



# Foreign, Commonwealth & Development Office

## CONTRACT FOR SUPPLIER SERVICES

### Section 1 - FORM OF CONTRACT

**CONTRACT FOR:** Climate and Ocean Adaptation and Sustainable Transition (COAST) Programme - Component A

**CONTRACT REFERENCE NUMBER:** ecm\_7066

#### THIS CONTRACT is made

**BETWEEN:** The Secretary of State for Foreign, Commonwealth and Development Affairs at the Foreign Commonwealth and Development Office, ("**FCDO**");

**AND:** DAI Global UK Ltd ("**Supplier**"), whose registered office is situated at 3rd Floor, Block C, Westside, London Road, Apsley, HP3 9TD

(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, including Bid Documents
Section 4	Special Conditions
Section 5	Schedule of Prices
Section 6	Cost Proforma

#### 2. Contract Signature

If the original Form of Contract is not returned to the FCDO Contract Officer (as identified in Section 4) duly completed, 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 18 November 2024 and the end date of the Initial Period shall be 31 March 2030



# Foreign, Commonwealth & Development Office

## 4. Financial Limit

Payments under this Contract shall not, in any circumstances, exceed £101,100,000 inclusive of any government tax, if applicable.

## 5. Programme Name

The Programme Name to which this Contract relates is **Climate and Ocean Adaptation and Sustainable Transition (COAST) Programme - Component A**

## 6. Time of the Essence


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

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

Name:  
  
Position:  
  
Signature:  
  
Date:

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

Name:  
  
Position:  
  
Signature:  
  
Date:



Foreign, Commonwealth and Development Office (FCDO)

## Standard Terms and Conditions – Service Contracts

## SECTION 2 - GENERAL CONDITIONS OF CONTRACT

### Preliminaries

1. Definitions and Interpretation
2. Representations and Warranties
3. Financial Limit

### Term of Contract

4. Contract Term

### Provision of Services

5. Obligations of the Supplier

### Supplier Personnel and Supply Chain Matters

6. Supplier Personnel
7. Sub-Contractors and Exclusivity
8. Visibility of Sub-Contract Opportunities
9. Staff Transfer
10. Duty of Care
11. Procurement of Equipment
12. Use of and Responsibility for Equipment

### Contract Governance

13. Monitoring of Contract Performance
14. Progress and Financial Reports
15. Open Book Accounting and Audit
16. Exit Management

### Payment and Taxation

17. Charges
18. VAT
19. Retention and Set Off
20. Supplier Profit
21. Satisfactory Performance
22. Payments and Invoicing Instructions
23. United Kingdom Income Tax and National Insurance Contributions
24. Tax Compliance

### Intellectual Property, Security and Information

25. Intellectual Property Rights
26. Security Requirements
27. Malicious Software
28. Transparency
29. Confidentiality
30. Freedom of Information
31. Official Secrets Act
32. FCDO Data
33. Protection of Personal Data
34. Publicity and Branding

### Liabilities

35. Limit of Liability
36. Indemnity
37. Insurance

## **Control of Contract**

- 38. Variations
- 39. Assignment and Novation

## **Default and Termination**

- 40. FCDO Remedies for Default
- 41. Financial Distress
- 42. Force Majeure
- 43. Termination without Default of the Supplier
- 44. Termination with Default of the Supplier
- 45. Partial Termination, Suspension and Partial Suspension
- 46. Consequences of Expiry or Termination

## **Miscellaneous and Governing Law**

- 47. Dispute Resolution Procedure
- 48. Prevention of Fraud and Bribery
- 49. Anti-Terrorism Regulations
- 50. Safeguarding
- 51. Discrimination
- 52. Law and Jurisdiction
- 53. Environmental Requirements
- 54. Conflict of Interest
- 55. Waiver
- 56. Entire Agreement
- 57. Third Party Rights
- 58. Notices

- |            |                        |
|------------|------------------------|
| Schedule 1 | Definitions            |
| Schedule 2 | Staff Transfer         |
| Schedule 3 | Insurance Requirements |
| Schedule 4 | Tender                 |

- |            |                                     |
|------------|-------------------------------------|
| Appendix A | Contract Amendment Letter           |
| Appendix B | FCDO Supply Partner Code of Conduct |

## Preliminaries

### 1. DEFINITIONS AND INTERPRETATION

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

### 2. REPRESENTATIONS AND WARRANTIES

- 2.1 The Supplier represents and warrants that:
- 2.1.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
  - 2.1.2 it has full capacity and authority to enter into and to perform this Contract;
  - 2.1.3 this Contract is executed by its duly authorised representative;
  - 2.1.4 it has all necessary consents and regulatory approvals, including in the country of performance, to enter into this Contract;
  - 2.1.5 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Contract;
  - 2.1.6 its execution, delivery and performance of its obligations under this Contract will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
  - 2.1.7 its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);

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

### **3. FINANCIAL LIMIT**

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

## **Term of Contract**

### **4. CONTRACT TERM**

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

## Provision of Services

### 5. OBLIGATIONS OF THE SUPPLIER

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

## Supplier Personnel and Supply Chain Matters

### 6. SUPPLIER PERSONNEL

- 6.1 The Supplier shall not remove or replace any Key Personnel (including when carrying out its obligations under Clause 16 (Exit Management)) unless:
- 6.1.1 requested to do so by FCDO;
  - 6.1.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
  - 6.1.3 the person's employment or contractual arrangement with the Supplier or a Sub-Contractor is terminated by the employer for material breach of contract; or
  - 6.1.4 the Supplier obtains Approval (such Approval not to be unreasonably withheld or delayed).
- 6.2 The Supplier shall:
- 6.2.1 provide a list of the names of all Supplier Personnel requiring admission to FCDO Sites, specifying the capacity in which they require admission and giving such other particulars as FCDO may reasonably require;
  - 6.2.2 ensure that all Supplier Personnel:
    - (a) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
    - (b) are vetted in accordance with Good Industry Practice and in compliance with the Staff Vetting Procedure;
- [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/301861/Security\\_Policy\\_for\\_Contractors\\_Consultants\\_Suppliers.pdf](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, 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 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 behalfs 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,
  - (b) in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or 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**

<b>Name of Sub-Contractor</b>
Monterey Bay Aquarium Foundation
FutureFish Company Ltd
University of Exeter
Centre for Marinelife Conservation and Community Development (MCD)
FISH Safety Foundation
Think Aqua
Heriot Watt University
Poseidon
DAI Global LLC
Blue Green Advisors Ltd
DevLearn Consultancy Ltd
Wildlife Conservation Society

## **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 As set out in Section 4 (Special Conditions)

#### **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 As set out in Section 4 (Special Conditions)

### **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

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



# **Climate and Ocean Adaptation and Sustainable Transition (COAST) programme**

## **Component A**

### **Terms of Reference**

## Contents:

Acronyms .....	5
Key Terms .....	5
1. Introduction and key terms .....	7
1.1. Introduction to COAST .....	7
1.2. Procurement purpose.....	7
1.3. The Authority .....	7
2. Overview of COAST & Component A.....	7
2.1. Context & The Blue Planet Fund.....	7
2.2. COAST's aim, objectives and themes.....	8
2.3. COAST Structure .....	9
2.4. Component A Overview .....	10
2.5. Component A Priority Countries and phasing .....	11
2.6. COAST partner coordination.....	12
2.7. Intended beneficiaries .....	13
2.8. COAST Annual Review.....	13
3. Component A: Detailed scope of work .....	14
3.1. Mobilisation Phase.....	14
3.1.1. Overview .....	14
3.1.2. Deliverables .....	14
3.1.3. Mobilisation Phase Extension .....	17
3.1.4. FCDO role during the Mobilisation Phase.....	17
3.2. Delivery of Sub-Component 1 .....	17
3.3. Delivery of Sub-Component 2.....	18
3.4. Delivery of Sub-Component 3.....	18
3.5. Project screening and approval process .....	19
3.6. Approval of projects under Sub-components 1, 2 and 3 .....	19
3.7. Pre-Phase 2 Scoping and Phase 2 Mobilisation.....	20
3.7.1. Pre-Phase 2 Scoping .....	20
3.7.2. Phase 2 Mobilisation Phase.....	21
3.8. Strategies and workplans .....	22
3.8.1. Overall Workplan.....	22
3.8.2. Annual Workplans.....	22
3.8.3. Country Strategies .....	23
3.9. Reporting and governance .....	23
3.9.1. Supplier-FCDO meetings.....	23

3.9.2.	Monitoring reports .....	24
3.9.3.	HMG post updates .....	25
3.9.4.	Component A Governance .....	25
3.9.5.	BPF Country Plan Technical Working Groups .....	25
3.10.	Downstream Partner Management .....	25
3.11.	Monitoring, evaluation and learning .....	26
3.11.1.	Component A Logframe Results Framework .....	26
3.11.2.	Component A VfM reporting .....	27
3.11.3.	Lessons learning .....	27
3.11.4.	Component D collaboration .....	27
3.12.	Programme funded advisers .....	27
3.13.	COAST Partner Coordination Forums .....	28
4.	Design of the Contract .....	28
4.1.	Timeframe and Break Clauses .....	28
4.2.	Budget .....	28
4.3.	Flexibility – scope, scale up and down options .....	29
4.3.1.	Scope .....	29
4.3.2.	Scale up .....	30
4.3.3.	Scale down .....	31
4.4.	Performance Requirements and Deliverables .....	32
4.5.	Value for money .....	32
5.	Resourcing – staffing, skills and expertise .....	32
5.1.	Core Team .....	32
5.2.	Country Teams .....	33
5.3.	Programme Management .....	34
5.4.	Sub-component 3 team .....	34
5.5.	Staff Expertise .....	34
5.6.	Technical Assistance Pool .....	34
5.7.	Supporting diversity in resourcing .....	35
6.	Contract delivery requirements .....	35
6.1.	Finance .....	35
6.1.1.	Payment Structure .....	35
6.1.2.	Financial management, forecasting and reporting .....	35
6.1.3.	Supplier Performance Key Performance Indicators .....	36
6.2.	Audits .....	37
6.3.	Risk Management .....	37

6.4. Safeguarding .....	37
6.5. Modern Slavery .....	37
6.6. Gender, Equality and Social Inclusion.....	38
6.7. Climate and Environment .....	38
6.8. Social Value .....	38
6.9. Duty of Care.....	38
6.10. Transparency.....	39
6.11. General Data Protection Regulations (GDPR) .....	39
6.12. UK Aid Branding.....	39
6.13. Digital .....	39
6.14. SME Support Reporting.....	40
6.15. Asset Management.....	40
6.16. Exit Strategy and end of Component A .....	40
6.17. Supplier Insurance.....	40
Annex A: COAST Theory of Change .....	41
Annex B: Indicative COAST Logframe .....	43
Annex C: Outline Component A Project Screening and Approval .....	45
Annex D: Supplier Key Performance Indicator Assessment Criteria .....	50

## Acronyms

BPF	Blue Planet Fund
COAST	Climate and Ocean Adaptation and Sustainable Transition programme
Defra	Department for Environment, Food and Rural Affairs
ECED	Energy, Climate and Environment Directorate
FCDO	Foreign, Commonwealth and Development Office
FY	Financial Year
GDPR	General Data Protection Regulations
GESI	Gender, Equality and Social Inclusion
HMG	His Majesty's Government (UK Government)
ICAI	Independent Commission on Aid Impact
ICF	International Climate Finance
KPI	Key Performance Indicator
MEL	Monitoring, Evaluation and Learning
NAO	National Audit Office
ODA	Official Development Assistance
PCF	Partner Coordination Forum
PrOF	Programme Operating Framework
SRO	Senior Responsible Owner
TA	Technical Assistance
ToR	Terms of Reference
VFM	Value for Money
WEF	World Economic Forum

## Key Terms

Blue Planet Fund	A £500 million portfolio of ODA programmes between FCDO and Defra with the overarching aim of improving and enhancing the marine environment and reducing poverty.
Climate and Ocean Adaptation and Sustainable Transition (COAST) programme	A £154 million programme to be delivered by FCDO as part of the BPF. COAST is the main BPF programme leading activities to achieve three BPF priority outcomes (critical marine habitats, small scale fisheries, sustainable aquaculture). COAST's aim is to improve the adaptive capacities, climate resilience and prosperity of vulnerable coastal communities, and drive a more sustainable and inclusive management of their marine environment and coastal resources.
The SRO	FCDO's SRO for the COAST programme, responsible for ensuring its delivering in line with HMG's Programme Operating Framework.
Component A	The component under COAST for which this Terms of Reference relates to.
Sub-components	Three sub-components that collectively form Component A. Two sub-components (1 and 2) will be delivered in COAST's Priority Countries. A third sub-component (3) will be open to deliver in any ODA eligible country.
The Authority	The Authority for this ToR is FCDO.
The Supplier	The organisation appointed to deliver this ToR. The Supplier is one of four COAST tier-1 delivery partners.
The Contract	The contract between FCDO and the organisation appointed to deliver this ToR.
COAST Priority Country(ies)	Up to six (6) countries that two sub-components (1 and 2) will be delivered in. The first four have been identified: Indonesia, Philippines, Vietnam and Mozambique. Two more will be identified during delivery.
COAST Programme Funded Adviser	FCDO staff recruited to support COAST's delivery in COAST's Priority Countries and embedded into the Supplier's team.
BPF Regional Coordinator	HMG BPF staff supporting the BPF portfolio's delivery in geographic regions. They are located in a country in the region.

COAST tier-1 delivery partner	Organisations holding direct agreements (contracts, MoUs, Accountable Grant Agreements) with FCDO to lead the delivery of a COAST component.
Downstream Delivery Partner	Organisations contracted by the Supplier to deliver projects/activities under Component A.
COAST logframe	The COAST-programme level logical framework (logframe) used to monitor performance across all COAST components.
Component A Overall and Annual Workplan	The multi-year overall plan to guide the delivery of Component A underpinned by annual plans.
Component A Results Framework	The results framework/logframe used by the Supplier to capture results and monitor Component A's delivery.
COAST Annual Review	FCDO's annual performance review of the COAST programme.
COAST Partner Coordination Forum	The semi-annual forum attended by all COAST tier-1 delivery partners (and open to COAST's tier-1 delivery partners downstream organisations and other BPF programme partners as appropriate to attend) to share updates, progress, plans and lessons to support coordination.
FCDO Programme Operating Framework (PrOF)	Linked <a href="#">here</a> . The PrOF sets the standard for how the FCDO delivers its programmes and projects.

# 1. Introduction and key terms

## 1.1. Introduction to COAST

Under the £500 million [Blue Planet Fund](#), the Foreign, Commonwealth and Development Office (FCDO) has [launched](#) the new Climate and Ocean Adaptation and Sustainable Transition (COAST) programme. COAST has a total budget of up to £154 million funded from UK Official Development Assistance (ODA) only. COAST will run from Financial Year (FY) 2023/24 with a planned end of 31<sup>st</sup> March 2030. COAST will be delivered through four Components:

- Component A – Integrated delivery across COAST’s themes in up to six Priority Countries plus a demand led fund for UK Embassies and High Commissions in ODA eligible host countries to utilise to deliver responsive, strategic projects.
- Component B – Climate resilient and innovative small scale fisheries and aquaculture (delivered through WorldFish’s [BlueTech Innovation Superhighway project](#)).
- Component C – Unlocking blue carbon climate finance (delivered by the World Economic Forum’s [Blue Carbon Action Partnership project](#)).
- Component D – Independent monitoring, evaluation and learning and programme coordination.

## 1.2. Procurement purpose

Through this procurement, FCDO is seeking a commercial supplier (“the Supplier”) to manage COAST’s Component A.

Component A has been allocated a budget of up to £101.1 million for the initial term, within COAST’s total approved budget.

Component A is anticipated to begin delivery in Q2 2024/25 once the procurement process has concluded and the contract has been awarded to the successful Supplier. It will operate for an estimated **68** months until the planned end of the programme (31<sup>st</sup> March 2030), with an optional extension of up to 24 months and up to £15 million additional budget to 31<sup>st</sup> March 2032 subject to budget and Ministerial approval of a business case addendum. The majority of Component A’s budget will be delivered through two sub-components to support technical assistance/capacity building and grants for locally focussed projects in up to six Priority Countries (please see section 2.4 for further detail of the activities in each Sub component, and section 4.2 for an anticipated breakdown). A third sub-component under Component A will be used to support projects aligned to COAST’s aim and objectives that are proposed by UK Embassies and High Commissions (posts) in ODA eligible host countries.

## 1.3. The Authority

COAST is managed by the FCDO’s Energy, Climate and Environment Directorate (ECED). The Authority of the services from the Supplier will be FCDO.

