCDO SRO and Programme team based in the British High Commission in Abuja. The Supplier's Place teams will also liaise with the respective FCDO Regional Coordinator for state specific issues, with the SRO retaining overall oversight.

The main contact for the contract or commercial issues will be the FCDO Nigeria Commercial Delivery Manager based in Abuja or/and the PCD contract officer based in the UK.

viii. Broader Governance of the PLANE programme

The PLANE business case provides an overview of all the components of the overall PLANE programme. While the contract is the largest element covering Outputs 1-4, Output 5 (work in the North East) and Output 6 (Community Engagement). Under the "FCDO managed component", there is support to the World Bank on expenditure (which should benefit PLANE Output 2, under the contract) and there will be a FCDO Nigeria Programme Funded Adviser.

Beyond the PLANE contract Programme Management Board, there will be additional Oversight groups which the Contract should be aware of.

i. **FCDO Education Portfolio Oversight Group** – The Education Portfolio Oversight Group, chaired by FCDO, is made up of the programme leads for each of the individual organisations involved across FCDO's education portfolio (representatives from all windows of PLANE plus the "FCDO managed component"), key leads / sub-partners responsible for delivery of specific key outputs (particularly if an output on the agenda), and representatives of programmes (such as PERL) whose contribution is critical to achieving education outcomes. The objective of the Group is to enable strategic oversight of FCDO Nigeria's education portfolio, ensure synergy between the components of the portfolio, to avoid duplication and address any arising issues. It monitors and reports on overall quality control and strategic input. The Education Portfolio Oversight Group should meet at least annually.

ii. **External Oversight Committee for FCDO's Education Portfolio** - The oversight committee, includes the Minister of Education or/and the Permanent Secretary of the Federal Ministry of Education, the Executive Secretaries of federal agencies such as UBEC, NCCE, TRCN and NMEC, State Commissioners for Education and SUBEB Chairs, representation from National and State Legislatures, representation from Civil society, World Bank, USAID, FCDO, representation from the Senior Leadership team for the PLANE contract, the Senior Leadership team of PLANE windows 2 & 3 and the DELVe. The objective of the oversight committee is to enable accountability of the portfolio to the Government of Nigeria. The Oversight Committee should meet annually. FCDO may include independent technical advisers to join this Oversight Committee.

iii. **The State education coordination meetings / telephone calls** are held for each partner state and are made up of each of the FCDO Regional Coordinators together with the state leads for the individual organisations operating in education, including PERL (and other relevant FCDO funded programmes). Where there are other key development actors (including World Bank funded projects), the meeting should be broadened to include these actors as appropriate. The objective of this meeting is to

discuss state specific issues to enable synergies at the state level, to feed into the State's plans and monitoring of progress at the State level.

Governance and oversight arrangements associated with the PLANE contract, other components of PLANE and other programmes in the context will be discussed and agreed during the Inception phase of the PLANE contract.

13. Background and Context

The PLANE BC points to emerging areas of “good news” that provide opportunities for the new programme to engage with and support. There have been further developments since the time the business case was written, including (but not limited to):

- Elections to fill Federal and state executive and legislative posts in Nigeria – the President and the Governors of the FCDO partner states mentioned greater commitment to improving basic education in their speeches
- The GPE NIPEP project funded piloting of RANA – Hausa Early Grade reading – in Kano, Kaduna and Jigawa states
- The World Bank BESDA project is operational and will fund expansion of Hausa early grade reading in schools across the FCDO partner states (and other states)
- The World Bank BESDA project commenced pilot activities for a national learning assessment at Primary 4 and Junior Secondary 2
- At the time of writing this ToR, the Federal Ministry of Education, under the leadership of the Permanent Secretary who co-chairs the National Education Group (along with FCDO) was in the process of undertaking Education Sector Analysis with plans to develop a National Education Plan in advance of Nigeria's planned application to the GPE in Aug 2020. The findings from the UBEC Personnel Audit (2017/18) will be used in the ESA.
- The UBE Commission created a new Department for Teacher Development and commenced the process to revise the guidelines for CPD for teachers. In its efforts to support improved monitoring in line with the requirements of the National Teacher Education Policy (NTEP), UBEC expresses interest in the Basic Education Professional Development Database (BEPDD, piloted by FCDO-TDP in one LGA each in Kano, Kaduna and Jigawa)
- The National Commission for Colleges of Education (NCCE) reviewed the NCE curriculum for pre-service teachers, putting greater emphasis in the course content on student teachers learning to teach foundational skills, including reading, supported by FCDO-TDP and other projects.
- The Teachers Registration Council of Nigeria embarked on a new Career Path for Nigeria's teachers – in an effort to professionalise teaching
- Results from the FCDO funded Teaching at the Right Level (TaRL) pilot in Borno state were shared with government and other stakeholders and there are plans to expand the scale of the intervention following positive results
- FCDON is to commence a new Intervention (the “Bridging Intervention”) in advance of the PLANE contract in selected LGAs in partner states, to implement a larger TaRL pilot in the North West drawing on the lessons learned from the TaRL Borno pilot and other evidence
- The FCDO TDP ends August 2019 – see www.tdpnigeria.org for more information - reports, teaching and learning materials and approaches used
- FCDO is boosting support to policy and implementation to support girls education, as part of the broader UK commitment to “12 years of quality education” pledge made at the Commonwealth Heads of Government in

