



# Foreign, Commonwealth & Development Office

## CONTRACT FOR SUPPLIER SERVICES

### Section 1 - FORM OF CONTRACT

**CONTRACT FOR :** Forest Governance, Markets and Climate Phase 2 – Technical Assistance Portfolio Manager (TAPM)  
**REFERENCE NUMBER:** ecm\_7702

#### 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:** **Palladium International Limited** whose principal place of business, or, where the Supplier is a company, whose registered office is situate at 16<sup>th</sup> Floor, HYLO, 105 Bunhill Row, London, EC1Y 8LZ ("**Supplier**")

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

#### WHEREAS:

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

#### IT IS HEREBY AGREED as follows:

##### 1. Documents

This Contract shall be comprised of the following documents:

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

##### 2. Contract Signature

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

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

##### 3. Commencement Date and End Date of Initial Period

The Services shall commence on 4 August 2025 and the end date of the Initial Period shall be 4 August 2029 .



# Foreign, Commonwealth & Development Office

## 4. Financial Limit

Payments under this Contract shall not, in any circumstances, exceed £75,000,000 exclusive of UK Value Added Tax, if applicable, but inclusive of any other government tax, if applicable.

## 5. Programme Name

The Programme Name to which this Contract relates is Forest Governance, Markets and Climate.

## 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: REDACTED

Position: REDACTED

Signature:

Date:


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

Name: REDACTED

Position: REDACTED

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 variations 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](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](http://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](mailto: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. In the event of the Controller reasonably rejecting Protective measures put in place by the Processor, the Processor must propose alternative measures to the satisfaction of the Controller. Failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures. Protective Measures must take 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 UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
  - a. the destination country has been recognised as adequate by the UK Government in accordance with Article 45 UK GDPR or section 74 of the DPA 2018
  - b. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or section 75 DPA 2018) as determined by the Controller
  - c. the Data Subject has enforceable rights and effective legal remedies;
  - d. 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
  - e. 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 (immediately?) 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 The Processor's obligation to notify under clause 33.2.5 shall include the provision of further information to the Controller, as details become available

33.2.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under 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.

33.2.8 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 UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
- c. the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

33.2.9 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.

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

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

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

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

33.2.13 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).

33.2.14 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 UK GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK 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 UK 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 International Development Partnership, Progress Prosperity logo (UK Dev 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 International Development – Partnership, Progress Prosperity" logo ('UK Dev logo') in accordance with FCDO standards for use of the UK Dev 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 Dev Logo. The Supplier shall include reference to this in its progress reports and annual reviews.

- 34.2.4 may use the UK Dev 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](mailto: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 the FCDO Investigations Department at [reportingconcerns@fcdo.gov.uk](mailto: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 <sup>st</sup> 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;

**“Agreement”** means this contract

**“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.

**“Contractor”** [to be completed as appropriate]

**“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 UK GDPR.

**“Customer”** [to be completed as appropriate]

**“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 Protection Legislation”** (i) all applicable UK law relating to the processing of personal data and privacy, including but not limited to the UK GDPR, and the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and (ii) (to the extent that it may be applicable) the EU GDPR). The UK GDPR and EU GDPR are defined in section 3 of the Data Protection Act 2018.

**“Data Protection Impact Assessment”**: an assessment by the Controller carried out in accordance with Section 3 of the UK GDPR and sections 64 and 65 of the DPA 2018.

**“Data Subject Request”**: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to 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);

**"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"** takes the meaning given in Article 26 of the UK GDPR;

**“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;  
means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, regulation, order, regulatory policy, mandatory guidance or code of practice, judgement of a relevant court of law, or directives or requirements with which the Processor is bound to comply;

**“Law enforcement processing”** means processing under part 3 of the DPA

**“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 designed to ensure compliance with obligations of the Parties arising under Data Protection Legislation and this Agreement, 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 including those outlined in Schedule [x] (Security).

**“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;

**“UK GDPR”** means the UK General Data Protection Regulation

**“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:

<b>“Admission Agreement”</b>	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;
<b>“Eligible Employee”</b>	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement;
<b>“Fair Deal Employees”</b>	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);
<b>“Former Supplier”</b>	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);
<b>“New Fair Deal”</b>	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;
<b>“Notified Sub-Contractor”</b>	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;
<b>“Replacement Sub-Contractor”</b>	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);
<b>“Relevant Transfer”</b>	a transfer of employment to which the Employment Regulations applies;
<b>“Relevant Transfer Date”</b>	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
<b>“Schemes”</b>	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;
<b>“Service Transfer”</b>	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;
<b>“Service Transfer Date”</b>	the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;

<b>"Supplier's Final Supplier Personnel List"</b>	a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Service Transfer Date;
<b>"Supplier's Provisional Supplier Personnel List"</b>	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;
<b>"Transferring FCDO Employees"</b>	those employees of FCDO to whom the Employment Regulations will apply on the Relevant Transfer Date;
<b>"Transferring Former Supplier Employees"</b>	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
<b>"Transferring Supplier Employees"</b>	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 £10,000 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 £10,000,000 in respect of any one occurrence, the number of occurrences being unlimited, but £10,000,000 any one occurrence and in the aggregate per annum in respect of products and pollution liability.

#### **4.TERRITORIAL LIMITS**

4.1.1 Global

#### **5.PERIOD OF INSURANCE**

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

#### **6.COVER FEATURES AND EXTENSIONS**

6.1 Indemnity to principals clause.

#### **7.PRINCIPAL EXCLUSIONS**

7.1 War and related perils.

7.2 Nuclear and radioactive risks.

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

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

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

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

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

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

## **8. MAXIMUM DEDUCTIBLE THRESHOLD**

8.1 Not to exceed £0 for each and every third party property damage claim (personal injury claims to be paid in full).

## **PART B: PROFESSIONAL INDEMNITY INSURANCE**

### **1.INSURED**

- 1.1 The Supplier

### **2.INTEREST**

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

### **3.LIMIT OF INDEMNITY**

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

### **4.TERRITORIAL LIMITS**

- 4.1 Global

### **5.PERIOD OF INSURANCE**

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

### **6.COVER FEATURES AND EXTENSIONS**

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

### **7.PRINCIPAL EXCLUSIONS**

- 7.1 War and related perils
- 7.2 Nuclear and radioactive risks

### **8.MAXIMUM DEDUCTIBLE THRESHOLD**

- 8.1 Not to exceed £0 each and every claim.



## **PART C: UNITED KINGDOM COMPULSORY INSURANCES**

### **1.GENERAL**

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

## **SCHEDULE 4: TENDER**

### **1. GENERAL**

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

APPENDIX A. CONTRACT AMENDMENT LETTER

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

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

File Ref: [  
Date: [

Contract Amendment No: [

CONTRACT FOR: [

CONTRACT NUMBER: [

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

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

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

Name: [

Position:

Signature:

Date: [

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

Name: [

Signature:

Date:



## Foreign, Commonwealth & Development Office

### FCDO Supply Partner Code of Conduct

#### **Principles**

The 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 priorities<sup>1</sup>**
- ✓ **Demonstrate commitment to wider HMG priorities<sup>2</sup>**

#### **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 the 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. The 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

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

<sup>2</sup> <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 and any suspicions/allegations/concerns which relate to safeguarding to the FCDO Investigations Department at [reportingconcerns@fcdo.gov.uk](mailto:reportingconcerns@fcdo.gov.uk) or on +44(0)1355 843747.

### **3. Transparency and Delivery Chain Management**

Key Performance Indicators KPI 3 a – f

The 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.

The 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 the 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' mailbox<sup>3</sup> 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)<sup>4</sup>
- ✓ Supply Partners shall adhere to HMG prompt payment policy and not use restrictive exclusivity agreements with sub-partners.

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

<sup>4</sup> <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 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 the 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 Initiative<sup>5</sup>).

#### **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 Scheme<sup>6</sup>. 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 Development<sup>7</sup>, 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

<sup>5</sup> <https://eiti.org/>

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

<sup>7</sup> <http://digitalprinciples.org/>

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 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 Compact<sup>8</sup>;
- ✓ Practices in line with the International Labour Organisation (ILO) 138<sup>9</sup> and the Ethical Trading Initiative (ETI) Base Code<sup>10</sup> 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.

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

<sup>9</sup> [http://ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C138](http://ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138)

<sup>10</sup> <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 the 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, the 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 the FCDO during Contract mobilisation.

<b>Contract Checks and Compliance KPIs</b>		<b>KPI target</b>	<b>Specific Contractual link</b>	<b>Checking mechanism</b>
<b>i.</b>	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
	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
<b>1.</b>	<b><u>VfM and Governance standards</u></b>			
<b>a)</b>	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>b)</b>	VfM being maximised over the life of a contract <ol style="list-style-type: none"> <li>1. By confirmation of annual profit level fluctuations since tender submittal</li> <li>2. by timely identification and resolution of issues</li> <li>3. ensuring lessons learned are shared</li> </ol>	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"> <li>Tax the organisation paid on profits made in the last 3 years, and in which countries</li> <li>Compliance with relevant country level tax regulations fully understood and met</li> </ul>	Annually updated documentation submitted by contracted supplier and on behalf of delivery chain partners	Terms and Conditions Clauses 15, 23 & 24  Terms of reference	Annual return  Compliance checks
2.	<u>Ethical Behaviour</u>			
a)	Recruitment policy (which must address circumstances where there may be potential or actual conflict of interest)	Updated policy documentation submitted once annually by contracted supplier and on behalf of delivery chain partners	Terms and Conditions Clauses 6, 51 & 54	Annual return Compliance checks
b)	Ongoing conflict of interest, mitigation and management	As 2a. above	Terms and conditions Clause 54	Annual return Compliance checks
c)	Refresher ethical training and staff updates (including disclosure restrictions on FCDO confidential information)	Copy of training logs provided Delivery in accordance with training programme in place	Terms and conditions Clause 6, 29, 51 & 54	Annual return Compliance checks
d)	A workforce whistleblowing policy	Continuous workforce awareness maintained Policy in place	Terms and Conditions Clause 48	Annual return Compliance checks
e)	1. Procedures setting out how, staff involved in FCDO funded business, can immediately report all suspicions or allegations of aid diversion, fraud, money laundering or counter terrorism finance or any suspicions/allegations/concerns which relate to safeguarding to the Investigations Department at <a href="mailto:reportingconcerns@fcdo.gov.uk">reportingconcerns@fcdo.gov.uk</a> 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	Details submitted as applicable	Terms and Conditions Clause 48  HMG <a href="#">business</a>	Annual return Compliance checks  Contract management

	must provide proof of compliance with the HMG approval requirements under the <a href="#">business appointment rules</a>		<a href="#">appointment rules</a>	
<b>3.</b>	<b><u>Transparency and Delivery Chain Management</u></b>	Updated documentation submitted once annually	Contract Terms and Conditions Clause 28	Tender evaluation  Periodic spot checks Compliance checks
<b>a)</b>	IATI compliance for Supply Partner and their delivery chain Supply Partners			
<b>b)</b>				
<b>c)</b>	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
<b>d)</b>	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
<b>e)</b>	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
<b>f)</b>	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
<b>4.</b>	<b><u>Environmental Issues</u></b>			
<b>a)</b>	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>b)</b>	Published annual environmental performance reports <b><u>Net zero by 2050 tracking</u></b>	Updated documentation submitted once annually	Contracts ToRs	Periodic and annual return spot checks
<b>5.</b>	<b><u>Terrorism and Security</u></b>			
<b>a)</b>		Updated documentation submitted if and	Standard Selection Questionnaire (SSQ)	Annual return Spot checks Compliance checks

	Up to date status declaration regarding the reporting of terrorist offences or offences linked to terrorist activities or financing	when changes identified since tender submittal		Annual contract review
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 the 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.	<b><u>Safeguarding, Social Responsibility and Human Rights</u></b>			
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	Updated documentation submitted annually	Contract T&Cs Clause 50	Annual return  Compliance checks

	<p>Rights and Safeguarding reflecting UN Global Compact Principles 1 &amp; 2</p> <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>Updated documentation submitted if and when changes identified since tender submittal</p> <p>Updated documentation submitted annually</p>		<p>Annual checks Compliance checks</p> <p>Tender evaluation 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			
<b>1.</b>	<b><u>VfM and Governance standards</u></b>					
<b>a)</b>	Evidence of how economic and governance policies work in practice	X	O			
<b>b)</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			
<b>c)</b>	<b><u>Tax Declaration (HMRC format)</u></b>					
	Comply with all tax requirements	X	X			
<b>2.</b>	<b><u>Ethical Behaviour</u></b>					
<b>a)</b>	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 or any suspicions/allegations/concerns which relate to safeguarding to the Investigations Department (CFWU) at <a href="mailto:reportingconcerns@fcdo.gov.uk">reportingconcerns@fcdo.gov.uk</a> 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.	<b><u>Transparency and Delivery Chain Management</u></b>					
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.	<b><u>Environmental Issues</u></b>					
a)	Environmental risks identified (e.g. by maintaining a risk register) with formal context specific environmental safeguarding policies in place	X	O			
b)	Annual published environmental performance reports Net zero by 2050 tracking in place	X	O			
5.	<b><u>Terrorism and Security</u></b>					
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 the 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.	<b><u>Safeguarding, Social Responsibility and Human Rights</u></b>					
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 Current membership of ETI	X O	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			
	2.Numbers and details of organisational safeguarding allegations reported	X	X			
	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)	X	O			

### 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

## TERMS OF REFERENCE

### FOREST GOVERNANCE MARKETS & CLIMATE – Phase 2 (FGMC2) TECHNICAL ASSISTANCE PORTFOLIO MANAGER (TAPM) Start 2025 - End 2029

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## Key Acronyms

BC	Business Case
FCDO	Foreign, Commonwealth Development Office
FGMC	Forest Governance, Markets and Climate
GESI	Gender Equality and Social Inclusion
ICF	International Climate Finance
KPIs	Key Performance Indicators
MEL	Monitoring, Evaluation and Learning
ODA	Official Development Assistance
PMSST	Programme Management, Strategy and Support Team
TA	Technical Assistance
TAPM	Technical Assistance Portfolio Manager
TOR	Terms of Reference
VfM	Value for Money

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# Part 1 – Requirements

## A. Introduction and overview of FGMC2

1. **The aim of the Forest Governance, Markets and Climate (FGMC2) programme** is to reduce the illegal and unsustainable use of forest resources, while benefitting poor, forest-dependent people, especially Indigenous People and Local Communities. It promotes sustainable growth in developing countries, supporting them to trade their way out of poverty by changing the way forest products are bought and sold across the globe, establishing forest stewardship to reverse forest and biodiversity decline.
2. FGMC2 builds on a successful first phase (FGMC1: £280m, 2011-24) which provided evidence and strong foundational partnerships that drove governance reforms and improved forest stewardship. **FGMC2 doubles the ambition to a £500m 10-year Business Case with an initial phase running from 2024-2029 with a total value of £220m.** Ministers will be asked to approve the remaining second phase based on satisfactory progress.
3. **FGMC2's programme vision is that by 2035** there will be no major international outlets for illegal forest material and that regional and domestic trade in illegal forest products will be significantly reduced. Rights for local communities and Indigenous People will be clarified and respected, and sustainable multiple use forest management practices that incorporate carbon values will be operational in the productive forest areas across 16 partner countries, representing over 360million ha of primary forests (roughly 40% of tropical forests)<sup>1</sup>.
4. It will contribute to deliver the Glasgow Leaders Declaration's ambition to halt and reverse forest loss by 2030 and the FCDO's White Paper commitments to tackle illegality in trade and secure forest tenure reforms including in SE Asia, the Congo Basin and the Amazon.
5. The programme focus is on **forest land stewardship** establishing governance arrangements and rules-based systems (outcomes) and the changed behaviour of key actors as a result of the implementation and enforcement of those rules (impact). The ultimate benefits to forest, environment and people are captured at the super-impact level.
6. FGMC1 experience demonstrates the importance of **robust governance foundations** if lasting change is to be secured. These foundations enable a fair and formal set of rules and system reforms that underpin the distribution of forest benefits. In particular, they must recognise the rights of Indigenous People and Local Communities (IPLCs) as well as the urgency of addressing the threats to climate, eco-system services and biodiversity from mismanagement of forests. They must be credibly enforced and overseen through independent monitoring, effective traceability systems, and transparent government and business processes that reduce the scope for corruption and elite capture.
7. **The challenge for FGMC2** is to take forward this tried and tested approach into new countries and to address new threats to forests, including forest conversion, biodiversity loss, illegal mining and the new incentives (and challenges) created by carbon markets.
8. The programme will be delivered through three interlinked components:
  - **Component I: Partnerships with tropical producer countries for national scale forest governance reforms (£136m/ 5yr; £305m/ 10 years).** FGMC2 will provide

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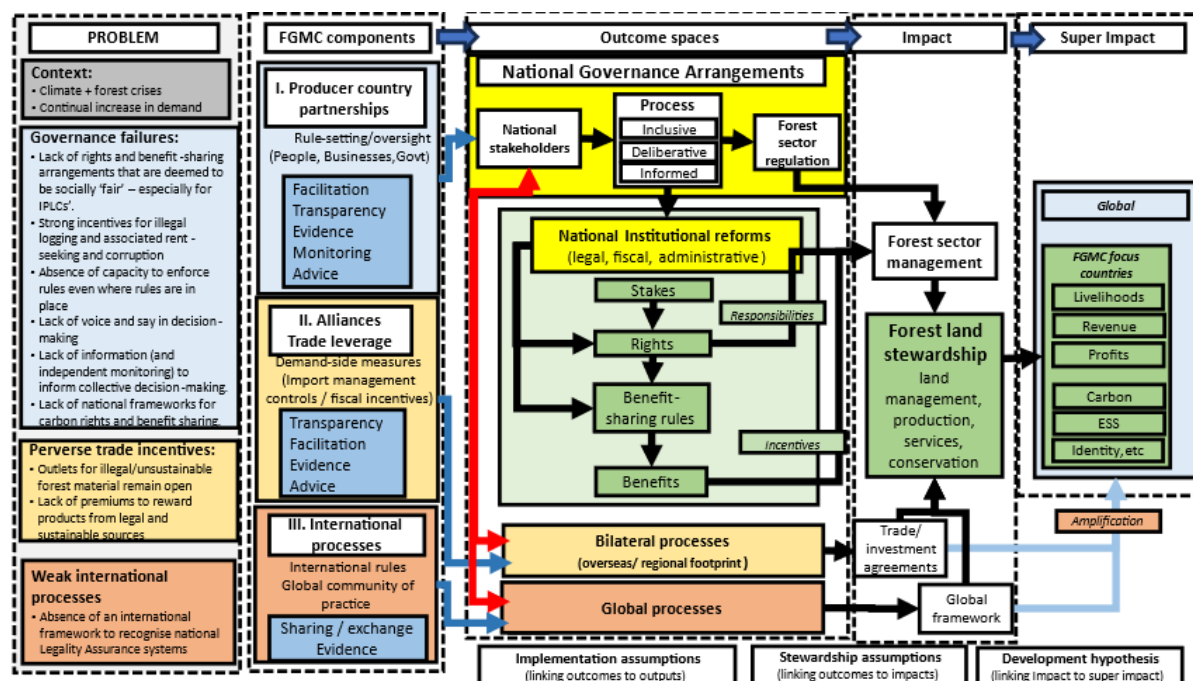
<sup>1</sup> Reflects the total area (millions of hectares) of primary forests an estimated 369m ha out 884m ha primary forests in 37 tropical countries, comprising Indonesia, PNG, Solomon Islands, Laos, DRC, Cameroon, Rep of Congo, Ghana, Liberia, Guyana and Gabon, Cote d'Ivoire, Thailand, Cambodia, Surinam, Bolivia (scoping is yet to begin in the latter)

support to establish national rules-based systems that ensure good forest land governance with a fair distribution of the costs and benefits (timber, agricultural commodities, mining, carbon and biodiversity payments) arising from the ownership and management of forest lands and their assets and accruing directly to forest owners and managers or indirectly as public goods. It will build from established partnerships under FGMC1, to sustain on-going reforms, or where new problems threaten forests, the process would focus on new governance challenges related to illegal agriculture and mining or forest carbon governance. It will also explore opportunities for new partnerships to take advantage of the replicable approach and significant demand. Budget provision would support engagement with up to 16 countries in total. Precise geographical scope will be finalised during inception and mobilisation phases but will include Indonesia, Ghana, Liberia, Republic of Congo, Guyana, Cameroon, Papua New Guinea, Solomon Isles, Laos and DRC. A further group of countries will be identified in the 2nd year of the programme following further scoping activity. Engagement will be phased, with a gradual increase in the number of new partnerships.

- **Component II: Forest footprint alliances with consumer markets** (£34m/ 5 yrs; £79m 10yrs). FGMC2 will support building of alliances with key consumer countries, China, Vietnam, Malaysia and India (“Alliance countries”) for sustainable forest footprints to reduce the negative impacts on forests and poor people from risky investments, and will promote responsible business practices in partner consumer countries. The focus of this component is generating the evidence and understanding to inform consumer market policies that support and incentivise the governance reforms of producer countries. The ambition is to close markets to trade in illegal and unsustainable forest products through effective import management regulations, public and private procurement policies and recognition, and by rewarding trade from countries with effective forest governance systems in place. This component will identify market “pull” from partner countries and will likely include engagement with major processing and consumer hubs, notably EU, China, India, Vietnam.
  - **Component III: Global forest governance.** (£33m 5 years, £81m 10 years). This component will seek to shape international market norms and initiatives, support policy engagement that catalyses change in international markets and global forest governance, encourage positive international frameworks to prohibit trade in illegal material and incentivise national forest stewardship through rules that place governance at the heart of schemes/ investment strategies. Action will be supported through accountable grants which support non-government organisations who are working to sustain global forests through policy action (e.g. think tanks, advocacy groups, trade associations) who are encouraged to form coalitions to inform pertinent international policy and initiatives aligned to FGMC2 objectives. Through the establishment of an International Forest Governance Hub, independent advice will be provided to developing forest countries, enabling FGMC partners to draw on their experience and encourage other countries in their efforts to strengthen forest governance, thereby amplifying FGMC2 outcomes and impacts. This will also create a mechanism that allows for pooling of donor resources further amplifying potential impact.
9. The intervention logic is depicted through an overarching **Theory of Change** (Figure 1 below). In a nutshell the intervention logic is that: national, multi-stakeholder deliberative processes (Output) will result in a consensus interpretation of the rules (forest laws, norms, institutions etc) that govern the forest sector (Outcome) which will be enforced effectively and fairly (Impact) and, in turn, lead to benefits for People, the Forests and the Planet (Super Impact).’ To secure results at scale, consumer markets (including carbon) must address

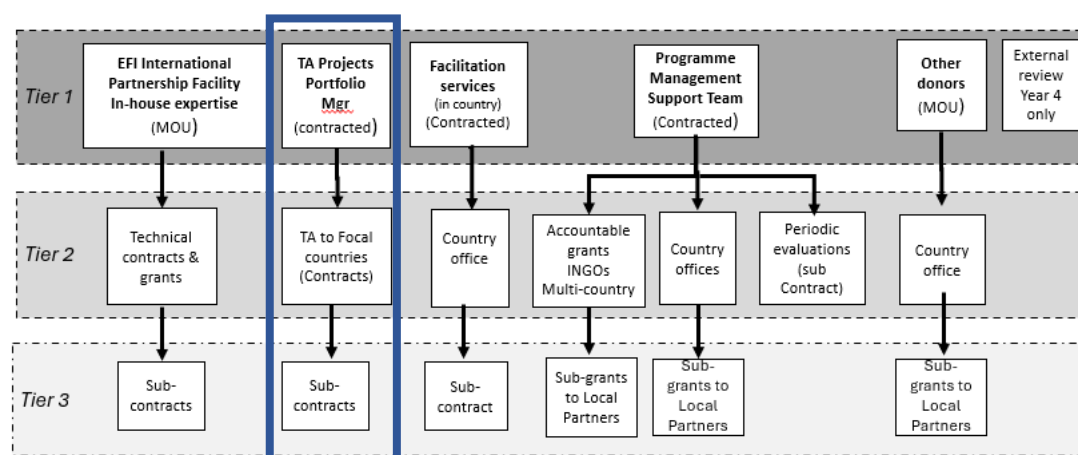
demand through the rules governing their forest footprint and global norms established through international processes seeking to safeguard forests.

Figure 1 - Overarching Theory of Change



10. The programme will use a similar format to the first phase, which demonstrated the right mix of agility and soft diplomacy to build strong trusting relationships and drive change. It will be delivered through a mix of facilitation and technical assistance (TA) contracts, accountable grants, and expertise (see programme governance in figure 3 below). Building on the proven model of FGMC1, the programme will be delivered through three service provider contracts and a limited number of MOU grant agreements with strategic international partners, some of which will enable us to work with other donors and engage directly in international policy initiatives. Coherence across the three components of the programme will be achieved through the coordination, monitoring and planning role envisaged for an outsourced Programme Management, Strategy and Support team (PMSST). The PMSST will be responsible for programme-wide MEL and developing the country-specific strategies that will define the needs for Technical Assistance under this Portfolio Manager contract. This builds on the successful approach to delivery under FGMC1.
11. FGMC2 will be delivered via five delivery instruments set out in figure 2 below. The 3 components outlined above will be delivered through the coherent implementation of a combination of these delivery instruments, dependent upon context.

Figure 2 - FGMC2 delivery instruments.



## B. Objectives

12. The objective is to establish a Technical Assistance Portfolio Management service (TAPM). A TAPM Contract Supplier will directly mobilise, or commercially source, contract and oversee projects that provide technical assistance in support of forest governance reform processes. A Portfolio Management Core Team will be responsible for the smooth running of the TAPM service but not the delivery of the TA projects. These projects will help FGMC partner countries develop forest policies and institutional arrangements that deliver accountable forest stewardship or improve forest footprints associated with international trade in alliance countries, contributing to Components 1 and 2 of the programme.