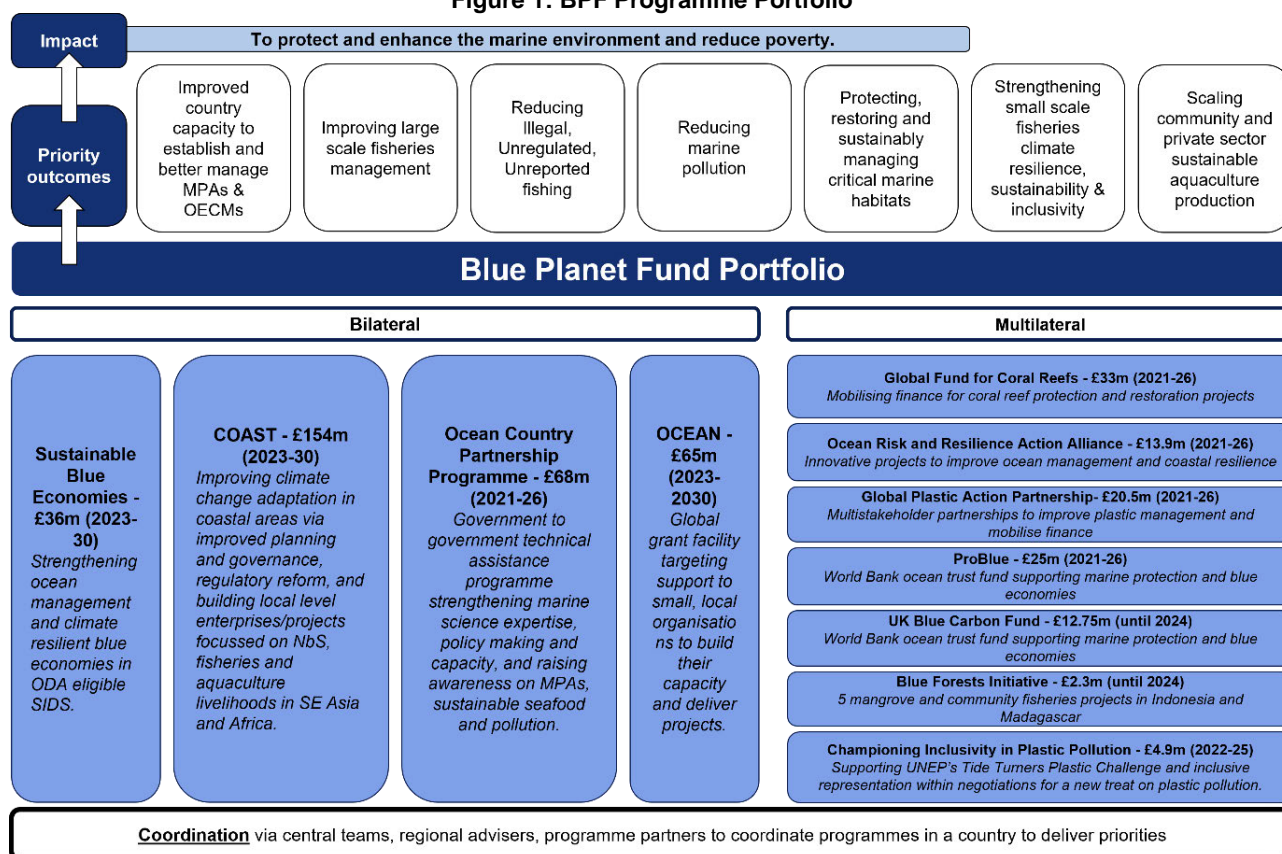
# 2. Overview of COAST & Component A

## 2.1. Context & The Blue Planet Fund

The health of ocean ecosystems and the state of its biodiversity is worsening due to direct human activity (e.g. harmful and unsustainable fishing, coastal habitat conversion, pollution), and climate change. This is resulting in the loss of ecosystem services provided by marine and coastal habitats. Coastal populations, particularly those in developing countries, are highly vulnerable to the loss of these ecosystem services and are increasingly exposed to climate change’s impacts in coastal areas (e.g. sea level rise, more frequent and intense storms, marine heatwaves, ocean acidification). Many developing country coastal communities experience high poverty rates and are reliant on precarious livelihoods (e.g. artisanal fisheries).

The joint Defra-FCDO £500m [Blue Planet Fund](#) (BPF) is a 2019 manifesto commitment that aims to protect and enhance the marine environment and reduce poverty. It was formally launched at the 2021 G7 leaders' meeting in Carbis Bay. The 2021 Defra-FCDO BPF Delivery Framework sets seven priority BPF outcomes to achieve the BPF's aim and guide the design and delivery of a portfolio of programmes managed by Defra and FCDO to deliver the BPF commitment (Figure 1). Synergies between the key pathways to achieve the priority BPF outcomes were identified to help drive coherent design of BPF programmes that achieve impact and value for money for HMG. Under the 2021 Defra-FCDO BPF Delivery Framework, FCDO are leading BPF programming to deliver three priority BPF outcomes: protecting and restoring critical marine habitats, strengthening small scale fisheries and scaling sustainable aquaculture. Defra are leading programmes to deliver the BPF's other four priority BPF outcomes:

**Figure 1: BPF Programme Portfolio**



## 2.2. COAST's aim, objectives and themes

COAST supports the UK's international priority of tackling climate change and biodiversity loss and achieving the Sustainable Development Goals, as set out in the 2023 [International Development White Paper](#) and 2023 [Integrated Review Refresh](#). COAST additionally supports the 2023 UK [International Climate Finance Strategy](#).

COAST's aim is to improve the adaptive capacities, climate resilience and prosperity of vulnerable coastal communities, and drive a more sustainable and inclusive management of their marine environment and coastal resources.

To achieve this aim, COAST will focus on three outcome themes, based around areas with good underpinning evidence:

- protecting, restoring and sustainably managing coastal habitats and nature-based solutions (e.g. mangroves, seagrass, corals)



- improving small scale fisheries' sustainability, productivity and resilience
- unlocking more sustainable, less intensive aquaculture.

COAST recognises the interrelated nature of these priority themes and will seek to support activities that adopt an integrated approach across themes, particularly those focussed on the local level. Additionally, COAST may support activities outside of these themes where they will help achieve COAST's aim, such as supporting strengthened coastal governance and management or integrating coastal priorities into climate and non-climate plans and policies.

COAST allows for flexibility in the types of activities it may support under these themes. This will allow for locally contextualised activities to be delivered that account for specific local challenges and political economy factors, and for COAST to respond to priorities in countries and design activities to be sustainable beyond the programme's support. COAST's activities will work, support and partner with a range of partners, including national and local governments, the local communities, private sector, academia, non-governmental organisations, and others.

Some activities within COAST's themes are recognised to have limited underpinning evidence – a key objective for COAST is to help strengthen the evidence base for effective coastal and marine ODA programming as well as to deliver results for beneficiaries. Under COAST's themes there is good to strong evidence of the effectiveness of activities that directly work with or support local communities – COAST has adopted a strong focus on this in result (see Section 2.3).

The COAST theory of change (Annex A: COAST Theory of Change) and logframe (Annex B) articulate how the programme intends to achieve impact. It identifies the problem to be addressed, the proposed solutions and pathways to impact, and underlying assumptions. The theory of change will remain live throughout the programme's delivery and be regularly reviewed and updated by the Supplier in agreement with FCDO.

The programme's structure and delivery principles has been developed to embed approaches that support delivery in line with COAST's aim, objectives, themes and theory of change set out in this section (see later sections for more details).

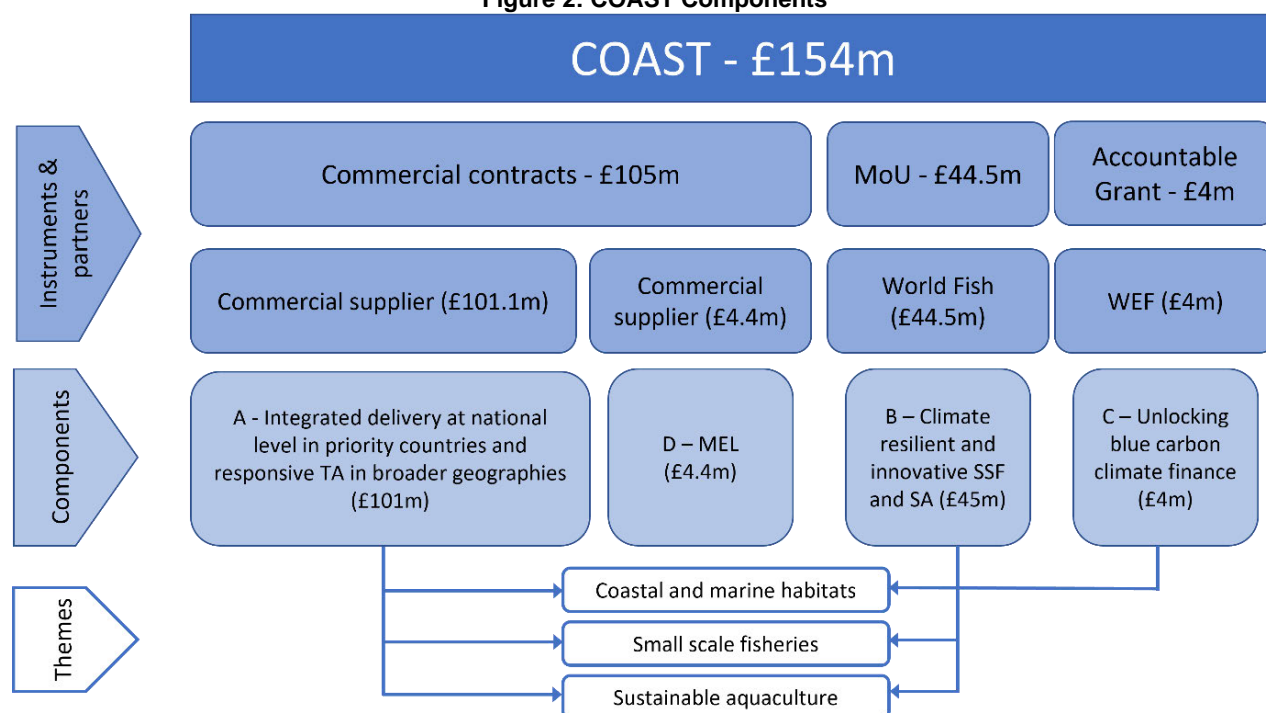
### 2.3. COAST Structure

COAST will be delivered through four components, summarised in Figure 2 and with more detail provided in the COAST business case. Alongside the Supplier for Component A, COAST will include:

- The £44.5m Asia-Africa BlueTechSuperhighway project (Component B), delivered by WorldFish (2023-2030) to support testing and scaling proven and novel activities, approaches and technologies to strengthen small scale fisheries and sustainable aquaculture's productivity, sustainability and climate resilience.
- The £4m Blue Carbon Action Partnership project (Component C), delivered by World Economic Forum (WEF) to support countries to unlock and mobilise finance to protect and restore blue carbon ecosystems.
- A £4.4m monitoring, evaluation and learning (MEL) element (Component D), delivered by Itad (delivery 2023-2030).

This approach allows COAST to provide contextualised activities, partnerships and support, prioritise local level activities, apply evidence and lessons throughout delivery, and coordinate activities to achieve impact at scale. Mechanisms will be established to support the coordination of partners appointed to deliver each component, as well as COAST's integration with other BPF and other donor's programmes in country where appropriate.

Figure 2: COAST Components



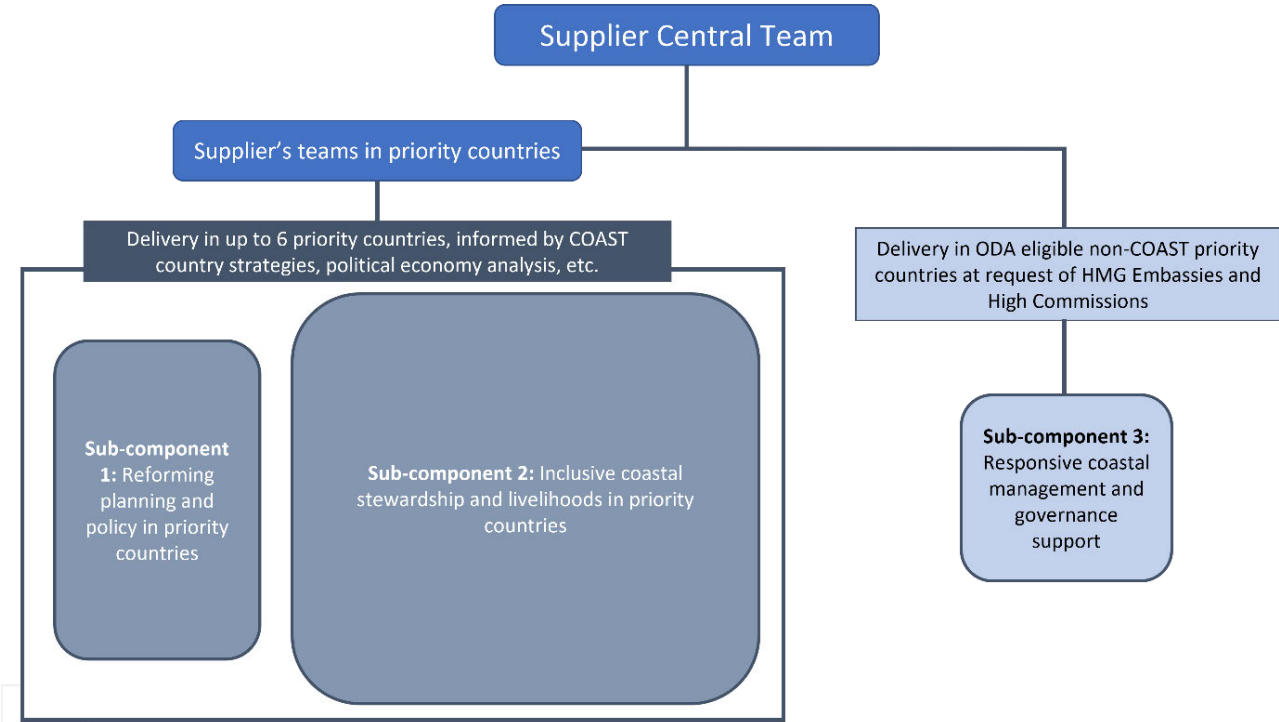
## 2.4. Component A Overview

This component will deliver integrated activities across COAST's themes at a range of scales through three sub-components. To maximise impact and scale, sub-components 1 and 2 will be focused in up to six Priority Countries (see Section 2.5), whilst flexibility will be retained in sub-component 3 to support activities in any ODA eligible country. This Terms of Reference is to appoint a Supplier to deliver this Component (Component A). An overview of the three sub-components is provided below and in Figure 3.

- **Sub-component 1 – Reforming planning and policy in Priority Countries (*approximately 15-25% of Component A's budget*):** To include a range of inputs over timeframes as appropriate, including provision of technical assistance (TA), analysis and capacity building to support countries' national and sub-national regulatory and policy framework priorities and improve enabling environments for finance flows into COAST's themes. Activities under this sub-component will be informed by political economy, security and other analysis with an aim to drive integrated approaches where possible. It will include scope to support the integration of ocean and climate objectives into non-ocean and climate sectors' policies and plans (e.g., health systems, disaster risk reduction, social protection, finance, education, land-use, etc.), as well as seeking to address market failures through strengthened and/or streamlined regulation and governance. The sub-component will help build national and sub-national capacities on coastal and marine management, data collection and evidence generation and use in decision making.
- **Sub-component 2 – Inclusive coastal stewardship and livelihoods in Priority Countries (*approximately 60-75% of Component A's budget*):** Provision and management of grants to support projects, activities, capacity building and action at local levels around COAST's themes, prioritising integrated approaches where possible. This sub-component will help enhance community led governance, stewardship and sustainable use of coastal resources (for example through locally managed marine areas) and support the development of a pipeline of scalable projects.
- **Sub-component 3 – Responsive coastal management and governance support (*approximately 7.5-12.5% of Component A's budget*):** This sub-component will provide demand led support to posts in ODA eligible countries outside of COAST's priority six countries. Posts will be responsible for developing and submitting project proposals (see Section 3.4). A

range of activities may be supported through this sub-component and all activities will be proposed by posts. Examples of activities include provision of technical expertise and analysis to strengthen and/or streamline regulatory and governance frameworks or help integrate coastal, climate and ocean issues into climate, ocean and non-ocean and climate sectors’ policies and plans (e.g. health systems, disaster risk reduction, social protection, finance, education, land-use, etc.), support to convene and coordinate stakeholders, facilitation of South-South knowledge sharing, project proposal development to unlock ocean or climate finance, and research, mapping and analysis. All activities will be tailored to local contexts. Proposals for projects by posts may have identified an organisation to work with to deliver the project, request the Supplier’s support to run a call for proposals, or directly request expertise and support from the Supplier to deliver the project.

**Figure 3: COAST Component A Structure**



### 2.5. Component A Priority Countries and phasing

Component A will deliver in up to six Priority Countries across two phases.

The first four COAST Priority Countries were selected during the design of the COAST business case and based on technical and political economy analysis and considered countries’ stated priorities and views from posts to assess interest.

The Phase 1 Priority Countries are: Indonesia, Vietnam, the Philippines, and Mozambique. Delivery will begin in these countries at the start of Component A’s delivery (FY2024/25) and is assumed to continue throughout the term of Component A including any optional expansion unless otherwise decided by FCDO.