London 2018. FCDON is working in partnership with UNICEF, state governments and with the World Bank as they design a new programme for Adolescent Girls

- The Vice President's office, through the National Social Investment Office is looking to provide support to improved teaching and learning in basic education, including use of technology

14. Coordination and Collaboration

The successful achievement of overall PLANE outcomes will require collaboration and coordination, across the outputs within the PLANE contract, between the components within the PLANE portfolio, with other FCDO funded programmes outside the portfolio, with other interventions supported by other development partners and with the Government of Nigeria. Through its agreements, FCDO aims to encourage synergy and value for money through effective coordination and collaboration between programmes (education and other).

See Background section 13 and Annex C for an overview of programmes to be aware of, coordinate with and possibly collaborate with.

15. Independent Third-party Evaluation, Learning and Verification

The PLANE contract itself will monitor its own success closely at output and outcome level, using specific and measurable indicators against demonstrable, realistic and timebound milestones. A detailed Results Framework (log frame), setting out indicators and targets for each Place at output, outcome and impact level will form the foundation of programme monitoring. The RF should include measures of cost efficiency and cost effectiveness. The RF should be supplemented by a monitoring handbook or manual which justifies the log frame design, elaborates on the data collection sources and methods, and outlines the risks to data quality and how these will be mitigated.

The PLANE contract needs to be able to demonstrate results with convincing evidence, and to ensure that systems and processes to do this are developed from the outset. Data to measure results may come from a variety of sources, including programme specific data collection and programme surveys, national data systems and surveys at State or national level. The supplier will develop and implement monitoring systems with the purpose of tracking progress towards the achievement of outputs and outcomes (reflecting FCDO's data disaggregation action plan, disaggregating data by sex, age, and disability).

In addition, an independent (third party) supplier of evaluation, learning and verification services (DELVe) will be contracted separately by FCDO, covering a number of human development programmes, with all costs of DELVe outside of this contract. DELVe will be expected to achieve three major purposes:

- Provide independent (third party) assurance to FCDO of the accuracy of the monitoring data received and the quality of programme implementation.
- Deliver a range of formative evaluation products for learning purposes that will help to maximise the chance of the contract achieving programme outcomes (likely to include quantitative and qualitative methods).
- Deliver an independent evaluation for accountability purposes. The independent evaluation will include a review of the inception period and a mid-term evaluation.

DELVe will conduct an inception period review to assess the success of PLANE's transition of approaches from previous and current FCDO education programmes, the robustness of monitoring processes established to measure programme targets, and the robustness of processes established to evaluate innovative programme interventions. The review will identify areas for improvement and any significant risks to programme success, so that course corrections can be made at an early stage.

DELVe will finalise the mid-term evaluation in December 2025 to provide a strong evidence base to inform FCDO's mid-term review at the 2025/26 contract review point. This will assess continued relevance of the programme outputs / outcomes (taking account of changes in political economy at State and Federal level between the Business case stage and implementation). An independent assessment of whether outputs are being efficiently delivered and whether or not there is any evidence that the outputs are effectively contributing the intermediate outcomes will also be required.

The Supplier will therefore have a range of responsibilities with respect to the independent DELVe supplier, as follows:

- i. With respect to the **independent verification**, first the Supplier would first be expected to make available to DELVe for review documentation concerning the design and implementation of the monitoring systems. Second the Supplier would need to make available detailed results datasets (for example at the level of schools) in order to form the sampling frame for independent verification.
- ii. With respect to the evaluative work for learning purposes the Supplier should expect to collaborate with FCDO and with the DELVe to identify key questions and change pathways where independent **formative evaluation** might increase the effectiveness of the programme, and ensure that there is no duplication in the activities to be carried out by the Programme (Output 4) and DELVe, on evaluation.
- iii. With respect to the **summative evaluation**, the Supplier will be expected to corporate with the DELVe to facilitate access to materials and key informants (including the Supplier's own personnel) and to participate in such evaluation steering group or committee as may be established.

FCDO will conduct **Annual Reviews** of the programme to examine progress against outputs and outcomes, and value for money. At the mid-point of the programme, the mid-term review, informed by the independent evaluation by DELVe, will assess in greater depth, the likelihood that programme activities, outputs and outcomes will achieve the desired impact and the value for money of the programme and its components.

At the end of the programme a **Project Completion Review (PCR)** will be undertaken, to assess the extent to which the project successfully attained outcome and impact goals and to identify lessons learned.

FCDO will also undertake additional programmatic or financial reviews, audits, evaluations or strategic initiatives related to the programme, when the need arises. Independent financial audits of the programme to give full and satisfactory audit discharge to the project expenditure, will be conducted after the first 18 months of operation, and annually thereafter.