## C. The Client, Recipients, and Beneficiaries

13. The **client** of the TA Portfolio Management service is the UK Foreign, Commonwealth and Development Office (FCDO) in support of UK government partnerships with countries seeking to strengthen forest stewardship.
14. The intended **recipients** of the individual TA projects are the Governments seeking to reform their governance systems in order to manage their forests sustainably or to reduce their forest footprints in producer countries, and other citizens engaged in ensuring effective law enforcement and accountability in the FGMC partner countries. The ultimate **beneficiaries** are the forest communities and small businesses working in forests and other citizen's whose livelihoods depend on forests.
15. TA projects will support different recipients in different countries, depending on context and need. This will be decided and developed in an agile, evidence-based and context-specific way. The needs will be assessed by the FGMC Core Team (FCDO programme team and the PMSST) based on discussions with and asks from country partners.
16. Because of FGMC's flexible approach, the direct beneficiaries of TA activities will be identified in response to need identified in forest governance reform processes and targeted where FGMC support adds greatest value compared to other initiatives.



## D. Scope of Work

17. The TA Portfolio Manager (TAPM) Contract Supplier will be expected to directly mobilise or procure and administer a portfolio of roughly 8-13 modest TA projects (of approximately £2m-£8m each in value generally of a multi-year duration) on behalf of FCDO responding to country-specific demand that is identified by FGMC's core team (FCDO+PMSST) and national stakeholders. In agreement with FCDO after consultation with partner governments the TAPM Contract Supplier will directly deliver TA projects where expertise and capacity are demonstrated in project intervention proposals to meet specific TOR. In other contexts, the Portfolio Management Core Team will procure and subcontract from the market, especially where local organisations are indicated by preference.
18. The TAPM Contract Supplier will ensure rapid mobilisation of TA projects – with a target of 2 months from the point at which specific TA Project's ToR are approved, unless it has been agreed with FCDO that a longer timeframe is required. In contexts where the TA requirements make it necessary for the TAPM Contract Supplier to subcontract an alternative supplier, the TAPM will ensure rapid procurement and mobilisation – with a target of 3 months from the point at which specific project ToR are approved, unless it has been agreed with FCDO that a longer timeframe is required (i.e. where projects are particularly specialised or complex, and/or require close engagement of government in procurement. This is to ensure FGMC2 is able to respond quickly to emerging opportunities (see figure 2).
19. The TAPM Contract Supplier will be responsible for establishing due diligence procedures, financial and risk management systems and standard terms and conditions to ensure good management of public funds and value for money across the Portfolio of projects. The Portfolio Management Core Team will be responsible for oversight and monitoring performance of all TA projects and for managing sub-contracts and sub-contractor performance.
20. The scope of the TAPM service is wide ranging given the responsive nature of the programme. The TAPM Contract Supplier will mobilise flexible, demand-led technical assistance to FGMC partner countries. TA support will be targeted at government and non-government stakeholders engaged in national scale forest sector governance reforms (the nature of the TA and relevant domains are indicated below).

### The Nature of FGMC2 TA Projects

21. Depending on the local availability of expertise, the TAPM Contract Supplier will encourage the inclusion of national organisations and experts in the direct mobilisation or procurement of suppliers to deliver TA projects, which should help to reduce costs as well as ensure contextual knowledge. Based on experience from FGMC1, capable local TA service providers are available in many geographies.
22. Learning from the first phase of the programme, FGMC2 will operate under the following guiding principles for the delivery of effective technical assistance that supports dynamic governance reform processes:
  - **Country-led:** TA must respond to country demand, working with beneficiaries to establish governance arrangements that enables them to steer progress (see Box 1).
  - **Transformational:** FGMC aims to catalyse transformational shifts across the entire forest sector through changes to laws, policies and social norms combined with systematic monitoring.

- **Flexible:** FGMC works with a range of countries and supports different processes. TA to partner countries must be provided in as flexible and timely a way as possible, providing countries with choice depending on the needs they prioritise.
- **Complementary and additional:** the strategic country level dialogue and scoping led by the PMSST will identify opportunities and needs additional to the support provided by other donors.
- **Opportunities for learning:** FGMC prioritises monitoring, evaluation and learning, and looks to continuously improve and base its work on evidence of what works.
- **Sustainable beyond exit:** FGMC supports processes that build capacity and capability at an organisational and country level, leading to transformational wide-ranging governance reforms (ultimately reducing the dependency on external aid and financial support).

#### **Box 1 –Flexible and country-led – building on FGMC1 experience and practice**

Experiences derived from FGMC1 identified the importance of country owned and led processes. FGMC2 will continue this approach, delivering results through national processes and platforms. Consequently, the programme will need flexibility to adjust resources and activities in response to changing contextual factors across a range of countries and international markets. Country-level actions (mainly Component 1) will require an approach to design, delivery, management and monitoring which is explicitly adaptive and responds to the priorities identified through national stakeholder deliberations with reference to partner country governance). As the programme is explicitly focused on strengthening forest and market governance in countries with complex forest land and political contexts, it will need to scale up or scale down action as risks and opportunities arise. In addition, by working across all three of the major tropical forest basins, the programme aims to influence directly (in focal countries) and indirectly (through support to south-south learning, work through other donors, influencing international policy and markets). **Annex H of the business case** (partner country analysis and engagement) sets out the preliminary country-specific priorities as well as the process through which these will be developed with stakeholders.

#### **Likely domains of the TA projects:**

23. The TA needed to support forest governance reforms will vary between country contexts depending on the specific FGMC2 focus in a country, stakeholder capacities and interests, as well as the nature of support to the forest sector by other donors. For example, they may focus on:
- Supporting government capacity to regulate their forestry and forest land sectors, including that related to forest carbon markets and forest mining.
  - Supporting legal, regulatory and policy reforms related to forest land uses and related trade measures for imports from other forest countries.
  - Building traceability and compliance monitoring systems for forest products.
  - Supporting organisational development.
  - Building capacities of businesses, trade associations and of IPLC organisations and CSOs to engage in national and international policy development processes.
  - Building capacities of IPLC and CSOs for independent forest monitoring and developing approaches that enable SMEs to work with national regulatory systems.

24. **Annex A** provides an indication of the types of TA projects that are likely to be developed into Terms of Reference (ToRs) ready for direct mobilisation or competitive sub-contracting by the TAPM Contract Supplier on appointment.

#### **Box 2 – Examples of TA provided in FGMC1**

FGMC's TA support in **Liberia** focused in the beginning on rebuilding Liberia's forestry sector after the civil war. The establishment of Liberia's timber legality assurance system (TLAS) was supported including building capacities of core government services, especially that of the Forest Development Authority (FDA), including establishing FDA's Legality Verification Department. A web-based application has been developed, Libertrace, which is used by the FDA to monitor legality compliance of Liberia's forestry sector. Because of the devastating war, TA also supported the restoration of FDA's Headquarter and renovation of control posts in districts across the country.

The next phase of TA-support of FGMC focused on strengthening the effectiveness and sustainability of legal and governance reforms by building institutional checks and balances and greater accountability. This TA-project worked with a range of forest sector stakeholders in Liberia to support them in providing and demanding oversight and accountability in the sector: (1) Government services & agencies that hold the FDA to account on the regulation of forest production as enshrined in the VPA (including the Ministry of Justice, Liberia Revenue Authority and Ministry of Interior Affairs), (2) Civil society and community actors to monitor the forest sector and hold government to account, (3) Independent media holding government, civil society, communities and private sector to account, and (4) Private sector actors holding Government to account for ability to demonstrate compliance to market requirements.

**Indonesia's** forestry sector was supported through a series of Multistakeholder Forestry Projects (MFP1-4). The MFPs have supported Indonesia building its timber legality assurance system (SVLK) to tackle illegal logging. In addition, FGMC supported Indonesia in its ambitions on sustainable timber and community forestry. MFP4<sup>2</sup> for example worked on: (i) sustainable and legal timber production to ensure the effectiveness and sustainability of SVLK to further strengthen confidence amongst international buyers and domestic suppliers, and on; (ii) community-based forest enterprises, catalyzing community forest business development to foster more sustainable use of forests, reducing forest degradation and deforestation, and improving prosperity.

25. **Geographic Scope:** FGMC2 will work across a range of countries in West and Central Africa, South America, in SE Asia, notably the Mekong region and the Pacific as well as with trade levers in significant emerging markets. It will gradually build the geographic scope of the programme, building from the legacy of FGMC1 partners to deepen engagement in regions and in response to strong demand. It will not operate in all countries (potentially up to 16) from the outset. The nature of the work delivered in each country will depend upon the context, opportunities and country specific strategies. The FGMC2 programme will work in up to 16 tropical forest countries possibly including: Ghana, Rep of Congo, DRC, Cameroon, Gabon, Cote d'Ivoire, Mozambique, Liberia, Indonesia, PNG, Solomon Islands, Laos, Guyana, Bolivia, Suriname, Cambodia, Myanmar, Thailand and several Alliance countries (consumer markets) possibly including China, Vietnam and India, Malaysia, Philippines, United Arab Emirates and Nigeria. There will not be a call for TA projects in all

<sup>2</sup> [The Multistakeholder Forestry Programme Phase 4 \(MFP4\)](#)

of these countries. As partnerships are developed and scoping work progresses FCDO expect there will be as many as 8-13 TA projects to be delivered through the TAPM service. The first batch of about 5 or 6 identified TA projects will be ready to mobilise at the time of contracting this service.

26. For a step-by-step description of how the TA Portfolio Management service will operate in practice, please refer to part 2, section A (Operating Model) of this document.

## E. Requirements

27. The TAPM Contract Supplier will be responsible for the mobilisation directly (see section E1 below), or the procurement and sub-contracting (see section E2 below) of TA projects. **The TAPM Contract Supplier's Portfolio Management Core Team will be responsible for the subsequent management of the portfolio of TA projects, on behalf of FCDO, responding to country-specific demand that is identified by the FGMC core team (PMSST & FCDO) and national stakeholders. As per the PMSST Supplier Terms of Reference, the TAPM contract should not include any of the PMSST supply chain within the TAPM supply chain or sub contracts as they are not eligible to bid for any other contracts or grants issued under the FGMC2 programme.**
28. **Locally Led TA Delivery.** Wherever possible the TAPM Contract Supplier will encourage use of national organisations and experts for delivery of TA projects as local contextual knowledge and working with Governments at a local level is key to supporting the institutional change intended through the programme.

### E.1 Direct mobilisation and implementation of TA projects

29. It is expected that a number of TA projects will have been identified and draft ToRs will be ready to share with the TAPM Contract Supplier upon contracting. A second batch of TA projects are likely to be identified before the end of the second year. Additional TA need may be identified in subsequent years following engagement with new partner countries. These include potential Tier 3 countries identified in the Business Case such as Gabon, Bolivia, Suriname, Cote d'Ivoire, Cambodia, Mozambique, Myanmar, Thailand.
30. In agreement with FCDO and partner governments the TAPM Contract Supplier will directly deliver TA projects where expertise and capacity is demonstrated through a detailed intervention proposal. This section sets out the requirements for direct delivery of TA projects in the Portfolio where the TAPM Contract Supplier has demonstrated their specific capacities, networks, and track record that will offer excellent VfM to meet the specific TA intervention TORs. In the bid proposal the Supplier will indicate the skills and expertise that can be readily mobilised through their network or Consortium.
31. **We do not expect the TAPM Contract Supplier to engage directly with the partner countries to identify needs for TA.** The PMSST and FCDO (FGMC Core team) will have direct engagement with partner country Governments and will provide draft ToRs to the Portfolio Management Core Team and FCDO.
32. The TAPM Contract Supplier will be expected to make a compelling case to FCDO and recipient Government in **an intervention proposal** responding to each country-specific draft TOR. The proposal will indicate their capacity to mobilise and deliver the TA project with significant VfM benefits. This will include demonstrating:
- being able to mobilise quickly;

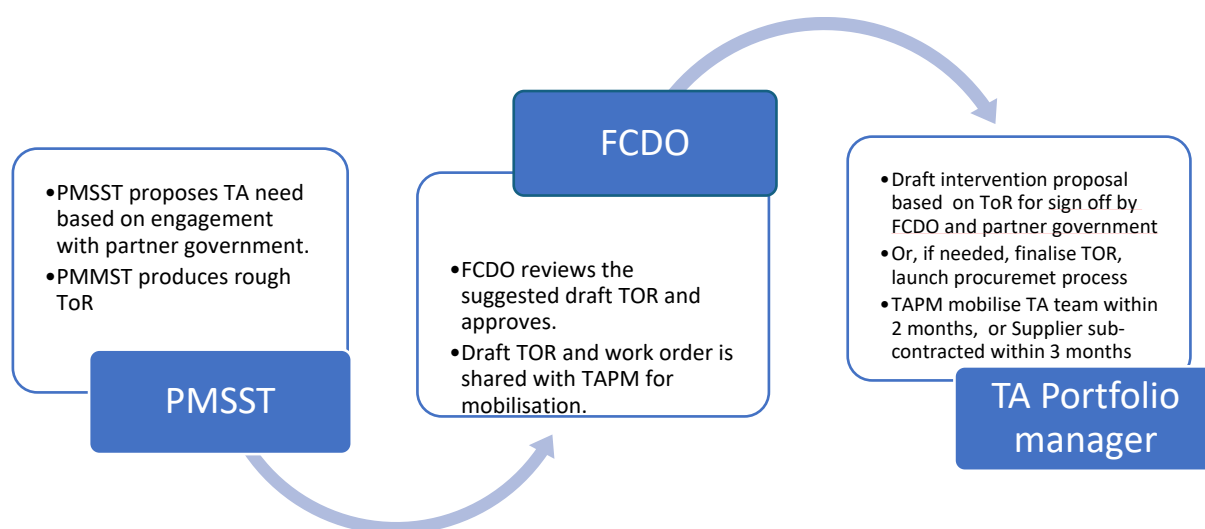
- established networks or track record in the country or in delivering to the specific TA requirement;
  - skills and experience necessary for the particular TA TOR, including particular knowledge of a country context;
  - local organisations or experts identified as part of the offer where appropriate;
  - cost of delivery and VfM proposition.
33. The TAPM Contract Supplier will be invited to submit to FCDO a costed intervention proposal (based upon contractual fee rates and expenses) **within 1 month of receiving the ToRs**. The proposal will be discussed and agreed with the recipient Government or other recipient stakeholders.
34. The TAPM Contract Supplier will propose its approach to delivery, including its intervention proposal for oversight and management. **The TA projects will be delivered by a separate team from within the Supplier's structures so as to maintain a separation from the Portfolio Management Core Team's role which is to be responsible for oversight and monitoring progress.**
35. FCDO will consider the suitability of the TAPM Contract Supplier in terms of their reputation and positioning within a particular country context to deliver the TA project in question and will consult with partner governments as the recipients of the planned TA project.
36. The intervention proposal will clearly indicate the monitoring and oversight arrangements for directly delivered TA in the intervention proposal in order to minimise the risk or perception of a lack of impartiality in the monitoring of performance. These arrangements will be further elaborated in the detailed intervention proposal for direct management of the TA against specific ToR.
37. The TAPM Contract Supplier will ensure rapid mobilisation of TA projects – with a target of **8 weeks** from the point at which a specific TA Project's Intervention proposal has been approved, unless it has been agreed with FCDO that a longer timeframe is required. This is to ensure FGMC2 can respond quickly to emerging opportunities.

## E.2 Procurement of and sub-contracting TA projects

38. In contexts where the TAPM Contract Supplier does not have the appropriate expertise, networks or positioning to directly deliver the TA required, the Portfolio Management Core Team will be responsible for competitively procuring and subcontracting another organisation and where appropriate a local organisation.
39. **Procurement:** The TAPM Contract Supplier will run competitions to select subcontractors to deliver the TA projects in circumstances that require specialised expertise not available within the TAPM Contract Supplier, or local organisations that do not form part of their consortia. FCDO may ask the TAPM Contract Supplier to run a competitive procurement process where the partner Government has signalled a concern over direct project delivery by the TAPM Contract Supplier.
40. The TAPM Contract Supplier will run a fair and competitive procurement process. This will include, but is not limited to i) fleshing out initial ideas into full ToRs; ii) ensuring standardised and agreed clauses with the PMSST for oversight and reporting, iii) evaluating proposals with input from FCDO, the PMSST and partner governments; iv) negotiating contract terms with selected suppliers in line with FCDO guidance and the terms set out in the agreed TOR, and v) support to the mobilisation of TA projects.

41. **The TAPM Contract Supplier will not engage directly with the partner countries to identify needs for TA.** The PMSST and FCDO (FGMC Core team) will have direct engagement with partner country Governments and will provide draft ToRs to the Portfolio Management Core Team. In cases where the TAPM will run a competitive process to sub-contract a suitable supplier, the Portfolio Management Core Team will finalise the ToRs in collaboration with the PMSST, and once agreed by FCDO along with tender documents, will aim to procure and mobilise a TA project **within a three-month period**, wherever possible. This is to ensure FGMC2 is able to respond quickly to emerging opportunities.
42. It is acknowledged that particularly in cases of complex TA requirements, in particularly challenging geographical contexts, or where FCDO and/or partner governments have concerns over bias or conflict of interest, the three-month target may be extended in agreement with FCDO.
43. In some instances, the FCDO FGMC2 team and partner Government representatives will join the TAPM in assessment of proposals (but FCDO representation will not exceed 50% of the panel). Figure 3 sets out the process for identifying need, drafting and finalising ToRs and mobilising directly or procuring suppliers to deliver the TA projects.

Figure 3 - Decision making structure (see paragraphs 67-75 describing the steps in the operating model)



### E.3 Management of a portfolio of TA Projects

44. **Mobilisation and management of a portfolio of Technical Assistance Projects:** The Portfolio Management Core Team will mobilise TA projects on behalf of FCDO across various tropical forest countries in Africa, Pacific, Asia and Americas. This encompasses the full lifecycle of contract management, from initial intervention proposal or procurement to contract execution and completion.
- **Management of the Portfolio of TA Projects:** Responding to a FCDO request (work order) the Portfolio Management Core Team will mobilise and monitor the progress of TA projects with support from the PMSST, ensuring that each adheres to agreed intervention project proposals or sub-contract terms, delivers and reports on TA as planned and managing any changes or modifications to the scope of work. This includes implementing



robust risk management across the Portfolio of projects to identify, assess, and mitigate risks associated with their execution (with PMSST support). The Portfolio Management Core Team will be responsible for the disbursement, due diligence, and fiduciary oversight of the operations of the portfolio of TA projects. This will include contract management of sub-contractors.

- **Collaboration with Programme Management Strategy and Support Team (PMSST):** The Portfolio Management Core Team is required to collaborate closely with the PMSST to:
  - Refine draft ToRs, liaising with PMSST and FCDO to finalise these;
  - ensure that standardised reporting requirements established by the PMSST are integrated within each TA project workplans,
  - ensure that TA Project downstream suppliers understand and adhere to the programme wide theory of change, work of other delivery partners, and common reporting formats and structures as part of their onboarding
  - Support/facilitate active learning by TA Projects from other delivery partners and from feedback provided by the PMSST
  - Engage with feedback provided by PMSST based on their political economy analysis, engagement with stakeholders etc
  - Participate in monthly meetings with PMSST and FCDO to update on progress, any issues arising from specific TA projects, and to discuss any challenges and opportunities
- Failure to work effectively with the PMSST may constitute a breach of contract. **Annex B** provides an outline of how the PMSST and TAPM Contract Supplier are expected to work together.
- **Accountability and Reporting:** The TAPM Contract Supplier will maintain accountability for the performance of the TA projects and will propose a TA Portfolio reporting framework during the inception period. This will include quarterly reports to FCDO summarising ongoing activities and utilisation of funds across the Portfolio. The TAPM Contract Supplier will conduct due diligence and provide fiduciary oversight for TA project disbursements. The TAPM Contract Supplier will establish appropriate performance metrics and reporting mechanisms to track progress, identify issues, and report on key achievements and challenges to FCDO, PMSST and partner Governments.
- **Fiduciary Management:** The TAPM Contract Supplier will manage financial forecasts for TA projects and Portfolio Management Core Team costs, manage fiduciary risks, involving careful monitoring of financial aspects of TA project delivery on a quarterly basis, including conducting due diligence of any suppliers subcontracted to deliver TA projects.

## Inception period

45. During the inception period, we expect the TAPM Contract Supplier to set up systems and approaches to ensure swift mobilisation of downstream TA projects, coordinating where appropriate with the PMSST. During the inception period the TAPM Contract Supplier will develop their intervention proposals for the first batch of TA projects for which draft ToRs exist. TA projects will be formally commissioned within the Contract through a Works order, the format of which will be agreed between FCDO and the Supplier during inception.

46. The process to share and build up the future additional pipeline of TA projects will be agreed during this inception period. The pipeline will be iterative and grow at the pace of FCDO engagement with new partners and clearly identified need (see Part 1 Section G for implications for the Portfolio Management Core Team and costings).
47. The following elements will be delivered in the inception period and included in an inception report to be submitted no later than 3 months after contract signature and will form the basis for milestone payments (see Part 2 section B). A formal progress meeting at end of month one will take place to ensure deliverables are on track and meeting FCDO expectations:
- **Milestone 1: TA Mobilisation Plan.** A priority for the TAPM Contract supplier on appointment will be to prepare a mobilisation plan for the first batch of TA projects (set in draft TOR) identified by partner governments, FCDO and the PMSST that will be available upon Contract signature. The Plan will indicate which projects they intend to mobilise directly. The intervention proposals for those TA projects directly mobilised by the TAPM Contract Supplier will be agreed with the FCDO and partner Government
  - Where the TAPM Contract Supplier does not have the required skills or is not considered by partner governments appropriate to deliver the TA, the TAPM Contract Supplier will indicate how they plan to secure these through a competitive procurement process. This will include a description of their procurement approach set out in a procurement manual.
  - For TA projects to be secured through a competitive process, fully drafted ToRs and tender documents will be agreed with FCDO and procurement processes should aim to be concluded 3 months after agreement, unless agreed otherwise with FCDO.
  - **Milestone 2: Coordination Plan with the PMSST.** This should set out, in agreement with the PMSST, how the TAPM Contract Supplier will work with the PMSST and will include:
    - A reporting and results collection plan that indicates the coordination process with the PMSST to ensure that reporting is timely. Reporting frameworks should align with the PMSST and should cascade into existing and agreed frameworks (templates, timings, etc).
    - A dashboard for tracking progress across the portfolio.
    - Agreement on standard clauses and templates and proformas for inclusion in any sub-contracts incorporating FCDO guidance on VfM and best practice for TA projects, and regarding programme wide reporting and oversight. This would include defining any KPIs for downstream TA project performance and associated metrics.
  - **Milestone 3: An Inception Report.** This will include all systems and processes developed and agreed during the inception phase as described above, plus the due diligence approach for all sub-contracts, including risk appetite, and a portfolio-wide comprehensive risk matrix that is agreed with FCDO

### Delivery period

48. During the delivery of the programme, we expect the TAPM Contract Supplier to:



- Manage swift mobilisation of TA projects to be implemented directly, with a target of mobilising within 8 weeks/2 months of the Intervention Proposal being agreed by FCDO, unless it has been agreed with FCDO that a longer timeframe is required. The process to mobilise TA projects in the first batch may be initiated in the first 3 months (i.e. during the inception period).
- Manage swift procurement and mobilisation of TA sub-contracts, where indicated as necessary for the specific requirement, with a target of mobilising within 12 weeks/3 months of ToRs and tender documents being signed off by FCDO, unless it has been agreed with FCDO that a longer timeframe is required. The process to procure and mobilise the first batch of TA projects may be initiated in the first 3 months.
- Mobilise and oversee various TA projects in different countries (see **Annex C** of the ToR and Annexes H and I of the business case for more information and wider thinking on geographies and the indicative TA projects likely in the first batch of projects). The exact countries where TA projects will be mobilised will be decided by the FGMC Core Team as they develop country strategies and delivery plans informed by discussions with partner governments and national stakeholders.
- Ensure that TA project governance arrangements put country processes and stakeholders in the driver's seat.

Based on experience from FGMC1, it is likely that these will be modest in scale (ranging from £2m-£8m each) providing flexible support to dynamic policy processes (that may stall or accelerate). It will not be the same scale or effort in every country.

## F. Budget and Time Frame

### Budget

49. **The budget and contract value for the services to be delivered under this contract is expected to be up to £75m** (inclusive of all applicable taxes: FCDO programmes are not automatically tax exempt and therefore suppliers will be liable to pay local tax in some countries). **This budget includes the TA project funding and the costs of the Portfolio Management Services.**
50. The TAPM Contract Supplier will be expected to allocate the FGMC TA budget according to the following parameters:
  - **Portfolio Management Services:** will cover all fees and all expenses associated with mobilising directly or sub-contracting and the oversight of approximately 8-13 TA projects across various countries. Portfolio Management Core Team costs are addressed in section 1H. It is expected this would be in the range of £5-8m.
  - **TA Project Funds** – this will cover the costs of delivering the 8-13 TA projects in country, including any downstream TA project subcontractor costs. Where projects are subcontracted this would be a pass through mechanism with no additional management fees. It is expected that this would be **up to** £70m, noting the total value of up to £75m including Portfolio management services.
51. Annual budget allocations will be based on agreed workplans of various TA projects and will be subject to annual ODA allocations to the FGMC2 programme, which are also

contingent on the outcome of future UK Government Spending Reviews. Annual workplans will be agreed with partner governments and FCDO.

### Timeframe

52. The contract will run from contract signature in 2025 for a period of 4 years until 2029 covering the first period of FGMC2.
53. FGMC2 is intended to be a long-term, transformational portfolio of various interventions. Because the FGMC2 TA work is context-specific, country-led, and responsive, the specific TA project need will be developed over the course of the life of the FGMC2 programme. In the inception period the FCDO will identify the first group of TA projects to be mobilised by the Portfolio Management Core Team. This could therefore result in changes in delivery, including scaling up and/or down.
54. The TAPM contract will comprise 3 phases:
  - a) The Inception Phase: 3 months
  - b) Implementation Phase: from month 4 onwards
  - c) Exit and Closure Phase: 3 months before contract end.
    - At the end of the Contract the TAPM Contract Supplier will follow their exit strategy (which will be agreed between the FCDO and the TAPM Contract Supplier, in accordance with the standard terms and conditions).
    - all TA projects should be closed, ideally three months before the Contract ends, and the TAPM Contract Supplier should complete all other closedown and handover tasks.
55. **Extension:** The TAPM service contract may be extended for up to 5 years and up to an additional £100m to transition to the planned second 5-year programme period. The decision to extend will be made by FCDO and be subject to resource availability. The budget approval for the second 5 year programme period is subject to Ministerial approval after a programme mid-term independent evaluation.
56. **Contract scale up**, should additional resources become available, **and scale down**, should circumstances or resource availability change, is addressed in Part 2 section C.