The Supplier will deliver a scoping process in 2026 to determine any expansion to an additional up to two countries to begin delivery in Phase 2. Phase 2 will begin in FY2027/28 and run until the end of Component A’s term including any optional expansion unless otherwise decided by FCDO. Section 3.7. includes further details on the Phase 2 scoping and additional country selection process to be delivered by the Supplier.

Component A may stop delivery in a Priority Country at any point subject to approval by the SRO following the process set out in Section 4.3. Such a decision may be taken, for example, in result of outcomes not sufficiently meeting the aims of the programme in a Priority Country or unfavourable political economies developing.

Under sub-components 1 and 2, the Supplier may deliver activities and projects to support inter-country interventions or learning within the Priority Countries.

## 2.6. COAST partner coordination

As set out in Sections 2.3 and 2.5, FCDO aims to drive integration, coordination and collaboration across COAST's components and tier-1 delivery partners. Additionally, FCDO aims to coordinate COAST's delivery alongside other BPF programmes, particularly in countries where COAST will operate alongside other bilateral BPF programmes. FCDO will action this through the following approaches and mechanisms:

- **COAST Delivery Partner Coordination Forum:** FCDO will establish the COAST Delivery Partner Coordination Forum (PCF). The PCF will bring COAST tier-1 delivery partners together to share updates and lessons, monitor progress and support coordination and collaboration. The PCF will meet approximately every six months and use a hybrid format of in person and online attendance. The Component D Independent MEL tier-1 delivery partner will be responsible for organising and managing the PCF. The Supplier will participate in each PCF, including providing an update on activities delivered, underway and planned, sharing lessons from Component A's delivery, engaging other COAST tier-1 delivery partners to identify opportunities for collaboration, and sharing proposals to strengthen the delivery of COAST and collaboration between COAST tier-1 delivery partners. FCDO may invite other officials within FCDO, Defra's BPF team and others across HMG to participate in a PCF. FCDO may consider inviting recipients under COAST to attend specific agenda items and explore options to incorporate beneficiaries' views and voices to inform discussions. Country specific PCFs may be set up if this will improve in-country delivery – this would be the responsibility of the Supplier, set out in Section 3.13.
- **Supplier Workplans:** Ahead of each financial year, the Supplier will produce a budgeted Annual Workplan for Component A's proposed activities, including a breakdown of activities by Priority Country. Each Annual Workplan will set out planned activities the Supplier will undertake to support coordination and collaboration with other COAST tier-1 delivery partners. Each Annual Workplan will be approved by the SRO.
- **BPF country plans and technical working groups:** FCDO and Defra, in collaboration with posts and host country national governments, will develop BPF country plans for each COAST Priority Country. Each country plan will set out the ocean and blue economy priorities in each country and outline how each BPF programme will support those. These intend to improve the coherence and clarity of the BPF's offer in each country and ensure the BPF programme portfolio delivers in-country priorities and needs. The Supplier's workplans and Country Strategies (see Section 3.8.) will be nested under each BPF country plans. A technical working group may be established by the host government and the UK to regularly review progress of the BPF portfolio in the host country, which the Supplier will support through providing information to use in such meetings and potentially attending at the request of post or the COAST team.
- **COAST Programme Funded Advisers:** FCDO may appoint COAST programme funded advisers to support COAST's delivery in COAST Priority Countries. They will be FCDO staff members, and therefore funded by FCDO, and based in COAST Priority Countries. Their role will be to support Tier-1 delivery partners' coordination and collaboration, their engagement with posts and other in country stakeholders (e.g. government ministers and officials), and provide technical and political economy advice to Tier-1 delivery partners where needed. The Supplier will engage proactively with any appointed in country COAST programme funded adviser to support them to deliver their role.

- **Blue Planet Fund Regional Coordinators:** Defra have funded and recruited BPF regional coordinators to cover Southeast Asia (based in Jakarta), East Africa (based in Maputo), West Africa (based in Accra), the Pacific (based in Suva), and the Caribbean and Eastern Pacific (based in Quito). BPF regional coordinators will engage with BPF delivery partners, including COAST's Tier-1 delivery partners, to support their coordination and collaboration across BPF programmes. BPF regional coordinators will not be responsible for managing programmes but will provide contextual advice to FCDO, Defra and BPF delivery partners to support programme delivery and decision making. BPF regional coordinators will support the development of BPF country plans (see above). FCDO has designed COAST to operate effectively should Defra cease funding to the BPF regional coordinators and FCDO does not anticipate the Supplier to procure additional staffing resource should these roles cease.

## 2.7. Intended beneficiaries

COAST will partner with and support a variety of beneficiaries<sup>1</sup>, which are broadly grouped into the following categories:

- Local communities
- National, regional and city government ministries and agencies
- Other key institutions within developing countries (e.g. representative bodies of different industries)
- Regional institutions and organisations
- Academic and research organisations
- Private sector companies (e.g. companies that pilot low-carbon approaches)

The ultimate beneficiaries of the programme are the citizens in ODA eligible countries who will benefit from enhanced and more equitable marine and coastal environment and resource management, more diversified and sustainable coastal livelihoods, and improved adaptive capacities, capabilities and resilience to climate change.

## 2.8. COAST Annual Review

FCDO will undertake an Annual Review of the COAST programme in line with FCDO policy. FCDO's deadline for completing the COAST Annual Review is 20<sup>th</sup> July of each year.

The Annual Review will be reported publicly on DevTracker.gov.uk. The Annual Review will assess performance and achieved results against logframe milestones, assess the programme's ongoing value for money and the validity of its theory of change, review programme risk management, and other assessments. The Annual Review will provide recommendations to improve delivery of the programme for COAST partners, including the Supplier, to action.

Each Annual Review will score COAST's annual performance following standard FCDO scoring procedures and using results achieved against milestones set in the programme's logframe<sup>2</sup>. The Supplier will provide accurate, verified and accessible information to support FCDO's Annual Review (see later sections).

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<sup>1</sup> The use of the word "beneficiaries" is not intended to overlook the critical and active roles that these individuals play as change makers. The FCDO is cognisant of the language it uses and prefers to refer to "partners" or "counterparts" during the delivery of COAST to better reflect their role. Nevertheless, for the sake of clarity, in this document the word "beneficiaries" is used to distinguish these groups from other partners in the delivery chain.

<sup>2</sup> FCDO's Annual Review scoring is as follows: A++ - Outputs substantially exceeded expectations; A+ - Outputs moderately exceeded expectation; A – Outputs met expectation; B – Outputs moderately did not meet expectation; C – Outputs substantially did not meet expectation.



### 3. Component A: Detailed scope of work

This section sets out the detailed scope of work the Supplier will undertake in delivering Component A. The role of FCDO is outlined.

#### 3.1. Mobilisation Phase

##### 3.1.1. Overview

Following the appointment of the Supplier and the Contract signing, the first seven (7) months of delivery by the Supplier will represent the Mobilisation Phase. The aim of the Mobilisation Phase is to ensure the comprehensive establishment of Component A alongside strong stakeholder engagement, in line with this ToR and FCDO's ProF.

**Three** weeks after Contract signing the Supplier will submit for SRO approval a Mobilisation Phase plan. The Supplier will follow the approved Mobilisation Phase plan throughout the Mobilisation Phase. The Mobilisation Phase plan will outline the activities the Supplier will undertake during the Mobilisation Phase. Section 3.1.2. outlines the deliverables the Supplier will produce during the Mobilisation Phase along with the estimated month by FCDO they will be submitted to FCDO by the Supplier. Within the Mobilisation Phase plan the Supplier may propose alternative months that Mobilisation Phase deliverables will be submitted however FCDO will require that deliverables are submitted on a staggered basis and when available to avoid all deliverables being submitted to FCDO at the end of the Mobilisation Phase. All deliverables will be required to be approved by the SRO before the end of the Mobilisation Phase and this staggered approach will allow time for FCDO to review each deliverable and for the Supplier to update them ahead of final submission to FCDO before the end of the Mobilisation Phase.

The Supplier will provide regular updates to FCDO on the Mobilisation Phase's delivery and progress via regular meetings and reports set out in Section 3.8. and 3.9. In some instances, early delivery could be possible if opportunities arise and subject to approval by the SRO.

##### 3.1.2. Deliverables

- **[3 weeks after Contract award]** A Mobilisation Phase plan submitted to SRO for approval setting out how the Supplier will deliver the Mobilisation. This will include an overview and timeline of the activities to be undertaken by the Supplier during the Mobilisation Phase and the dates deliverables will be submitted to FCDO. Where needed and based on the advice from post and the Supplier's experience, the Supplier will provide an overview in the Mobilisation Phase plan of any approvals required for the Supplier to deliver Component A in the COAST Priority Country to be gained by the Supplier from any COAST Priority Country host government authorities, including a timeline for when any approvals will be aimed to be secured by the Supplier, and which stakeholders in each host country will be key for granting approvals and how the Supplier will engage with them.
- Ensure there are appropriate policies, strategies, management, approval and reporting processes in place to deliver the programme and ensure compliance with FCDO's ProF rules and FCDO's Terms and Conditions in the Contract, and any applicable ODA policies and rules in priority/host countries. Existing policies, strategies, management, approval and reporting processes should be updated in line with FCDO's due diligence recommendations post-tender and evaluation, or new ones developed to ensure compliance with FCDO ODA policies and rules (and any applicable ODA rules in Priority Countries). FCDO will review and agree the final set of policies, strategies, management, approval and reporting processes. This should at least include the following:
  - **[1 month after Contract award]** The Supplier's reporting process to FCDO on Component A's delivery.

- **[2 months after Contract award]** A risk management strategy and risk appetite statement, including producing a risk register that will be regularly reviewed and updated. The Supplier will closely monitor risks throughout Component A's delivery to ensure risks are within appetite. The Supplier will keep FCDO informed of the programme's risks and any risk materialisation throughout the Contract's lifetime.
- **[2 months after Contract award]** A downstream partner due diligence process to be followed by the Supplier prior to signing agreements and transferring funds with downstream partners, demonstrating how the Supplier will effectively manage downstream partners and ensure they are able to deliver in line with FCDO ProF in line with Section 3.10.
- **[4 months after Contract award]** A refined Overall Workplan for Component A outlining estimated annual budgets and activities across Component A's delivery, with relevant breakdowns by sub-component and Priority Country (this will be a refined version of the Overall Workplan to be submitted as part of the tender), to be approved by the SRO.
- **[4 months after Contract award]** A communications and stakeholder engagement strategy for Component A, outlining how the Supplier will engage with FCDO's COAST team and in country stakeholders throughout delivery (including FCDO posts, host governments, private sector, Indigenous Peoples and Local Communities representative groups, NGOs, and other stakeholders), including what the role of each stakeholder is in supporting COAST's delivery tailored to each Priority Country. This strategy should also include how the Supplier will undertake substantive efforts to coordinate and collaborate with other COAST and BPF delivery partners throughout delivery in each of the Priority Countries (where relevant based on overlap with other BPF programmes). This should be demonstrated through identifying potential for join up in activities early, reporting on how Component A activities are being coordinated with other COAST and BPF delivery partners' activities during delivery, etc. FCDO will introduce the Supplier and other COAST tier-1 delivery partners (and other relevant BPF delivery partners) within 1 month of Contract award, and FCDO will support the Supplier and other COAST tier-1 delivery partners to form collaboration agreements if needed.
- **[4 months after Contract award]** A gender equality and social inclusion (GESI) strategy outlining how the Supplier will embed GESI into delivery through their and their downstream partners' activities. This should outline how Component A's delivery will target women and girls and social inclusion.
- **[4 months after Contract award]** A learning strategy, outlining how lessons from Component A's delivery will be captured and shared with FCDO and other COAST and BPF delivery partners. This strategy should outline how the Supplier will apply lessons to strengthen Component A's delivery.
- **[4 months after Contract award]** An emissions reduction and sustainability strategy, outlining how Component A will make substantive efforts to avoid or reduce greenhouse gas emissions during delivery and how they will monitor and report on emissions performance and how the Supplier will avoid, minimise, reduce or mitigate environmental, social and climate risks during delivery.
- **[2 weeks after Contract award]** FCDO will facilitate an introductory meeting between the Supplier and FCDO posts in each Phase 1 Priority Country during which the Supplier will agree with each post how they will coordinate and engage during delivery, particularly during the Mobilisation Phase, and for posts to advise and provide guidance to the Supplier on engaging host governments and processes and approvals the Supplier will be required to obtain for Component A to operate in each Priority Country (if required).
- **[1 month after Contract award]** Full recruitment of the Supplier's Core team (including Country Leads), and **[4 months after Contract award]** recruitment of other staff with appropriate

expertise and experience across programme management and delivery, technical areas related to COAST, programme monitoring and reporting, etc. to support the Core team.

- **[3 months after Contract award]** Submit an initial process for soliciting and identifying projects to be supported through sub-component 3 (see Section 3.4). FCDO will provide feedback within 1 month of submission.
- **[3 months after Contract award]** Finalise the screening process and screening criteria to be used to guide Component A activities, including post and potentially host country involvement to secure local buy in (see Sections 3.2., 3.3., 3.4., 3.5., 3.6. and Annex C).
- **[3 months after Contract award]** Provide an exit strategy to the SRO in line with Sections 16.5 to 16.7 of FCDO's Standard Terms and Conditions.
- **[4 months after Contract award]** With support from the Component D tier-1 delivery partner, develop the Component A logframe results framework (Section 3.10.).
- **[4 months after Contract award]** Establish a country office and full recruitment of wider country team members in each Phase 1 Priority Country (Indonesia, Vietnam, the Philippines and Mozambique) to oversee delivery through the lifetime of the programme and lead engagement with in-country stakeholders, including government officials, posts, and others.
- **[4 months after Contract award]** Produce an initial Component A Country Strategy for each Phase 1 Priority Country ('Country Strategy'). Further detail on what each Country Strategy should include is provided in Section 3.8.3. FCDO's COAST team and posts will review each Country Strategy and work with the Supplier to produce robust Country Strategies before the end of the Mobilisation Phase. Country Strategies will continue to be reviewed and updated throughout the lifetime of COAST's delivery.
- **[5 months after Contract award]** Finalise any additional Component A governance arrangements, including those mandated by applicable host government ODA regulations, and agree with each post in each Priority Country the level of posts' involvement in the screening process.
- **[Timing to be agreed between the Supplier, COAST team and posts 3 months after Contract Award]** The Supplier will hold Component A kick off events in each COAST Priority Country, working with posts and the COAST team to ensure relevant stakeholders are invited.

**Table 1: Mobilisation Phase deliverables indicative submission date**

Deliverable	Submission month post contract award						
	1	2	3	4	5	6	7
Mobilisation Phase Plan finalised	X						Final SRO approvals
Core team recruitment	X						
Core team and post meetings	X						
Supplier reporting process to FCDO	X						
Risk management strategy		X					
Downstream partner due diligence process		X					
Sub-component 3 delivery process			X				
Refined screening process			X				
Component A in country kick off workshop dates agreed			X				
Exit strategy			X				
Refined Overall Workplan				X			
Component A logframe				X			



Communications and stakeholder engagement strategy				X		
GESI strategy				X		
Learning strategy				X		
Emissions reduction and sustainability strategy				X		
Country teams established				X		
Country Strategy for each Priority Country				X		
Component A governance finalised, including in each Phase 1 Priority Country					X	

### 3.1.3. Mobilisation Phase Extension

The SRO will consider and may approve requests from the Supplier to either: (i) extend deadlines for deliverables to be submitted within the Mobilisation Phase, or (ii) requests for any Mobilisation Phase deliverable's final SRO approval to be extended beyond the Mobilisation Phase with a clear new deadline proposed by the Supplier. The Supplier will provide to the SRO a clear justification for any extension requests at least 3 weeks in advance to the date a deliverable is due to be submitted for requests related to scenario (i) and at least 5 weeks in advance of the end of the Mobilisation Phase for requests related to scenario (ii).

### 3.1.4. FCDO role during the Mobilisation Phase

During the Mobilisation Phase, FCDO will proactively work with the Supplier to ensure all deliverables are finalised per Section 3.1.2. before the end of the Mobilisation Phase. The COAST team provide feedback to the Supplier within 25 working days once each deliverable is submitted by the Supplier. The COAST team will facilitate the Supplier's working relationships with posts in each Priority Country and BPF Regional Coordinators and will support the Supplier to communicate wider Component A information with other posts as needed (e.g. for sub-component 3). The COAST team, working in collaboration with posts in Priority Countries, will facilitate introductions to key stakeholders in host governments, after which the Supplier will be expected to maintain their own productive working-level relationships with host governments throughout programme mobilisation and delivery.

## 3.2. Delivery of Sub-Component 1

The Supplier will provide, manage and oversee technical assistance, capacity building, and analysis (including on political economy, security, sensitivity, and other themes) under sub-component 1 in each Priority Country. FCDO envisions that the Supplier's Component A Country Teams will oversee sub-component 1 in their respective Priority Country, supported with additional expertise from the Supplier's technical assistance pool or elsewhere to deliver activities. The Supplier's Country Teams may also directly deliver activities under sub-component 1 where existing skills and capacity is available in house.