Annex A: FCDON PLANE ToR Acronyms

PLANE	Partnership for Learning for All in Nigeria
ACORN	Anticorruption in Nigeria
AESPR	Annual Education Sector Performance Review
AfDB	African Development Bank
AG	Accountable Grants
AR	Annual Review
ARIES	Activities Reporting Information & Electronic System
BC	Business case
BESDA	Better Education Service Delivery for All
BY	Borno and Yobe states
CBA	Cost Benefit Analysis
CDEL	Capital Departmental Expenditure Limits
CoE	College of Education
CPD	Continuing Professional Development
CPWN	Competitive Procedure with Negotiation
CSO	Civil Society Organisations
CWD	Children with Disabilities
CYED	FCDO's Children Youth and Education Department
DA	Delivery Approach
DCA	Delegated Cooperative Agreement
DDA	Due Diligence Assessment
DDD	Doing Development Differently
FCDO	Department for International Development
FCDON	Department for International Development Nigeria
DHS	Demographic and Health Survey
DIT	Department for International Trade
DPM	Deputy Programme Officer
DPs	Development Partners
DPSA	Delivering Procurement Services for Aid
DTL	Deputy Team Lead
EAA	Education Above All
EAC	Educate a Child
EDOREN	Education Data, Research and Evaluation in Nigeria
EDPG	Education Development Partners Group
EiE	Education in Emergencies
EiEWG	Education in Emergency Working Group
EME	Early Market Engagement
ENGINE	Educating Nigerian Girls in New Enterprises
EPT	FCDO's Education Policy Team
ERICC	Education Research in Conflict and Protracted Crisis
ESSPIN	Education Sector Support Programme in Nigeria
EU	European Union
EVET	Extremism, Violent Extremism and Terrorism
FCO	Foreign and Commonwealth Office
FME	Federal Ministry of Education
GBP	Great British Pounds
GDP	Gross Domestic Product
GEA	Gender Equality Act
GEC	Girls' Education Challenge
GEFA	Global Evaluation Framework Agreement
GEP3	Girl Education Project Phase 3
GoN	Government of Nigeria

GPE	Global Partnership for Education
HDT	Human Development Team
HMG	Her Majesty's Government
HRP	Humanitarian Response Plan
HoO	Head of Office
HQ	Head Quarter
ICAI	Independent Commission for Aid Impact
IDPs	Internally Displaced People
IRR	Internal Rate of Return
ITT	Invitation To Tender
IQS	Integrated Quranic Schooling
IQTE	Islamiyya Quranic And Tsangaya Education
JPAL	Abdul Latif Jameel Poverty Action Lab
JSS	Junior Secondary School (1-3)
K4D	Knowledge Evidence and Learning for Development project
KKJ	Kano, Kaduna and Jigawa states
KPI	Key Performance Indicators
LEG	Local Education Group
LGA	Local Government Area
LGEA	Local Government Education Authority
LINKS	FCDON Powering Economic Growth in Northern Nigeria
M4D	Mobilization for Development
MICS	Multiple Indicator Cluster Survey
MoU	Memorandum of Understanding
MSP	Ministerial Strategic Plan
NCCE	National Commission for Colleges of Education
NE	North East
NEDS	National Education Survey data
NEN	North East Nigeria
NENTAD EiE	North-East Nigeria Transition to Development Education in Emergency Programme
NFP	Not for Profit
NGF	Nigeria Governors Forum
NGO	Non-Governmental Organisations
NPV	Net Present Value
NMEC	National Mass Education Commission
OCHA	Office of the Coordination of Humanitarian Affairs
ODA	Official Development Assistance
OJEU	Official Journal of the European Union
P	Primary grades (1-6)
PbR	Payment by Results
PCD	Procurement and Commercial Department
PCR	Project Completion Review
PDIA	Problem Driven Iterative Adaptation
PERL	Partnership to Engage, Reform and Learn
PIN	Prior Information Notice
PMB	Programme Management Board
PO	Programme Officer
PPP	Public-Private Partnership
PSG	Programme Steering Group
PSS	Psychosocial Support
QAU	Quality Assurance Unit
RANA	Reading and Numeracy Activity
RDEL	Resource Departmental Expenditure Limit
RR	Risk Register

SDG	Sustainable Development Goals
SDP	Single Departmental Plan
SDP	Social Development Programmes
SDP	State Development Plan
SEND	Special Education Needs and Disability
SIP	School Improvement Programme
SMoE	State Ministry of Education
SRM	Strategic Relations Management
SRO	Senior Responsible Owner
SUBEB	State Universal Basic Education Board
TA	Technical Assistance
TARL	Teaching at the Right Level
TC	Technical Corporation
TDP	Teacher Development Programme
TL	Team Lead
ToC	Theory of Change
ToR	Terms of Reference
TPM	Third Party Monitoring
TRCN	Teachers Registration Council of Nigeria
UBEC	Universal Basic Education Commission
UBE-IF	Universal Basic Education – Intervention Funds
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations Children's Fund
USAID	United States Agency for International Development
USD	United States Dollars
V4C	FCDON Voices for Change programme
VfM	Value for Money
WASH	Water, Sanitation and Hygiene
WB	World Bank
EFO	Externally Financed Output
WB SEPIP	World Bank State Education Program Investment Project