## G. Team Structure and costs for Portfolio Management Service

57. The TAPM Contract Supplier will be an organisation with a strong track record of contract administration, project portfolio management and TA delivery. It is expected that the Portfolio Management Core Team will have the key skills outlined in this section.
58. **Director/Team Leader:** The Director/Team Leader will oversee the delivery of the technical assistance portfolio management service. They will have extensive experience in programme administration, including but not limited to managing complex portfolios in the field of governance reform or natural resource management. Their role includes providing strategic direction and guidance, ensuring effective management and coordination with other delivery partners, especially the PMSST, and overseeing TA project delivery teams and sub-contractors.
59. **Portfolio Management Core Team:** The core team will have expertise and a proven track record relevant to project portfolio management services delivering in developing countries. This includes project mobilisation or procurement, project management, financial administration, application of value for money principles, due diligence,

monitoring and evaluation, and sufficient knowledge of tropical forestry and institutional reform in the Pacific, Africa and SE Asia to mobilise experts capable of providing the TA required to support the needs of the programme (see Table 1 below). The small core team (of 3-5 people) will be structured to ensure the capacity to scale up or down as needed (see Paragraphs 65-66 for the parameters for doing so). During the initial phase of the programme, when multiple concurrent TA mobilisation processes are expected, the core team should be augmented to meet the increased demand, especially to complete necessary due diligence assessments for any sub-contracts. It is expected that the Core Team would include an experienced Team Leader, a subject matter specialist capable to guide TA mobilisation, TOR development and selection and a project and finance manager to track the portfolio of TA and reporting, as well as MEL expertise. Members of the Core Team would not have an additional role in any TA delivery therefore we would not expect to see level of effort split across these roles.

### **Required skills**

60. The following skills and expertise are considered particularly important for the mobilisation of TA projects and subsequent administration of the portfolio of TA projects by the Portfolio Management Core Team:

#### **TA project mobilisation expertise:**

- Ability to set up multiple TA projects across countries and continents.
- Efficient budget setting and forecasting skills.
- Experience of mobilising or procuring expertise in the domains of the programme (set out in the TOR) drawing from and building networks of country-based expertise.
- Ability to mobilise and build delivery teams, reach local companies where possible, procure, and sub-contract service providers mobilising quality expertise for tailored TA contracts that will work closely with national stakeholders, including provision of TA to work inside government structures where appropriate.
- Evidence of language skills and cultural sensitivity relevant to the geographies covered by the contract.

#### **Sectoral expertise needed to support mobilisation:**

- Experience of managing TA projects supporting governance, forest policy, trade and climate change work. Table 1 sets this out in greater detail.
- Sufficient understanding of tropical forest land use sectors and international trade and market levers, to support the development of appropriate ToR, mobilisation of TA projects and a demonstrated networking capacity to attract quality bids in this field in the case of sub-contracting.
- Capacity to source country-based service providers with skill sets to meet expected domains for which we anticipate a need for technical assistance (see Table 1). We do not expect the Portfolio Management Core Team to demonstrate expertise in these domains.
- Understanding of the importance of ensuring that Gender and Social Inclusion considerations are addressed in all TA Projects.
- Demonstrate broad network of sector specialists through identified experts or proposed consortia to cover the skills and domains outlined in the TOR as well as networks in priority geographies.

#### **Contract Administration**

- Ability to manage multiple TA projects and sub-contracts across a range of tropical forest countries.
- Efficient budget and financial administration and risk management, including forecasting and financial reporting.
- Experience and track record of managing a Portfolio function across multiple geographies, including mobilising quality expertise, networks to contract country-based expertise.

- Experience with FCDO (HMG) procurement and due diligence requirements and strong administrative and risk management processes.
- Stakeholder management – primarily with FCDO staff in the UK and in BE/BHCs in country, and with the PMSST. British Embassy/High Commission staff alongside PMSST will lead on relationships with government counterparts, but some engagement with beneficiaries, may be expected from the TAPM in specific country contexts.
- Ability to encourage the mainstreaming of gender equality and social inclusion considerations into international development programming.
- Evidence of an inclusive working culture, including language skills and cultural sensitivity relevant to the geographies covered by the contract, and strong systems and procedures in place to ensure safeguarding, institutionally and in contract implementation.

#### Portfolio management:

- Risk management: monitoring and mitigating risk at portfolio level.
- Ability to conduct due diligence of the delivery chain, following FCDO best practice guidance.
- Strong knowledge and record management systems to ensure continuity of portfolio management in face of staff changes.
- Effective staff performance management and training processes to ensure staff have skills and support they need to manage the portfolio effectively.
- Portfolio management and learning: supporting coordination, synergies and learning across TA projects in close cooperation with the PMSST.
- Experience and ability to manage TA project programming in an adaptive way, including pivoting planned tasks or locations to emerging opportunities.

#### Other Expertise:

- Ability to manage HMG funds, including ODA.
- Experience of running international development programming, particularly similar portfolio administration of TA capacity building/technical assistance.
- Demonstrate knowledge of networks in relevant technical domains (see Table 1) to mobilise technical experts. These experts will be treated as separate to the Portfolio Management Core Team and costed against individual TA projects based upon rate cards proposed at tender stage.

61. For direct delivery of TA projects, we expect technical experts will be mobilised and costed against individual TA project TORs based upon rate cards proposed at tender stage. The Portfolio Management Core Team at tender stage should be costed to manage the anticipated levels of TA from the start of the contract and as mentioned only scaled up/down if FCDO see the need. This is set out in more detail below (para 62)

*Table 1 - Domains of TA expertise expected to be delivered through TA projects*

Thematic areas for TA support projects	Examples of TA expertise where FGMC support projects may be mobilised <sup>3</sup> .
Forest governance	Specialist technical advice and assistance on: <ul style="list-style-type: none"> <li>• Improvements to core elements of a forest authority's role;</li> <li>• Change management and governance support to strengthen forest management and regulatory institutions;</li> </ul>

<sup>3</sup> The actual range of interventions may be wider than this and or not fall into these categories. The supplier's subcontractors should be prepared to deliver all reasonable interventions.

	<ul style="list-style-type: none"> <li>• Supporting the review and development of policy, regulation and laws governance forest land uses , including forest tenure security;</li> <li>• Forest policy and forest and land legal matters, including tenure security, land law;</li> <li>• Gender;</li> <li>• Forest carbon policies and regulations;</li> <li>• Forest mining policies and regulations.</li> </ul>
Sustainable forest management and forest land policies	<p>Specialist technical advice and assistance on:</p> <ul style="list-style-type: none"> <li>• Supporting legal, regulatory and policy reforms related to forest land uses and related trade measures;</li> <li>• Tropical forest management systems;</li> <li>• Forest commodity value chains, including processing;</li> <li>• Community and IPLC forest policies</li> <li>• Forest carbon values: international/ national policy development (VCM, CCM etc) and requirements and standards of initiatives.</li> </ul>
Transparency, Traceability and regulatory systems	<ul style="list-style-type: none"> <li>• Supporting governments to procure/develop an integrated management information system (IMIS) and TLAS;</li> <li>• Regulatory controls review, streamlining, strengthening;</li> <li>• Audit strengthening;</li> <li>• Building traceability and compliance monitoring systems for forest and FRC products;</li> <li>• IT interventions related to transparency and forest land uses;</li> <li>• Capacities of local and environmental investigative journalism.</li> </ul>
Institutional capacity development	<ul style="list-style-type: none"> <li>• Supporting government capacity to regulate their forestry and forest land sectors, including that related to forest carbon markets and forest mining;</li> <li>• Supporting action related to forest law enforcement;</li> <li>• Capacities of the Judiciary that support forest law enforcement and greater coherence between forest land use policies.</li> </ul>
Capacities of CSOs and IPLC organisations	<ul style="list-style-type: none"> <li>• Building capacities of IPLC and CSOs for independent forest monitoring and developing approaches that enable SMEs to work with national regulatory systems;</li> <li>• Organisational development of CSO bodies;</li> <li>• IPLC tenure security.</li> </ul>
Capacities of private sector bodies, SMEs etc	<ul style="list-style-type: none"> <li>• Understanding national regulations and export controls;</li> <li>• Understanding international market requirements;</li> <li>• Understanding of SME in the forest sector;</li> <li>• Understanding of commodity market analysis and trends.</li> </ul>
Economic and political analysis International trade and market analysis and measures	<ul style="list-style-type: none"> <li>• Import regulations and policies in consumer markets;</li> <li>• Economic domain modelling;</li> <li>• Forest sector political economy analysis;</li> <li>• Market recognition policy measures.</li> </ul>

## Portfolio Management Service Costing

62. Given that the provision of TA responds to demand, and we cannot at this point be firm on how many TA projects will go forward for the TAPM Contract Supplier to mobilise and manage, the size and structure of the TAPM Contract Supplier's Portfolio Management Core Team may need to vary to ensure Value for Money over the Contract lifetime. We are therefore proposing that bidders present Portfolio Management Core Team resources and costs that will deliver the requirements of this ToR against the typology of potential projects as set out in **Annex A** (which provides an indication of year one priority countries and project

ideas)). **For absolute clarity, the Portfolio Management Core Team resource and costs will not include those required for the direct delivery of the TA projects themselves but any management costs for sub contracts and sub contractor performance should be included in the Portfolio Management Core Team proformas (using tab 2.0 Total Programme Cost).** The TA budget as described should be entered into tab 2.0 Total Programme Cost line 36. Technical Assistance Budget with the rates cards in tab 2.5 TA Rate Card completed. The size and structure of the Portfolio Management Core Team and any associated costs will consider the volume, complexity and inputs needed to deliver the requirements outlined in this ToR.

63. For evaluation purposes and for year one, the resource and costings provided at tender proposal stage will be assumed to be the same for the entirety of the Contract. These costs and the Portfolio Management Core Team structure will also form the baseline for future annual reviews. All future proposals must be set against the original baseline gross fee rates provided.
64. FCDO will provide the TAPM Contract Supplier with an updated pipeline of work at the outset of the inception period of the Contract (based on **Annex A**). In the case that FCDO sees the need for the Portfolio Management Core Team to be amended based upon an updated pipeline of work, this will be done using the fee rates and unit expense costs within the contract and using the forementioned baseline costs. FCDO approval will be required for any changes and failure to agree may lead to early termination of the contract.

### **Changes in the Pipeline**

65. The FCDO recognises that the pipeline of potential TA Projects coming forward is subject to change both up and down. In the event the pipeline reduces, in either number of TA projects or their complexity, during the year in question, the TAPM Contract Supplier will provide a revised costed proposal for a reduction in Portfolio Management Core Team resource and cost.
66. If demand increases, either in number of TA Projects or complexity, the TAPM Contract Supplier may bring in additional resource for the Portfolio Management Core Team following agreement on a costed proposal using the fee rates and unit expense costs within the contract and using the forementioned baseline costs.

## Part 2 – Contract Management

### A. Operating Model

*The following is the current end-to-end process for the implementation of TA project interventions, but it is expected that this will be adapted during the inception phase and evolve over the life of the Contract.*

67. **STEP ONE:** Requests for TA support will be submitted by the PMSST to FCDO reflecting in-country consultations with national stakeholders. FCDO will consult with its relevant advisors including at Post, to ensure the request is fully understood and consider how best to support it.
68. **STEP TWO:** Where requests are deemed appropriate and a priority for TA support, the FGMC SRO will ask the PMSST to draft an outline of the required support indicating how it fits with the FGMC supported country roadmap or Theory of Change. This should include an estimate of the maximum cost of the work. FCDO FGMC programme advisors will support the development of the draft TORs.
69. **STEP THREE:** The FCDO SRO will consider the draft proposal against the country specific strategy as well as programme priorities and resource availability. The SRO will advise the TAPM Contract Supplier through a work order to go forward with next steps once the decision to support the intervention is made. This will include agreement of an indicative maximum budget.
70. **STEP FOUR:** Where the TAPM Contract Supplier has the capability to directly deliver the TA through its consortium resources, it will prepare a costed intervention proposal for consideration by the partner government and FCDO. This will include any specific terms, performance KPIs or milestones for the TA project as well as a detailed workplan. Once the proposal is agreed with FCDO and partner governments where relevant, the TAPM Contract Supplier can mobilise the TA project intervention, moving to STEP EIGHT for delivery by the TA project team and oversight by the TAPM portfolio management core team.
71. **STEP FIVE:** Where the TAPM is **not** considered to be the best fit for the delivery of a particular TA project ToR, the TAPM Contract Supplier will provide finalised TORs and draft procurement competition documents to the FCDO SRO (or their nominated representative) at least 5 days prior to the expected start of the competition. The SRO will review the documents and will raise any material concerns – such as, unclear Intervention ToR, exceeding agreed budget, criteria that predetermines a winner, or if there is perceived bias. In cases where the SRO has concerns, the start of the competition will be paused until these are addressed in a time frame set by FCDO, not exceeding 2 weeks.
72. **STEP SIX:** The TAPM Contract Supplier runs a fair competition compliant with the requirements of the specific ToR. The SRO (or their nominated representative) may join bid evaluation processes. In some cases, depending on the nature of the TA envisaged and interest of partner Governments, a representative of partner Government may also join the process of bid evaluation.
73. **STEP SEVEN:** Following evaluation of bids, the TAPM Contract Supplier will inform the PMSST and FCDO SRO of the results of the bid assessment. The PMSST will inform the partner Government of the identity of the winner. Should the FCDO or partner



Government raise concerns over bias or conflicts of interest, the SRO may review the risks of conflict of interest and may require the competition to be re-run. If there are no concerns, the TAPM Contract Supplier will inform the winning bidder to mobilise the TA project intervention.

74. **STEP EIGHT:** Throughout the lifetime of each TA project, the TAPM Contract Supplier will:

- Be responsible for the oversight of the effective delivery of TA projects whether delivered directly or through sub-contractors, in the case of oversight of projects directly delivered the governance arrangements will ensure distinct accountabilities;
- Apply an inclusion lens to ensure all interventions consider gender and IPLC, applying the 'do no harm' principle and identifying entry points for strengthening inclusion;
- Deliver Portfolio level progress reports to FCDO and PMSST against an agreed timetable (detailed below). At country-level, PMSST will review progress periodically and feedback any concerns reflecting challenges to the TAPM Contract Supplier;
- Ensure that the TA project establishes appropriate project specific governance arrangements that put national stakeholders in the driver's seat of project steerage. FCDO (Posts or FGMC advisors) may be represented in project steerage where appropriate;
- Ensure that the TA projects report into the programme-wide reporting framework as agreed with the PMSST; and
- Make payment to subcontractors, in arrears, against a pre-agreed payment schedule.

75. **STEP NINE:** On conclusion of each TA project, the TAPM Contract Supplier will deliver a Project Completion Report to the FGMC Core Team and colleagues at Post, within an agreed timeframe, and shared with partner country governments. The format of formal reporting will be finalised during the Inception Phase in consultation with the PMSST. Completion Reports should include results achieved and lessons learned.

## B. Payment and Performance

76. FGMC2 will adopt a hybrid approach to performance related payment for the delivery of the TAPM service. Milestone payments will be used during inception and exit phases of the TAPM service, and Key Performance Indicators (KPIs) will be used during implementation phase. Individual TA projects will establish a performance oversight approach adapted to the requirements specific to each project.

77. The performance of the TAPM Service will be monitored quarterly and annually by the FCDO and will be linked to payment (see KPIs and payment by results below and in **Annex D**). A performance dashboard will be reviewed by FCDO at a quarterly Performance Review Meeting, and the evidence it contains will be used to determine whether the contract is on track against its Key Performance Indicators (KPIs).

78. KPIs will be used to assess performance of the Portfolio Management Core Team Service.

79. As well as this formal performance management process, the FCDO wants to foster an honest and positive working relationship with the TAPM Contract Supplier, in which delivery challenges and issues are raised pro-actively when they occur so that adjustments can be made, and solutions can be found where possible. To this end, the TAPM Contract Supplier will be invited to join monthly meetings with the FGMC Core team (comprising FCDO and PMSST).

80. **Milestone Payments** (fees and expenses) will be made at the end of a successful **inception phase** and on receipt of all required reports at the end of the **exit phase**. Inception phase deliverables have been set out in Part 1 section E above (para 45). These elements will be



included in an inception report to be submitted no later than 3 months after contract signature and will form the basis for a milestone payment. At the end of the Contract, the final quarterly payment will be made based on the timely and satisfactory submission of the following final products:

- Programme Completion Report – technical and financial.
- Lessons learnt reports
- Asset disposal registers

**81. Performance and Payment of TAPM Portfolio Management Service during delivery:**

100% of the Portfolio Management Core Team costs (fees and expenses) will be paid quarterly in arrears based on satisfactory performance against key performance indicators. Payment of 25% of fees is linked to KPIs being met satisfactorily, in line with the scoring system set out in the table below. Depending on the extent to which each KPI is met, a percentage of payment of fees will be retained. Retained fees will not be reimbursed. Draft KPIs for this service are shown in **Annex D**. The final version of the KPIs and the timing of the quarterly review will be agreed during the inception period. Each KPI will be given a score as defined in **Annex D**. KPIs will only relate to the **Portfolio Management Service's administrative oversight** of the TA interventions.

**82. FCDO will score the portfolio management service KPIs across 3 cross cutting themes - Timeliness, Financial management and accuracy, and Quality of portfolio management – quarterly, on a 5-point scale. FCDO will award scores for each KPI. Scoring will be based on “snapshot” assessments at the end of each quarter, based on the evidence available at the time of the assessment.**

**83. Detailed methods for measuring the KPIs will be agreed between the FCDO and the TAPM Contract Supplier during the Inception Period and will be embedded into the performance management system of the programme.**

**84. KPIs may be revised during the Contract period, if agreed with the FCDO and TAPM. This could be to reflect learning during programme delivery about the best way to measure progress, or to reflect improvements required if existing KPIs are not being met.**

**85. If performance fails to meet required standards (scoring below a 4) in any two consecutive quarters discussions will be held on whether FCDO determines a Rectification Plan at the suppliers' own cost is required. If a Rectification Plan has been put in place, it will be reviewed at subsequent performance meetings. If the agreed milestones in the rectification plan have not been met, then the next quarter's KPI linked to that rectification plan will score a 1 resulting in that quarter's fees being retained. If a Rectification Plan cannot be agreed to the satisfaction of FCDO, or is not adhered to, the contract can be terminated as per Section 44.1.4 of the standard T&Cs.**

**Performance dashboard for Individual TA projects**

**86. The TAPM Contract Supplier will maintain a dashboard relating to the performance of each TA project, including those implemented directly by them as well as any that are sub-contracted. The metrics included will be agreed during the inception period, but are expected to include:**

- Progress with mobilisation of each TA project.
- Whether implementation plans for each TA project are on track, and activities are being delivered as planned, including evidence of this if required.
- A reflection on TA project finance forecasting.

- A review of the risk register, financial information and any due diligence issues.
  - Any issues that require discussion.
87. This will be reviewed in a quarterly Performance Review Meeting with the FCDO. The TAPM Contract Supplier is required to ensure all the information provided is concise, clearly written and user friendly. The Performance Review Meetings will be the forum for the review by the TAPM Contract Supplier and FCDO of the Performance Dashboards. The Performance Review Meetings shall (unless otherwise agreed):
- take place within one (1) week of the Performance Dashboards being issued by the TAPM Contract Supplier.
  - take place at such location, predominantly virtually, and time (within normal business hours) as FCDO shall reasonably require unless otherwise agreed in advance;
  - be attended by the TAPM Contract Supplier's Contract Officer and the FCDO's Contract Manager; and
  - be fully minuted by the TAPM Contract Supplier. The prepared minutes will be circulated within 10 calendar days by the TAPM Contract Supplier to all attendees at the relevant meeting and also to the FCDO Contract Manager and any other recipients agreed at the relevant meeting. The minutes of the preceding quarter's Performance Review Meeting will be agreed and signed by both the TAPM Contract Supplier and the FCDO's Project Officer at each meeting.
88. It is expected that the TAPM Contract Supplier will develop separate payment-linked KPIs and milestones for **specific TA projects, tailored to their scope of work whether delivered directly, or through subcontracting**. This distinct set of KPIs and milestones will be developed and agreed at the time of agreement of specific TA projects either in the intervention proposal for directly delivered projects, or in the ToR of procured and subcontracted TA. Depending on the nature of the TA project this may include a mix of output-linked **milestones** combined with **KPIs** assessing the quality of services. Where output-based milestones are proposed in the intervention proposal for directly delivered TA, FCDO will agree the payment frequency, quality standards and retention policy for each specific TA project. Where output based milestones are not appropriate, payment linked KPIs [of up to 25%] will be framed around the quality of reporting and financial management as well as the quality of TA service delivered. In the case of procured and subcontracted services, FCDO will approve that proposed performance payment approach as part of the ITT material prior to tender. In the case of TA projects delivered directly, the TAPM intervention proposal will include proposed payment linked performance approach that will be agreed with FCDO in approving the proposal.

## C. Contract Management

89. Transition from Inception Phase to Implementation Phase will be dependent on satisfactory completion of the Inception Phase and subject to FCDO approval of all Inception Phase requirements, as detailed in Part 1 Section E of this ToR.
90. There will be a formal review point (including contract review) at the following points:
- 4 months from the start of the contract: Inception Review
  - 25 months from the start of the contract: Second Annual Performance Review.

91. Continuation of the contract beyond the review points will be dependent on supplier performance, the impact of the programme and continuing need.
92. **Early termination of contract: A Break Point can be invoked at any UK spending review period.** FCDO reserves the right to terminate the contract at any time by issuing a Termination notice to the TAPM in the event of unsatisfactory performance and/or unsatisfactory delivery of outputs or may be “without default of the supplier” (in accordance with FCDO’s Standard Terms & Conditions). FCDO further reserves the right to terminate the contract in the event of substantial changes within the FCDO or programme operating environment.
93. **Extension** (cost and or time): a possible up to 5 year extension providing up to £100m value (comprising up to £12m for portfolio services and approx. £88m in a TA project fund). may be granted at the sole discretion of FCDO to enable a continuation to the second 5-year programme period allowing for more effective phasing in of TA in new (Tier 3) geographies. The decision to extend the TAPM service would be subject to Ministerial approval of the budget uplift for Period 2, excellent performance and continuing need.
94. **Scale-up** options: as noted in Part 1 section F.
95. **Scale down:** FCDO reserves the right to scale down or discontinue the whole programme or specific elements of it at any point, in line with the FCDO Terms and Conditions. Any such changes will be fully communicated to the supplier and implemented in accordance with the Terms and Conditions. The TAPM Contract Supplier shall commit to being flexible and to fully support such changes in the event any decision is made to scale up (increase) or scale down (decrease) the scope of the programme.
96. Scaling down is at FCDO's sole discretion, and may occur for a number of reasons, including but not limited to: budgeting constraints; a future Spending Review and available resources; a change in political landscape; a change in FCDO and/or HMG priorities (such as a change in geographic or thematic focus); dissatisfaction with supplier performance (determined at FCDO's discretion); due to political sensitives in some countries; opportunities not foreseen but still in the scope of the Terms of Reference, etc. Note that T&Cs provisions relating to underperformance will be applicable in parallel.
97. The TAPM will be capable of scaling interventions up or down, as required by the FCDO. This will trigger a review of the milestones and budget of the intervention and a review of the Portfolio Management Services, as defined in section 1G of this ToR. Scale up and scale down could also trigger a review of the Core Management Team size and costs.
98. All scale up, scale down decisions will be at the sole discretion of FCDO, and no compensation or damages will be due. FCDO will give at least 14 days’ notice of any scale up, scale down decision and during this time the TAPM Contract Supplier will agree a proposal for the scale up or down to be enacted through a contract amendment as agreed with FCDO.

## D. Division of Tasks and Responsibilities

100. **Annex B** sets out in a table the respective division of roles and responsibilities between the PMSST and the TAPM Contract Supplier. This table focuses on respective tasks where the two outsourced management services will need to work closely together to avoid confusing stakeholders. It is not an exhaustive list of either the PMSST or TAPM Contract Supplier responsibilities.
101. The TAPM Contract Supplier and the PMSST will need to work as a coordinated team throughout programme planning and delivery. A key role of the PMSST is to provide a constructive ‘challenge-function’ to TA project delivery when needed and to be a useful

resource for the TAPM Contract Supplier including by providing technical and political economy advice, verifying that information obtained by TA projects reflects realities on the ground and/or repositioning with governments.