Activities supported under sub-component 1 will be informed by and align with each Country Strategy. The Supplier will engage with in-country stakeholders, including government officials, post, BPF Regional Coordinators, other donors, private sector, civil society and NGOs, and local communities where needed to design technical assistance and capacity building support under sub-component 1.

The Supplier will use a screening process to assess proposed projects and recommend those for support, as set out in Section 3.5, and all projects will be approved following the approach set out in Section 3.6.

The Supplier will ensure all downstream partners are managed in accordance with the requirements set out in this terms of reference (particularly Section 3.9.).

### 3.3. Delivery of Sub-Component 2

The Supplier will manage a grant portfolio of local level projects under sub-component 2 in each Priority Country. All projects supported will align with the aims, objectives and priorities set out in each Country Strategy in the Priority Country they are implemented in.

The Supplier will use a screening process to assess proposed projects and recommend those for support, as set out in Section 3.5, and all projects will be approved following the approach set out in Section 3.6.

The Supplier will develop bespoke processes for soliciting proposals in each Priority Country that is tailored to support and align with the aims, objectives and priorities set out in each Country Strategy. The solicitation approach in each Priority Country may change over time in line with updates to Country Strategies. The solicitation process followed by the Supplier may include:

- Open calls for proposals with clear boundaries to ensure projects align with Country Strategies
- Targeted calls for proposals for projects addressing a specific issue identified in Country Strategies
- Direct award to existing initiatives or projects in Priority Countries where they directly align with COAST's aims and objectives, Country Strategies, and where COAST support would help achieve scale and avoid overlapping initiatives.

The Supplier will develop and maintain a portfolio of projects under sub-component 2 to deliver the aims, objectives and priorities of all Country Strategies. Therefore, FCDO has not set a minimum or maximum limit to the budget sizes for each grant project, the number of annual funding windows, or the total number of projects anticipated to be supported through sub-component 2 given sub-component 2's delivery is required to align with Component A Country Strategies. The Supplier is therefore not expected to deliver sub-component 2 equally across each Priority Country in terms of number of projects or sub-component 2 spend. Through the Component A Overall and Annual Workplans, the Supplier will outline the number of new projects and anticipated budget sizes across all Priority Countries on an annual basis to support this.

The Supplier will ensure there is appropriate oversight and monitoring of all sub-component 2 projects from their Country Team and Core Team.

The Supplier will ensure all downstream partners are managed in accordance with the requirements set out in this terms of reference (particularly Section 3.9.). The Supplier will support downstream partners under sub-component 2 where additional capacity is required. The Supplier will produce a project closure report for all projects funded through this sub-component.

### 3.4. Delivery of Sub-Component 3

The Supplier will develop a process to allow FCDO posts in ODA eligible countries to submit proposals for projects under sub-component 3. As part of this, the Supplier will establish a proposal submission mechanism (e.g. proposal/concept note form, email inbox, etc.), outline how regular proposals may be submitted to the Supplier by posts (e.g. open submission process, use of funding windows and calls for proposals, etc.), clarify budget and timeframe limits for projects, and other aspects.

The Supplier will develop and implement a sub-component 3 communications plan to ensure posts are made aware of sub-component 3's offer. This plan should utilise established FCDO processes where possible. FCDO will support the Supplier to develop this plan by providing relevant information on these internal processes and helping the Supplier use them.

As some posts in ODA eligible countries may lack technical capacity to develop proposals, hindering their ability to access support through sub-component 3, the Supplier may provide technical support to FCDO posts to develop proposals. This will be agreed with FCDO in the Mobilisation Phase and could include the Supplier developing guidance notes for posts or providing advice during application windows when requested by posts. The Supplier will ensure appropriate processes and measures are followed to avoid any conflicts of interest arising where the Supplier does provide advice to posts on their proposals ahead of the Supplier's review.

The Supplier will use a screening process to assess proposed projects and recommend those for support, as set out in Section 3.5, and all projects will be approved following the approach set out in Section 3.6.

Through their sub-component 3 proposals, posts' may directly request the Supplier to deliver a project using the Supplier's staff or technical assistance pool. The Supplier will assess through the screening process whether this is feasible and if not, the Supplier will identify suitable options (including procurements) should the proposal be recommended for support. Where a post has identified an organisation to deliver a project and included this in the proposal, the Supplier will assess their suitability through the screening process and recommend alternative options if the identified organisation is not deemed suitable during screening.

The Supplier will ensure all downstream partners are managed in accordance with the requirements set out in this terms of reference (particularly Section 3.9.). The FCDO post in the relevant country will appoint a lead contact point who will support the project's implementation, monitoring and reporting.

### 3.5. Project screening and approval process

FCDO has developed an indicative screening process with a set of screening criteria to guide Component A's funding decisions (see Annex C). This indicative process intends to ensure Component A supports activities that have a high potential for sustainable impact for people, climate and nature through a robust focus on underpinning evidence to activities, consideration of political economy and local context, prioritisation of support where it is needed most, and other factors important for ODA programming. During the Mobilisation Phase, the Supplier will review and strengthen the indicative process and submit to FCDO a final process and set of screening criteria. The Supplier may propose different approaches to be followed in different Priority Countries to allow for contextualised approaches. The SRO will approve the final process and set of screening criteria to be followed before the end of the Mobilisation Phase.

Throughout delivery, the Supplier will monitor the efficiency and effectiveness of the final screening process and capture lessons for how it may be improved. The Supplier will provide recommendations to FCDO to improve the process throughout delivery, using the operational progress meetings. Any updates to the screening process and set of screening criteria will be approved by the SRO.

### 3.6. Approval of projects under Sub-components 1, 2 and 3

The SRO will have final approval for all projects funded through Component A and overseen by the Supplier.

The Supplier may propose using delegated approval thresholds to improve the efficiency and effectiveness of the screening and approval process and Component A's delivery based on the ongoing monitoring of the efficiency and effectiveness of the process. FCDO does not anticipate this to be proposed for at least the first two years of delivery to allow sufficient experience and information to be gathered to inform a recommendation. The SRO will agree any delegated approval thresholds to be followed by the Supplier and any updated Component A governance requirements in result.

Should delegated approval thresholds be agreed, FCDO will retain the right to remove these and revert to approving all projects through Component A.

### 3.7. Pre-Phase 2 Scoping and Phase 2 Mobilisation

Phase 1 of Component A will run from the start of the Contract in 2024/25 until the end of FY2026/27. Phase 2 will begin at the start of FY2027/28 and run until the end of FY2029/30, with an optional extension phase noted elsewhere. Phase 2 will have the option to expand COAST's Priority Countries from the initial four starting in Phase 1 to an additional up to two countries. It is assumed that delivery will continue in the Phase 1 Priority Countries throughout Phase 2.

#### 3.7.1. Pre-Phase 2 Scoping

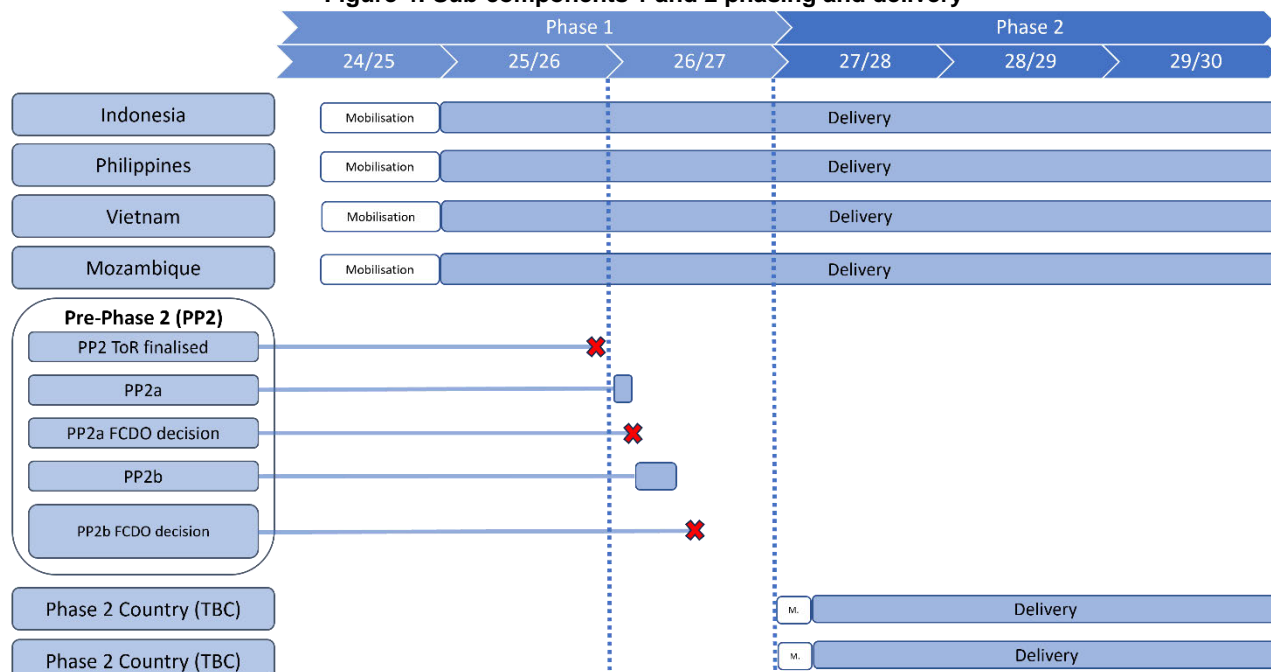
In FY2026/27 the Supplier will undertake a scoping analysis to inform a decision by the SRO on Component A's potential geographic expansion to an additional two Priority Countries in Phase 2. Throughout this scoping analysis, the Supplier will consider the performance, needs and lessons from the delivery of Component A to date to inform recommendations on how to best achieve impact, efficiency, scale, and VfM during Phase 2.

The activities to be undertaken by the Supplier and the decisions to be taken by FCDO during the Pre-Phase 2 scoping are set out below and in Figure 4:

- **Pre-Phase 2 ToR:** Before the end of FY2025/26, the FCDO and the Supplier will agree a terms of reference for the Pre-Phase 2 scoping, including an initial list of countries to focus on and any requirements on travel.
- **Pre-Phase 2a:** By the end of May 2026, an initial recommendation on whether to a) maintain delivery in Phase 1's four Priority Countries only or b) expand delivery to one additional country in Phase 2 with a short list of up to 3 countries for more in depth scoping or c) expand delivery to two additional countries in Phase 2 with a short list of up to four countries for more in depth scoping. The Supplier will provide a recommendation to the SRO based on the performance and delivery of Component A to date and lessons learnt from its delivery, technical, political economy and other factors, the priorities and performance of other COAST components and BPF programmes, other donor's programming activities, and other factors. This recommendation will not include travel and will rely on desk based analysis or virtual meetings or interviews.
- **Pre-Phase 2a FCDO decision:** The SRO will provide a decision to the Supplier within 20 working days of receiving the Supplier's Pre-Phase 2a report and recommendation on which of option a), b) or c) will be taken based on the Supplier's Pre-Phase 2a report and FCDO's internal discussions.
- **Pre-Phase 2b:** Should option b) or c) be selected by the SRO following Pre-Phase 2a, the Supplier will provide a recommendation to the SRO on which country(ies) to expand Component A into for Phase 2 and an initial Country Strategy for the country(ies) by the end of September 2026. This will involve more in-depth analysis for each shortlisted country, drawing on in-country discussions utilising any Supplier staff already based in a shortlisted country or external expertise based in each country. Some travel by the Supplier's team may be required to a short listed country. This recommendation will also include a reconsideration of whether option a) from Pre-Phase 2a is now the preferred option if Pre-Phase 2b's more in depth analysis finds that the short listed countries under options b) or c) are no longer valid.
- **Pre-Phase 2b FCDO decision:** The SRO will provide a decision to the Supplier within 40 working days of receiving the Supplier's Pre-Phase 2b report and recommendation on the

final approach for Phase 2 based on the Supplier's Pre-Phase 2b report and FCDO's internal discussions.

**Figure 4: Sub-components 1 and 2 phasing and delivery**



### 3.7.2. Phase 2 Mobilisation Phase

Should FCDO decide to expand COAST's delivery to an additional one or two Priority Countries in Phase 2, a contract variation procedure will be carried out to incorporate the proposed additional country and core team staff where applicable. The Supplier will then undertake a rapid Phase 2 Mobilisation Phase. This will be completed within the first three months of FY2027/28. Subject to the Supplier's recommendation in their Pre-Phase 2b report and the SRO's Pre-Phase 2b decision, FCDO may agree to allow some Phase 2 Mobilisation Phase activities to begin in the final quarter of FY2026/27 to allow robust delivery in any new Priority Country in Phase 2.

Deliverables within Phase 2 Mobilisation Phase will be similar to the overall Mobilisation Phase set out in Section 3.1. and include:

- Produce an initial Component A Country Strategy for each Phase 2 additional Priority Country. Further detail on what each Country Strategy should include is provided in Section 3.8.3. FCDO's COAST team and posts will review each Country Strategy and work with the Supplier to produce robust Country Strategies before the end of the Phase 2 Mobilisation Phase. Country Strategies will continue to be reviewed and updated throughout the lifetime of COAST's delivery.
- Agree with each post in each Phase 2 additional Priority Country their level of involvement in the screening process.
- Establish a country office and team in each Phase 2 additional Priority Country to oversee delivery through the lifetime of the programme and lead engagement with in-country stakeholders, including government officials, posts, and others.

The staffing costs of both any additional proposed Core team members and any new Country Teams associated with Phase 2 scale up will be dictated by the scale-up rate cards detailed in the Cost Proforma. Any additional associated costs such as office set-up, equipment, capital expenditure should be proposed as part of this Phase 2 scoping, and the split between Programme activities, Staffing, Travel/Accommodation, NPAC and Profit should align with the first



structure of the four Priority countries. Once agreed by the SRO, this will be enacted via a Contract Amendment. The overall contract financial limit will not be affected.

- The Supplier will hold Component A kick off events in each COAST Priority Country, working with posts and the COAST team to ensure relevant stakeholders are invited.

### 3.8. Strategies and workplans

#### 3.8.1. Overall Workplan

As part of their bid, the Supplier will produce an initial Overall Workplan outlining the indicative budget and activities for each year of Component A, with a breakdown by sub-component and Priority Country, as informed by this Terms of Reference. In preparing this initial Overall Workplan, the Supplier should undertake a preliminary assessment of ODA rules and regulations in Priority Countries to identify what, if any, activities will need to be undertaken during the Mobilisation Phase to successfully register and mobilise COAST, and ensure ongoing compliance with host government regulations. This preliminary assessment will be updated in the Mobilisation Phase (see Section 3.1.2.).

This will be refined throughout the Mobilisation Phase and a final version will be approved by the SRO before the end of the Mobilisation Phase. This will form the Overall Workplan for Component A, supported by the Annual Workplans and Country Strategies as they are developed.

The Overall Workplan will be reviewed and revised as required based on learning from Component A's delivery and decisions taken in the strategy progress meetings.

#### 3.8.2. Annual Workplans

Before the end of the second full week of February each year, the Supplier will produce an Annual Workplan for the upcoming financial year. Each Annual Workplan will at least include:

- an outline of the activities to be undertaken in each Priority Country under Sub-components 1 and 2;
- proposed activities and plans for Sub-component 3;
- a detailed budget (including breakdown by sub-component and Priority Country);
- results targets for the year;
- an overview of wider activities to support the delivery of Component A (e.g. Phase 2 scoping); and
- proposed amendments to Component A's implementation based on delivery lessons identified and other relevant information.

The Supplier will ensure that each Annual Workplan is clear, accurately costed, and ambitious in terms of results.

FCDO will provide feedback to the Supplier on each Annual Workplan within 10 working days of it being submitted by the Supplier. The Supplier will seek to address all comments received from FCDO and will advise FCDO where action will not be possible or advisable within 7 working days of receiving FCDO's feedback.

The SRO will approve the Annual Workplan before the start of the next financial year. Where FCDO and the Supplier cannot agree the Annual Workplan before the start of the next financial year, the Supplier will produce a Q1 workplan for approval by the FCDO at least 10 days before the start of the next financial year to allow additional time for FCDO and the Supplier to agree the Annual Workplan and ensure activities and delivery may continue. Once the Annual Workplan is approved this will override the Q1 workplan.

The Supplier will ensure that each Annual Workplan is aligned with each BPF country plan for each COAST Priority Country.

### 3.8.3. Country Strategies

The Supplier will develop a Country Strategy for each Phase 1 Priority Country. Each Country Strategy will identify viable areas and activities for COAST to target its support to achieve its intended impact in each country, in line with COAST's aims, objectives and themes. Each Country Strategy will include as a minimum a theory of change for each priority COAST country, an overview of in-country stakeholders' priorities, delivery details for Component A, including how sub-components 1 and 2 will be structured in each country context (see Sections 3.2. and 3.3.), and how Component A will coordinate and collaborate with other COAST tier-1 delivery partners, BPF delivery partners and other donor programmes.