Annex B: The Intervention Based Mechanism

The supplier will submit interventions proposal templates²⁹ for the approval of Interventions before they commence. The interventions proposal template provides a checklist for FCDO to assess the relevance and value of potential interventions before the Intervention schedule is submitted and approved. Failure to submit the interventions proposal template for approval will delay FCDO's acceptance of any subsequent intervention schedule.

The interventions proposal templates will be submitted by place and by Output. i.e. the supplier can submit up to 24 interventions proposals (for each of the 4 Outputs and the 6 places) at the start of the project year. It is expected that standard interventions will be proposed for at least 1 year in duration, although FCDO recognises that some interventions will be proposed for less and some for more, than 1 year. At quarterly points, suppliers will be expected to report on progress of already approved interventions in their quarterly reporting. Where an intervention (and associated activities) will not commence until mid-way through the year, the supplier should submit the necessary intervention proposal template for approval closer to the time the intervention will commence, i.e. suppliers can submit interventions proposal templates where appropriate at quarterly review points.

This approach allows the supplier to work in more place-specific ways, ensuring that there is sufficient evidence, interest and demand from stakeholders for a particular intervention in a given place. It also allows FCDO to have greater visibility of and ability to assess the appropriateness of the interventions and activities in each place, including the strength of evidence associated with the interventions being proposed.

²⁹ An excel template or other more appropriate format can be used – an Intervention schedule template is provided with the tender pack. Templates to be finalised during the Inception phase.

Interventions proposal template (example)

The Interventions proposal template includes a “package” of Interventions for each Output and Place.