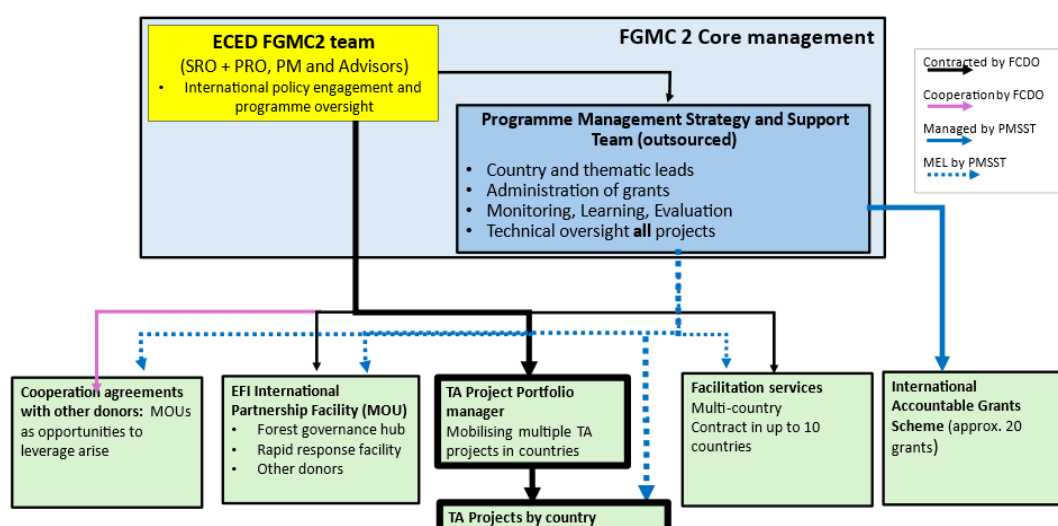
102. Failure to work effectively and constructively with the PMSST may constitute a breach of contract. FCDO requires that the TAPM Contract Supplier, in particular the Portfolio management Core Team, works with the PMSST to ensure:

- TA project activities align with country roadmaps and theories of change,
- TA project reporting is harmonised with programme wide reporting, that TA projects engage in programme wide learning and evaluation activities, that reporting is timely, in the agreed format and to the required standard, to feed into PMSST progress reporting to FCDO.
- All TA projects understand the role of the PMSST in programme wide oversight working on FCDO's behalf, utilise the advice provided by the PMSST and respond to PMSST feedback derived from stakeholders.

## E. Governance and Oversight

103. The management structure for FGMC2 is outlined in figure 4 below. This will support routine decision making, channel strategic and or other high priority decisions upwards, set out posts' involvement and support partner coordination. The FCDO's Energy, Climate & Environment Directorate (ECED) FGMC team will establish a cross Whitehall Advisory Group involving DEFRA, FCDO and IFU colleagues with an interest in the governance reforms helping strengthen coherence across UK forest-relevant programmes, creating the enabling conditions for other investments in forest land uses and the partnerships underpinning UK's regulation of its forest footprint, such as FLEGT VPAs. The programme will specifically support VPA partnership arrangements (led by Post and Defra timber policy team).

Figure 4 – FGMC2 Governance Structure



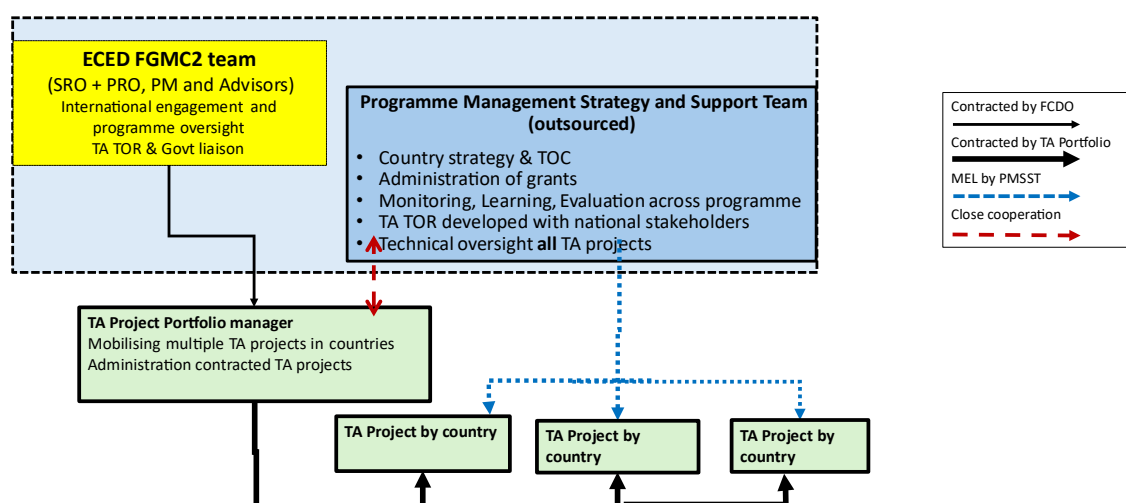
## TA Portfolio Management

104. Figure 5 below sets out how the TAPM Contract Supplier will interact with FCDO and the PMSST. The TAPM Contract Supplier will report directly and regularly to FCDO on both the administration and performance of the portfolio of TA project contracts. Overarching governance arrangements for the Portfolio TA will be agreed during the Inception period

taking into consideration the monitoring and strategic planning arrangements agreed with the PMSST. It is expected that the PMSST and the TAPM Contract Supplier will cooperate closely to facilitate effective guidance, communication, learning and feedback exchange across the portfolio of TA projects and the programme as a whole.

105. The TAPM Contract Supplier will mobilise TA projects based on initial TOR/ideas developed by partner Governments and the PMSST and agreed with FCDO. The TA projects will establish country-specific governance arrangements (as discussed below). The TAPM Portfolio Manager will play an administrative role and will not be expected to be involved in technical or thematic guidance in the delivery of TA projects. Technical guidance and oversight will be provided by the PMSST for all the TA projects.
106. The PMSST is responsible for programme-wide monitoring, learning and evaluation which continuously informs and adjusts global and country strategies/roadmaps and ensures learning and cooperation across the programme as discussed above. The TAPM Contract Supplier will develop, tailor and agree (in close cooperation with the PMSST) reporting frameworks for all TA projects that facilitate programme wide monitoring, reporting, learning and inclusivity. The PMSST will also provide technical oversight across all FGMC projects and delivery instruments thereby helping to foster learning and the development of a community of practice in support of FGMC's global ambition. While the PMSST will lead the overall MEL of the programme, the TAPM Contract Supplier will monitor the progress of TA projects through their own MEL in alignment with the PMSST's requirements.
107. The TAPM Contract Supplier and PMSST will join the FCDO at monthly meetings to review progress across the programme, including the portfolio of TA projects. The TAPM Contract Supplier will be expected to provide updates on the TA portfolio, including on mobilisation of TA, progress updates, delays, risks and any issues arising in specific projects. During the monthly meetings, the PMSST will provide thematic insight and feedback on stakeholder perceptions of the TA projects on the ground, efficiency of work, engagement with partner governments and national stakeholders and reflect on political economy analysis. The TAPM Contract Supplier is also expected to attend the annual stakeholder meetings.
108. Governance structures for downstream suppliers delivering TA projects will be agreed with FCDO (guided by PMSST) and national counterparts. More information on expected governance structures can be found in **Annex E** on country specific arrangements. It is expected that the governance arrangements will vary from one TA project context to another.

Figure 5 - TA Portfolio Governance Structure



## F. Reporting requirements

111. The following reporting requirements relate to reports drafted by the TAPM Portfolio Management Service specifically. The Portfolio Management Service Core Team will report on the functioning of TA mobilisation, oversight, and management, and will flag any important milestones, opportunities for engagement or matters that require FCDO attention, as well as reporting on financials and summarising challenges.

112. The TAPM Portfolio Management Service will provide a quality assurance function to all the reports from the specific TA projects. More information on expectations for those reports can be found in **Annex E** on country governance requirements. Reporting requirements for specific TA projects will be agreed with the PMSST, FCDO and national stakeholders, and specified in each TA project ToR and intervention proposal.

113. The TAPM Contract Supplier must submit the following portfolio level reports: covering the portfolio manager function carried out by the Portfolio Management Core Team:

- a) An **Inception Report** will be submitted 2 weeks before the end of the 3-month Inception Phase period. The report should summarise the progress and all outputs completed against the list of Inception Phase deliverables set out in Part 1 Section E.
- b) **Quarterly Progress and Financial Reports** for the portfolio of TA projects will be submitted on an agreed day of every third month of the programme and will include:
  - Summary of progress in mobilising, monitoring and completing TA projects
  - Summary of TA project progress, including key challenges, opportunities or results;
  - Financial reports for the portfolio, and forecast expenditure for the next quarter;
  - Summary portfolio workplan for the next quarter.
- c) **Annual Reports** of no more than 20 pages (excluding annexes) will be submitted by the end of each reporting year and will include:
  - Financial information to support the achievements and activities and forecast for next financial year;
  - Report on VFM measures integrated in the projects to be assessed during FCDOs Annual Review;

- Summary workplan for the next year;
- Other information required for Annual Review as requested by FCDO.

**114. We expect the TAPM Contract Supplier to report on any suspected fraud or safeguarding concern as and when these arise.**

115. We expect the TAPM Contract Supplier to (a) ensure that the reporting requirements (including the frequency of reporting) for specific TA projects are agreed with concerned national stakeholders and the PMSST to ensure that TA reports inform the overall programme progress monitoring and (b) that TA projects are producing timely reports as expected.

116. All TA projects will agree specific reporting requirements with the FCDO based on the specific ToRs and governance arrangements.

## **Managing TA project performance**

117. It will be the TAPM Contract Supplier's responsibility to manage performance of TA projects and to i) remain informed and plugged into the PMSST's programme and country specific monitoring and oversight, and ii) ensure activities are being delivered in a way that maximises value for money for the FCDO.

118. The TAPM Contract Supplier must hold a kick-off meeting co-designed and co-delivered with the PMSST, before any TA project starts, to review the delivery plan for the project, and agree the following:

- Project specific governance arrangements with counterparts
- Reporting requirements for the project, interfacing with the PMSST's MEL system and requirements. This including clear milestones and results monitoring targets.
- A risk matrix for the project and appropriate mitigation steps.
- Annual audit requirements for the project.

119. If reporting from the TA project teams, subcontractors and/or feedback from the PMSST shows that the project is off track, the TAPM Contract Supplier must agree a plan with the PMSST and the TA subcontractor within a month to improve performance and meet milestones. If this plan is not followed, the FCDO will agree whether the project should end. The TAPM Contract Supplier will then work with the TA subcontractor to close the project.

## **G. Financial Management**

120. The TAPM Contract Supplier will manage the TA project fund enabling TA project actions to proceed as planned, and to adapt to local contexts, as well as monitor the financial management of each TA project. The TAPM will:

- provide full and detailed financial information to FCDO for the portfolio of projects, reflecting on their spending and forecasts;
- inform FCDO of changes to submitted forecasts on a monthly basis;
- ensure that TA projects are providing information that will allow for an assessment of value for money by using benchmarks, cost comparisons and efficiency savings;
- adhere to FCDO guidelines and policies on all spend cascading this understanding through the delivery chain;
- check, verify and authorise all financial claims, ensuring funds are claimed in accordance with agreed rules;
- timely disbursement of funds to ensure valid claims are paid within agreed timeframes;
- commission and share with FCDO Annual Externally Audited Accounts verifying that all TA project funds were spent in accordance with the agreed terms;
- deal with ad hoc enquiries relating to specific TA projects from FCDO or the PMSST;



- maintain full financial records;
- produce quarterly and annual financial returns showing amounts spent, broken down to each specific TA project in FCDO's financial year period;

### Value for money

121. FGMC2 is funded by the UK's Official Development Assistance (ODA) budget and will operate in various countries, there is therefore an extremely strong focus on value for money (VfM), which the FCDO expects the TAPM Contract Supplier to integrate throughout the programme.

122. FGMC defines value for money in the following terms:

- **Economy:** The TAPM Contract Supplier will be a good steward of programme resources, buying the right inputs of the appropriate quality, at the right time, right price, and leveraging networks.
- **Efficiency:** TA projects will be mobilised and/or procured through fair and open competition, ensuring good value for money and will function flexibly in a manner that encourages efficiency and prioritisation to clear needs.
- **Effectiveness:** FGMC contributes to enhanced and sustained action on institutional governance reforms through ensuring interventions are demand driven and context specific.
- **Equity:** FGMC facilitates the inclusion of stakeholders often previously unable to influence policy making, particularly Indigenous Peoples and SME forest managers and processors. Support provided will help strengthen the voice of civil society in national-level policy processes across many countries. We expect the TAPM Contract Supplier to recruit national experts and local TA service providers wherever possible.
- **Cost Effectiveness:** The TAPM will optimise the relationship between the resources deployed and used and the impacts that the TA projects are intended to achieve.

123. The TAPM Contract Supplier will be expected to not only apply VfM considerations to the delivery of Portfolio management services but to also emphasise the importance of VfM down the delivery chain, effectively assessing and scrutinising VfM offer in any TA projects and incorporating appropriate VfM metrics to measure VfM where feasible.

## H. Risk Management

124. The overall programme risk for FGMC2 is MODERATE. The FCDO will review the TAPM approach to risk management as set out in the Inception Report which will be informed by the overall programme risk appetite and register. This will be reviewed annually during the delivery of the Contract.

125. Recognising that FGMC2 may test new approaches and is seeking to deliver transformational change in often challenging governance contexts, it will be necessary for TA projects to take managed risks. The TAPM Contract Supplier will, in partnership with FCDO, manage the programme within FGMC's Risk Appetite and Risk Management approach. The TAPM will reflect on risks with each TA project and agree with the FCDO the approach to risk management for each project. The FCDO are committed to reducing risks of fraud and sexual exploitation, abuse and harassment, showing zero tolerance for inaction or mishandling of reported cases.

126. The TAPM Contract Supplier will be expected to develop an informed approach to managing risk across the portfolio of TA projects including but not limited to a risk register which tracks associated key risks and mitigation. An illustrative matrix should be provided within the proposal. The matrix will be further developed during the Inception Phase and updated and discussed regularly with FCDO throughout implementation. The TAPM risk



register will inform FCDO's programme wide risk management and risk register, including in particular:

- **Country-specific context** risks as reported by TA projects
- **Programme delivery risks**, particularly linked to stakeholder capacity and coordination between TA projects across countries;
- **Safeguarding** risks associated with TA projects and Portfolio oversight
- **Financial and Fiduciary** risks
- **Reputational** risks associated with TA project performance for partners and HMG

127. The TAPM Contract Supplier should consider how they would adapt and respond to changes in context and any potential disturbances to the programme. Regular liaison with the PMSST will help to keep abreast of country level risks. Activities procured will have their own risk matrix and risks will be discussed and reviewed by FCDO on a case-by-case basis.

128. FCDO has a zero-tolerance policy on fraud. The TAPM Contract Supplier will set out their approach and strategy for monitoring fiduciary and financial risks across the Portfolio of projects in the proposal. These should include, but are not limited to:

- due diligence assessment for all projects, including verification of safeguarding policies in place for downstream partners;
- regular monitoring of projects, partners, and others;
- results/milestone-based payment systems where appropriate with each project;
- risk mitigation strategies with clear actions; and
- post-activity reviews.

129. FCDO will use its mandatory due diligence process to test (and where necessary), agree improvements in risk management procedures including governance and oversight, risk and control, corruption and fraud, and asset management policies and safeguards. The TAPM Contract Supplier, as the primary partner and direct recipient of UK Aid, will be responsible for due diligence checks and demonstrating rigorous risk management strategies of downstream partners. The TAPM Contract Supplier may also be required to undergo financial and fraud risk assessments which will be monitored on a regular basis helping to ensure funds are used for their intended purposes.

130. Due diligence assessments are not a one-off process and should be revisited and linked to other risk assessment and management tools. The TAPM Contract Supplier will maintain a register of TA subcontractors, and consultants showing the due diligence that has been performed, any risks identified and the mitigations that have been taken. Any significant risks, including those that may pose a potential reputational risk for FCDO, or may result in the misapplication of funds must be escalated to the FCDO.

131. Key risks that will need to be managed throughout inception and implementation, as well as for consideration in the preparation of bids include:

- **governance risks:** the relationship with the PMSST will require careful management to clarify respective roles and expectations and ensure a smooth working relationship with space for mutual challenge but also support.
- **fiduciary risk:** bidders must demonstrate a sound due diligence process, robust financial management and the capacity to monitor use of funds all the way down the delivery chain to avoid misuse.

- **safeguarding risk:** bidders must be guided by safeguarding policies and ensure these are understood and implemented by downstream partners. High-risk sub-contractors should be identified, and appropriate monitoring mechanisms discussed with FCDO.

## I. Other requirements

132. This section sets out additional standard terms and conditions required by the FCDO. These will apply to the TAPM services, all suppliers of TA projects and their subcontractors down the delivery chain. The TAPM Contract Supplier will include FCDO requirements and guidance into their contract template for the TA projects.

### Financial arrangements

133. The TAPM Contract Supplier will invoice FCDO quarterly for all TA Fund and Portfolio Management Service expenditures. Despite quarterly invoicing, the TAPM Contract Supplier will provide the FCDO with monthly forecasts and expenditure figures. The TAPM Contract Supplier will inform FCDO of potential slippage or overspend as soon as they are identified.

134. The TAPM Contract Supplier will invoice separately for (a) Portfolio Management Services and (b) “TA Project Fund” spending, as defined in Section 1F. The funds received for all TA projects delivery, including pass through costs for the TA projects delivered through sub-contracts, will be drawn from and be accounted for as part of the TA Project Fund. The TAPM Contract Supplier will set up a separate bank account for the “TA Fund” to ensure transparency and to facilitate reporting. This bank account must be available for open book accounting, to provide the FCDO with transparency on costs. The TAPM Contract Supplier and FCDO will agree the detail of the approach to invoicing during the inception period to ensure that the TAPM Contract Supplier can manage onward payments to the TA Project Suppliers in a timely manner.

135. All TAPM Contract Supplier costs will be invoiced in GBP and reimbursed by the FCDO quarterly based on actual costs incurred. This may be subject to retention based on payment by results (see Part 2 Section B) with regards to fees for the Portfolio Management Core Team services and any performance linked payments established for specific TA projects. These payments will by default be made in arrears. Where it is demonstrated that it is necessary for delivery, TA projects requiring advance payment arrangements for specific activities will be agreed with the FGMC SRO, and will not be in advance of need.

136. Open book contract management will be required to ensure full transparency of TAPM Contract Supplier finances, including any profit margins and Non-Project Attributable Costs associated with the programme (Portfolio Management Services and TA Project Funds). The TAPM Contract Supplier will be required to provide annual audited accounts that separately identify FCDO funds, associated disbursements, and any unspent funds.

### Misapplied Funds

137. The TAPM Contract Supplier will use reasonable endeavours to promptly recover any funds which are used for any purposes outside those specified in the TA Project agreements, or in the event of Aid Diversion taking place. Aid Diversion is any event, including fraud, corruption, bribery, theft, terrorist financing, money laundering and other misuse of funds that prevents funds being directed to the aid outcomes or recipients intended. Any funds used in the ways set out in this paragraph will be referred to as “**Misapplied Funds**”.

138. Where the TAPM Contract Supplier cannot practically recover the Misapplied Funds despite using its reasonable endeavours to do so, they will fully document this, and will notify FCDO as soon as is practicable. This notification will include an explanation of the amount and nature of Misapplied Funds, the reasons why the TAPM Contract Supplier cannot recover the Misapplied Funds, the efforts the TAPM Contract Supplier has made to recover the Misapplied Funds, and an explanation of how the TAPM Contract Supplier will prevent a reoccurrence of the misapplication of funds.

139. Misapplied Funds which are recovered by the TAPM Contract Supplier must be used for future TA Projects and will be offset on the next quarterly in arrears invoices for TA Project Funds. Any recovered Misapplied Funds which have not been disbursed at the end of the contract term will be offset from final payment of invoice or credited by the TAPM Contract Supplier to FCDO where these exceed the amount of the final invoice payment.

140. Without prejudice to any other rights and remedies FCDO has under the Contract, FCDO may in its sole discretion, acting reasonably, determine that any Misapplied Funds which are not recovered could be considered a Default by the TAPM Contract Supplier under the terms of this Contract and be offset from any final payment invoice or credited by the TAPM Contract Supplier to FCDO where these exceed the amount of the final invoice payment.

### **VAT and other taxes**

141. The Contract value is inclusive of all applicable taxes. The FCDO considers this Contract, including all TA project funding and the TAPM Contract Supplier's costs for delivering the programme, to be Outside Scope of UK Value Added Tax (VAT) due to the place of supply rules – as such, any UK VAT suffered by the TAPM Contract Supplier during delivery of the programme can be recovered as input tax, subject to the normal rules of recovery. However, it is the TAPM Contract Supplier's responsibility to establish its taxation position in the UK and any countries FGMC operates in and ensure it meets its obligations. Local taxes may be applicable in other countries.

### **Local laws and regulations.**

142. The TAPM Contract Supplier should ensure that all sub-contracted TA project suppliers give due regard to any domestic legislation or guidelines in the partner country where the TA project is delivered. The TAPM Contract Supplier will ensure that each TA project has knowledge of the working conditions of the partner country and understands any restrictions or legislation relevant to operating there.

143. Any in-country staff and the suppliers of TA projects must have the required licences or registrations to operate in that partner country. The TAPM will verify this capacity as part of its due diligence assessments prior to any contract awards.

### **Delivery chain mapping**

144. Delivery chain mapping is a process that identifies and captures, usually in visual form, the name of all partners involved in delivering a specific good, service or charge, ideally down to the end beneficiary. Bidders should provide details of their approach to delivery chain mapping reflecting on the responsibilities of Portfolio management.

145. In line with the FCDO Supplier Code of Conduct, the TAPM Contract Supplier shall provide and 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 must demonstrate how funds/Assets flow from the initial source to end beneficiaries. This record needs to be updated regularly by the TAPM Contract Supplier and when there are material changes to the delivery chain. As a minimum, delivery chain data should be submitted to FCDO on an annual basis as part of the annual programme report. Delivery Chain Mapping should be included as a standing agenda item in the regularly scheduled progress meetings with FCDO, for discussion and review.

### **Competition and fairness**

146. As part of maintaining and promoting VfM, where it is necessary for the TAPM Contract Supplier to procure TA, it is expected they will run fair and transparent procurement processes so as to ensure that the best-placed TA project supplier is selected to deliver. This means advertising opportunities through CfPs with clear selection criteria. These should be advertised in accordance with Clause 8 of the Standard Terms and Conditions and especially reaching out to local markets in the target TA countries. Application processes must be proportionate, placing reasonable requirements on applicants.

147. The FGMC2 core team will agree contract awards, based on the advice from the TAPM Contract Supplier summarising the competitive selection process. In some instances, where the planned TA projects are politically sensitive the FCDO or partner Government may join the assessment process.

### **Safeguarding**

148. FCDO maintains a zero-tolerance approach to sexual exploitation and abuse by the TAPM Contract Supplier, any partner organisations or contracted TA projects, which includes their downstream partners. In this programme, this means suppliers, members of the consortium and any partner organisations. The FCDO expects its partners to follow our lead and robustly consider social safeguards through their own processes. The capacity of our partners to do this and their effective performance will be a key risk assessment factor in programme design, delivery and monitoring and evaluation.

149. As a FGMC2 tier 1 supplier, the TAPM must have adequate safeguarding policies, procedures, and measures in place to protect beneficiaries and staff. Organisations contending to be suppliers of TA projects will be required to provide their safeguarding policies as part of bid applications and a clause will be included in contracts to ensure that safeguarding requirements, along with whistleblowing and complaint procedures, are adequate. Additionally, the capacity of tier 1 suppliers to install, monitor and respond to safeguarding measures will be assessed as part of the due diligence checks that will take place prior to the signing of this contract. All TA project suppliers will also be expected to adhere to the FCDO Supplier Code of Conduct and other standard FCDO safeguarding policies

### **Duty of care**

150. The TAPM Contract Supplier will be expected to meet the appropriate UK and overseas duty of care in relation to its employees and other personnel it retains and logistical arrangements. Bid proposals will set out duty of care systems and procedures, notably for contexts of travelling to high security risk or conflicted affected countries.

151. All TAPM personnel (including its employees, subcontractors or agents) engaged under this Contract will come under the duty of care of the TAPM, as set out in Clause 10 of the Terms & Conditions. The TAPM Contract Supplier is responsible for the safety and well-being of its personnel. Responsibility for Duty of Care of downstream TA project personnel will be set out in each TA project contract, including appropriate security arrangements. FCDO will share available information with the TAPM Contract Supplier on security status and developments in-country where appropriate. Travel advice is also available on the Foreign & Commonwealth Office website ([www.gov.uk/foreign-travel-advice](http://www.gov.uk/foreign-travel-advice)) and the TAPM Contract Supplier must ensure it (and its personnel) are up to date with the latest position.

152. The TAPM Contract Supplier is responsible for ensuring that appropriate arrangements, processes and procedures are in place for its personnel, taking into account the environment they will be working in and the level of risk involved in delivery of the contract. The TAPM Contract Supplier must ensure its personnel receive the required level of training prior to deployment (where applicable).

153. The TAPM Contract Supplier must comply with the general responsibilities and duties under relevant health and safety law including appropriate risk assessments, adequate information, instruction, training and supervision, and appropriate emergency procedures.

### **GDPR**

154. Please refer to the details of the GDPR relationship status and personal data (where applicable) for this project as detailed in **Annex F** below and the standard clause 33 in section 2 (FCDO Standard Terms and Conditions) of the contract.

### **Intellectual property rights (IPR) and publication**

155. IPR arrangements between the FCDO and the TAPM Contract Supplier will be governed by Section 25 of the standard T&Cs of the Contract. This includes intellectual

property created by TA subcontractors in the course of delivering activities funded by FGMC (e.g. policy recommendation reports and digital tools), unless otherwise agreed by the FCDO.

156. The FCDO is committed to openness and transparency. Activity outputs must be made open source, accessible and suitable for publication and further use unless otherwise agreed with the FCDO. The TAPM Contract Supplier must include suitable T&Cs in their arrangements with TA subcontractors to support this approach.

### **Emissions tracking and reducing the environmental impact of delivery**

157. The TAPM Contract Supplier (including consortium members if a consortium) must be publicly committed to achieving Net Zero by 2050. For large companies, the FCDO recommends having a commitment to Science Based Targets and/or joining Race to Zero, and for SMEs joining Race to Zero via the SME Climate Hub.

158. As a climate-focused programme, it is important that the TAPM Contract Supplier considers the direct emissions produced by its work to deliver FGMC and takes steps to reduce them. The TAPM Contract Supplier will produce a plan for reducing these emissions and report against it, with proportionate monitoring, as part of programme management.

159. As well as greenhouse gas emissions, the FCDO is committed to avoiding other negative environmental impacts of FGMC and maximising co-benefits. This includes pollution, waste management, water, biodiversity and land degradation. The TAPM Contract Supplier is required to include this as part of activity planning and risk assessment process.