Each Country Strategy will be based on analysis of government policies and initiatives, poverty and development challenges, technical needs, stakeholder mapping, engagement and consultation conducted by the Supplier, the Supplier's expertise and experience in country, political economy analysis, security evaluations, mapping other BPF and donor programmes, and other factors.

The Supplier will ensure each Country Strategy is aligned with each BPF country plan in each BPF Priority Country, ensuring that each Country Strategy supports COAST's wider role within the BPF portfolio in a country. FCDO will ensure the latest version of any BPF country plan is provided to the Supplier within 2 weeks of Contract Award and within 1 week of any update.

Each Country Strategy will take a multi-year approach to support long term planning and delivery for Component A. The Supplier will ensure that each Country Strategy is regularly reviewed to adapt delivery based on learning and contextual changes, at least on an annual basis. FCDO envisions that each Country Strategy will be detailed for earlier years, with greater detail provided for later years as delivery progresses and reviews are undertaken.

The Supplier will ensure that each Country Strategy is agreed by each post and will collaborate with them during the development and revision of each Country Strategy and ensure their feedback is taken on board. This process may include posts reviewing and agreeing the Country Strategy through their governance boards, including any revised Country Strategies. The Supplier will lead this process, working with posts, and escalate to the COAST team when required, who will support the Supplier to secure agreement with each post. Whilst posts will agree each strategy, the COAST SRO will have final approval for each Country Strategy.

## 3.9. Reporting and governance

### 3.9.1. Supplier-FCDO meetings

To support the reporting process and ongoing oversight and management of Component A by FCDO, the Supplier will meet online regularly with FCDO. On occasions, FCDO and the Supplier may agree to hold in person meetings. The regular FCDO-Supplier meetings proposed are:

- A monthly operational progress meeting between the Supplier's Core Team and the FCDO COAST team. The Supplier will be responsible for establishing these meetings, developing an agenda and agreeing it with FCDO, chairing the meetings, and recording and sharing minutes. This will be used to support day to day decision making, progressing live workstreams, share key delivery and progress updates including at Priority Country and Component A levels, provide updates on financial forecasts, spend and reporting, and aid results reporting and updates where relevant. Each meeting should last no more than three hours (with the option for the Supplier and FCDO to lengthen if required). The Supplier will develop a short slide deck to support each

meeting as required, submitted in advance. Live risks and their mitigations will be discussed at each meeting.

- A six-monthly strategy progress meeting following the submission of each six-monthly progress report and annual report between the Supplier's Core Team and the FCDO COAST team. The Supplier will be responsible for establishing these meetings, developing an agenda and agreeing it with FCDO, chairing the meetings, and recording, sharing and storing minutes. This meeting will occur between eight to ten working days after each report is submitted to FCDO, allowing FCDO time to review each report and ideally provide initial written feedback to the Supplier in advance of each meeting. This meeting will be used to discuss each progress and annual report, including COAST's strategic performance and impact, ToC validity, results achieved and planned, key risks, country deep-dives, and other items. This meeting will allow FCDO to request further information and updates and for further discussions on any recommendations to adapt Component A's delivery. The Supplier will produce a support slide deck to support the meeting, drawing from each progress report and annual report. FCDO envisions each meeting to last between four to eight hours, possibly more depending on the delivery stage of Component A. FCDO and the Supplier will agree an agenda for the meeting ahead of each progress and annual report's submissions, including the option to hold different items across different days if required. Decisions taken in this forum will be used to update the Component A Overall Workplan as needed. FCDO may invite posts and BPF Regional Coordinators to these meetings.
- FCDO and the Supplier may agree to hold lighter touch operational progress meetings, including on specific topics, on a fortnightly or weekly basis at various stages of Component A to provide full and efficient support to Component A's delivery. This may be required during the Mobilisation Phase to ensure strong collaboration between FCDO and the Supplier.
- Regular meetings between the Supplier's country offices in each Priority Country and the FCDO post in each Priority Country, including any Defra funded BPF Regional Coordinators. Other personnel across the Supplier and COAST team may join as required. The frequency of each meeting will be agreed between the Supplier's country offices and the FCDO post in each Priority Country. The Supplier will be responsible for establishing these meetings, setting an agenda and recording and sharing minutes.

FCDO will proactively engage in each of these meetings, ensuring relevant personnel are in attendance and prepared for the discussions to support the function of each meeting.

### 3.9.2. Monitoring reports

The Supplier will provide quarterly progress monitoring reports to FCDO (maximum 20 pages excluding annexes) and an annual monitoring report (maximum 50 pages excluding annexes). FCDO anticipates the reporting cycle will follow the financial year and will agree the dates reports will be submitted by the Supplier during the Mobilisation Phase. FCDO anticipates each annual monitoring report to be submitted in early May, covering the previous financial year.

The templates for the progress and annual reports will be developed by the Supplier during the Mobilisation Phase and approved by the SRO. They should at least include: i) an overview of activities delivered in that quarter by country, ii) results tracking (including achieved results in each annual report), iii) evaluation results lessons and recommendations for SRO consideration; iv) an overview of issues and risks, and iv) a brief overview of an upcoming quarter's activities.

All quarterly and annual financial reports will be submitted alongside and cross-referenced to the respective progress and annual monitoring report (Section 6.1.).

FCDO will approve all quarterly progress and annual monitoring reports and will require the Supplier to revise them where needed. The Supplier will ensure all information within each report is accurate and presented in an accessible format to allow information to be easily disaggregated by country and support FCDO's monitoring and oversight, including FCDO's Annual Review of the COAST programme.



### 3.9.3. HMG post updates

The Supplier will include a maximum three page descriptive overview of delivered and planned activities with one to two case studies for each Priority Country in every progress and annual report. This will be in addition to each progress and annual report's page count (see Section 3.9.2.).

### 3.9.4. Component A Governance

Before the end of the Mobilisation Phase, the Supplier and FCDO will finalise the COAST governance arrangements. This will include all governance arrangements specific to each Priority Country and/or to manage efficiently each sub-component's delivery, following discussions between the Supplier, posts and host governments (as required) in those countries. Examples of potential governance boards include:

- A Component A project/activity approval board. This would be used for the Supplier to present projects or activities proposed for funding through sub-components 1, 2 and 3, for SRO approval. The SRO would chair the board and the Supplier would take minutes. Attendees would likely include the COAST programme team, other HMG policy officials, posts COAST's representatives, and the Supplier's Core Team and other relevant staff (e.g. country leads).
- A Component A board in COAST Priority Countries. This would be used for the Supplier to engage posts in each Priority Country on delivery, project approvals, and risks. A ToR and chair would be agreed by the Supplier and post. The Supplier would take minutes. Attendees would likely include posts, the Supplier and potentially other COAST tier-1 delivery partners. Representatives of the host government may also be considered, depending upon local ODA policies and regulations and appetite to engage.

FCDO anticipate the governance arrangements for Component A will need to evolve over time and FCDO and the Supplier will work together to ensure the governance arrangements are appropriate.

### 3.9.5. BPF Country Plan Technical Working Groups

The Supplier may be required to support technical working groups established under each BPF country plan in each COAST Priority Country. Each technical working group will be negotiated and agreed by FCDO with each host government, including the role and membership of each technical working group and how often they meet.

Support that will likely be required from the Supplier for each technical working group includes providing information to FCDO to report on COAST progress and priorities to host governments at each technical working group meeting, and potentially attending technical working group meetings. As much as possible FCDO will seek to use existing reports and information provided by the Supplier to FCDO or shared with the Component D Tier-1 delivery partner to use in technical working group meetings, however the Supplier may be required to provide bespoke information to FCDO to use for technical working group meetings. FCDO will seek to give the Supplier three weeks' notice if the latter is required.

## 3.10. Downstream Partner Management

The Supplier will be responsible for managing all downstream partners and subcontractors and ensuring that activities throughout Component A's delivery chain are compliant with FCDO's [Programme Operating Framework](#), and the Suppliers' policies, strategies and management processes for Component A.

The Supplier will undertake due diligence checks on all downstream partners prior to appointment and transfer of funds, following the Supplier's process finalised during the Mobilisation Phase. The Supplier will not sign agreements with organisations that do not pass due diligence checks. The Supplier will maintain an accurate delivery chain map for Component A throughout the Contract

lifetime covering all downstream partners and level of COAST spend. The Supplier will provide the latest downstream delivery chain map to FCDO when requested.

The Supplier will sign agreements with all downstream partners and ensure these include clawback mechanisms to be used if needed, for example if incidents are identified such as: improper use of funds; failure to pay suppliers; fraud and corruption; or unsatisfactory performance that could reasonably have been avoided. The Supplier will use milestone-based grant payments to ensure downstream partner delivery performance, prevent wastage and ensure funds are used appropriately. The Supplier will ensure payments are made to downstream partners on time and on achievement of results agreed with grantees. The Supplier will verify downstream partners' expenditure claims and reporting, financial forecasting and accounts, and other activities to ensure FCDO funds are used accordingly.

FCDO will not provide advanced funding to the Supplier. There may be legitimate circumstances for payments to be made by the Supplier in advance to not-for-profit organisations that are downstream grantees of the Supplier. The Supplier will own this risk and will assess applications for advance payments from their downstream grantees and ensure there is a strong justifiable case. The Supplier will keep advance funding to downstream grantees to an absolute minimum and ensure that any advance payments to downstream grantees only cover activities that cannot be funded through payments in arrears. FCDO will not be required to approve advance payments by the Supplier to downstream grantees, however the Supplier will notify FCDO of all advance payments proposed, based on an agreed definition of significant between the Supplier and FCDO set during the Mobilisation Phase, and allow FCDO the option to disagree such payment if needed. The Supplier will proactively work with downstream partners to accurately forecast to 5% variability. The Supplier will include details on all payments in advance to downstream grantees in funding requests and financial reports submitted to FCDO.

The Supplier will undertake regular monitoring, tracking and spot checks of downstream partners. The Supplier will work with FCDO and the UK Public Sector Fraud Agency where required and if concerned funds are not appropriately used.

### 3.11. Monitoring, evaluation and learning

#### 3.11.1. Component A Logframe Results Framework

The Supplier will develop a detailed logframe results framework specific to Component A before the end of the Mobilisation Phase with support from the Component D tier-1 delivery partner. This results framework will include outputs, outcomes and impact level statements and indicators along with annual results targets and milestones for each level, using FCDO's logframe template. These should provide a full overview of Component A's activities, results and performance. The Supplier will undertake regular monitoring and evaluations of activities delivered under Component A to capture results and ensure results are accurately monitored, captured and reported. These will be shared with FCDO regularly, through operational progress meetings and strategy process meetings and associated reporting (Sections 3.8.3. and 3.8.4.).

The Supplier will report International Climate Finance (ICF) spend and results and spend and results that deliver nutrition benefits for Component A using FCDO's methodologies – these will be provided to the Supplier upon contract award. The SRO will approve any proposed changes to the Supplier's Component A results framework.

To support the comprehensive monitoring of the whole COAST programme, the Supplier will ensure Component A's results framework is aligned with and appropriately nested under the overarching COAST logframe, to be developed by FCDO with the Component D Independent MEL supplier in 2023. This includes ensuring the Component A results framework's methodologies are aligned with any methodologies developed for COAST's output, outcome or impact results areas to allow key results from Component A to be incorporated and reflected in COAST's logframe. The Supplier will collaborate with the Component D Independent MEL supplier to achieve this aim. The SRO, with authorisation of their Deputy Director, will agree any proposed changes to the COAST logframe.

### 3.11.2. Component A VfM reporting

The Supplier will report on value for money (VfM) performance under Component A. The Supplier will develop a set of value for money indicators and targets during the Mobilisation Phase to support this, working with the Component D tier-1 delivery partner. These will reflect FCDO's approach to VfM, including the four E's (economy, efficiency, effectiveness and equity), as set out in the ProOF.

The Supplier will report on VfM performance through operational progress meetings, strategy progress meetings and the progress and annual monitoring reports, with different information and level of detail provided by the Supplier depending on the timing of the reporting and stage of Component A's delivery.

### 3.11.3. Lessons learning

The Supplier will proactively identify, collate, and share evidence and lessons generated through Component A's delivery. The Supplier will share lessons via the quarterly and annual monitoring reports to FCDO.

### 3.11.4. Component D collaboration

The Supplier will collaborate with COAST's Component D Independent MEL supplier. This will allow FCDO to have a comprehensive and accurate overview of COAST's performance. As well as collaborating to achieve the nesting of Component A's results framework under the COAST logframe, this will include:

- The Supplier engaging and supporting the Component D Independent MEL supplier to undertake any evaluations of activities or performance of Component A undertaken at the request of FCDO. This will include providing the Component D Independent MEL supplier with applicable information, supporting their engagement with stakeholders and other activities to be set out in any terms of references for selected evaluations.
- The Supplier providing lessons identified through Component A's delivery to the Component D Independent MEL supplier when the latter requests.
- The Supplier's proactive participation in COAST's six-monthly PCF (see Section 2.6).

The Supplier Performance KPIs will regularly monitor the Supplier's collaboration with COAST partners (Section 6.1.3. and Annex D).

## 3.12. Programme funded advisers

FCDO have included scope within the COAST business case to appoint FCDO staff as programme funded advisers to COAST. Their role is anticipated to focus on supporting tier-1 delivery partners' engagement with national stakeholders, advising on programme activities and delivery, supporting posts to engage with COAST, coordinating COAST's tier-1 delivery partners, and supporting COAST's coordination with other BPF and HMG programmes in country. FCDO will assess during delivery whether to deploy programme funded posts. FCDO will locate programme funded advisers in COAST's Priority Countries, prioritising those where greater support is required.

FCDO will be responsible for the costs for any programme funded adviser. FCDO will regularly update the Supplier on any plans to deploy COAST programme funded advisers and will aim to provide at least nine months advanced notice of any request for the Supplier to host a COAST programme funded adviser in their country office.

Ahead of any COAST programme funded adviser being appointed, FCDO and the Supplier will agree a ToR for the programme funded adviser to make their role clear for all stakeholders. FCDO envisions that any COAST programme funded adviser will be hosted by the Supplier, working from their offices in a Priority Country. The Supplier will ensure that any programme funded adviser is supported to deliver their role, including providing access to work from the Supplier's in-country offices and engage with their IT systems. The Supplier will collaborate and proactively engage any

COAST programme funded adviser, as well as any BPF Regional Coordinators. The Supplier will include them in relevant meetings and engagements, reviews of projects, seek their advice where relevant, and take other action to support these roles deliver their objectives. The Supplier's performance for this will be monitored through the Supplier's KPIs.

### 3.13. COAST Partner Coordination Forums

The Supplier will actively prepare for and participate in each PCF.

Subject to agreement with the SRO, the Supplier may establish and deliver Priority Country or regional PCFs (collectively referred to as geographic PCFs), either on a regular or ad hoc basis, where a more geographically focussed coordination and collaboration meeting is deemed useful and needed with clear outputs identified that would benefit the delivery of Component A. The Supplier would be responsible for covering the costs, organising, managing, delivering and reporting on any Priority Country or regional PCFs. The Supplier would be responsible for inviting participants to each geographic PCF. The Component D tier-1 delivery partner may support the Supplier with advice to deliver these geographic PCFs.

## 4. Design of the Contract

### 4.1. Timeframe and Break Clauses

Component A is anticipated to begin delivery in Q2 of FY2024/25 once the procurement process has concluded and the Contract has been awarded. It will operate for an estimated 68 months (depending on start date) until the planned end of the programme (31<sup>st</sup> March 2030), with an optional up to 24 month and £15 million cost extension to 31<sup>st</sup> March 2032 subject to budget and Ministerial approval of a business case addendum.

Break points will be embedded throughout the Contract. These will include:

- At the end of the Mobilisation Phase i.e. 7 months after the signing of the Contract;
- 31 March 2025 in line with the current spending review period
- 31 March 2027 in line with the end of Phase 1 and a planned midterm evaluation of COAST undertaken by the Component D supplier;
- 31 March 2028 in line with the mid-point of Phase 2, and;
- The ability to break the Contract at the end of each UK spending review period.

### 4.2. Budget

Component A has been allocated a budget of up to £101.1 million (with an optional up to £15 million extension over an additional 24 months – see Section 4.1). This includes any direct and indirect management costs to the Supplier to deliver Component A. FCDO and the Supplier will maximise the proportion of budget that is directed to activities under each of Component A's sub-components that will benefit beneficiaries, aim to minimise direct and indirect delivery costs, and focus on achieving sustainable results and VfM.

Of Component A's budget, FCDO estimates that approximately 21%, 69% and 10% will respectively be delivered through Sub-components 1, 2 and 3 throughout delivery. An indicative budget is shown in Table 2 – this includes a breakdown by Phase and the Supplier's direct and indirect management costs would come out of these figures. FCDO will work with the Supplier throughout implementation to manage annual budgets and spend profiles across Component A.