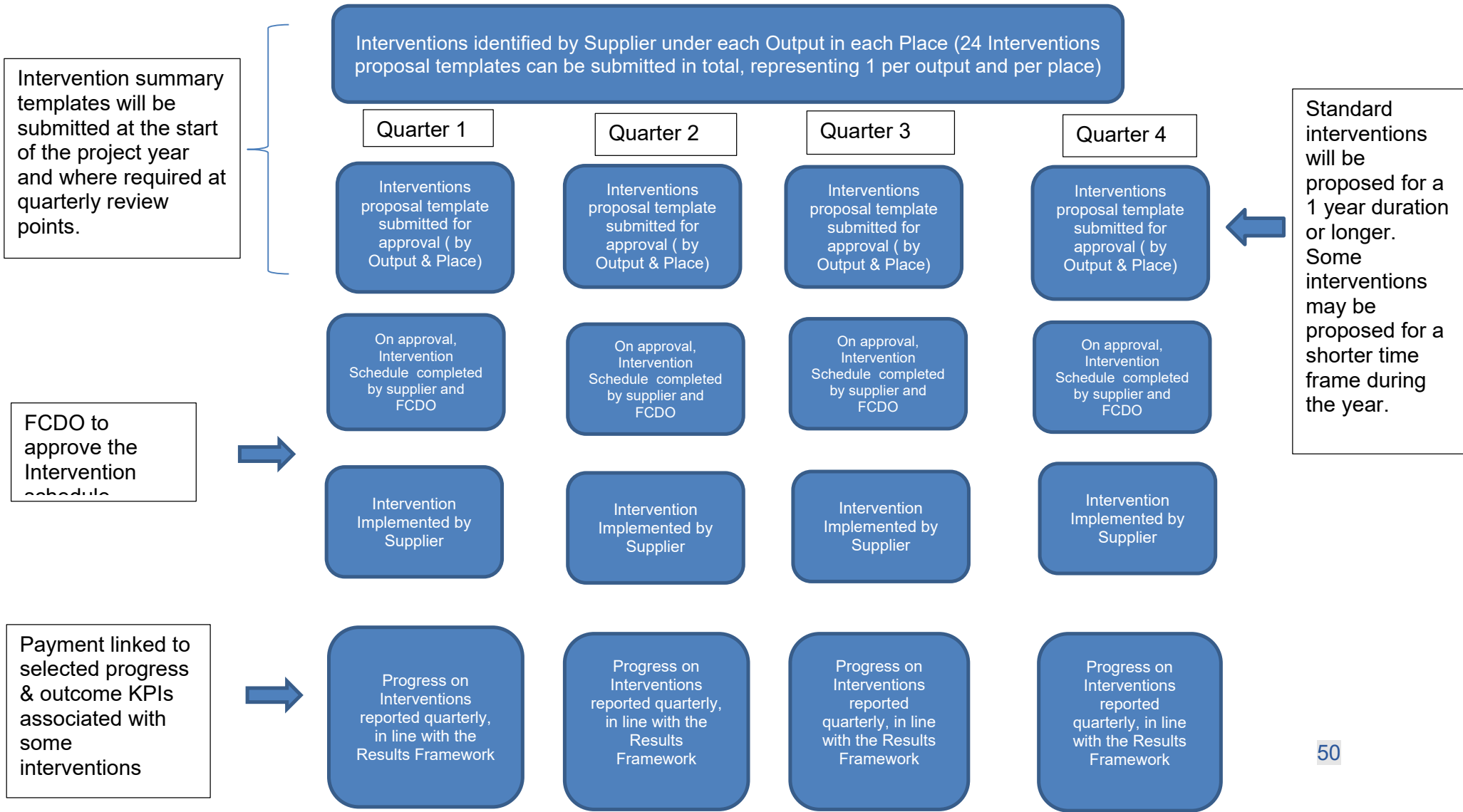
Date: **Insert**

Output: **Insert** and Place Name: **Insert**

Number of Interventions: **Insert**

S/N	Intervention name	Activities under Intervention	Duration	Relevant to which Logframe indicators (Outputs & Outcomes)	Evidence (Global and Local) to support Intervention & activities	Evidence of stakeholder interest in Intervention & Activities	Risks & Mitigations	Estimated Fees (Core + Extended team)	Estimated Expenses (Programme support expenses + other expenses)
1	Teaching & Learning Hausa	Insert activity	Month/year – Month/year						
		Insert activity							
2	Teaching & Learning English								
3	Teaching & Learning Numeracy								
4	Insert Intervention								

Use of the Intervention Based Mechanism



Annex C: PLANE contract engagement with other programmes & partners

It will be important for the PLANE contract to ensure linkages with other ongoing FCDO Nigeria education programmes and initiatives.

Under PLANE:

- **Window 1, Bridging Intervention** – FCDO will fund a not for profit organisation to implement an accelerated remedial programme using TaRL approaches within state systems for all Primary 4 to 6 pupils in all schools in at least 2 LGAs in Kano state – to commence in autumn 2019, to end by Dec 2021. The PLANE contract will need to coordinate and draw lessons from this intervention in its inception phase (see Sections 8 and 10 above)
- **Window 2, Output 5** – Education in Emergencies support in the North East: In the short term (up to December 2021), 3 elements will be supported, across selected LGAs in Borno and Yobe states – (i) an approved Cost Extension of FCDO support to IRC to provide EiE (ii) an approved Cost Extension of FCDO support to UNICEF (with Plan International); (iii) a approved agreement with USAID to extend the reach of Results Area 1 of the AENN programme, “to increase the capacity of local education authorities to plan, manage, and oversee education services”, so that more LGAs benefit. Consultations will commence in summer 2021 with plans to have a not for profit agreement to commence delivery under this component, by October 2021.
- **Window 3, Output 6** – work to support Community engagement: Consultations will commence in autumn 2019 with plans to have a not for profit agreement to commence delivery under this component, by October 2021. The PLANE contract will need to work in strong alignment with this component which will focus on delivering in KKJ with policy engagement in other locations where appropriate; will not include delivery in the North East.
- **Under the FCDO internal component in PLANE** –
 - **DELVe** – This will provide independent evaluation, learning and verification services in relation to PLANE and the wider Human Development portfolio. The PLANE contract will need to work actively with DELVe (see Section 15 above)
 - **A planned agreement with the World Bank** to undertake (i) analysis of Learning Opportunities for the School aged population, (ii) analysis of Education Financing. The PLANE contract will need to coordinate and collaborate with this sub-component.
 - **Other elements include planned research** – a post ESSPIN study (as recommended by the ESSPIN PCR, 2017) to better understand sustainability to feed into PLANE ways of working with systems.
 - **A Programme Funded FCDO Nigeria Education Adviser** will be recruited with a focus on engagement with partners and government to support results delivery.

Other FCDO Nigeria’s bilateral education portfolio (current)³⁰:

³⁰ Also see a Note provided on the FCDO PLANE portal in June 2019, which provides an overview of key reports from previous and current programmes, including relevant web links.

- **The Girls Education Project Phase 3** – on track to support 1 million girls by the time the programme ends in July 2021, with 3 Output areas - Output 1: Increased enrolment and retention for girls in basic education; Output 2: Improved capacity of teachers to deliver effective learning for girls (including the Reading and Numeracy Activity, RANA); Output 3: Improved governance to strengthen girls' education. RANA originally ended in 2018 and was extended to develop and test Primary 4 – 6 Hausa materials and provide support to Kano, Kaduna and Jigawa states on Hausa Early Grade reading, through engagement with State Ministry and SUBEB officials including those managing the Global Partnership for Education project, NIPEP and the World Bank BESDA project. See <https://devtracker.FCDO.gov.uk/projects/GB-1-202643>
- **The Teacher Development Programme** – providing support to Inservice teacher development (Output 1), Pre-service teacher development (Output 2) and Results and Evidence (Output 3), working in partnership with relevant agencies at Federal level such as the UBE Commission, the National Commission for Colleges of Education (NCCE), the Teachers Registration Council of Nigeria (TRCN) and with 12 Colleges of Education (Federal and state), Ministries of Education and State Universal Boards for Basic Education (SUBEBs) in the 5 states of Katsina, Zamfara, Jigawa, Kano and Kaduna. Ends in Aug 2019. See www.tdpnigeria.org for approaches used and materials produced in TDP. Also see <https://devtracker.FCDO.gov.uk/projects/GB-1-202942>