### **Transparency and record keeping**

160. FCDO requires all Suppliers receiving and managing funds, to release open data on how this money is spent, in a common, standard, re-usable format and to require this level of information from immediate subcontractors, sub-agencies and partners.

161. It is a contractual requirement for the TAPM Contract Supplier to comply with this, and to ensure they have the appropriate tools to enable routine financial reporting, publishing of accurate data and providing evidence of this FCDO – further information is available from: [www.aidtransparency.net](http://www.aidtransparency.net).

162. The TAPM Contract Supplier will need to keep records of all work and expenditure, as per clause 15.1 of the standard T&Cs, in a form which can be transferred to FCDO and available upon request, for example for FCDO internal audit, National Audit Office (NAO), the Independent Commission for Aid Impact (ICAI), and so on.

### **Consortium/ management**

163. While not a requirement, it is possible for the TAPM to be a consortium rather than a single organisation. In this case, there will be a named lead organisation (known as the “Primary Supplier”), that will manage the consortium members. The Lead organisation is referred to interchangeably as the “Supplier” in this Terms of Reference.

164. The Primary Supplier will be responsible for ensuring the effective management of FGMC TA project contracts, delegating responsibilities to consortium members/ as necessary to achieve the objectives of delivering the TAPM service. The Primary Supplier will be solely accountable to FCDO for the delivery of the Terms of Reference. It is essential that all suppliers work together in an inclusive, transparent, and coordinated manner. The Primary Supplier and all consortium members/ are required to work as one team and not in silos. The Lead organisation will be responsible for developing and maintaining a cohesive team spirit, based on transparency, equal partnership, and a shared vision and objectives. These requirements also apply to the Primary Supplier’s and consortium members/s’ working relationships with the PMSST and FCDO.

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## Annex A: Preliminary pipeline of TA projects

### **Likely countries in the first pipeline batch for TA projects and typology of project contexts:**

There are two broad types of technical assistance contexts where TA is envisaged; the first supports tropical producer countries to strengthen their regulatory systems regarding the traceability of commodities and the export controls in place, and the second, is with alliance countries, those markets that import forest-risk commodities and invest overseas in commodity production, to encourage consideration of sourcing and putting in place import regulations

First batch of TA Projects likely in the following **Producer countries**: Liberia, Indonesia, Cameroon, PNG. It is envisaged that TA projects will work with Government services responsible for forest management, land use planning, forest regulation or export controls. In some instances, the TA will focus on building institutional accountability strengthening the capacities of the private sector in compliance verification, of CSOs and IPLCs in holding governments and businesses to account.

### **Possible TA project to support government authority/ies to strengthen national regulatory systems around commodity traceability and export controls**

Tropical countries often face challenges in regulating commodity production and trade, particularly for commodities linked to deforestation and forest degradation, such as timber, palm oil, and soy. Their regulatory frameworks are often fragmented, outdated, and lack the necessary enforcement and traceability mechanisms. This situation can lead to unsustainable logging/agricultural practices and illegal trade, which undermine sustainable forest stewardship, resulting in environmental degradation, economic losses, and unfair outcomes for people who depend on forests for their livelihoods, such as Indigenous Peoples. The lack of robust traceability systems further complicates efforts to monitor supply chains and verify the origin of commodities, undermining a country's ability to comply with international standards, including the forthcoming UK Forest Risk Commodity Regulation (UKFRC) and European Union Deforestation Regulation (EUDR).

Addressing these complex issues requires engaging multiple national stakeholders, including representatives from government, private sector, and civil society to develop solutions. By adopting a deliberative approach, FGMC supports stakeholders with a stake in forest land in having a say in how this land is used, including how benefits are distributed. This ensures that the regulatory frameworks governing forest commodities are not only legal but also legitimate and, in turn, are more likely to be sustainable.<sup>4</sup>

Below are indicative outcomes and activities that FGMC could expect to support through a technical assistance project under the TAPM contract:

1. **Strengthened and transparent legality control systems:** support the Government to strengthen its commodity supply chain and legality verification systems. This includes engaging stakeholders to develop new procedures to address gaps and creating

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<sup>4</sup> FGMC1 focused on the national processes and frameworks that support national Timber Legality Assurance Systems (TLAS). FGMC2 will continue this work but will expand its scope beyond timber to other forest-risk commodities (FRCs), including minerals. It may also include work with national regulations covering emerging forest services such as carbon.

comprehensive documentation to support future implementation. It may also include requirements for IT system development, piloting and rollout.

2. **Strengthened regulatory framework:** harmonise the governing acts and policies of relevant agencies to identify and address gaps and inconsistencies in legal and regulatory frameworks. Provide support to amend acts and policies to ensure a coherent regulatory framework.
3. **Increased stakeholder capacity:** develop a strategy to address needs identified in organisational capacity assessments of key agencies and other non-government stakeholders, and deliver targeted training to help them to engage effectively in deliberations to shape forest sector policies and to enhance their ability to implement the agreed control systems.
4. **Increased transparency and accountability:** establish information-sharing mechanisms to make relevant data publicly available. Through engagement with state and non-state stakeholders, strengthen grievance and redress mechanisms and complaint processes to handle issues effectively, including those related to local communities' and Indigenous Peoples' rights. Support the independent monitoring mechanisms as agreed through multi-stakeholder deliberations.
5. **Enhanced outreach:** support the authority/ies to implement a communication and stakeholder engagement strategy, create outreach materials, and hold international forums to share experiences and prepare for implementation.

### **First Batch of possible TA projects for Alliance Countries that import forest-risk commodities and invest overseas in commodity production**

First batch of TA projects likely in **China** and **Vietnam**.

FGMC defines "Alliance Countries" as emerging economies that import or invest overseas in commodities whose production may have negative impacts on forests in tropical countries. These may include timber products, or commodities whose production put forests at risk such as palm oil, soy natural rubber, cassava, and minerals.

Alliance Countries also generally have important manufacturing sectors and some of the commodities they import from developing countries are further processed and exported to developed country markets which are becoming increasingly selective about the impacts of their imports on forests. The UK Forest Risk Commodity Regulation (UKFRC) and European Union Deforestation Regulation (EUDR), the US Lacey Act and the possible US FOREST Act are amongst the regulations being adopted in these markets to address illegal commodity trade and commodity-driven deforestation.

Through their trade and investment Alliance Countries can influence forest stewardship in developing countries, both through introducing regulations governing their national operators and through promoting better practices through industry codes of practice. These efforts can be supported through bilateral government-to-government MoUs and arrangements between national trade bodies such as associations or chamber of commerce.

FGMC aims to support such arrangements through working with a combination of Alliance Country partners: government agencies, trade associations, research bodies and CSOs and,



where practicable, other donors who are active in relevant sectors. In cases where there is significant investment in a producer country by Alliance Country operators, placement of national representatives as facilitators may be advantageous to help overcome cultural and communication obstacles.

A national Programme Management Office (PMO) is key in managing relationships with partners and as a conduit for providing grant funding that enables think tanks, trade associations, CSOs, research bodies to generate evidence and convene dialogues that improve understanding of the complexities and risks associated with overseas supply chain.

Below are indicative outcomes and activities that FGMC could expect to support through a technical assistance project under the TAPM contract:

1. **Adoption of national regulations covering trade and overseas investment:** Supporting research and exchanges to develop understanding and evidence that inform government agencies on regulations covering trade and investment. Adoption of controls that exclude illegal and unsustainable forest products aims to incentivise tropical forest countries to establish their own forest land stewardship assurance systems.
2. **Adoption of trade and investment commodity codes of practice for industry organisations:** Supporting development of codes of practice and piloting their implementation in key producer countries, including placement of national facilitators in those countries. These may apply to commodity specific sector associations and also to the finance sector.

## Annex B Coherence across PMSST and TAPM roles

The TA Portfolio Manager (TAPM) and the PMSST will be independent of each other but will need to work as a coordinated team throughout programme planning and delivery. A key role of the PMSST is to provide a constructive ‘challenge-function’ when needed to improve delivery and value for money for individual TA projects.

Issue	PMSST	TAPM
Global programme wide responsibilities	Programme level monitoring and strategic planning - Overall responsible for programme wide MEL against FGMC2 TOC and results framework and reporting to FCDO (quarterly and annual)	Accountable for the performance of all the technical assistance projects. Responsible for development of a portfolio wide reporting framework (to FCDO) across all TA projects (discussed with PMSST) Portfolio TA coordination Agree coordination structure with PMSST
	Development of standard provisions with TAPM Contract Supplier regarding harmonised reporting frameworks and ToC for all TA projects (included in ToRs for intervention proposals and in contract requirements for sub contracted TA projects)	Development of standard provisions with PMSST supplier regarding harmonised reporting frameworks and ToC for all TA projects (included in intervention proposals and in contract requirements for sub contracted TA projects)
Programme wide coherence – globally	Ensure all delivery partners understand and align to the programme wide ToC.	Adherence to programme wide (and nested) ToC See coordination point above
	Lead Monthly meetings with FCDO as part of Core Team, working with key delivery partners such as TAPM Contract Supplier to prepare agenda	Attend monthly meetings with FCDO, PMSST, and other key delivery partners, working with PMSST to input into agenda
	Organizing Annual stakeholder fora	Participate in annual stakeholder fora
Political/country engagement	Direct engagement (alongside and delegated by FCDO)	No direct engagement at country level. The individual TA project teams in-country will engage with governments.
Technical Assistance to partner countries - ToRs	Identification of key TA needs with partner governments (and FCDO) in each partner country - scoping	Collaborate closely with the PMSST to ensure that the TA projects are oriented to specific country-context needs and adjusted to significant shifts in country context.
	Preparation of early draft ToRs with FCDO These should include guidance on MEL and reporting (see below)	Refinement of ToRs, liaising with PMSST and FCDO to finalise
	Assists FCDO in finalising/sign off of ToRs with partner governments	
Technical Assistance to partner countries - mobilisation		Responsible for preparation of intervention proposals and managing procurement process in line with FCDO contract requirements Liaising with FCDO (3 months to mobilise)
	Providing information on potential local suppliers to TAPM	Intel on potential suppliers (international and local) where needed.

		Where sub contracting is required, carry out bid assessment with FCDO and in some contexts the national stakeholder/ government
	Providing any local insights into local suppliers and their positioning to the TAPM, where appropriate.	Due diligence etc
Technical Assistance to partners countries – <b>Specific TA project contract Management</b>	Constructive technical guidance and oversight of TA projects together with host government and national stakeholders Reviewing TA project reports and progress and reflecting on changes to country strategies  Support TAPM in identification of risks/ challenges/ opportunities, assessing risks	Administer TA projects in the Portfolio, including monitoring project progress with support from the PMSST (see below), ensuring adherence to ToRs (and where relevant, contract terms), TA deliverables, agreed reporting, and managing any changes to scope of work. Includes: robust risk management across the TA Portfolio to identify, assess, and mitigate risks. The TAPM will be responsible for the disbursement, due diligence, and fiduciary oversight of TA projects (Tier 2 and 3 in delivery chain terms).
	At country level – support/advice to TA projects based on local stakeholder understanding and overview – communicate to TAPM as well as “challenge/triangulation”	Advice to TA projects on project administration and, feedback on reports
Technical Assistance to partner countries - <b>Performance, Reporting, MEL</b>	PMSST Provides technical guidance and feedback to the TAPM on TA projects based on in-country observation and engagement with stakeholders PMSST informs TAPM and FCDO of any issues observed (directly by PMSST or via SHs) regarding TA project performance	TAPM quarterly reports of ongoing activities and utilization of funds to FCDO - Drawing together information from TA projects reporting. Any major issues shared in monthly meetings
		Ensure TA project reports on progress are shared with PMSST in a timely manner to feed into overall MEL reporting to FCDO (quarterly and annual)
Programme wide coherence – <b>country level</b>	At country level – development of common ToC and country strategy/roadmaps agreed with and by national SHs	TA projects in each country are responsible for alignment with the national strategies/roadmaps
	Regular engagement across delivery partners in-country to ensure coordination amongst grantees, TA projects, facilitation etc	TA projects in each country are responsible for coordination with other FGMC2 delivery partners where relevant (by TA projects) – encouraged by TAPM

## Annex C: Country profiles for Producer and “Alliance” Countries

1. **Part 1:** A fiche has been prepared for each of the identified producer countries, informed by country visits and consultations with national stakeholders, other development partners, and Posts. These set out a country-by-country analysis of needs and opportunities, and proposed actions for the first 1-3 years. Broad opportunities and rationale for FGMC2 engagement are identified building from the experience and networks of the first Phase.
2. Each fiche provides:
  - a short summary of the forests and national governance context, some detail on trade in forest risk commodities and the challenges and opportunities in the forest sector;
  - the rationale for FGMC engagement in that country;
  - potential actions
3. The budget indications for each partner country will be determined as a result of detailed work planning with concerned Governments. It is likely that these will range from £2m to £7m per year across the Tier1 and Tier 2 country contexts. These budgets are not part of the PMSST contract and are provided to illustrate the potential scale of spend in countries as per the overview of country-level arrangements shown in Figure 6, Part 2 Section L.
4. More detailed versions of these fiches are set out in **Annex H of the Business Case**.
5. **Part 2** of this Annex sets out the Alliance Countries

## GHANA

<b>Forests</b>	<b>Governance</b>	<b>Commodity trade</b>
<ul style="list-style-type: none"> <li>• Ghana's forests cover 5.4 m ha, 23% of its land area. 0.9 m ha are primary forest.</li> <li>• It has lost 1.5 m ha of forest since 2001, including 0.13 m ha of primary forest.</li> <li>• Annual deforestation rates accelerated from 0.3% in 2010 reaching 2.5% in 2018.</li> <li>• While agriculture has contributed most to forest loss, mining has become increasingly important.</li> </ul>	<ul style="list-style-type: none"> <li>• Except for voice, at country level governance indicators are marginally negative. Trends vary: control of corruption, rule of law, regulatory quality and government effectiveness have weakened, but political stability and voice and accountability improved.</li> <li>• By contrast with these trends, the forest sector has seen improvements in accountability, transparency, voice, government effectiveness and reduced opportunities for corruption.</li> </ul>	<ul style="list-style-type: none"> <li>• Mining products, mainly gold, contributed 48% of export value in 2022. Soft commodity exports, dominated by cocoa, accounted for 13%. Wood products exports have declined in importance from 20% in the early 2000s to just 1% in 2022 due to reduced timber harvests and an increase in mining and oil exports.</li> <li>• Risk assessment of illegal logging &amp; associated timber trade (ILAT risk) was 57/100 in 2020, placing Ghana 87<sup>th</sup> highest of all countries.</li> </ul>
<p><b>Context</b></p> <p>Deforestation in Ghana over the past decades has been driven primarily by agricultural expansion – including cocoa– and illegal, informal gold mining. The share of Ghana's land area with at least 30% tree cover has gone down from 29% in 2000 to just under 23% in 2022, with an acceleration in this trend over 2013-2022. The rate of primary forest loss (mainly in forest reserves/protected areas), has also increased in recent years, the bulk attributable to uses other than logging.</p> <p>In 2019, the timber sector accounted for 1.3% of Ghana's GDP. The country's log production reached an estimated 2.6 m m3 in 2021, up from 2.25 m m3 in 2020. Only a fraction of this production reaches international markets. In 2020, India overtook China as Ghana's main destination for timber products, with the EU27+UK coming third.</p> <p>Addressing the rising concern over mining in forests is critical, as forests are faced with increasing pressures from two sides – pressure for government to open forest reserves to mining, and increasingly organised illegal mining. Greater attention is being paid, nationally and internationally, to policies and practices that aim to reconcile low-deforestation goals with economic development objectives.</p>		
<p><b>FGMC rationale for engagement</b></p> <p>Ghana is one of 5 Tier 1 countries where action in the forest sector can be mobilised quickly. FGMC2 will be able to build on FGMC1's legacy of support to Ghana's productive forest sector to consolidate achievements and secure a voluntary Partnership agreement (VPA) with the UK. FGMC2 will also support Ghanaian stakeholders in seeking ways to address new threats to forests, particularly the growth of mining in forest areas. The programme will test the assumption that stakeholders interested in forests can apply lessons learnt from FGMC1's proven deliberative multi stakeholder process to a different political economy context and set of stakeholders engaged in mining. This experience in Ghana will establish whether FGMC2 could support a similar approach where there is a threat to forests from mining.</p>		
<p><b>Intervention logic</b></p> <p>The overall objective of proposed FGMC support is to contribute to strengthening the credibility of Ghana's forest governance framework and the capacity of its TLAS/forest management system to demonstrably help forests retain high value, in a way that creates stronger incentives for stakeholders to adopt and sustain good forest management practices. This will contribute to Ghana achieving its socio-economic development goals in conjunction with its climate and biodiversity commitments.</p>		
<p><b>Key activities</b></p> <ul style="list-style-type: none"> <li>• Sustaining forest governance reforms that strengthen and promote sustainable forest management (SFM), with a focus on addressing post-FLEGT licensing questions, supporting further development and application of domestic market policies and regulation of overland trade, ensuring TLAS remains underpinned by robust checks and balances, and supporting the effective functioning and sustainability of the transparency tools.</li> <li>• Supporting the generation of evidence that informs SFM policies and practices, including on options for higher value retention in forests and incentives for SFM, and supporting action to build on the lessons learned from FLEGT VPA and improve international understanding of Ghana's SFM approach and TLAS assurance through support to BMRC.</li> <li>• Fostering stakeholder engagement with new threats to forests, through the convening and capacity-building of stakeholders and the gathering of evidence that can inform reflections on what is at play in the mining/forest interface (as well as relevant work with other forest-risk commodities.)</li> </ul>		

## GUYANA

<u>Forests</u>	<u>Governance</u>	<u>Commodity trade</u>
<ul style="list-style-type: none"> <li>• Guyana's forests cover 18.7 m ha, 89% of its land area making it a High-Forest, Low Deforestation (HFLD) country. 17.1 m ha are primary forest.</li> <li>• It has lost 0.2 m ha of forest since 2001, including 0.15 m ha primary forest.</li> <li>• Annual deforestation peaked 0.14% in 2016 dropping to 0.05% in 2022.</li> </ul>	<ul style="list-style-type: none"> <li>• Governance indicators at country level, except voice &amp; accountability, are marginally negative.</li> <li>• Trends since 2000 vary, with improvements in control of corruption and political stability, but weakening for regulatory quality, government effectiveness, voice and accountability.</li> <li>• In the forest sector specifically, adoption of a deliberative process has changed the way decisions are made with greater transparency and voice in the past 10 years.</li> </ul>	<ul style="list-style-type: none"> <li>• The contribution of wood products (Guyana's only significant soft commodity affecting forests) declined from 12% of total export value in 2006 to 0.7% in 2022 due to increased importance of oil. China accounted for 44% of wood product export value.</li> <li>• Minerals, including gold, contributed 6.1% of export value, declining from 64% in 2016 (as oil export increased).</li> <li>• The risk assessment of illegal logging &amp; associated timber trade (ILAT risk) was 59/100 in 2020, the 83<sup>rd</sup> highest globally.</li> </ul>
<b><u>Context</u></b>		
<p>Approximately 12.6 million ha (86%) of the forests are state-owned and administered by the Guyana Forestry Commission (GFC), while Indigenous Peoples own 15%. Most deforestation is caused by gold and bauxite mining, which represent more than 6% of Guyana's exports.</p>		
<p>UK's support to forest governance reform and the timber trade started in the 1990s/early 2000s aimed at strengthening GFC's policies and management, and promoting sustainable, ecologically sound and socially integrated forest management systems. This laid a strong foundation for FGMC's support for the forest governance reform process framed under the VPA. Together with contributions from EU and Norway, this has helped improve transparency and stakeholder relations, as well as clarifying forestry sector-related legal and administrative requirements.</p>		
<p>The UK has supported implementation Guyana's VPA, including development of its Timber Legality Assurance System (GTLAS); engaging relevant stakeholders in the process; increasing transparency and accountability; improved dialogue on communities' land rights; and improving the legal framework.</p>		
<b><u>FGMC rationale for engagement</u></b>		
<p>As a country that has benefited from UK support for some years, FGMC2 will build on the positive experiences and support Guyana's continued journey towards FLEGT licensing and a potential future VPA with the UK. Guyana has also become an important test case for jurisdictional REDD+ with its success in securing a major forest carbon deal, built upon years of forest governance reform and stakeholder engagement. Guyana provides an important opportunity to demonstrate the value of building strong governance foundations and continuing to strengthen inclusive processes for stakeholder engagement.</p>		
<b><u>Intervention logic</u></b>		
<p>Proposed FGMC actions will contribute to strengthening forest sector governance in Guyana, leading to credible, fair, and sustainable forest sector management. This will contribute to maintaining the environmental and economic services provided by Guyana's forests, including climate change mitigation, biodiversity conservation, secure IPLC livelihoods and economic growth.</p>		
<b><u>Key activities</u></b>		
<ul style="list-style-type: none"> <li>• Support national stakeholder deliberation on forest governance reform that informs establishment of a National Sustainable Forestry System and other relevant processes (i.e., Low Carbon Development Strategy, NDC and mining.)</li> <li>• Establishment of a Facilitation Facility &amp; targeted IPLC support.</li> <li>• Effective law enforcement and compliance in Guyana's forest sector.</li> <li>• Support to transparency mechanisms.</li> <li>• Effective participation in the Broader Market Recognition Coalition (BMRC). Support for national engagement processes and support to potential regional outreach.</li> </ul>		

## INDONESIA

<u>Forests</u>	<u>Governance</u>	<u>Commodity trade</u>
<ul style="list-style-type: none"> <li>Indonesia's forests cover 131 m ha, 69% of its land area. 84 m ha are primary forest. It has lost 29 m ha of forest since 2001, including 10 m ha of primary forest.</li> <li>Annual deforestation rates have dropped since the introduction of SVLK – from 2.4% in 2016 to 1.4% in 2022.</li> <li>Agriculture, primarily palm oil, has been the main cause of forest loss, although mining is also important.</li> </ul>	<ul style="list-style-type: none"> <li>All indicators have shown strong improvements since 2000 as Indonesia's democracy has strengthened.</li> <li>While corruption and political stability remain problematic, regulatory quality, government effectiveness and voice &amp; accountability are now positive and strengthening.</li> <li>In the Forest Sector, effective independent monitoring and a stronger deliberative process have significantly improved accountability and efficiency</li> </ul>	<ul style="list-style-type: none"> <li>Mining product exports (coal, iron and ores) contributed 36% of export value in 2022, while soft commodities, more than half palm oil, was nearly 18%.</li> <li>India and China were the main markets for coal, and China for most other mineral exports. India and China were also the main markets for palm oil and China for pulp and paper.</li> <li>The risk assessment of illegal logging and associated timber trade (ILAT risk) was 50/100 in 2020, placing Indonesia midway amongst all countries. FLEGT licensing of its exports under its VPA has contributed to this ranking.</li> </ul>
<p><b><u>Context</u></b></p> <p>Non-oil natural resources are crucially important for Indonesia's economy. Soft commodity exports, including forest products, palm oil, rubber, coffee and cocoa, earned \$51.2 billion in 2022, about 17.5% of total exports. Mining product exports, including critical minerals, other metals and coal-based products, earned \$105.1 billion, 36% of Indonesia's total exports. Indonesia is exposed to increasing market demands to demonstrate that its commodities produced on forest land are sustainable. Indonesia has reacted negatively to the 2022 EU Deforestation Regulation, which it views as a protectionist.</p> <p>Indonesia has been strengthening its national assurance systems related to forest-based commodities. Its Timber Legality Assurance System, which assures that its forest products have been produced in compliance with national laws, has been amended to require sustainable production. Its national palm oil certification scheme (ISPO) aims to assure markets that its palm oil production is legal and sustainable. Key markets for Indonesian wood exports include US, Japan, EU, UK, Australia, South Korea and China, while India and China are the leading destinations for palm oil.</p>		
<p><b><u>FGMC rationale for engagement</u></b></p> <p>The UK has a long history of support to Indonesia's forest sector and action to continue cooperation can be mobilised quickly. It was the first country to issue FLEGT licences, and experience with establishing its associated TLAS can be transferred to other commodity sectors that impact on forests, such as palm oil. This will be important to meet the rapidly changing needs of external markets (including the UK and EU) regarding their new requirements for forest risk commodities. There is also a need to strengthen civil society voice in regulations for forest carbon and ensuring effective communication of lessons from FGMC-supported work.</p>		
<p><b><u>Intervention logic</u></b></p> <p>The broader long-term objective will be to help Indonesia reach its FOLU Net Sink 2030 forest sector commitments through supporting inclusive dialogue on rules for sustainably produced forest products and other key soft commodities, tackling illegal activity, including mining in forest areas, and securing finance for sustainable forest management, including a robust well-financed independent monitoring system.</p>		
<p><b><u>Key activities</u></b></p> <ul style="list-style-type: none"> <li>Strengthening the Timber Legality Assurance System (SVLK) and supporting its wider recognition through the BMRC.</li> <li>Strengthen ISPO and other national agricultural commodity certification / assurance systems, including stakeholder participation, independent monitoring and recognition in international markets.</li> <li>Develop approaches to tackling illegal mining in forests</li> <li>Integrating forest impacts in Indonesia's sustainable finance policies, including stakeholder participation, and review of goals and elements of Indonesia's sustainability taxonomy regarding production of forest products, FRCs and minerals.</li> </ul>		