**Table 2: Component A estimated annual budgets (to be confirmed ahead of each financial year)**

FY	24/25	25/26	26/27	27/28	28/29	29/30	Total
	Phase 1		Phase 2				

<b>Sub-component 1</b>	£2.4m	£4m	£4.5m	£4.5m	£4m	£1.4m	<b>£20.8m</b>
<b>Sub-component 2</b>	£3m	£10.2m	£15m	£15m	£14.25m	£11.5	<b>£68.95m</b>
<b>Sub-component 3</b>	£0.35m	£2.25m	£2.25m	£2.25m	£2.25m	£2m	<b>£11.35</b>
<b>Total</b>	<b>£5.75m</b>	<b>£16.45m</b>	<b>£21.75m</b>	<b>£21.75m</b>	<b>£20.5m</b>	<b>£14.9m</b>	<b>£101.1m</b>

FCDO currently plans for all of COAST's budget to be ODA RDEL (resource) spend. Due to the programme delivering in a new area, further evidence is required to estimate whether planned COAST activities may be counted as ODA CDEL (capital) spend rather than RDEL spend. By the end of FY 2025/26, FCDO will complete an analysis with support from the Supplier to estimate potential ODA CDEL spend based on delivered, current and planned activities. An estimate of potential ODA CDEL spend for FY 2026/27 onwards will be made and FCDO will seek to secure CDEL spend as identified from the analysis for that period. The Supplier will deliver the programme in accordance with FCDO's decision on COAST's ODA RDEL and CDEL budgets. Any CDEL will not represent additional budget to Component A beyond the extension options outlined in the ToR.

All costs submitted at the point of tender are to be the maximum costs incurred and should be based on the full duration of the contract. At the mid-term review point and at the end of the initial term (pre-any extension) there will be an opportunity for both parties to review the impact of external factors on cost – typically this will be inflation rate fluctuations.

The review will not simply apply an inflationary change but will consider if there have been any material changes to inflation trends (as measured by relevant official published indices) since the point of tender submission that are unsustainable for the supplier, or conversely where these have reduced vs the assumptions used at the point of tender. The principles of offset benefits will apply and where demonstrable that the supplier has benefited from economic conditions that are materially improved from the baseline assumptions on entering the contract, FCDO will require transparency of cost inputs reflected fully from the contract start date on making decision at this review point.

Any increase or decrease must be fully justified by either party. Failure to agree a change may result in termination of the Contract. To ensure consistency – inflation will be baselined on the published rates against widely recognised and published indices at the time of the Supplier submitting their tender proposal. Note that FCDO expects economies of scale to be reflected in reduced costs where applicable.

### 4.3. Flexibility – scope, scale up and down options

FCDO anticipates there may be need to flex over the duration of the Contract in response to demands from countries and changes in strategic priorities. This could result in changes in scope (including changes in countries within which Component A delivers, changes in Country Strategies and/or activities delivered in countries), scale up or scale down. The Contract structure has been developed to support this flexibility, including by using break clauses. Sub-sections set out when changes may occur and how these would be managed.

#### 4.3.1. Scope

In certain circumstances, FCDO may need to change the scope of work delivered under this Contract. This could mean:

- Change in the Phase 1 Priority Countries ahead of Contract award.



- Changing the budget allocations between COAST components or sub-components under Component A.
- Changing a Country Strategy and objectives to align with changes with in-country priorities while still delivering COAST's overarching objectives (for example, starting work in new sectors, stopping work in a sector, or adding additional activities).
- Stopping work in a Priority Component A country during delivery.
- Ring-fencing a portion of Sub-Component 3 for specific sectors and/or specific countries or regions.
- Making changes to the way activities are delivered, as part of maintaining good value for money.
- Changing policies regarding programme delivery (for example, safeguarding, risk or due diligence approaches used).

Changes in scope could be required as the result of the below non-exhaustive list (FCDO cannot foresee all circumstances that would require a change of scope):

- Continued scoping work being carried out by the FCDO in advance of this Contract beginning, and/or additional scoping tasks that happen during the Contract period.
- Changing priorities of the FCDO and HMG.
- Changing priorities of our partner countries.
- Political economy reasons, including a change in the security situation or government stability.
- The results of work completed by the Supplier during the Mobilisation Phase (e.g. to agree policies for the programme), which may highlight changes that are required to follow best practice and/or maintain value for money.
- Learning gathered during programme delivery (e.g. more efficient project management processes being developed).
- Change in FCDO policy (e.g. safeguarding policy or the Programme Operating Framework).
- Recommendations of evaluations carried out by the Independent MEL provider under COAST Component D.
- Recommendations from FCDO annual reviews.

The decision whether to change the scope of the programme will be made at the discretion of the FCDO. If a change is required, the FCDO will inform the Supplier as early as possible, and the Supplier will be consulted on how this should be managed within the programme. The change will usually be managed through the standard Contract management processes, but in some circumstances may require a contract variation (e.g. if safeguarding policies change) which will be carried out in line with the T&Cs.

#### 4.3.2. Scale up

Within the planned COAST delivery timeframe, COAST's budget may be scaled up subject to demonstration of positive impact and successful delivery. Scale up would be possible if FCDO secured additional funding or another HMG Department secure additional funding and seek to deploy this through COAST. In the event that funding comes from another HMG Department (or another area of Senior Responsible Officer (SRO) oversight and accountability within the FCDO), FCDO will arrange for the Department to be integrated efficiently into COAST's governance structure. It is expected that any additional funding would be committed to the Supplier through existing pricing and payment mechanisms of the FCDO as the contracting authority. The additional funding could be used for, but not necessarily limited to:

- Carrying out additional projects in COAST Priority Countries.

- Expanding delivery to include other countries beyond COAST's Priority Countries and possible two expansion countries, taking COAST's delivery beyond a maximum of six Priority Countries.
- adding additional budget to Sub-Component 3 to deliver additional projects. This could include ring-fencing a portion of the funding for specific sectors or countries/regions.

A scale up may be approved by the FCDO under the following, non-exhaustive list of circumstances (FCDO cannot foresee all circumstances that would require a scale up of COAST):

- The scale up being consistent with HMG's Green Book and/or any future superseding good practice guidance documents issued by the Cabinet Office and following appropriate internal HMG business case and procurement governance approval processes.
- If funding is provided from another HMG Department (or another area of SRO oversight and accountability within the FCDO) all governance arrangements required must be clear and agreed with FCDO.
- The scale up being in line with HMG objectives, which may change over the life of the Contract.
- The activities to be covered are in line with COAST's objectives and deliverable through its delivery approach, as set out in Sections 2 and 3.
- The scale up is shown to be deliverable within COAST, as determined by the FCDO. This determination will consider whether the operating environment of any additional countries is suitable (e.g. the security situation and political economy in relation to climate change), whether the post has sufficient resources to provide strategic guidance, and whether the additional activities would impact the delivery of the existing programme. The Supplier will be consulted as part of this deliverability assessment.
- COAST having strong performance and the potential to yield additional results (to be determined at FCDO's discretion, based on programme reporting and evaluation evidence).

The decision whether to seek a scale up to the programme through this Contract will be made by the FCDO. The additional Supplier resource requirements to deliver any scale up will vary depending on the size of the uplift in budget and the nature of the change in scope. The FCDO will discuss the requirements with the Supplier, set out a request outlining the additional activities and Supplier tasks, and formally request a response from the Supplier. Any additional Supplier costs that are proposed within the increased budget will be reviewed to ensure robust value for money is maintained. The FCDO will expect for economies of scale to be factored in. Any such additional budget will be additional to that stated in this Terms of Reference, should not be assumed and will be enacted via a Contract Variation will be made if the additional scope of work can be agreed on the same VfM basis as the original Contract value. This will be made in line with the T&Cs of the Contract and the Public Contract Regulations 2015.

#### 4.3.3. Scale down

Under certain circumstances, the FCDO reserves the right to scale back COAST at any point, potentially resulting in the total budget reducing with resulting reductions across COAST components and changes or stopping of activities, or the programme may end earlier than planned. For example, this scale down could happen in the following, non-exhaustive list of circumstances (and FCDO cannot foresee all circumstances that would require a scale down of COAST):

- There is a change in FCDO or HMG priorities (e.g. a change in geographic or thematic focus that means COAST is less of a priority, or a change in ICF strategy) or a reduction in funding available.
- There are political economy changes, including a change in the situation of the security, government stability, or necessary government engagement with COAST Priority Countries.

- FCDO's dissatisfaction with performance of the programme. This will be determined at the FCDO's discretion, based on evidence from performance management, results collection and evaluation evidence, and the results of FCDO's Annual Reviews of COAST.

The decision whether to scale back the programme will be made at the discretion of the FCDO. If a scale down is required, the FCDO will inform the Supplier as early as possible, and the Supplier will be consulted on how this should be managed within the programme. Any reduction will be carried out in line with the Contract's T&Cs. The reduction will usually be managed through a Contract Variation and corresponding changes to Task Orders.

In the event of a scale down, the Supplier is expected to reduce their Supplier Costs in response, wherever possible in a way that is proportionate to the scale down (including stopping tasks that are no longer needed). No compensation or damages would be due to the Supplier if a scale down is required.

#### 4.4. Performance Requirements and Deliverables

The Supplier will be monitored by FCDO on their ability to effectively deliver the programme and achieve results and impact, as well as on their efficiency and effectiveness in managing the programme in line with the requirements set out in this ToR.

#### 4.5. Value for money

A very strong value for money (VfM) focus will be applied throughout COAST's delivery. The Supplier will be required to integrate this throughout the programme and track performance against a suite of KPIs to allow the Supplier's delivery and Component A's performance to be assessed regularly on a VfM basis.

COAST defines value for money in the following terms:

- i. Economy: Being a good steward of programme resources, buying the right inputs, of the appropriate quality, at the right time, right price, and leveraging networks.
- ii. Efficiency: COAST produces the intended mix, quality, and quantity of deliverables, aligned with needs of partner countries and other beneficiaries, working adaptively and within the available resources.
- iii. Effectiveness: COAST activities demonstrate impact for partner countries and beneficiaries in line with COAST's aim and objectives.
- iv. Cost-effectiveness: COAST creates more value than it consumes and/or meets expectations commensurate with the resources invested in the programme.
- v. Equity: COAST contributes to reducing constraints, improving opportunities and influence in climate change and coastal matters for women, other marginalised groups, and future generations.

The delivery partner will be expected to emphasise the importance of VfM through their delivery chain, effectively assessing and scrutinising downstream partners' costs, budgets and approaches to VfM prior to and throughout delivery, and incorporating appropriate VfM metrics to measure VfM where feasible.

The Supplier would be required to contribute information, analysis, and views towards any COAST-level VfM evaluations undertaken by the Component D's Independent MEL supplier.

## 5. Resourcing – staffing, skills and expertise

### 5.1. Core Team

The Supplier will ensure there is an experienced Core Team to oversee the management, delivery, governance and reporting of Component A in line with these ToRs. The Supplier will ensure the Core



Team has relevant expertise and experience across COAST's aims, objectives, themes, and Priority Countries. The Core Team should at least include:

- Programme Director: a senior member of staff responsible and accountable for delivery of the Contract, but not expected to spend all their time working on Component A.
- Team Leader: responsible for managing the Core Team, the broader delivery of Component A on a day-to-day basis, and the key focal point for the COAST Team and SRO.
- Deputy Team Leader: provide additional capacity support to the Team Leader and able to deputise when required.
- GESI and MEL Lead: responsible for ensuring GESI and MEL are embedded across Component A's delivery in line with good practice and for ensuring Component A's delivery aligns with COAST's MEL strategy and results framework, working closely with the COAST Component D delivery partner. These may be two separate roles.

The Supplier will ensure that responsibilities for the following aspects of Component A are clearly mandated within either the roles outlined above or additional roles within the Core Team:

- Programme Management.
- Financial management and financial reporting of Component A.
- Management of Component A Country Teams (see Section 5.2).
- Management of sub-component 3.

The Core Team should have appropriate expertise and experience across COAST's themes and may appoint technical, thematic or sectoral leads to support coherent and strategic delivery. However, as Component A seeks to adapt delivery to suit the context of each priority COAST country, this expertise will be required in each country (see Section 5.2.).

Should any named Core Team member leave the team before the Contract is signed, or during the Contract period, FCDO must be notified and must approve their successor (based on their CV) to ensure a similar level of skill and value for money. Where agreement cannot be reached, FCDO reserves the right to terminate the contract.

## 5.2. Country Teams

To effectively deliver Component A, FCDO requires the Supplier to establish teams located in each of the priority COAST countries ('Country Team'). Each Country Team will have as a minimum:

- Country Lead: responsible for leading and overseeing the impactful, efficient and effective delivery of Component A in the priority COAST country, including developing and owning each Country Strategy and ensuring Component A's delivery responds to local context and political economy, building and maintaining a productive relationship with post and BPF regional coordinators, and ensuring the Country Team maintain positive relationships with key external stakeholders and other BPF delivery partners.
- Thematic, technical or sectoral leads: responsible for providing technical expertise to guide Component A's delivery in each priority COAST country, with appropriate knowledge and experience working in the country.

The Supplier will ensure each Country Team has strong stakeholder management and communications skills, GESI expertise, government engagement expertise relevant to their host

country, private sector engagement expertise, an ability to design effective activities with clear outputs and outcomes to ensure the effective delivery of Component A, and strong contextual knowledge of each Priority Country.

The Supplier will be able to establish new Country Teams in Phase 2 priority COAST countries subject to the outcome of the Pre-Phase 2 scoping phase (see Section 3.7. for more details).

Should any named Country Lead or other key personnel leave the Supplier's team before the Contract is signed, or during the Contract period, FCDO must be notified and must approve their successor (based on their CV) to ensure a similar level of skill and value for money.

### 5.3. Programme Management

The Supplier will ensure there is appropriate programme management experience and expertise in place to manage Component A in the Core and Country Teams (depending on the model employed). Key skills should include:

- Contract and grant management, including procurement.
- Downstream partner management and due diligence.
- Risk management, including monitoring and reporting at project and portfolio levels, especially related to fraud, safeguarding and modern slavery.
- Financial budgeting, management, and reporting.
- Data and programme management systems and reporting.

The Supplier will ensure that Component A's programme management is efficient, accurate and effective and represents VfM throughout delivery. The Supplier will use the model best suited to achieve this, with possible options including:

- Central: programme management across all Component A activities and Country Teams is centralised within the Core Team.
- Decentralised: programme management is decentralised to each Country Team with a focal point individual or team in the Core Team acting to consolidate across Component A to give FCDO a clear overview.
- Hybrid: A hybrid model in between the Central and Decentralised models.

### 5.4. Sub-component 3 team

The Supplier will have relevant expertise and experience in place to manage sub-component 3 in line with Section 3.4. and ensure its efficient and effective delivery that represents VfM.

### 5.5. Staff Expertise

The Supplier will ensure that staff with appropriate expertise and experience for each role are appointed to deliver Component A. This includes appropriate technical expertise in the themes and sectors COAST focuses on, programme management and delivery expertise (particularly related to ODA programme delivery in Priority Countries), financial management, stakeholder engagement (with government, private sector and civil society in Priority Countries), monitoring, evaluation and learning expertise, expertise relevant to each Priority Country (particularly those staff working within in-country teams) and language skills.

### 5.6. Technical Assistance Pool

The Supplier will establish a technical assistance pool to allow them to deploy short term expertise, skills and staffing where required to deliver specific tasks not deliverable by the Core or Country

Teams, as required. Such deployment should be proposed to and approved by FCDO. The Supplier will ensure the expertise within the technical assistance pool are relevant to the aim, objectives, themes and priorities of COAST.

The technical assistance pool will seek to utilise in-country expertise within each Priority Country as much as possible. Non-Priority Country nationals may also be included within the technical assistance pool.

The Supplier may contract additional staff expertise outside of the technical assistance pool when required expertise is not available within the technical assistance pool. The Supplier will ensure appropriate processes are in place to do so, and all costs for additional staff expertise will be dictated by the technical assistance pool rate card provided in the Cost Proforma.

### 5.7. Supporting diversity in resourcing

The Supplier is expected to promote diversity amongst its workforce in terms of age, ethnicity, nationality, gender/gender identity, sexuality, disability and experience. The Supplier will include support for this when advertising roles. The Supplier is also expected to demonstrate action to identify and tackle inequality in employment, skills and pay in the contract workforce and supply chain, addressing systemic barriers to progression for minority and marginalised groups. This will be monitored through the KPI's and Supplier performance payments.

## 6. Contract delivery requirements

### 6.1. Finance

#### 6.1.1. Payment Structure

The Contract will utilise a milestone-based payment model for the Mobilisation phase, followed by a hybrid performance related payment model involving payments in arrears and a performance related payment for the Implementation phase (see Section 6.1.3.).

FCDO will transfer monies to the Supplier in arrears on a quarterly basis. Payments in arrears will be based on a clear financial report detailing the Supplier's expenditure. Expenses directly incurred by the Supplier's team will be also reimbursed quarterly in arrears based on actuals.