FCDO Centrally Managed Programmes (CMPs):

- **Girls Education Challenge** phase 2. Two projects in Nigeria (i) Educating Nigerian Girls in New Enterprises (**ENGINE**) – supporting 18,000+ adolescent girls in Kano, Kaduna, FCT and Kaduna states; (ii) **Discovery Girls, Fitila** – providing support to improved teaching and learning and community engagement in 500 schools in Kano – See <https://girlseducationchallenge.org/#/>. Both of these projects completed in late 2020.
- **Education Research in Conflict and Protracted Crisis (ERICC)** – A new FCDO central research programme. Nigeria is a focal country and there will be research in North East Nigeria. See <https://devtracker.FCDO.gov.uk/projects/GB-GOV-1-300405>
- **Research on Improving Systems of Education (RISE)** - To deliver high quality evidence and increase the knowledge base of education specialists and partner governments in developing countries, to promote more effective education systems reform, directly resulting in better learning for all children, with a particular focus on girls. Nigeria became a RISE focal country in 2019 – see <https://devtracker.FCDO.gov.uk/projects/GB-1-204322> and www.riseprogramme.org/

Global initiatives which UKAid contributes to

- **Global Partnership for Education** – Nigeria benefitted from a first grant of USD100m, in the form of the Nigeria Partnership for Education Project (NIPEP) which will end in 2020. Nigeria second grant from the GPE (known

as Nigeria GPE2) has recently been approved. FCDO is the Coordinating Agency for this. See www.globalpartnership.org

- **World Bank Better Education Service Delivery (BESDA)**, funded through the WB International Development Association (IDA) - a USD611 million Programme for results (P4R) credit to Nigeria, aiming to bring out-of-school children into the classroom (Results Area 1), improve literacy (Results Area 2), and strengthen accountability for results in basic education (Results Area 3). Results Area 1 and 2 are focused on the 13 states of North West and North East Nigeria plus the 4 states most affected by Out of School children in the other 4 geopolitical areas. Results Area 3 covers national. See <http://projects.worldbank.org/P160430?lang=en>

Programmes of Other Development partners in basic education (not EiE)

- **USAID's Northern Education Initiative Plus** – provides support to improve planning and management, Hausa and English early grade reading in Bauchi and Sokoto states, support to non-formal schools and support to communities (to end in 2020). See <http://neiplus.com/>

The contract will also need to be aware of and ensure any necessary linkages with other FCDO Nigeria funded programmes in health, governance, social development, economic and other

a. LAFIYA: UK support for health in Nigeria

To save lives, reduce suffering and improve economic prospects for the poorest and most vulnerable in Nigeria through: i. Encouraging Government of Nigeria to increase resources invested in health (through advocacy, community accountability; and data to inform government prioritisation using a “delivery” approach, as used successfully in Pakistan) ii. Improving effectiveness and efficiency of public and private basic health services (through innovative financing mechanisms, strengthening health systems and working with private sector to deliver affordable health services for the poorest populations) iii. Reducing total fertility rate (through addressing social norms, demographic impact analysis, and support to family planning commodities and services). See <https://devtracker.FCDO.gov.uk/projects/GB-GOV-1-300495>

b. Partnership to Engage, Reform and Learn (PERL)

The Partnership to Engage, Reform and Learn (PERL) is a five-year governance programme (ending 2021). Its objective is to support governments of Nigeria (at Federal, State and Local Government level) to reform core governance processes (making, implementing, tracking and accounting for policies, plans, and budgets) and to ensure that these improvements feed through into the improved delivery of public goods and services.

PERL is made up of three pillars that plan and work closely together:

- ARC (Accountable, Responsive and Capable Government), managed by DAI, works with Nigerian governments to develop more systematic, transparent, responsive and accountable core governance processes. It assists governments to work with citizens to identify and address governance blockages to the effective delivery of services.
- ECP (Engaged Citizens), managed by Palladium, works with a wide and inclusive range of citizen groups and representatives, the media, and politicians. It supports these partners to bring citizens' priorities to the attention

of government in an effective way and hold government to account for the implementation of policy and budget commitments.

- iii. LEAP (Learning, Evidencing and Advocacy Partnership), managed by ICF, works to strengthen the evidence base for reform by creating demand for, generating and encouraging the use of evidence to inform discussion and decision-making on public sector reform.