## LIBERIA

<u>Forests</u>	<u>Governance</u>	<u>Commodity trade</u>
<ul style="list-style-type: none"> <li>• Liberia's forests cover 7.2 m ha, 72% of its land area – the highest in West Africa. 4.1 m ha are primary forest.</li> <li>• It has lost 2.2 m ha of forest since 2001, including 0.3 m ha of primary forest.</li> <li>• There has been a sharp increase in deforestation since 2010, reaching 5.4% in 2020 with clearing for agriculture, including oil palm plantations.</li> </ul>	<ul style="list-style-type: none"> <li>• Indicators have improved since 2000, but some gains have been eroded, especially corruption and government effectiveness. Improved voice &amp; accountability has been consolidated with active civil society and a relatively free press.</li> <li>• In the forest sector the governance situation has worsened with lax enforcement of rules, deteriorating accountability and decreased CSO voice. However, independent monitoring continues to expose bad practices.</li> </ul>	<ul style="list-style-type: none"> <li>• Mining product (ores) exports contributed 18% of Liberia's export value in 2022, while soft commodities, mainly rubber, accounted for a further 18%. Palm oil and cocoa exports have overtaken wood products, which have declined since their recovery after lifting of UN sanctions in 2009.</li> <li>• The EU is the main market for minerals, palm oil and cocoa, the USA for rubber, and China and India for wood products.</li> <li>• The risk assessment of illegal logging and associated timber trade (ILAT risk) was 83/100 in 2022, placing Liberia 31st highest globally.</li> </ul>
<p><b><u>Context</u></b></p> <p>Liberia has more than half of West Africa's remaining forests, which currently cover around 72% of the country. In 2022 Liberia recorded a 23% increase in primary forest loss. During Liberia's civil war in the 1990s and early 2000s, timber revenues were misappropriated and used to sustain the conflict. In 2003, the UN Security Council imposed sanctions on timber exports from Liberia. These were lifted in 2006 following the country's efforts to reform the sector. Currently, timber products account for only 1% of Liberia's export earnings with the largest market being China. Rubber contributes 63%, palm oil 21% and cocoa 2%.</p> <p>The VPA between Liberia and the EU entered into force in 2013. Liberia committed to develop a robust Timber Legality Assurance System (TLAS), through an inclusive multi-stakeholder process. A key component was the development of Libertrace, a national timber legality verification and traceability system.</p> <p>Liberia, together with five other tropical countries, joined in 2023 the Broader Market Recognition Coalition, incentivising good forest governance in tropical countries calling for adequately rewarding national sustainable forestry systems through market recognition.</p>		
<p><b><u>FGMC rationale for engagement</u></b></p> <p>Liberia is a Tier 1 country where forest sector action can be mobilised quickly. Evidence to date suggests that despite considerable governance challenges, stakeholders remain engaged in the deliberative processes and continued donor engagement is needed to avoid erosion of the considerable gains made under FGMC1. This includes support for media and civil society to expose corrupt practices and non-transparent decision making, and for champions within the government system. Recent non-transparent forest carbon offsetting deals struck with Liberia emphasise the need for continued support to those that voice concern.</p>		
<p><b><u>Intervention logic</u></b></p> <p>Proposed FGMC actions will contribute to strengthening forest sector governance in Liberia, leading to a credible, fair, and sustainable forest sector management. This will increase the capacity of Liberia's forest to provide climate change mitigation and resilience, and other ecosystem services such as biodiversity, secure IPLC livelihoods and economic growth through public and private investments in Liberia's forest sector.</p>		
<p><b><u>Key activities</u></b></p> <ul style="list-style-type: none"> <li>• Support for national stakeholder deliberation informing forest governance reform processes for the national timber control system, and other processes where relevant such as for carbon, biodiversity or other forest products/services.</li> <li>• Effective law enforcement and compliance across Liberia's forest sector through strengthening of the national timber control system</li> <li>• Support to increased transparency and accountability in the sector.</li> </ul>		



## REPUBLIC OF CONGO (ROC)

<u>Forests</u>	<u>Governance</u>	<u>Commodity trade</u>
<ul style="list-style-type: none"> <li>• Congo's forests cover 25 m ha, 74% of its land area. 21 m ha are primary forest.</li> <li>• It has lost nearly 1 m ha of forest since 2001, including 0.4 m ha of primary forest.</li> <li>• Deforestation peaked at 0.44% in 2016, declining to 0.23% in 2022.</li> <li>• Shifting agriculture has been the main cause of forest loss.</li> </ul>	<ul style="list-style-type: none"> <li>• All general governance indicators are markedly negative and, except for rule of law, have weakened over the last 5 years.</li> <li>• For forest governance, after a multistakeholder deliberative process to revise the Forest code in 2020, provisions for IPLC rights have been included for the first time.</li> <li>• National CSOs are active in independent forest monitoring, holding business and government to account.</li> </ul>	<ul style="list-style-type: none"> <li>• The share of mining product exports (copper and zinc) increased from 3% in 2011 to 31% in 2020 and were 26% in 2022. Soft commodity exports, primarily wood products, were 3.8% in 2022, down from 7.3% in 2016. Coffee and cocoa were minor export products.</li> <li>• The UAE was the main destination for copper; EU for zinc; and China, Vietnam and EU for wood products.</li> <li>• The risk assessment of illegal logging and associated timber trade (ILAT risk) was 90/100 in 2022, placing Congo 19th highest risk globally.</li> </ul>
<p><b><u>Context</u></b></p> <p>RoC's forest cover is 74% (25m ha). Around 3.9m ha of forest have been set aside as protected zones, 15m ha are intended for production, and there are 71,000 ha of commercial plantations. The main causes of deforestation are slash and burn practices, fuelwood production, illegal logging, and urban development. Other threats include mining (overlapping concessions), agro-industrial expansion, artisanal logging, and bushmeat hunting. Oil exploration remains a threat, particularly to RoC's extensive forested peatlands. The sustainable management of productive forests in northern RoC serves as an important example to countries in the region of how their forests could be managed, and trials with multiple-purpose management (for timber, carbon and biodiversity) provide an important test case of its potential.</p>		
<p><b><u>FGMC rationale for engagement</u></b></p> <p>RoC is a Tier 1 country where action can be mobilised quickly. Building on FGMC1 support, FGMC2 will build on experience to date and maintain the positive relationship developed with the Ministry of Forest Economy. This will support RoC achieving FLEGT licensing and underpin a potential future VPA with the UK. FGMC2's engagement will help maintain the space for civil society and media to expose non-compliance in the forest sector. For many years FGMC was the only UK programme active in RoC. Now, with several new programmes from Defra, DESNZ and FCDO, an FGMC2 focus will be on the strengthening governance and multi-stakeholder processes to complement these programmes.</p>		
<p><b><u>Intervention logic</u></b></p> <p>Proposed FGMC actions will contribute to strengthening forest sector governance in RoC, leading to a credible, fair, and sustainable forest sector management. This will increase the capacity of RoC's forests to provide climate change mitigation and resilience, and other ecosystem services such as biodiversity, secure IPLC livelihoods and economic growth. FGMC2 will build on and sustain existing support to governance reforms that secure sustainable forest management and timber production as currently framed by the VPA and will consider broadening support for applying multistakeholder deliberation to other emerging issues that impact on forests.</p>		
<p><b><u>Key activities</u></b></p> <ul style="list-style-type: none"> <li>• Support the forest sector reforms with a national deliberative process facilitated by a neutral facilitator</li> <li>• supporting analysis and policy reforms that enable multi-purpose forest management (integrating ecosystem services such as carbon into timber management)</li> <li>• Effective law enforcement and compliance across RoC's forest sector through establishment of the national timber control system (framed by its VPA).</li> <li>• Support to transparency mechanisms and independent forest monitor.</li> <li>• Effective participation in the Broader Market Recognition Coalition (BMRC).</li> </ul>		

## CAMEROON

<b><u>Forests</u></b>	<b><u>Governance</u></b>	<b><u>Commodity trade</u></b>
<ul style="list-style-type: none"> <li>Cameroon's forests cover 29.6 m ha, 62% of its land area. This includes 18.2 m, ha of primary forest.</li> <li>It has lost 1.8 m ha of forest since 2001, including 0.8 m ha primary forest.</li> <li>Annual deforestation rate increased from around 0.1% in 2011 to 0.7% in 2020, declining to 0.5% in 2022.</li> <li>Shifting agriculture was the main driver of forest loss.</li> </ul>	<ul style="list-style-type: none"> <li>Key governance indicators are strongly negative and apart from limited improvements (in control of corruption and rule of law), have worsened since 2000.</li> <li>In the forest sector there are some signs of improvement from a very low base with the Government committed to establishing a nation-wide system of compliance monitoring that includes a mechanism for CSOs to ensure compliance with IPLC rights and safeguards.</li> </ul>	<ul style="list-style-type: none"> <li>Soft commodity exports, dominated by cocoa and wood products, contributed US\$ 1.6 bn, 36% of Cameroon's total exports in 2022.</li> <li>The EU accounted for 76% of cocoa and 44% of wood product exports. China accounted for 32% and Vietnam 14% of wood product exports. Cameroon is an important export conduit for Central African Republic &amp; RoC.</li> <li>The risk assessment of illegal logging and associated timber trade (ILAT risk) was 82/100 in 2020 – the 28<sup>th</sup> highest in the world.</li> </ul>
<b><u>Context</u></b> <p>Roughly 62% of the country is covered by forest. The forest sector provides direct and indirect jobs, and accounts for around 4% of the country's GDP and 16.6% of export earnings. The EU27+UK's overall share in Cameroon's international timber sales declined from more than 80% in 2004, to 34.6% in 2020. China and Vietnam respectively accounted for 30% and 21% of export value in 2020. New markets include Senegal and Turkey. Cameroon is under considerable pressure to increase the generation of revenue with a focus on the non-oil sector, putting additional pressure on forests. Cameroon has been an important regional player straddling the Anglophone and Francophone regions of West and Central Africa and plays a key role in international and regional trade in timber, NTFPs and forest-risk commodities (i.e., palm oil and cocoa). Pressures of competing land uses are acutely felt.</p>		
<b><u>FGMC rationale for engagement</u></b> <p>Cameroon is a Tier 2 country for FGMC2 where accountable grants have been active alongside an FGMC coordinator, and efforts to strengthen dialogue between Cameroon and Asian timber trade partners have also been supported. However, with the EU leading the VPA process, FGMC has not engaged directly with government. The rationale for FGMC2 engagement is to build on existing work and take advantage of the improving relationships between donors and the Ministry of Forests, providing a strategic opportunity to engage with the Ministry of Forests alongside the EU in support of the VPA process. There is also strong interest in building effective ties with Asian markets, notably Vietnam and China.</p>		
<b><u>Intervention logic</u></b> <p>FGMC support will strengthen forest governance in Cameroon, thereby leading to a credible, fair, and sustainable forest sector management. This will increase the capacity of the country to protect its forests by ensuring that they retain higher value, provide climate change mitigation and resilience, and other ecosystem services such as biodiversity, secure IPLC livelihoods and economic growth through investments. To achieve this, FGMC will support the establishment or consolidation of facilitated processes that shape sectoral reforms in a way that is as deliberative, inclusive, and informed as possible, for long-lasting, legitimate outcomes.</p>		
<b><u>Key activities</u></b> <p>Strengthen timber sector governance, resulting in:</p> <ul style="list-style-type: none"> <li>Ministry of Forests and Wildlife organisational change and knowledge support</li> <li>Legal compliance in domestic market (capacity building and support for compliance).</li> <li>Engagement with international opportunities for collaboration and market development</li> <li>Actionable Independent Forest Monitoring (IFM) outputs to advance transparency and accountability (improved quality of IFM for greater impact)</li> </ul> <p>Strengthen forest stewardship to address key threats, resulting in:</p> <ul style="list-style-type: none"> <li>Revitalisation of multi-stakeholder policy dynamic through the National Monitoring Committee.</li> <li>Evidence &amp; tools informing deliberations (IFM, Economic modelling, TA support)</li> <li>Increased credibility (e.g. through BMRC) for timber on international market</li> </ul>		

## DEMOCRATIC REPUBLIC OF CONGO (DRC)

<u>Forests</u>	<u>Governance</u>	<u>Commodity trade</u>
<ul style="list-style-type: none"> <li>• DRC's forests cover 180.9 m ha, 78% of its land area. This includes 98.2 m ha of primary forest.</li> <li>• It has lost 18.3 m ha of forest since 2001, including 6.4 m ha primary forest.</li> <li>• Annual deforestation rate increased from around 0.2% in 2011 to 0.8% in 2017, declining to 0.7% in 2022.</li> <li>• Shifting agriculture was the main driver of forest loss.</li> </ul>	<ul style="list-style-type: none"> <li>• Apart from control of corruption, governance indicators have improved since 2000, but all remain strongly negative.</li> <li>• Political stability and voice &amp; accountability have improved since 2016.</li> <li>• DRC's forest sector CSOs are active, taking advantage of improved voice to hold govt and private sector to account. A moratorium on new logging concessions, in place for 20 years, remains a source of contention with limited progress on meeting conditions needed to lift it.</li> </ul>	<ul style="list-style-type: none"> <li>• Soft commodity exports are dominated by cocoa and wood products, which contributed US\$ 199 m, 0.7% of DRC's total exports in 2022. These have declined, while mining product exports reached \$29.2 bn, nearly 99% of total export value. China was the main market for both minerals and wood products.</li> <li>• The risk assessment of illegal logging and associated timber trade (ILAT risk) was 98/100 in 2020, the 3<sup>rd</sup> highest of all countries.</li> </ul>
<p><b><u>Context</u></b></p> <p>DRC is host to the major share of the Congo Basin's rainforest - the second largest tropical forest basin in the world. Moist forests cover 37% of its land area, alongside 17% dry forests, and 4% swamp forests, the latter including peatlands straddling the border with the Republic of Congo. Predominant livelihoods (e.g., crop expansion via small clearings, and fuelwood collection &amp; charcoal production) contribute to forest loss. Other land uses like logging, mining and large-scale agriculture also have significant impact because of the transformations that usually accompany them (e.g., roads, infrastructures, human settlements). Investments in land-based sectors and the influence of internal/external market drivers are expected to grow significantly in the next five to ten years.</p>		
<p><b><u>FGMC rationale for engagement</u></b></p> <p>DRC is a Tier 2 country for FGMC2. Although there has been experience of providing support to civil society via accountable grants under FGMC1, DRC has not been a focus country so there has been no engagement with government. DRC is of regional and global significance as a major forest country and has also become a laboratory for numerous initiatives seeking to address the drivers of deforestation whilst addressing DRC's many development challenges. FGMC2 will bring an important strategic and complementary focus to these efforts that have often struggled to confront the sector's governance challenges. DRC has become increasingly important to the UK, with several new forest relevant programmes under development. FGMC2 will bring an important enabling value to these programmes, focusing on strengthening forest governance and addressing impasses encountered in the productive forest sector over the last 30 years.</p>		
<p><b><u>Intervention logic</u></b></p> <p>FGMC-funded interventions will support further progress with transparency and accountability, clarity of rights, and the application of law, within the timber sector and will explore opportunities to extend to other forest-affecting opportunities and threats including forest carbon &amp; biodiversity finance, and the production of minerals and agricultural commodities.</p>		
<p><b><u>Key activities</u></b></p> <ul style="list-style-type: none"> <li>• Supporting stakeholders to find common ground on lifting the moratorium introduced in 2002 on the allocation of new industrial concessions; updated high-level political economy of the productive forest sector; identification of bottlenecks and a capacity building needs (facilitation, grants, studies, light-touch TA).</li> <li>• Support for transparency and informed deliberation in policymaking</li> <li>• Strengthening representation, voice and capacity of key stakeholders to engage in decision-making processes; formation and mobilisation of a robust evidence base for SFM and related dynamics; engagement with international opportunities for collaboration, transparency, and market development; additional opportunities for forest sector transparency (grants, facilitator, studies)</li> </ul>		

## LAO PEOPLES' DEMOCRATIC REPUBLIC

<p><b>Forests</b></p> <ul style="list-style-type: none"> <li>• Lao PDR's forests cover 14.7 m ha, 64% of its land area. 7.3 m ha are primary forest.</li> <li>• It has lost 4.4 m ha of forest since 2001, including 1.0 m ha primary forest.</li> <li>• Annual deforestation rates have accelerated sharply from 0.72% in 2011 to 2.1% in 2022.</li> <li>• Agriculture – rubber and more recently cassava cultivation – has contributed most to forest loss.</li> </ul>	<p><b>Governance</b></p> <ul style="list-style-type: none"> <li>• Apart from political stability, which has strengthened, governance indicators are negative. Control of corruption has weakened, while there have been improvements in rule of law and regulatory quality. Voice and accountability are particularly weak, demonstrating the limited space for civil society participation.</li> <li>• In the forest sector, a strong response to exposés on illegal logging and commitment to improve transparency.</li> </ul>	<p><b>Commodity trade</b></p> <ul style="list-style-type: none"> <li>• Mining product exports, mainly gold and coal contributed 10% of export value in 2022.</li> <li>• Since establishment of a large Chinese industry, pulp and paper exports have grown to 8%, surpassing rubber (7%).</li> <li>• Wood products exports declined following a ban in natural forest logging in 2014, but have started to increase.</li> <li>• China and Vietnam are the main export markets for most commodities, except for cassava (primarily to Thailand)</li> <li>• The risk assessment of illegal logging and associated timber trade (ILAT risk) was 89/100 in 2020. With recent increases in trade with Vietnam, it is likely this has increased.</li> </ul>
<p><b>Context</b></p> <p>Lao PDR has a high deforestation rate, driven partly by commodity agriculture, primarily rubber and cassava, which are exported to Vietnam, Thailand, and China. All three countries are important investors in Laos's agribusiness sector. Although some logging is authorised for hydropower and infrastructure development, illegal logging (with alleged local political protection) is a growing problem. Despite a ban since 2016, logging in natural forest has increased, along with timber exports to Vietnam. Laos started to negotiate a VPA with the EU and has started to develop a TLAS, but it is understood that the EU no longer wishes to continue.</p>		
<p><b>FGMC rationale for engagement</b></p> <p>Laos is a Tier 2 country and there has been some scoping of potential areas for cooperation. Its trading relationships with Vietnam and China, make it important for FGMC2. UK plans for a VPA with Vietnam create a need for the two countries' enforcement bodies to cooperate more effectively (building on past FGMC activity). With limited natural forest remaining, plantations are being looked to as important future sources of timber and fibre. However, investors struggle to secure the use of land allocated to them by government and there is a need to develop ways to involve and benefit local farmers who occupy land. There are opportunities to use FGMC's deliberative stakeholder approach to develop refined rules for plantation development by investors, that consider farmers' needs. This could address a gap arising from the EU decision to discontinue VPA negotiations. There are also opportunities to address the linked need to develop forest carbon rules, an area which plantation investors are interested in.</p>		
<p><b>Intervention logic</b></p> <p>FGMC actions would support development of a strong forest plantation sector that takes pressure off natural forests, that contributes to local livelihoods and poverty alleviation, and whose products become widely accepted in international markets. It would also contribute to Laos's reputation for high-integrity forest carbon through a robust and inclusive process to decide regulations. And it will strengthen responsible Chinese investment in the broader soft commodity sector.</p>		
<p><b>Key activities</b></p> <ul style="list-style-type: none"> <li>• Work with Chinese partners' activities in Laos to refine Chinese forest products code of practice to reflect Laos conditions, including the pulp and paper industry; refine Chinese code of practice for rubber investment with specific reference to Laos conditions; develop Chinese (and Thai/Vietnamese) guidelines for cassava trade.</li> <li>• Support a multistakeholder platform on forest plantation policy.</li> <li>• Support Laos's participation in the BMRC to promote its plantation-based timber products on international markets</li> <li>• Support establishment of a Forest Carbon Platform and initiate deliberations on rules for a forest carbon market.</li> </ul>		

## PAPUA NEW GUINEA (PNG)

<p><b>Forests</b></p> <ul style="list-style-type: none"> <li>• PNG's forests cover 42 m ha, 89% of its land area. 32 m ha are primary forest.</li> <li>• It has lost 1.8 m ha of forest since 2001, including 0.9 m ha of primary forest.</li> <li>• Deforestation peaked at 0.43% in 2015, declining to about 0.2% in 2021 but rose sharply to 0.34% in 2022.</li> <li>• Clearance for agricultural development is a major contributor to forest loss.</li> </ul>	<p><b>Governance</b></p> <ul style="list-style-type: none"> <li>• Apart from voice &amp; accountability, PNG's governance indicators are negative. Control of corruption and political stability have improved since 2006, while government effectiveness and regulatory quality have weakened.</li> <li>• Forest governance remains weak, but government states commitment to strengthening governance, testing timber legality systems, seeking to secure a greater proportion of timber and carbon values. Limited inclusion in reform processes.</li> </ul>	<p><b>Commodity trade</b></p> <ul style="list-style-type: none"> <li>• Mining product exports (gold, nickel and ores) contributed 21% of export earnings in 2022, while soft commodities, mainly palm oil, wood products, coffee and cocoa accounted for a further 13%. These commodities have declined in importance since 2012 due to the increased contribution of oil.</li> <li>• Japan is the main market for ores, EU for palm oil and coffee, and China for wood products. PNG is China's largest source of tropical logs.</li> <li>• The risk assessment of illegal logging and associated timber trade (ILAT risk) was 83/100 in 2020 (25th highest).</li> </ul>
<p><b>Context</b></p> <p>PNG has high levels of forest cover and relatively low deforestation rates. Its tree cover has declined from 93% of the country's land area in 2000 to 89% in 2022, while primary forest has declined from 70.4% to 68.5%. A notable increase in deforestation in 2022 was likely due to clearing for agricultural crops. The government wishes to capture more value from forest product exports by tackling suspected export transfer pricing, promotion of onshore processing through a log export ban from 2025, and greater state involvement in typically private sector activities. Palm oil is an important crop for agricultural expansion but meeting the government's production goals will involve clearing forest and may not be compatible with its climate change mitigation targets, or with zero deforestation requirements in some markets, leading to a likely two-tier export scenario. PNG has piloted a timber legality standard (TLS) with a view to developing a timber legality verification system (TVLS) and eventually an IT-based timber Decision Support System (DSS),</p>		
<p><b>FGMC rationale for engagement</b></p> <p>PNG is a Tier 2 country for FGMC2. FGMC1 had some engagement with PNG through accountable grants and has initiated development of a Forest Sector Economic Model (FSEM) that will help stakeholders examine and deliberate alternative options for the country's forests. FCDO has placed greater emphasis on the Pacific while PNG has increased its arguments for rewarding countries with high forest cover and low levels of deforestation for their forest carbon sequestration. PNG is an important provider of tropical timber to China and palm oil to both China and India, underpinning the need for FGMC2 to link activities in PNG with important "alliance" (consumer market) countries. FGMC1 has initiated activities to identify additional entry activities. FGMC also has an opportunity to influence forest carbon initiatives, including through LEAF and other programmes funded by DESNZ, by supporting stakeholder engagement in these processes.</p>		
<p><b>Intervention logic</b></p> <p>FGMC support will contribute to strengthening PNG's forest sector and land use governance by supporting linked platforms for inclusive stakeholder participation in deciding future directions for the sector. This covers use of the FSEM to examine broad forest land use alternatives, and processes that arise from them, linked to PNG's timber industry, agriculture development and carbon markets. These actions will help build the credibility of its forest management, improving market acceptance of PNG timber and palm oil and its reputation for high-integrity carbon, in turn leading to strengthened forest conservation and protection of local community livelihoods.</p>		
<p><b>Key activities</b></p> <ul style="list-style-type: none"> <li>• Adapt the FSEM to selected provinces and expand/refine the model scope to involve stakeholder involvement on forest land use decisions making.</li> <li>• Build on the TLS pilots to establish TVLS stakeholder platform, and linking to eventual DDS review, development and rollout.</li> <li>• Building international market understanding and acceptance of PNG timber legality systems, potentially leading to BMRC participation</li> <li>• Support establishment of a multistakeholder palm oil platform and piloting rules for oil palm plantation development.</li> <li>• Facilitation of China PNG MoU on bilateral timber and palm oil trade by adapting and piloting the Chinese codes of practice for overseas trade and investment and potential engagement with Malaysian industry bodies on adopting codes of practices by Malaysian companies operating in these sectors in PNG.</li> </ul>		



## SOLOMON ISLANDS

<u>Forests</u>	<u>Governance</u>	<u>Commodity trade</u>
<ul style="list-style-type: none"> <li>• Solomon Is' forests cover 2.5 m ha, 88% of its land area. 1.9 m ha are primary forest.</li> <li>• It has lost about 0.22 m ha of forest since 2001, including 0.14 m ha of primary forest.</li> <li>• Annual deforestation peaked at 0.75% in 2017 and was 0.57% in 2022. The Solomons are regarded as a HFLD country, but the apparent high forest cover masks degradation caused by destructive logging practices which are depleting the resource.</li> </ul>	<ul style="list-style-type: none"> <li>• Political stability and voice &amp; accountability have strengthened significantly in recent years, and both are now moderately positive.</li> <li>• Corruption, rule of law and regulatory quality have improved but remain negative, while government effectiveness remains weak, with limited reach of institutions beyond the capital Honiara and a few smaller population centres.</li> <li>• Political resistance to change in the forest sector means donor-supported revisions to forest policy and logging code have limited traction.</li> </ul>	<ul style="list-style-type: none"> <li>• Wood products – primarily unprocessed logs – comprise the bulk of Solomon Is' commodity exports, ranging between 50% and 81% of total export value.</li> <li>• As continued excessive logging degrades its forests, the country's high dependence on log exports leaves it vulnerable.</li> <li>• China imports 85% of the country's log exports, with India and other Asian countries making up the balance. The risk assessment of illegal logging and associated timber trade (ILAT risk) was 71/100 in 2020 (55th highest)</li> </ul>
<b><u>Context</u></b>		
<p>Solomon Islands' log exports, based on natural forests, currently contribute about 16% of Government revenue and 65% of export earnings. With these earnings derived largely from unsustainable logging in natural forests, there is an urgent need to consider sustainable forest management to avoid serious environmental impacts. The timber industry, based predominantly on log exports to China, is in decline due to years of harvesting in excess, resulting in deteriorating forest quality.</p>		
<b><u>FGMC rationale for engagement</u></b>		
<p>The Solomon Islands is a Tier 2 country for FGMC2, with no prior UK engagement in the forest sector for many decades. The greater FCDO emphasis on the Pacific creates opportunities to support the country's necessary transition to a more sustainable forest sector. The main rationale for an FGMC2 focus are: a) the importance of the country's trade in logs destined for China, an important "alliance" (consumer market); b) the potential of the important but currently small Australian and New Zealand sawnwood markets to encourage strengthened governance standards in the logging sector; and c) the opportunity to engage with stakeholders in the development of governance structures that support a fair and transparent forest carbon market. This presents a unique opportunity for FGMC2 to support governance considerations in the early stages of the forest carbon process.</p>		
<b><u>Intervention logic</u></b>		
<p>FGMC support will contribute to strengthening forest sector governance by supporting inclusive stakeholder participation in deciding directions for the sector, in general terms and more specifically linked to its timber industry and carbon markets. These actions will contribute to changing the direction of the country's forest sector economy by providing alternative incomes for customary landowners from a more sustainable timber sector and a regulated high-integrity carbon market.</p>		
<b><u>Key activities</u></b>		
<ul style="list-style-type: none"> <li>• Support deliberation on setting forest carbon rules, with initial focus on the voluntary carbon market.</li> <li>• Introduction of a Forest Sector Economic Model: Develop a FSEM and introduce a deliberative stakeholder platform (facilitation, model development, studies, national grants)</li> <li>• Explore opportunities to strengthen transparency and introduce systems that provide market assurance of legal timber production, including through building CSO monitoring capacity.</li> <li>• Building international market understanding and acceptance of strengthened SI systems</li> <li>• Facilitation of a China-Solomons MoU on bilateral timber trade by modifying and piloting Chinese codes of practice for overseas trade and investment, and engagement with Malaysian industry bodies on adopting codes of practices by Malaysian companies operating in these sectors in Solomon Islands.</li> </ul>		

## Annex C Part 2: Key market regulations in Alliance countries / consumer markets

1. Although on-the ground results will be delivered in Forest partner countries (Component 1 of the Business Case- see above Annex C Part 1 and Annex H in the business case), an underlying programme assumption is that change needs to be incentivised through external drivers, such as consumer country regulations (Component 2) and international trade and environmental policies (Component 3).
2. This part of the Annex focuses on Component 2 – Alliances with important consumer countries (**China, Vietnam, EU and India**) with significant footprints in tropical forest countries, whose regulations, once in place, will help drive and sustain transformational shifts in producer country forest governance and regulation. **A more detailed analysis is available in Annex I of the Business Case**
3. The Forest Law Enforcement Governance and Trade (FLEGT) international policy breakthrough was that consumer countries recognised that they were part of the problem, driving illegal logging and its associated trade. The past decade has demonstrated that market reform alongside forest governance reform, is also important. At the time the FGMC1 was designed the EU and USA were the predominant market for tropical timber, however, increasingly over the past decade markets have shifted to Asia. FGMC1 sought to understand trade trends from the perspective of tropical forest producer countries and the signals sent from their primary markets. With the emergence of China and other Asian markets as key players, FGMC has encouraged an appreciation in these emerging markets for the impacts of their consumption on tropical forests: i.e. their “forest footprint”.