FCDO is aware that the Supplier's downstream partners may require payments in advance – the process for how the Supplier will manage this is set out in Section 3.9. FCDO does not anticipate or expect the Supplier will require funds in advance for other activities, however there may be exceptional circumstances where this is the case. Should the Supplier require funds in advance, the Supplier will provide a clear and justified request supported by accurate forecasting to FCDO. The SRO will approve any funds to be disbursed in advance to the Supplier in agreement with ECED's finance manager subject to a strong case presented by the Supplier.

#### 6.1.2. Financial management, forecasting and reporting

The Supplier will set up a client bank account with a regulated UK bank or building society specific for Component A. The name and purpose of the account must be communicated to the banking provider and the FCDO funds must be segregated from other funds and cannot be considered as resources at the disposal of the Supplier. FCDO funds shall not be reported within their accounts. Any interest accrued by the Supplier stemming from balances held through advance payments of grant funds can be used to offset any bank charges incurred through the normal operations of the account. Any interest over and above such bank charges will remain the property of FCDO.

The Supplier will provide FCDO with quarterly financial forecasts, budget requests, and spend profiles. The Supplier will promptly advise FCDO in advance of any unexpected potential significant changes in forecasts. FCDO will use this information to monitor progress against payment schedules

to avoid payments being made in advance of need. Any significant changes to payment schedules will be agreed by the SRO.

The Supplier will provide FCDO with accurate quarterly and annual financial reports covering all Component A spend. Financial reports will disaggregate data by project and category of spend. The Supplier will assess financial performance against budgets submitted to FCDO to monitor variance and over or underspend.

The Supplier will provide updates on financial forecasts and reporting through the regular meetings between FCDO and the Supplier (see Section 3.8.3.).

The Supplier will assess fiduciary risks and action appropriate mitigations to avoid, reduce, mitigate, and manage risks. The Supplier will regularly report fiduciary risks to FCDO and immediately report any fiduciary risk materialisation issues to FCDO. The Supplier will undertake independent annual audits of the account that holds COAST funds on at least an annual basis.

### 6.1.3. Supplier Performance Key Performance Indicators

20% of the Supplier's Programme Management fees for each quarter will be contingent on a performance against a set of Supplier Performance KPIs. The Supplier Performance KPIs will be used once the Mobilisation Phase is complete – they will not apply during the Mobilisation Phase.

The Programme Management fees are defined as the Gross daily rates per quarter of all Project staff involved in the running and management of Component A, including the Core Team and Country Teams. This does not include technical advisors who are deployed on an as-needed basis, however all other project staff's Gross daily rates per quarter are included.

Annex D provides the Supplier Performance KPIs. FCDO and the Supplier will agree any refinements to the Supplier Performance KPIs and the detailed methods for measuring performance against each Supplier Performance KPI within 2 months of Contract award.

Each Supplier Performance KPI will be scored each quarter from 1-4. Each score represents the level of payment related to each Supplier Performance KPI:

- Score 4 – 100% Payment
- Score 3 – 75% Payment
- Score 2 – 60% Payment
- Score 1 – 0% Payment

The Supplier will provide evidence on their performance against each Supplier Performance KPIs in each quarterly financial report. Annex D sets out the types of evidence for each Supplier Performance KPI that FCDO will consider, and FCDO will consider other evidence where relevant provided in each quarterly financial report. Actions or evidence presented after each quarterly performance assessment will not be factored into the scoring and payment for the preceding quarter.

Each Supplier Performance KPI is weighted. These weightings will be used to allocate how much of the total 20% of the Programme Management Fees each quarter is applicable to each Supplier Performance KPI. Some Supplier Performance KPIs will only be applicable every other quarter or annually - modified weightings are provided in Annex D for Supplier Performance KPIs for when some are not in use for a quarter. Below is an example of how the weightings will be applied:

1. The total Programme Management fees in Quarter X are £500,000. £100,000 (20%) is subject to performance against the Supplier Performance KPIs.
2. Supplier Performance KPI 2 has a 25% weighting and therefore applies to 25% of £100,000. £25,000 of the Supplier's Programme Management fees is therefore at risk

subject to performance against Supplier Performance KPI 2. The Supplier scores a 3 for KPI 2a in Quarter X. FCDO pays the Supplier £18,750 for Quarter X under KPI 2.

3. Some Supplier Performance KPIs have two targets within them. Where this applies, Step 2 is repeated for each target based on their weightings. For example, Supplier Performance KPI 1 has a total weighting of 12.5% with KPI 1a and KPI 1b weighted at 5% and 7.5% respectively. Therefore £5,000 and £7,500 are respectively at risk for KPIs 1a and 1b, and £12,500 at risk for Supplier Performance KPI 1 overall. Scores are assigned to each of KPI 1a and 1b respectively, in line with the approach in Step 2.
4. Steps 1-3 are repeated for each Supplier Performance KPI and their Targets for Quarter X.

Poor performance by the Supplier will be addressed through a Rectification Plan. This will be developed by the Supplier and submitted to FCDO for agreement. If a Rectification Plan cannot be agreed to address poor performance to the satisfaction of FCDO, the Contract may be terminated as per Section 44.1.4 of FCDO's standard terms and conditions.

Supplier Performance KPIs may be further revised during the Contract if agreed by FCDO and the Supplier. Revisions could be made to reflect learning during Component A's delivery or to improve the Supplier Performance KPIs if issues are identified during delivery.

## 6.2. Audits

The Supplier will undertake at least annual financial audits of Component A. This will be conducted by an external independent party. The Supplier will share all audit reports with FCDO. The Supplier will ensure all projects funded through COAST submit annual audit reports and accounts for each financial year and make these available to FCDO upon request.

## 6.3. Risk Management

The Supplier will proactively assess, monitor and review risks to the delivery of Component A and take action to avoid, reduce or mitigate identified risks in line with FCDO's ProF. The Supplier will ensure a risk register and risk management approach is developed in the Mobilisation Phase and proactively utilised throughout delivery, including maintaining an accurate risk register and providing regular updates to FCDO through monthly operational progress meetings. The Supplier will report key risks to FCDO through regular meetings and reporting.

## 6.4. Safeguarding

FCDO maintains a zero-tolerance approach to sexual exploitation and abuse by the Supplier, which includes their downstream partners. The Supplier will take all reasonable steps to prevent the sexual exploitation, abuse and harassment of any person by its employees or downstream partners.

The Supplier will have appropriate safeguarding policies, procedures, training, and monitoring and reporting mechanisms in place in line with FCDO policy.

The Supplier will report any safeguarding issues to FCDO promptly and in line with FCDO policy, and fully cooperate with FCDO or FCDO's appointed partners during any safeguarding investigations. The Supplier will provide regular summaries of cases in the quarterly and annual reports.

## 6.5. Modern Slavery

The Supplier will have appropriate policies and monitoring systems in place to avoid modern slavery from occurring. This includes conducting due diligence on and monitoring downstream partners, with regular reporting through the delivery chain map.

The Supplier will report any modern slavery issues to FCDO promptly and in line with FCDO policy, and fully cooperate with FCDO or FCDO's appointed partners during any safeguarding investigations. The Supplier will provide regular summaries of cases in the quarterly and annual reports.

## 6.6. Gender, Equality and Social Inclusion

The Supplier will proactively embed GESI into the delivery of Component A. The Supplier will identify barriers and take appropriate actions to strengthen Component A's support to women and girls, people with disabilities, indigenous peoples, local communities and other groups and their ability to access information and support via Component A. To support this, the Supplier will ensure that activities under Component A seek opportunities to maximise engagement, capacity building, benefit distribution, including through capacity building opportunities.

The Supplier will engage with people from these groups throughout Component A's delivery to assess performance and identify lessons for improvements, providing an overview of activities within quarterly and annual reports.

The Supplier will collect and report results data from Component A's activities disaggregated by gender, age, disability, indigenous peoples, local communities, and other groups. This will be used to monitor the Supplier's performance.

## 6.7. Climate and Environment

The Supplier will assess the climate and environment risks and impacts of activities undertaken throughout delivery of Component A and ensure actions are in place to avoid, reduce or mitigate their impact on the climate or environment.

The Supplier must be publicly committed to achieving Net Zero by 2050. For large companies, the FCDO recommends having a commitment to Science Based Targets<sup>3</sup> and/or joining Race to Zero<sup>4</sup>, and for SMEs joining Race to Zero via the SME Climate Hub<sup>5</sup>.

As a climate-focused programme, the Supplier will consider the direct emissions produced by its work to deliver Component A and take steps to reduce them. The Supplier will produce a plan for reducing these emissions and report against it as part of Component A's quarterly and annual reports.

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

## 6.8. Social Value

Social value has a lasting impact on individuals, communities and the environment. The UK Government has an opportunity and responsibility to maximise benefits effectively and comprehensively through its commercial activity.

The Supplier will have policies and commitments in place to support efforts to maximise social value through Component A.

## 6.9. Duty of Care

The Supplier will be responsible and have a duty of care for the safety and well-being of their personnel (including its employees, sub-contractors or agents) engaged under this Contract and any

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<sup>3</sup> See <https://sciencebasedtargets.org>

<sup>4</sup> See <https://unfccc.int/climate-action/race-to-zero-campaign>

<sup>5</sup> See <https://businessclimatehub.org/uk> (the UK hub website is <https://businessclimatehub.org/uk>)



third parties affected by its work, including appropriate security arrangements. The Supplier will also be responsible for the provision of suitable security arrangements for its domestic and business property. FCDO travel advice is available on [www.gov.uk/foreign-travel-advice](http://www.gov.uk/foreign-travel-advice) and the Supplier must ensure it (and its personnel) are up to date with the latest position.

The Supplier must have appropriate policies, procedures in place to deliver this duty of care as well as monitoring plans to remain aware of risks to personnel during delivery. The Supplier must provide appropriate training for its personnel. The Supplier will ensure there are appropriate security arrangements in place throughout delivery.

The Supplier may be required to operate in insecure or conflict-affected areas, and the security situation may be volatile and subject to change at short notice. The Supplier should be comfortable working in such environments and should be capable of deploying to any areas required under Component A. It is not expected that the Supplier would put staff at risk or send them to the most insecure areas, but the Supplier must have the ability to monitor programmes in a wide range of districts/sub-districts across all countries in scope.

The 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.

#### 6.10. Transparency

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 sub-contractors, sub-agencies and partners.

It is a contractual requirement for the 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 to FCDO – further information is available from: [www.aidtransparency.net](http://www.aidtransparency.net).

The Supplier will keep records of all work and expenditure in a form that 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), etc.

#### 6.11. General Data Protection Regulations (GDPR)

The Supplier will comply with UK GDPR requirements which will be set out within the Contract through the use of FCDO's Standard Terms and Conditions.

#### 6.12. UK Aid Branding

The Supplier and FCDO will agree a UK Aid “visibility statement” to set out how UK Aid branding will be used by the Supplier and downstream partners. The Supplier must adhere to UK Aid branding guidance: [www.gov.uk/government/publications/uk-aid-standards-for-using-the-logo](http://www.gov.uk/government/publications/uk-aid-standards-for-using-the-logo). No publicity is to be given to this Contract without the prior written consent of FCDO.

#### 6.13. Digital

All digital spend is subject to separate approval by the FCDO, and activities must follow the UK Government's digital standards<sup>6</sup> and the Principles of Digital Development<sup>7</sup>. Any communications activities may need to go through additional approvals before they go ahead, including those carried out by Implementing Partners (IPs) as part of projects funded by COAST.

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<sup>6</sup> Please see: [Guidance on digital spend advice and controls for partners and suppliers - GOV.UK](http://www.gov.uk/government/publications/guidance-on-digital-spend-advice-and-controls-for-partners-and-suppliers) ([www.gov.uk](http://www.gov.uk))

<sup>7</sup> Please see: <https://digitalprinciples.org>

Government digital spend requirements must be followed, which will include sign off of any digital spend with FCDO Digital before activities go ahead, and may require additional user research, and will include digital work done by any Implementing Partners not just the Supplier and its contractors within a consortium.

#### 6.14. SME Support Reporting

It is now a requirement to report on the levels of contracted work being allocated to SME and other sub-contracted organisations to the UK Government SME Small Business Policy team. As part of the contractual compliance checking process, the Supplier will be required to submit returns to FCDO providing these details, as a minimum on an annual basis. FCDO's Standard Terms and Conditions including the supplier Code of Conduct covers responsibilities and requirements.

#### 6.15. Asset Management

All assets procured through Component A funds will be tracked and monitored through asset registers held by the Supplier. The Supplier will ensure all downstream partners maintain their own asset registers. The Supplier and their downstream partners' asset registers will be updated regularly and audited by the external audits.

The Supplier will agree with FCDO how COAST funded assets will be transferred or disposed of at the end of the programme, following FCDO rules and processes outlined in FCDO's Programme Operating Framework.

#### 6.16. Exit Strategy and end of Component A

The Supplier will annually update the Exit Strategy produced in the Mobilisation Phase and submit to the SRO along with the annual monitoring report. The SRO will approve each annual update. Delivery progress, lessons identified, stakeholder needs and engagement priorities, experience from cross-COAST component collaboration, management of downstream partners, and other experiences from Component A's delivery will be used to inform updates and support the exit strategy's improved focus on sustainability of impact, local partner engagement, and securing a legacy from Component A's delivery.

A final exit strategy will be submitted for approval by the SRO ahead of the penultimate annual monitoring report and no later than before entering the final 18 months of Component A's delivery. This strategy shall detail final activities and reporting to be undertaken, communications and stakeholder engagement plans and materials to be developed, asset disposal procedures, plans to return any confidential information provided by FCDO to FCDO, a short lessons learned brief for the programme (including on managing a complex programme), as well as other details required by the COAST programme team.

#### 6.17. Supplier Insurance

The Supplier will be required to evidence renewed insurance policies in advance of their expiry dates for the life of the Contract.



## Annex A: COAST Theory of Change

Figure 5: COAST High Level ToC developed in June 2022 (included in COAST Business Case)