PERL's work locations follow FCDO's geographical footprint in Nigeria. PERL works at the Federal/national level; in Kaduna, Kano and Jigawa states as partner states; in regional hubs in the South East and South West facilitating the sharing of good practices between states; and in the North East, supporting government and non-government partners in Borno and Yobe states with the coordination of recovery efforts. More information about PERL is available from <https://devtracker.FCDO.gov.uk/projects/GB-1-204822/documents>

PERL's approach to service delivery and working with sector programmes is set out below:

- i. PERL recognises that demonstrating the link between governance reforms and improved delivery to citizens is critical. This recognition is at the heart of PERL's work on tackling service delivery problems.
- ii. PERL will not be engaged in front-end service delivery but will be concerned with addressing bottlenecks in governments' delivery systems that affect service delivery.
- iii. Facilitating partnerships with sector programmes in order to facilitate engagement between appropriate constituencies to identify and help address critical problems that relate to governance failures. In particular, it is anticipated that these problems will relate to how governments organise their evidence-informed policymaking, budgeting, planning, implementation, human resource management, performance management and how citizens engage with these processes.
- iv. PERL offers sector programmes and their partners critical expertise and support in these areas, based on their experience, cutting edge international and Nigerian (local) evidence, learning from previous governance programmes (SPARC, SAVI) and adaptations.

The PLANE contract will be expected to collaborate with PERL and any successor FCDON public sector reform or/and accountability programme in areas including (a) budgeting and planning (b) public sector management (c) citizen participation and support to accountability, and (d) political economy analysis.

c. NENTAD: (update with reference to EiE)

The North East Nigeria Transition to Development Programme (NENTAD) is FCDO Nigeria's humanitarian and transition programme, delivering food security, nutrition, education in emergencies, protection and multi-sector interventions in the North-East of Nigeria. The PLANE contract is expected to engage with the implementers of FCDON's EiE interventions (under PLANE Output 5) and other implementers for the NENTAD programme where appropriate to ensure effective lesson learning. For example, NENTAD has used third party monitoring and has carried out a Disability Audit. More information about NENTAD is available from <https://devtracker.FCDO.gov.uk/projects/GB-GOV-1-300432/documents>.

d. Social protection programmes

The Child Development Grant Programme, CGD (nutrition and cash transfer) programme ended its first phase in 2019 and has been extended. The extension focuses on providing technical assistance to government in implementing Federal and State social protection programmes, policies and systems, and supporting civil society advocacy and engagement on social protection. FCDO are also supporting the Federal Government of Nigeria's cash transfer programme through technical assistance delivered by and through the FCDO's Governance Partnership Facility with the World Bank. The GPF is currently due to end in 2021, but discussions regarding extension of the fund are underway. See <https://devtracker.FCDO.gov.uk/projects/GB-1-202978>

e. Working to Improve Nutrition in Northern Nigeria programme (WINNN)

The Working to Improve Nutrition in Northern Nigeria programme (WINNN) aims to reduce child undernutrition and mortality in Northern Nigeria, by delivering evidence-based, cost-effective nutrition interventions through routine health services and improving government leadership and financial commitment to nutrition. The programme worked in Kebbi, Katsina, Zamfara, Yobe and Jigawa. See <https://devtracker.FCDO.gov.uk/projects/GB-1-201874/documents>.

f. Sanitation, Hygiene, Water and Sanitation phase 2 (SHAWN2)

The Sanitation, Hygiene, Water and Sanitation phase 2 (SHAWN2) programme is working to scale-up water, sanitation and hygiene coverage in Nigeria by providing 4.68 million new beneficiaries plus continued support to 2.32 million covered under Phase 1, with access to appropriate and safe sanitation facilities, hygiene education activities and a sustainable safe and reliable water supply to reduce exposure to public health risks and disease transmission. The programme works in eight states – Kaduna, Kano, Bauchi, Benue, Katsina, Zamfara, Yobe, Jigawa – in northern Nigeria. More information about the programme is available from <https://devtracker.FCDO.gov.uk/projects/GB-1-202977/documents>

g. Nutrition and WASH programmes

Both WINNN and SHAWN are likely to end in March 2021. It is possible that these will be succeeded by a new integrated nutrition, water and sanitation programme currently under design. Key areas of collaboration between PLANE and WINNN / SHAWN and any potential new nutrition / WASH programme include:

- i. Collaboration in raising the political profile of human capital investments (including nutrition and WASH) through advocacy, media and the smart use of data.
- ii. Addressing social norms, such as early marriage, that disempower women and limit education and other opportunities for girls.
- iii. Budgeting and expenditure on human capital, in collaboration with the PERL programme.

h. LINKS

LINKS- Powering Economic Growth in Northern Nigeria is a 7-year (2018-25) £70m project that will support pro-poor business growth and investment in Kano, Kaduna and Jigawa. While LINKS will focus on agriculture, renewable energy and ICT, it will also be “providing an investment supporting role where genuine commercial opportunities are identified”, and it has the flexibility to develop work in market sectors where there is significant pro-poor potential. It will have a strong regulatory, research, and advisory role. If an opportunity is identified to attract major investment into the target states in the education sector (for example), LINKS could provide an advisory

supporting role. More information about LINKS is available at <https://devtracker.FCDO.gov.uk/projects/GB-GOV-1-300028/documents>.