### Overview of trends in potential alliance countries

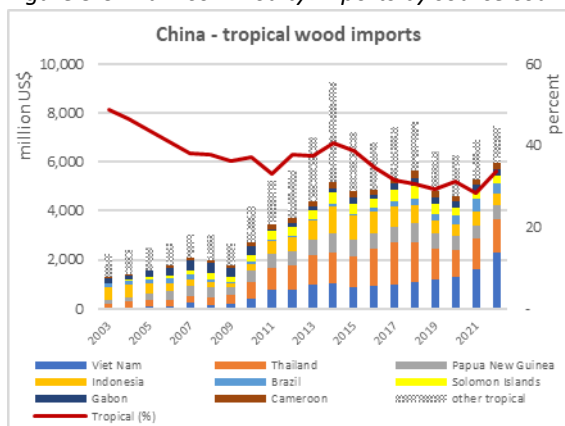
4. Trade patterns and the overseas footprints in focus countries are presented in this Annex, under the four potential alliance countries. These are followed by brief summaries and analysis of the policy and investment context demonstrating the “pull” for forest and forest risk commodities of these policies in tropical forest countries. The trends in trade and trends in market signals emerging from consumer market regulation and incentives will be monitored throughout the FGMC2 programme period.

## China

### Trade footprint

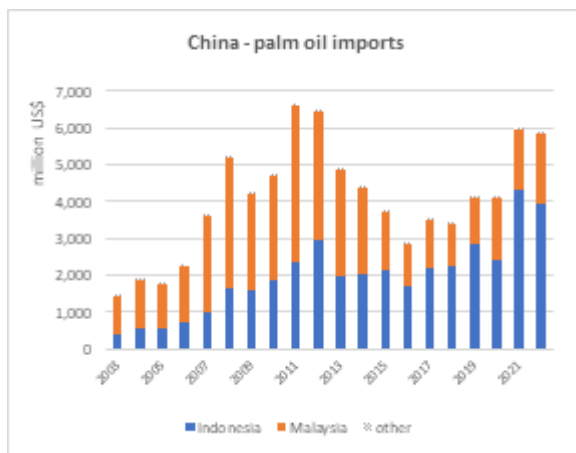
5. The key elements and trends of China's overseas trade footprint are captured in the following graphs (Figures 3 and 4).

Figure 3 China – commodity imports by source countries

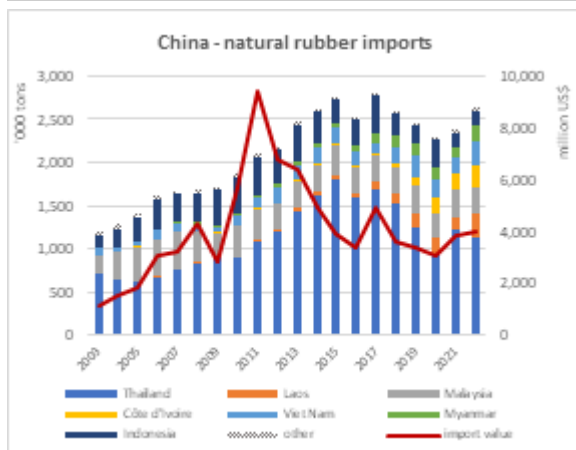


**Tropical imports: \$7.5 bn in 2022, 34% of total wood imports, up from \$2.3 bn, 49% of total wood imports in 2003**

- Imports increasing, but **shift to lower legality risk** products & sources
- Vietnam** (plantation wood chips) and **Thailand** (rubberwood sawnwood): **low risk**
- Indonesia** – wood chips & sawnwood: **moderate risk**
- PNG and Solomons** – unprocessed logs: **high risk**
- Gabon** – sawnwood & veneers: **high risk**
- Brazil** – sawnwood, parquet & plywood: **moderate** to **high risk**
- Cameroon** – logs & sawnwood: **high risk**
- Other important source countries: include **Myanmar, Congo, Laos, and DRC** – all **high risk**



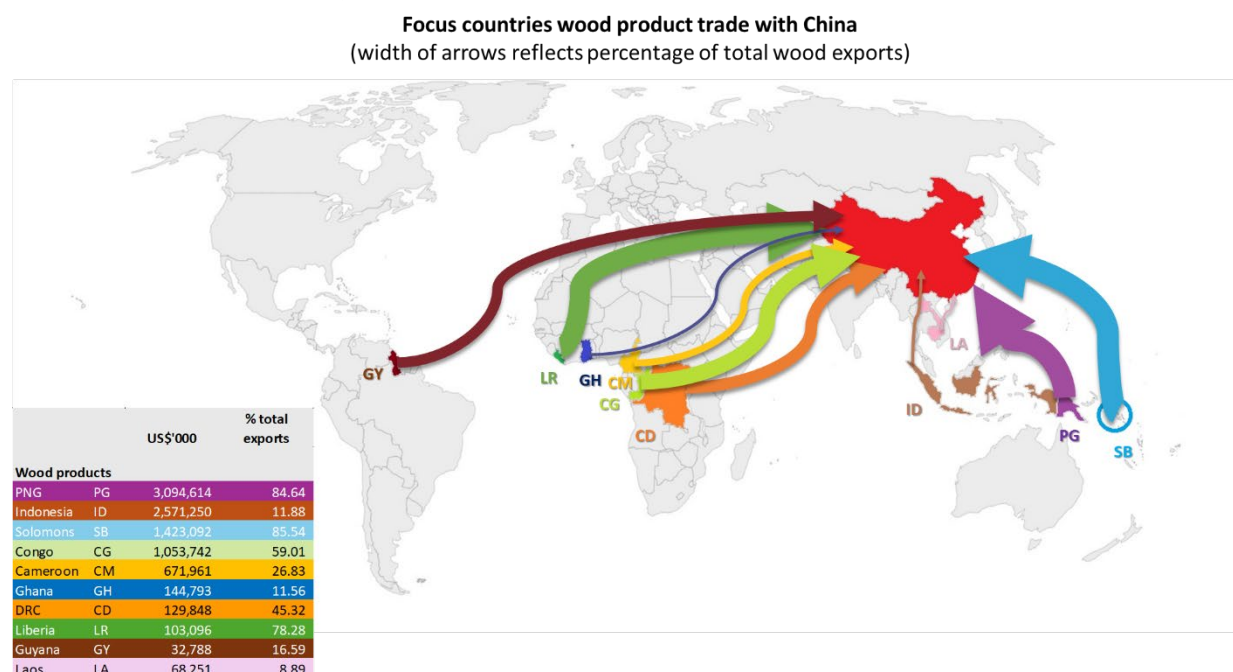
- Only 2 significant import sources.
- Indonesia's share** 68% in 2022, up from 26% in 2003 accounting for 15% of Indonesia's total palm oil exports.



- Volume** of unprocessed natural rubber imports *increased* from 1,2 m MT in 2003 to 2.6 m MT in 2022, while value dropped from \$9.3 bn in 2011 to \$3 bn in 2020, due to collapse in latex price.
- Apart from Côte d'Ivoire, main sources are in SE Asia.
- Laos, Myanmar** and **Cambodia** likely **high-risk** sources.



Figure 4: China's overseas footprint in focus countries



## Legal and sustainable trade and investment policies

### 6. Key policies include:

- **High-level policy:** There is greater awareness of environmental and social impacts of trade and investment. Political slogans like “Greening the Belt and Road” and “Ecological Civilisation” are underpinned by guidelines that encourage Chinese companies operating abroad to follow international or Chinese best practices for environmental protection and sustainable development.
- **Timber:** China’s 2019 Forest Law stops short of regulations on illegal imports, but it prohibits the knowing purchase, processing, and transport of wood from illegal sources; and it includes domestic traceability, requiring timber enterprises to keep a ledger of entry and exit of wood raw materials and products.
- **Cooperation with producer countries:** Forest MOUs, which include specific guidelines on responsible trade and investment, have been agreed with several timber-producing countries; and China is pursuing mutual recognition of timber legality assurance systems.
- **Voluntary commodity codes:** Major national trade associations have adopted and are piloting responsible trade and overseas investment codes for timber, palm oil, rubber and critical minerals.
- **Finance:** Guidelines on finance and environmental impacts have been developed, but these are not commodity specific.

### 7. China’s overseas footprint, as a result of the rapid growth in China’s commodity trade and investment in developing countries, inevitably causes forest loss and degradation, and also affects local people who depend on forests for their livelihoods. Since 2005, the government’s and key trade bodies’ awareness of these impacts has increased, and public and private policies have evolved to recognise the need to address them. While initial focus was on the domestic impacts of the country’s rapid growth, there has been a growing tendency to incorporate environmental and social responsibility in trade and

overseas investment policies. These are underpinned by the political slogans, “Greening the Belt and Road” and “Ecological Civilisation”

8. **China’s 2022 “Guidelines for Ecological Environmental Protection of Foreign Investment Cooperation and Construction Projects”**, jointly issued by the Ministry of Environment and Ecology (MEE) and the Ministry of Commerce (MOFCOM) followed the “Green Development Guidelines for Foreign Investment and Cooperation”. They emphasise how Chinese companies operating abroad are encouraged to follow international or Chinese best practices for environmental protection and sustainable development and are considered to be the most comprehensive document by any country regulator to guide non-domestic environmental management of enterprises.
9. As part of its cooperation under FGMC’s International Forest Investment and Trade (InFIT) programme, China has initiated a range of public and private policies specifically addressing commodities that affect forests. These include voluntary guidelines to assist Chinese investors to understand opportunities, risks and forest management compliance; participation multilateral initiatives such as Asia-Pacific Economic Cooperation (APEC), the Forum on China-Africa Cooperation (FOCAC) and the Greater Mekong Subregion (GMS) cooperation mechanisms; and bilateral MoUs that incorporate country-specific guidelines to strengthen cooperation with timber producing countries, including Gabon, Laos, Myanmar and Cambodia.

## Trade and Investment context

10. Key elements of the context for China’s trade and investment policies are as follows:

### Global trading position

11. **China is the world’s predominant trading nation** – in 2022 it was the top exporter, accounting for 14.6% of US\$24.6 trillion total product exports, was the second largest importer (after the USA) with 10.7% of total imports of US\$25.3 trillion.
12. **China’s imports of non-mineral commodities that may cause deforestation increased 8-fold from US\$17 billion in 2003 to US\$139 billion in 2022.** These were dominated by soy (\$61 bn), wood pulp (\$22 bn), wood products (\$22.2 bn), beef (\$17.8 bn), palm oil (\$5.8 bn), cassava (\$4.2 bn) and unprocessed natural rubber (\$4.0 bn). Brazil was the largest supplier of soy and wood pulp and beef; and Indonesia the largest palm oil and second largest pulp source.
13. **China imported wood products from a wide range of tropical, temperate and boreal countries**, with Russia, New Zealand, Viet Nam and USA its largest suppliers in 2022. **Tropical log imports** were mainly from PNG (\$549 m), Solomon Islands (\$299 m), Republic of Congo (\$144 m), Brazil (\$129 m) and Cameroon (\$126 m); and **tropical sawnwood** from Thailand (\$989 m – mainly rubberwood), Gabon (\$251 m), Cameroon (\$81 m) and Laos (\$75 m).

### Agricultural commodities

14. **China’s overseas investment in the agriculture sector from 2005 to 2022 totalled nearly US\$85 billion.** It increased from US\$180 m to \$2 bn in 2019 but declined (due to COVID) to \$170 m in 2022. Main tropical forest country recipients over the period were Brazil (\$3.3 bn), Laos (\$510 m), Cambodia (\$360 m), Malaysia (\$280 m) and Côte d’Ivoire (\$200m).

### Minerals

15. **China’s mineral imports increased in value by a multiple of 32, from US\$7.1 billion in 2003 to \$225 billion in 2022.** Its main product imports were ores and concentrates of iron

(\$128 bn), copper (\$56 bn), aluminium (\$7 bn), precious metals (\$7 bn), manganese (\$6 bn), zinc (\$5 bn), nickel (\$5 bn), chromium (\$4 bn) and tin (\$2 bn). Although Australia (49%) was the main source, developing forest countries, including Brazil (12%), Chile (9%), Peru (9%), South Africa (5%), Guinea (2%), Indonesia (2%) and DRC (1%) were important suppliers.

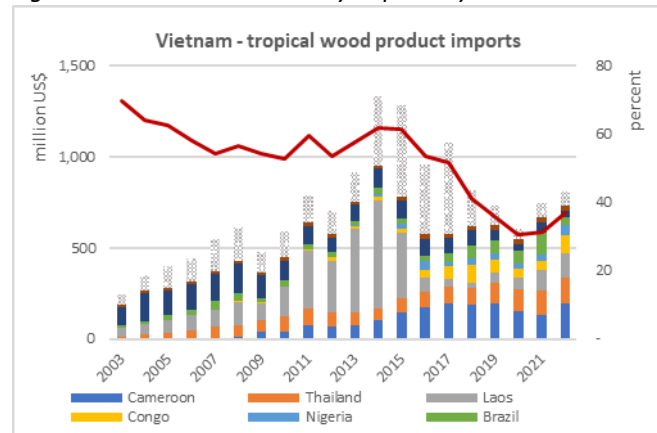
16. **Its overseas investment in the mineral sector over the same period totalled US\$181 billion, increasing from \$1.3 bn in 2005 to \$16 bn in 2019** (but declining to \$6.9 bn in 2022). Main tropical forest country destinations were DRC (\$17.2 bn), Indonesia (\$17.2 bn), Peru (\$5.8 bn), Guinea (\$5.1 bn), Brazil (\$4.8 bn), and Ecuador (\$3.6 bn).

## Vietnam

### Trade footprint

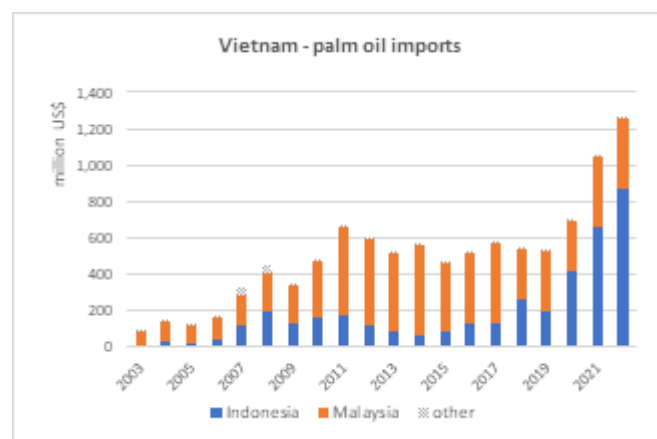
17. The key elements and trends in Vietnam's overseas footprint are set out in the following tables (Figures 5 and 6).

Figure 5. Vietnam – commodity imports by source countries

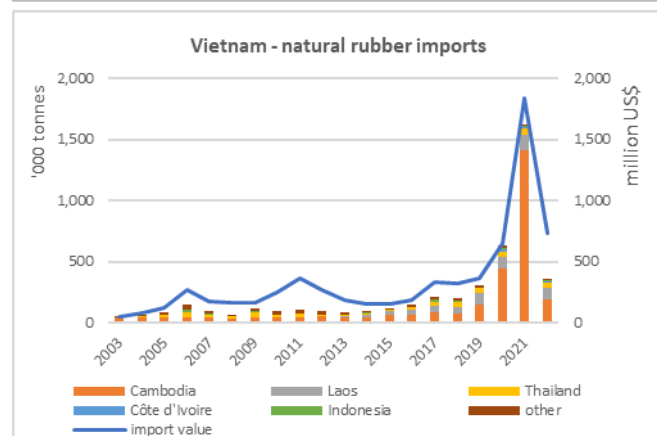


- Total wood imports peaked at \$2.4 bn in 2021. Tropical sources were \$806 m, 37%.
- General trend from tropical to low-risk non-tropical sources to supply furniture export industry
- Most high-risk tropical imports (**Cameroon, Congo, Laos, Nigeria**) are used by small businesses supplying the domestic market.
- **China** has become Vietnam's top wood product source as Chinese industry moves processing to Vietnam. These imports may have high-risk origins, e.g. **Russia**.

20.

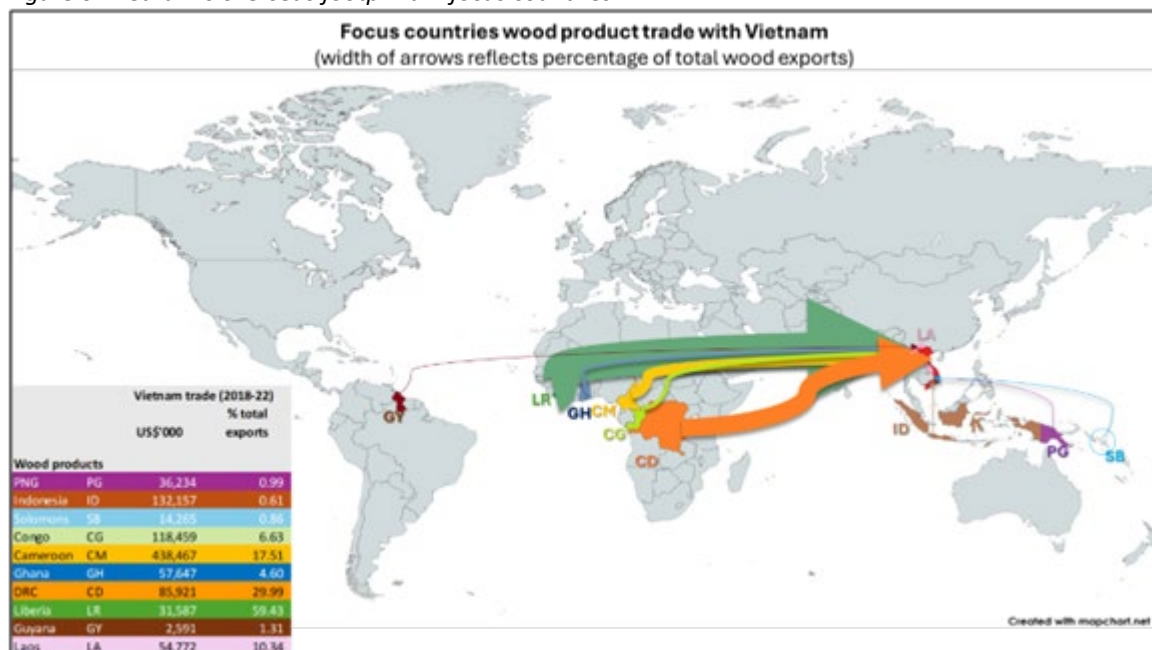


- Vietnam is world's 9<sup>th</sup> largest importer of palm oil after India, China, EU, Pakistan and Bangladesh
- US\$865 m (69%) from **Indonesia**, the balance from **Malaysia**.



- **Cambodia** and **Laos** are main natural rubber source countries, adding to Vietnam's domestic production (1.3 m tonnes in 2021).
- **Vietnam's** investment in both countries has been associated with **deforestation** and **land rights issues**.

Figure 6. Vietnam's overseas footprint in focus countries



## Legal and sustainable trade and investment policies

18. Key policies include:

- **Forests cover 13 million ha, about 40% of the country.** Although Vietnam no longer harvests timber from its natural forests, deforestation rates continue to rise, driven mainly by agricultural expansion. The government looks to carbon markets as a way to finance their protection.
- **Vietnam's export furniture industry** is highly exposed to countries with demands to demonstrate legal timber production. 75% of its wood product exports (primarily furniture), worth US\$12.8 billion in 2021, went to USA and EU – markets that demand evidence of legal or sustainable production.
- **Its tropical timber imports**, mostly from Central Africa and Mekong countries where forest governance is weak, were worth US\$240 million in 2021. They are used mainly by micro, small and medium enterprises that supply its domestic market, yet need to comply with timber trade agreements with the EU and USA.
- **The functioning of its FLEGT VPA Timber Legality Assurance System** will be important to demonstrate legality for these markets, and also for a likely VPA with the UK.
- A state-linked rubber corporation has initiated a **code of practice for responsible rubber**.

## Trade and Investment context

19. Key elements of the context for Vietnam's trade and investment policies are as follows:

- **Rubber and coffee are Vietnam's main FRC exports.** Coffee is largely produced by smallholders and will face challenges meeting EUDR traceability requirements.
- **Vietnam's unprocessed rubber imports**, worth US\$1.8 billion in 2021, were mainly from neighbouring Mekong countries where governance is weak and its investments there have been subject to deforestation and IPLC land rights issues.
- Vietnam has a strong **forest plantation sector, dominated by smallholder farmers**. This supplies wood chips to China and wood pellets to Japan and Korea, as well as contributing to the export industry.
- **Vietnam is an important manufacturing and exporting country of products derived from commodities produced on forest land.** Its wood product exports (including furniture) were worth US\$12.8 billion in 2021, 75% of which were to markets that demand evidence of legal or sustainable production. Its forest risk commodity exports

(mainly coffee, rubber and cashew) were worth US\$10.9 billion, with 45% to those sensitive markets.

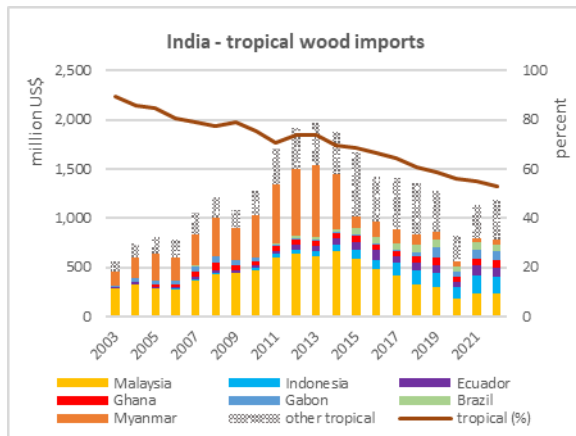
- Wood product export markets are dominated by **furniture exports** (\$8.2 billion in 2021), 65% to US; EU 5.4%, Japan 4.7%, and UK 2.9%. Other wood product exports were \$4.5 billion in 2021, comprising mainly **wood chips to China**, wood pellets to Japan and Korea, and plywood to the USA.
- **Vietnam's tropical timber imports, mostly from Central Africa and Mekong countries where forest governance is weak, were worth US\$240 million in 2021 – about 10% of its total timber import value.** They are used mainly by micro, small and medium enterprises (MSMEs) that supply its domestic market, yet need to comply with its timber trade agreements with the EU and USA, that require demonstration of legal production. Imports from China (30% of total) were worth \$709 million, some of those also originating in countries with weak forest governance.
- The wood product industry is highly reliant on **log and sawnwood imports**. Main sources of logs are Cameroon, USA, France, Congo and Germany; sawnwood from USA, Brazil, Laos and Chile. **Imports from Laos**, where there is a moratorium on natural forest logging, have recently increased. **Tropical (high-risk) logs** used mainly by small-scale furniture businesses supplying the domestic market, while low-risk timber imports and plantations supply exporters.
- Vietnam is an important producer of **coffee and rubber** – mainly by smallholders. **Coffee exports** were \$3.1 billion in 2022, with 58% going to the EU.
- **Vietnam's unprocessed rubber imports, mainly from neighbouring Mekong countries** were worth **US\$1.8 billion**. Cassava imports reached \$547 million, and cashew nuts \$3.6 billion. **Rubber exports** were \$6.7 billion. Vietnamese companies are significant investors in rubber plantations in Cambodia and Laos, which export unprocessed rubber to Vietnam
- FCDO's Business Plan for Vietnam aims to cover areas relevant to FGMC. These include cleaner growth, responsible investment, diversified supply chains for critical materials, increased trade, and more open and inclusive development while protecting natural habitats & biodiversity.
- The UK has over £40m invested in active programming supporting Vietnam's net zero, climate-resilient and nature positive transition. Areas of cooperation include energy, agriculture, forests, the blue economy, carbon markets, pollution, and the Illegal Wildlife Trade.