Annex D - Strategic Relationship Management (SRM) Performance Scorecard

The FCDO uses a SRM scorecard to assess the performance of projects managed by Key Suppliers on a quarterly or six-monthly basis. These assessments should be carried out in line with routine programme management.

Performance Category		Category Weighting	ID	KPI Name	Criteria	Score (1-7)	Weighted Score	Scored by
1	Flexibility & Ease of Doing Business (contract/agreement management)	10%	1A	Responsiveness	Degree to which the supply partner's management team quickly responds and adapts to changing contexts or requests			
			1B	Quality of Reporting	Degree to which reports provided by the supply partner are timely, accurate, concise and reflective of business needs. Includes aggregated data and financial reporting.			
						Category Total	0.00	
2	Delivery & Support	20%	2A	Adherence to Schedule	Degree to which contract and agreed deliverables are completed within agreed schedule.			
			2B	Communications with DFID programme team	Degree of effective communication.			
						Category Total	0.00	
3	Quality	20%	3A	Deliverable Quality	Agreed and defined deliverables are completed with a high level of quality, professionalism, and attention to detail			
			3B	Personnel	Performance of team (including team leader) and appropriate level of expertise / skill level of personnel allocated to the			
						Category Total	0.00	
4	Value for Money	15%	4A	Adherence to budget	% variance of project delivery in comparison to budget / estimate or expectations.			
			4B	Value for Money	Degree to which the supply partner is able to maximise value for money.			
						Category Total	0.00	
5	Partnership, Innovation and Improvement	20%	5A	Innovation & Innovative Solutions	Degree to which the supply partner proactively provides valuable, innovative and flexible solutions. Where appropriate implements measures to drive process efficiencies.			
			5B	Knowledge Sharing & Lessons Learned	The supply partner actively captures and shares lessons learnt (including undertaking appropriate evaluations relevant for the programme and country context) and acts upon			
			5C	Collaboration	The supply partner has sought out collaborations with other supply partners and partners and delivers effectively with other			
			5D	Responsiveness to Feedback	The supply partner has taken on board feedback from the last reporting period, due diligence review findings, annual review findings, audit report findings and Performance Improvement Plan (PIP).			
						Category Total	0.00	
6	Risk & Compliance	15%	6A	Compliance	Degree to which supply partner is compliant with DFID terms and conditions, including fraud reporting, audit and information security requirements etc.			
			6B	Delivery Chain Mapping	The supply partner has mapped its supply chain and has actively identified and managed downstream risks.			
			6C	Transparency	Degree to which the supply partner adheres to transparency requirements (SMART rule 5)			
			6D	Risk Management	Strength and implementation of procedures to identify and manage project risks, including fraud.			
						Category Total	0.00	

SRM Scoring Methodology

Performance Key	1	2	3	4	5	6
Serious Underperformance	0.00 - 2.99	0.00 - 4.99	0.00 - 4.99	0.00 - 3.99	0.00 - 4.99	0.00 - 3.99
Underperformance	3.00 - 4.99	5.00 - 9.99	5.00 - 9.99	4.00 - 6.99	5.00 - 9.99	4.00 - 6.99
Good Performance	5.00 - 6.99	10.00 - 14.99	10.00 - 14.99	7.00 - 9.99	10.00 - 14.99	7.00 - 9.99
Exceeding Performance	7.00 - 9.99	15.00 - 19.99	15.00 - 19.99	10.00 - 14.99	15.00 - 19.99	10.00 - 14.99
Outstanding Performance	10.00	20.00	20.00	15.00	20.00	15.00

Scoring Methodology	Score
Serious Underperformance Consistently below requirements	1
Underperformance Often below requirements	2
Less than Satisfactory Sometimes performs below requirements	3
Satisfactory Meets requirements	4
Good Performance Meets and sometimes exceeds requirements	5
Exceeding Performance Meets and often exceeds requirements	6
Outstanding Performance Consistently exceeds requirements	7

Annex E – Duty of Care Risk Assessment

Summary Risk Assessment Matrix

Project/intervention title: Partnership for Learning for All in Nigeria, PLANE contract

Date of assessment: 08/08/2019

Theme	FCDO Risk score	FCDO Risk score
	Abuja	Kano, Kaduna, Jigawa
OVERALL RATING ³¹	2	3
FCO travel advice	2	4
Host nation travel advice	Not available	Not available
Transportation	2	3
Security	2	3
Civil unrest	2	3
Violence/crime	2	3
Terrorism	1	3
War	1	1
Hurricane	1	1
Earthquake	1	1
Flood	1	1
Medical Services	2	2
Nature of Project/ Intervention	1	2

1 Very Low risk	2 Low risk	3 Med risk	4 High risk	5 Very High risk
Low		Medium	High Risk	

³¹ The Overall Risk rating is calculated using the MODE function which determines the most frequently occurring value.