## India

### Trade Footprint

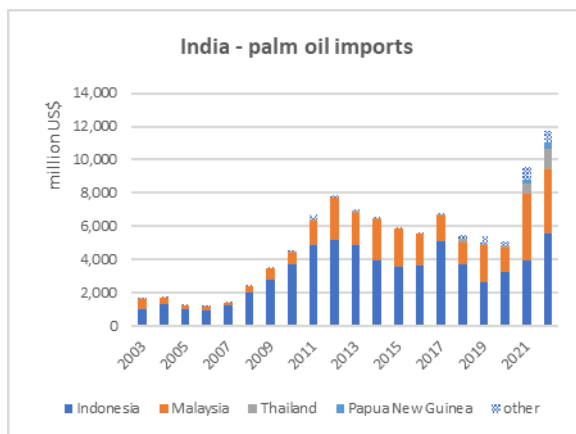
20. The key elements and trends in Vietnam's overseas footprint are set out in the following figures.

*Figure 7. India's – commodity imports by source countries*

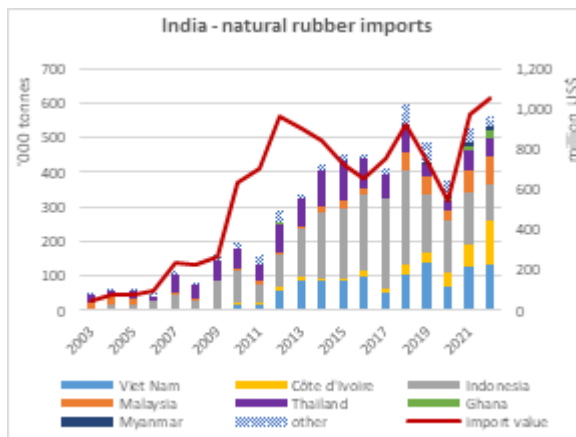


**Tropical imports: \$1.2 bn in 2022, 53% of total wood imports, down from \$2 bn, 73% of total wood imports in 2013**

- **Central & South America and Ghana** mainly plantation teak: **low risk**
- **Indonesia** – veneer, plywood & sawnwood: **moderate risk**
- **Gabon** – sawnwood & veneers: **high risk**
- **Myanmar** – logs before 2015, now sawnwood: **high risk**
- Other main sources: **Panama, Benin, Thailand, Costa Rica**: (plantation teak) **low risk**  
**Solomon Is, Suriname**: **high risk**



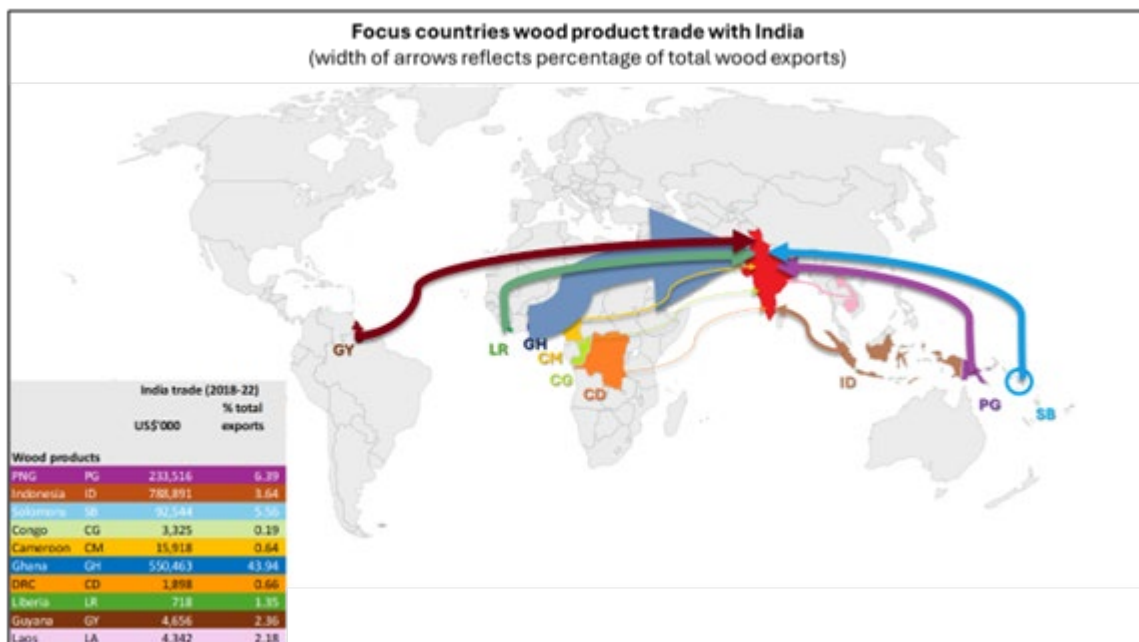
- India is the world's largest importer of vegetable oils, importing 15 m tonnes, 60% palm oil.
- 47% from **Indonesia**; 33% from **Malaysia**
- 10% from **Thailand** and 3.5% from **Papua New Guinea**
- **PNG** share could increase with planned expansion of plantations, with risk of forest conversion



- **Vietnam** (24%) and **Côte d'Ivoire** (22%) have replaced **Indonesia** as India's primary source of rubber
- Trade volume reached 0.6 million tons in 2018, dropping to 0.56 million in 2022. Value exceeded US\$1 bn in 2022.

Figure 8. India's overseas footprint in focus countries





## Legal and sustainable trade and investment policies

21. Key policies include:

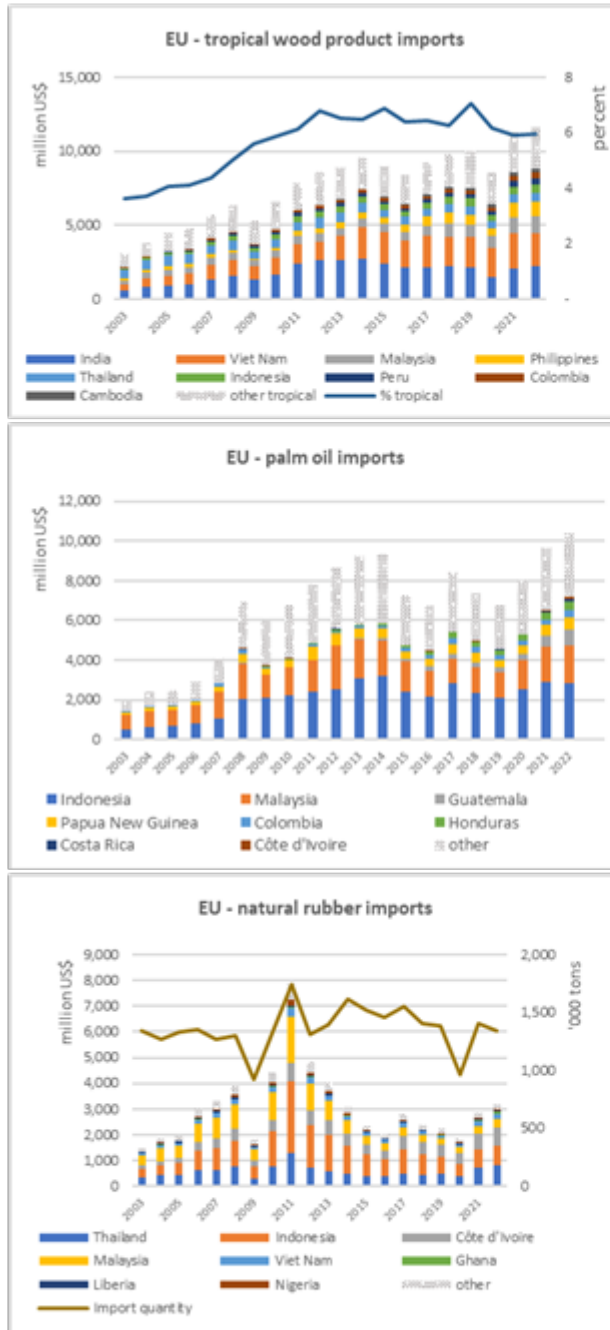
- **Policy:** India has a plethora of legislation, regulations and policies on environment protection, but actual enforcement and compliance with the legal and policy framework remains limited.
- **Indian industry** has had limited exposure to the risks of importing illegal or unsustainable commodities, and manufacturers have little experience with verification systems needed to guarantee that their products are legal.
- **There is an active NGO sector** focusing on national environmental and social issues, but limited attention has been given to India's overseas commodity footprint.



## EU

## Trade footprint

Figure 9. EU's Commodity imports by source.

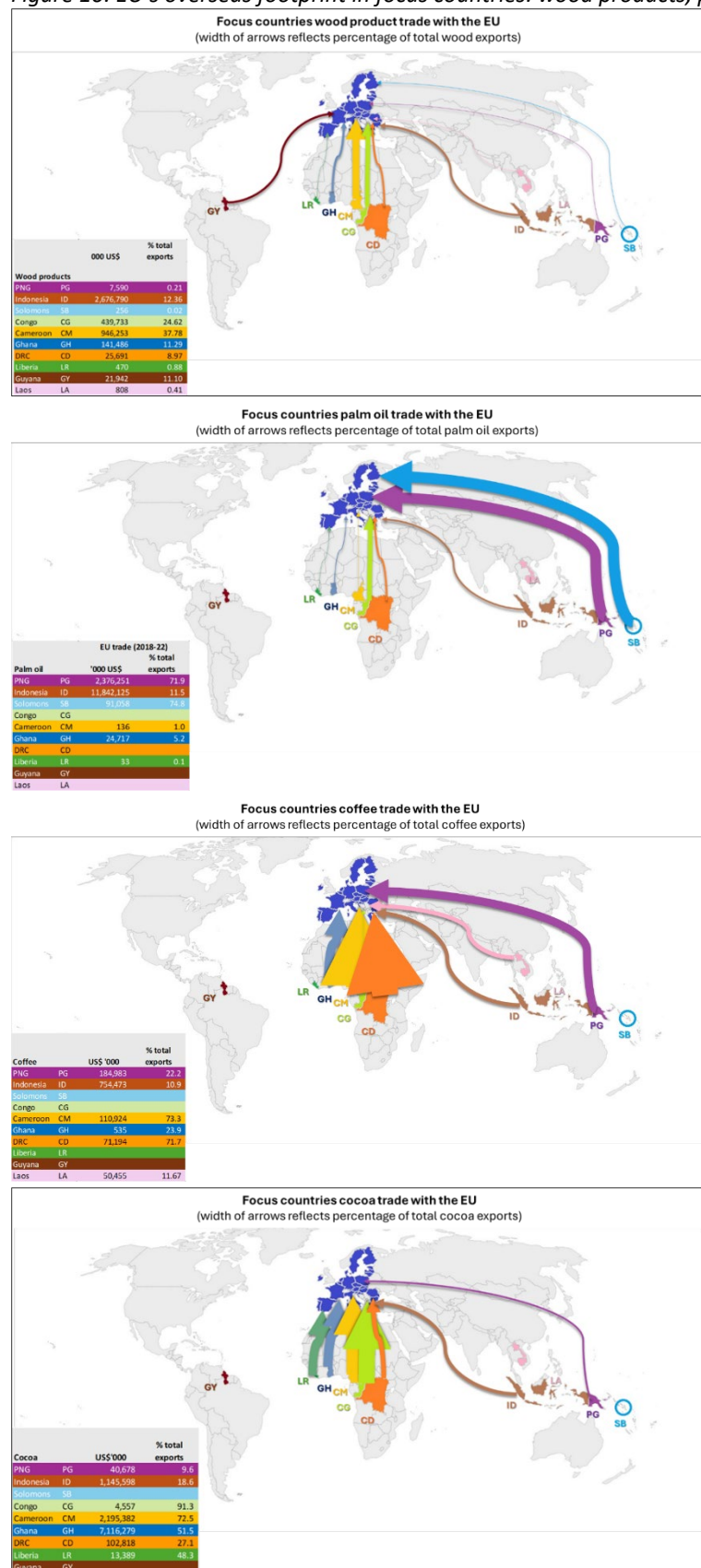


- EU imports of wood products (excluding furniture) from tropical countries reached \$11.6 bn in 2022, but were between 6% and 7% of total wood imports.
- India was the main direct source, but it is likely that so imported products were manufactured from wood originating in 3<sup>rd</sup> countries, which may not be tropical.
- Imports from Vietnam, the second largest source, and also Philippines and Cambodia, are likely to be similar

- Indonesia (37%) and Malaysia (26%) are the main palm oil suppliers to the EU, worth US\$7.5 bn in 2022.
- Increasing shares from Guatemala, Papua New Guinea and Colombia
- Palm oil is a key trade issue between the EU and Indonesia related to the EUDR and the Renewable Energy Directive.

- SE Asia and West Africa are main source regions.
- Imported volumes have remained relatively constant since the 2011 price spike

Figure 10. EU's overseas footprint in focus countries: wood products, palm oil, coffee, cocoa



## Legal and sustainable trade and investment policies

- **High-level policy:** The EU leads on the international stage in developing climate-linked policies drawing from the range of instruments it deploys. The Green Deal sets out the priorities at high level.
- **Timber:** EU FLEGT Action Plan, EU Timber Regulation and EU FLEGT regulation and Voluntary Partnership Agreements (referenced in the Appraisal Annex D) were leading initiatives launched from 2003. They pioneered due diligence requirements for trade to the EU. Extensive reviews and stock takes
- **Voluntary Partnership Agreements:** a cornerstone of the FLEGT policies. 10 VPA agreed and 2 more in dialogue. The EU has confirmed they intend to sustain agreements and conclude new one (Cote d'Ivoire VPA agreed recently), although there are concerns how the VPA will work with the instruments of the EUDR
- **Deforestation Regulation:** This builds from EUTR and introduces due diligence requirement for the EUs forest footprint requiring sourcing of forest risk commodities that can demonstrate they come from lands not subject to deforestation.
- **Cooperation with producer countries:** Forest Partnerships and development cooperation. Leading role in Voluntary Partnership Agreements for timber; now pioneering partnership deals linked to cocoa trade.
- **Voluntary commodity codes:** Major national trade associations have adopted and are responsible trade and overseas investment codes for timber, palm oil, soy, rubber and other commodities.

## Annex D - Draft Key Performance Indicators (KPI) for the Portfolio Management Service of the TAPM

**Performance score and criteria: Timeliness** *(especially of TA mobilisation or sub-contracting and quarterly progress reporting)*

Supplier KPI Category	5 Excellent <sup>5</sup> – Full Payment	4 Good – Full Payment	3 Satisfactory – 75% of payment	2 Needs Improvement – 50% of payment	1 Poor – 0% of Payment
<b>Timeliness KPI 25% of total</b>					
1a) target of 2 months TA project mobilisation from the time FCDO approves the proposal, or 3 months if running procurement from time TOR agreed, unless alternative timetable agreed with FCDO)	TA project directly mobilised within 1 month of proposal sign off TA project mobilised within 2 months after ToRs and tender documents approved	TA project directly mobilised by end of 2 <sup>nd</sup> month after proposal sign off or for those sub-contracted by end of 3 <sup>rd</sup> month after ToR and Tender documents approved	TA project directly mobilised takes 2-3 months after proposal sign off, or for those sub-contracted takes 3-4 months after ToR and tender documents (unless alternate agreed in advance)	TA project directly mobilised takes over 3 months after proposal sign off or for those sub-contracted takes over 4 months after ToR and tender documents approved (unless alternate agreed in advance)	TA project mobilisation over 5 months after proposal sign off. (unless alternate agreed in advance)
1b) Quarterly Progress reporting to FCDO is as per agreed schedule and deadlines	Reports are ahead of agreed deadlines.	Reports meet agreed deadlines.	Reports occasionally miss deadlines by up to 5 working days (unless agreed in advance by FCDO)	Reports miss deadlines by more than 5 working days (unless agreed in advance by FCDO)	Multiple missed deadlines for submitting reports, sometimes by over 10 working days
1c) Response to routine enquiries within 5 working days	Response to routine and urgent FCDO, PMSST and external enquiries within 1 working day. Response to more substantive exercises commissioned by FCDO in advance of mutually agreed deadline	Response to routine FCDO, PMSST, external enquiries within 5 working days. Response to FCDO enquires marked “urgent” within 1 working day. Response to more substantive exercises commissioned by FCDO	Response to routine FCDO, PMSST and external enquiries often take longer than 5 days	Response to routine FCDO, PMSST and external enquiries often take longer than 10 days.	Response to routine FCDO, PMSST and external enquiries frequently go unanswered.

<sup>5</sup> Suppliers under FGMC1 indicated that it was helpful for any incidences of exceeding expectations to be recognised to legitimately include this in bids. In this instance there is no bonus payment structure associated with the score

		within mutually agreed deadlines.			
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### **Performance score and criteria: Financial Management & Forecast Accuracy**

Supplier KPI Category	5 Excellent – Full Payment	4 Good – Full Payment	3 Satisfactory – 75% of payment	2 Needs Improvement – 50% of payment	1 Poor – 0% of Payment
<b>Financial management &amp; forecast accuracy KPI (25% total)</b>					
2a) 5-10% forecasting variance each month. It is expected that there will be variances across the Portfolio, regular communication is critically important.	<5% variance between actual spend and forecasts, with strong communication to FCDO in the event of anticipated deviation from expected spend.	<10% variance between actual spend and forecasts with regular communication to FCDO in the event of anticipated deviation from expected spend.	<15% variance in forecasts relative to agreed baselines. (allowances will be made for events outside the control of either subcontractors or the Supplier).	15-20% variance in forecasts relative to agreed baselines. (allowances will be made for events outside the control of either subcontractors or the Supplier).	Over 20% variance in forecasts.
2b) Timely financial reporting to FCDO	Financial information provided to FCDO is clear, accurate and continuously updated anticipating potential variances in advance and flagging to FCDO. Submitted as per agreed schedule with FCDO	Financial information provided to FCDO is clear, accurate and regularly updated. Submitted as per agreed schedule with FCDO	Financial information provided to FCDO occasionally requires clarification and prompting for updates. Submitted more than 2 days later than schedule agreed with FCDO	Outdated, incorrect or insufficient information occasionally provided. Submitted more than 1 week after schedule agreed with FCDO	Multiple examples of outdated or incorrect information provided. Submitted more than 2 weeks later than schedule agreed with FCDO
2c) Timeliness of TA project funding disbursement down delivery chain to TA Projects as per agreed timeframes	As per agreed date	As per agreed date	1 day late	2 days late	3 days + late

## **Performance score and criteria: Quality of Portfolio Management**

Supplier KPI Category	5 Excellent – Full Payment	4 Good – Full Payment	3 Satisfactory – 75% of payment	2 Needs Improvement – 50% of payment	1 Poor – 0% of Payment
<b>Quality of Portfolio Management KPI (50% total)</b>					
<b>See below criteria to be assessed Marks out of 10</b>	Excellent performance under the areas indicated below.  9 or 10	Meeting expectations in the areas indicated below.  7 or 8	Some improvements needed in the areas indicated below.  5 or 6	Significant improvements needed  4	Poor performance in many of the areas indicated below.  Below 4
<b>Criteria to be assessed under Quality:</b> <ul style="list-style-type: none"> <li>• Effective, transparent and efficient process to directly mobilise or procure TA projects.</li> <li>• Inclusion or procurement of local experts and local SMEs where appropriate.</li> <li>• Effective coordination with PMSST</li> <li>• Portfolio monitoring information and reports (including risk reporting) clearly presented, up to date and user-friendly with written outputs requiring minimal amendment</li> <li>• Positive feedback received from PMSST, Partner governments and TA project teams. <ul style="list-style-type: none"> <li>○ Quality of contract administration – good coordination, responsiveness, timely and adequate problem solving, speedy mobilisation</li> <li>○ Quality of TA being delivered – partner governments are happy with TA provided, delivering transformational change.</li> </ul> </li> </ul>					

## Annex E – Country Specific Arrangements

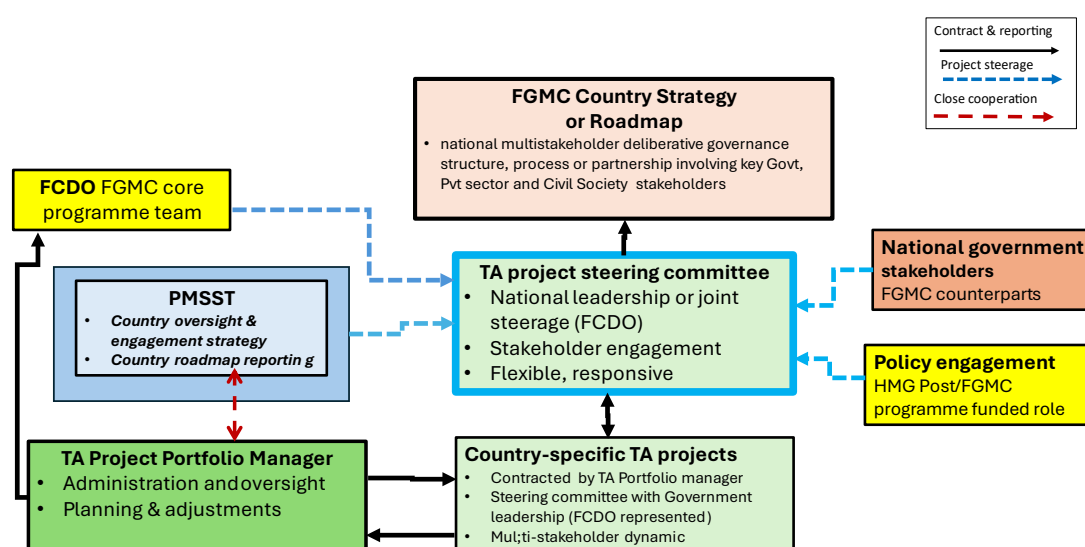
### TA Projects (in-country) governance

Governance arrangements for specific TA projects in partner countries will be agreed with national stakeholders and FCDO on a country-by-country basis informed by the context and country strategy/roadmap developed for each and guided by PMSST. These arrangements will seek to foster and strengthen national ownership for reforms and encourage long term sustainability of reforms and initiatives from the outset.

The TAPM Contract Supplier will be responsible for ensuring that the contract and finance arrangements meet expectations of FCDO and partner governments and have sufficient flexibility in-built to allow for adjustments over the period of the project as informed by national-level project steerage. The Portfolio Management Core Team will oversee project delivery and reporting informed by and in close cooperation with the PMSST.

Performance reviews of specific TA projects will be informed by the PMSST who will maintain direct relationships with the partner government and national stakeholders. The PMSST will be responsible for monitoring progress at country level against the agreed country strategies/roadmaps. The PMSST will lead MEL for the programme as a whole, ensuring that TA projects report to the FGMC2 programme results framework, and country-specific theory of change. The TAPM Contract Supplier will ensure that the TA projects monitoring and reporting is coherent with the FGMC2 programme and country level strategies/roadmaps.

*Figure 6 - Country level governance arrangements.*



### TA Project Reporting

The TAPM Contract Supplier will receive reports directly from the TA projects. The TAPM Contract Supplier's Portfolio Management Core Team will quality assure reports. These will be shared with FCDO and the PMSST for approval, and once finalised will be shared with government and national stakeholders and should be shareable with Posts.

What exactly should be included in each report from TA projects must be agreed individually to meet the needs of stakeholders but must utilise a reporting format agreed by the PMSST and FCDO and specific in each TA Project contract. This will ensure alignment with

programme theories of change, country road maps, and will facilitate their contribution to programme-wide annual reviews. We suggest that TA projects should include:

- Regular quarterly progress reports linked to KPIs, including accurate financial information.
- Annual reports and contribution to tracking transformational change (ICF KPI 15).
- Completion reports: will be submitted within 1 month of the end of each project. The content and length of these will be agreed during the inception phase but will likely include lessons learned, financial information, achievements, etc.



## Annex F: GDPR Schedule of Processing, Personal Data and Data Subjects

Description	Details
Identity of the Controller and Processor for each Category of Data Subject	<p>The Parties acknowledge that for the purposes of the Data Protection Legislation, the following status will apply to personal data under this Contract: </p> <ol style="list-style-type: none"> <li>1. The Parties acknowledge that Clause <b>33.2</b> Protection of Personal Data and <b>33.4</b> (Section 2 of the Contract) shall not apply for the purposes of the Data Protection Legislation as the <b>Parties are independent Controllers</b> in accordance with Clause 33.3 in respect of the following Personal Data: <ol style="list-style-type: none"> <li>a) where the parties will need to exchange personal data such as names, email addresses, phone numbers, employment history, address, data of birth, bank details, etc of project staff and consultants for recruitment purposes;</li> <li>b) circumstances where FCDO contracts a supplier to carry out activities such as surveys, focus groups, communications and events but which the supplier designs and implements and where FCDO does not stipulate to the supplier what personal data they should gather and use in order to carry out the activities, and the supplier is responsible for determining what data it requires to carry out the activities such as: <ul style="list-style-type: none"> <li>• where the supplier intends to gather and use personal data (including names and email addresses) for any programme workshops, training and other events) and the supplier is responsible for determining what data to collect for such purposes.</li> <li>• where the supplier intends to gather and use personal data from citizens participating in surveys, studies, focus groups or through programme activities and the supplier is responsible for determining what data to collect for which purpose, how they will use, store, and disseminate it, etc.</li> <li>• where the supplier intends to gather and use personal data from individuals engaged through communication and knowledge management activities, e.g. interviewees and the supplier is responsible for determining what data to collect and for which purpose.</li> </ul> </li> </ol> </li> <li>2. For the avoidance of doubt the Supplier shall provide <b>anonymised data</b> sets for the purposes of reporting on this Contract and so FCDO shall not be a Processor in</li> </ol>

	respect of the above as it does not constitute Personal Data.
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