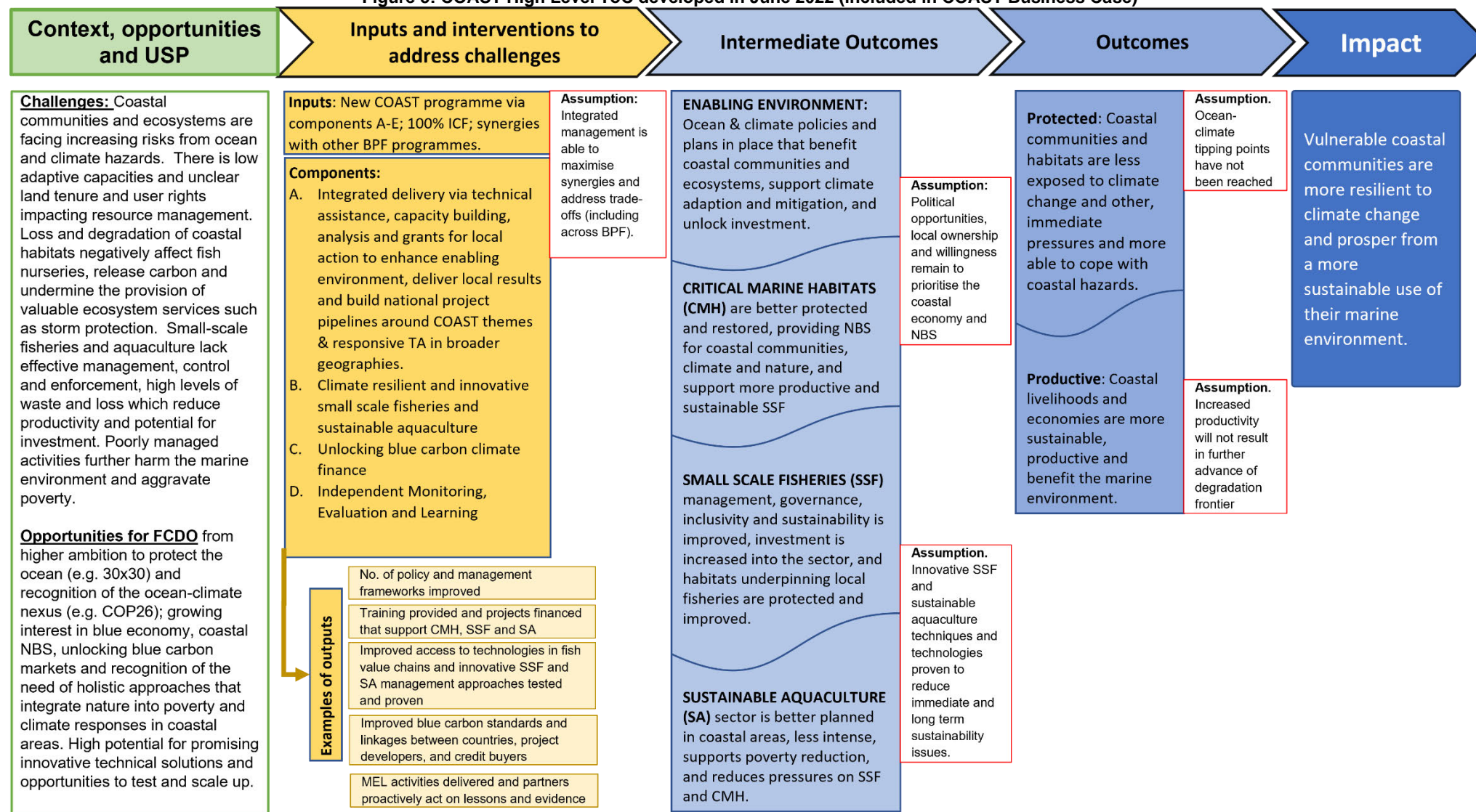
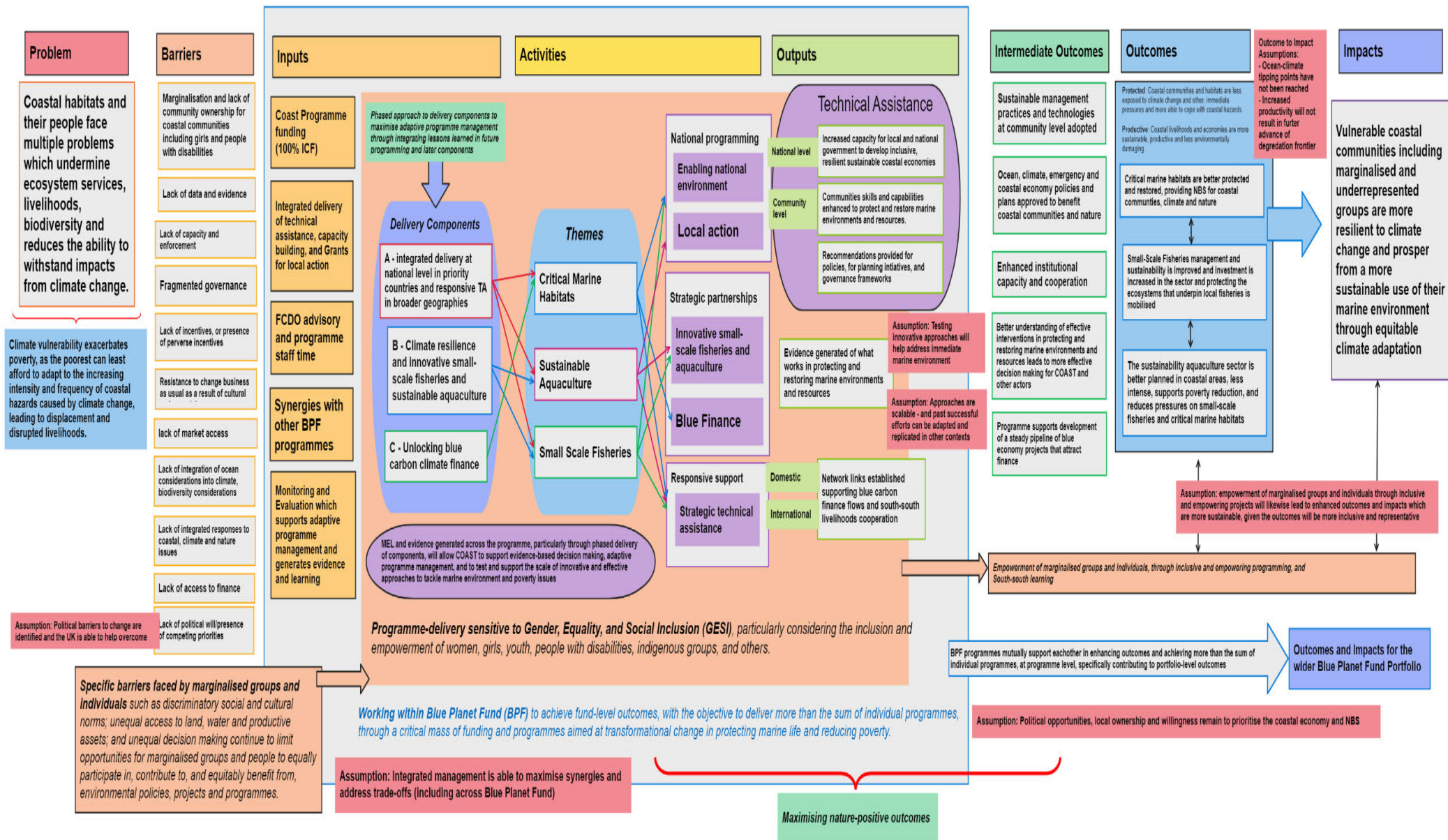


Figure 6: Detailed COAST ToC developed in March 2023





## Annex B: Indicative COAST Logframe

Statement	Indicative KPIs	Source
<b>Outputs</b>		
Partnerships established and operational	<ul style="list-style-type: none"> <li>Agreements with partners signed</li> <li>Delivery processes finalised</li> </ul>	Signed partner agreements, approved delivery processes (e.g., grant approval process)
CMH, SSF and SA enabling environments improved	<ul style="list-style-type: none"> <li>No. of improved policies</li> <li>No. of marine spatial planning supported</li> <li>Capacity building supported delivered</li> <li>Evidence of uptake of analysis</li> <li>No. of non-ocean/climate focussed policies supported to integrate CMH, SSF, SA or other coastal issues</li> <li>Hectares of coastal/marine areas mapped</li> </ul>	Partner reports and MEL reporting
Increased access and uptake of innovative SSF and SA approaches, techniques, and technologies	<ul style="list-style-type: none"> <li>No. of pilots supported to improve fisheries data collection, management</li> <li>No. technologies adopted to improve fisheries techniques, fish processing, post-harvest management.</li> <li>No. of fishers, particularly women in all their diversity, benefitting from improved knowledge/training and access to technologies/techniques</li> <li>Evidence of private sector engagement / volume of private finance mobilised</li> </ul>	
Improved blue carbon regulatory frameworks and access to finance	<ul style="list-style-type: none"> <li>No. of national blue carbon frameworks established</li> <li>No. of climate finance providers that engage in national blue carbon plans/BCAP project</li> <li>No. of standards improved to strengthen blue carbon project design</li> </ul>	
Pipeline of integrated projects that can access finance growing	<ul style="list-style-type: none"> <li>No. of projects supported that take an integrated approach across COAST's themes</li> <li>Volume of co-finance mobilised and/or finance flows into projects</li> <li>No. of people benefitting, particularly women, people with disabilities and other groups.</li> <li>No. of SMEs supported</li> </ul>	
Improved coastal livelihoods and more sustainable blue economies	<ul style="list-style-type: none"> <li>No. of people benefitting from diversified livelihoods training and capacity building, particularly women and girls, people with disabilities and other groups.</li> <li>No. of SMEs supported</li> </ul>	
Coordination and uptake of evidence and learning across COAST partners	<ul style="list-style-type: none"> <li>No. of evidence reports generated</li> <li>Attendance and evidence of proactive participation at COAST Coordination Forums</li> <li>Reports demonstrate learning and evidence acted upon</li> </ul>	MEL commercial supplier COAST Coordination Forum reports, evidence papers, partner reports
<b>Intermediate Outcomes</b>		
Enabling environment: Ocean & climate policies and plans in place that benefit coastal communities and ecosystems, support climate adaption and mitigation, and unlock investment.	<ul style="list-style-type: none"> <li>% change in stakeholders reporting improved policies and regulatory frameworks that allow increased ease of operation</li> <li>% change in stakeholders reporting improved national and sub-national coordination</li> <li>% change in finance flowing into coastal adaptation, ecosystems, livelihoods, and economies</li> <li>Evidence of implementation of MSPs due to COAST</li> </ul>	Evaluations, partner reports and surveys, national reporting
Critical marine habitats (CMH) are better protected and restored, providing NBS for coastal communities, climate, and nature,	<ul style="list-style-type: none"> <li>Hectares of habitat under protection, restoration, or sustainable management due to COAST (e.g. through LMMAs) – links to ICF KPI 17 and BPF KPIs</li> <li>No. of people, particularly women, benefitting from improved coastal habitat protection/restoration/management</li> <li>GHG emissions avoided/reduced – links to ICF KPI 6 and BPF KPIs</li> </ul>	

and supporting more productive and sustainable SSF		
Small scale fisheries (SSF) management and sustainability is improved, and investment is increased in the sector and protecting the ecosystems that underpin local fisheries is mobilised.	<ul style="list-style-type: none"><li>No. of people benefitting from improved incomes/livelihoods via SSF disaggregated by age, gender and disability</li><li>% change in incomes via SSF</li><li>% change/volume of finance flowing into SSF due to COAST</li><li>GHG emissions avoided/reduced – links to ICF KPI 6 and BPF KPIs</li></ul>	
Sustainable Aquaculture (SA) sector is better planned in coastal areas, less intense, supports poverty reduction, and reduces pressures on SSF and CMH.	<ul style="list-style-type: none"><li>New aquaculture projects are located in low-risk areas based on MSPs</li><li>% increase in SA aquaculture production due to COAST</li><li>No. of people, particularly women (in all their diversity), benefitting from SA due to COAST, disaggregated by age, gender and disability</li><li>% change incomes due to SA</li><li>GHG emissions avoided/reduced – links to ICF KPI 6 and BPF KPIs</li></ul>	
Outcomes		
Protected: Coastal communities and habitats are less exposed to climate change and other, immediate pressures and more able to cope with coastal hazards.	<ul style="list-style-type: none"><li>% change in coastal populations impacted by climate hazards and better able to cope (e.g. measured in impact on incomes, loss of property, etc.) – link to ICF KPI 1 &amp; BPF KPIs disaggregated by age, gender and disability</li><li>% change in coastal ecosystems damaged by climate hazards (whereby reduced % indicates improved ecosystem resilience)</li><li>% change in coastal ecosystems due to anthropogenic pressures (where reduced % indicates reduced pressure through better protection).</li></ul>	Evaluations, partner reports and surveys, national reporting
Productive: Coastal livelihoods and economies are more sustainable, productive, and less environmentally damaging.	<ul style="list-style-type: none"><li>% change in fish stocks due to COAST</li><li>% change of SSF fish stocks long term sustainability based on assessments and evaluations</li><li>% change in pollution and habitat loss due to aquaculture</li><li>% increase in low-trophic, multi-trophic aquaculture</li><li>Volume of ecosystem services protected/improved – links to ICF KPI 10 and BPF KPIs</li><li>% change in coastal food security and nutrition levels</li></ul>	
Impact		
Vulnerable coastal communities are more resilient to climate change and prosper from a more sustainable use of their marine environment.	<ul style="list-style-type: none"><li>% change in coastal populations impacted by climate hazards and better able to cope (e.g., measured in impact on incomes, loss of property, etc.) – link to ICF KPI 1 &amp; BPF KPIs and disaggregated by age, gender and disability</li><li>% change in coastal poverty levels disaggregated by age, gender and disability</li><li>% change in coastal food security and nutrition levels disaggregated by age, gender and disability</li></ul>	National reporting and evaluations (where possible)

## Annex C: Outline Component A Project Screening and Approval

To ensure Component A is directed towards activities that align with COAST's aims and themes, achieves VfM, and delivers sustainable impact for people, climate and nature, an indicative screening process has been developed by FCDO. This indicative process seeks to ensure a strong focus on the use and strength of evidence underpinning proposals and ensure the programme team are actively engaged in the decision-making process.

### Screening criteria

An initial set of screening criteria to assess activities and proposals to be supported through Component A are shown in Table 3. These screening criteria aim to direct COAST support to activities and projects aligned with COAST's aim, objectives, themes and theory of change, prioritising projects that will deliver robust, sustainable impact for people, climate and nature. Given evidence limitations within the marine sector, as recognised in the COAST business case, premium is placed on: (i) the quality of underpinning evidence for proposed activities and projects' potential impact for poverty reduction, sustainable blue economy development, climate adaptation and/or mitigation and wider marine environment benefit; (ii) alignment with host country priorities and Country Strategies; (iii) VfM, and; (iv) deliverability.

The Supplier will propose a final set of screening criteria during the Mobilisation Phase, to be approved by the SRO. The Supplier may propose to use a tailored set of screening criteria and review process for COAST Priority Countries and/or Component A sub-components and/or different COAST themes where this would support more contextualised approaches. The screening criteria will be regularly reviewed by the Supplier and FCDO with any proposed updates to be signed off by the SRO.

### Identifying and developing proposals

Sections 3.2, 3.3 and 3.4 outline the process that will be followed by each sub-component to identify potential activities for support. Activities and/or projects under each sub-component may be delivered by the Supplier or by another delivery organisation as a downstream partner to the Supplier. Where downstream partners are used by the Supplier, the Supplier will follow additional steps set out below.

### Project and activity prioritisation

**Prioritising activities underpinned by good evidence:** Proposals aligned to COAST's aims and themes and underpinned by good evidence (identified through application of the screening criteria) will be prioritised for design, screening and securing approval. Proposals for: (a) innovative activities; (b) those with less established evidence but high potential for results or (c) activities outside of COAST's themes but with high potential to support COAST's impact and outcome aims, may also be considered for support under COAST, but with lower priority for design, screening and approval. The SRO will agree with the Supplier in the Mobilisation Phase whether a specific process to develop and screen proposals under groups (a), (b) or (c) should be established including potentially developing tailored screening criteria to account for limited underpinning evidence but with high potential. Proposals underpinned by weaker evidence or that have limited linkage to COAST's impact and outcome aims will not be prioritised for further design or support. This approach aims to support efforts to achieve a balanced portfolio under Component A that prioritises overall spend towards activities underpinned by good evidence for poverty, climate and nature benefits, whilst retaining some budget to test more innovative activities with high potential under (a), (b) or (c).

**Geographic prioritisation:** The Supplier will outline any proposed prioritisation for delivery of Component A across the COAST Priority Countries within the ToC, Country Strategies and workplans. The balance of delivery across the Priority Countries will draw from assessments by the Supplier, using available evidence, on where more favourable opportunities and political economies lie for impact and recognising the scale of need.

**Scaling established initiatives:** Component A will have the option to provide additional funding to established projects under other HMG or other donor programmes where it meets the objectives set out in this process. Each project will be reviewed and approved following this screening and approval process.

### Screening proposals

All proposed activities under Component A will be screened using the final screening criteria by the Supplier. The Supplier will ensure that appropriate expertise and programme management staff are involved in the screening process and appropriate ethical walls are in place to avoid Supplier staff involved in the project's design and/or delivery are involved in screening the proposed activity or project.

The Supplier may establish a review panel with external expertise to support the screening and review of projects should this represent VfM and improve the accuracy and robustness of the screening process. The SRO will approve any external review panel to be established by the Supplier. Should an external review panel be established, the Supplier will ensure ethical walls are in place to mitigate conflict of interests if a panel member's organisation is to be or likely to be involved in an activity or project's delivery.

The Supplier will ensure that proposals with either (a) innovative activities, (b) activities with less established evidence but high potential for results or (c) activities outside of COAST's themes but with high potential to support COAST's

impact and outcome aims, have appropriate MEL activities proposed prior to approval to ensure projects contribute to wider evidence generation.

Following screening, a summary report detailing the Supplier's review and recommendations on proposed activities and projects, along with each proposals' concept note, will be provided to the COAST programme team for review and approval. The Supplier will develop all relevant documents in the Mobilisation Phase to support the screening process, including concept notes and summary reports.

The Supplier will have the option to propose using a scoring threshold to pass proposals or not, or whether scores will be used to help prioritise proposals with no pass threshold applied.

### **Approval process**

The SRO will be responsible for approving all proposed activities or projects under Component A. The SRO may request further reviews by the Supplier or actions to strengthen proposals where needed.

The SRO will consider Component A's existing portfolio into the approval decision process to ensure that the majority of funding is continued to be directed towards projects with good underpinning evidence whilst some budget is directed towards more innovative, or less evidence activities. The SRO will ensure that the portfolio of projects include activities that aim to maximise nature positive outcomes – any proposal that does harm to people, climate or nature will not be supported.

The SRO may agree with the Supplier whether any thresholds will be used to delegate approval of low-risk and/or low-value proposals to Supplier, should FCDO have a high level of confidence in the Supplier's process, capacity and capability following a sufficient period of time of the programme's delivery.

High risk proposals will be approved by the Head of Department for the Adaptation, Nature and Resilience Department in FCDO, who may decide to escalate further if needed.

### **Post involvement**

During the Mobilisation Phase, the Supplier and FCDO will agree with posts in each Priority Country their level of involvement in the screening process. Options for post involvement include: (i) posts reviewing the Supplier's screening alongside or before the COAST programme team and providing advice and recommendations to the COAST SRO and programme team to inform SRO decision making; (ii) posts only reviewing the Supplier's screening of activities and projects above an agreed risk or value threshold and subsequently following the process set out in (i), or; (iii) posts not reviewing the Supplier's project screening outcomes. The default approach will be option i). Posts will have the opportunity to revisit their agreed preferred option for involvement with the Supplier during delivery.

### **Reviewing proposals involving downstream partners**

For activities and projects proposed that will not be delivered directly by the Supplier and instead use downstream partners, the Supplier will, in addition to conduct a screening using the screening criteria, review the proposed downstream partner during the screening process to ascertain their capacity, capability, expertise, and experience to deliver the proposed activity or project and therefore manage funding appropriately. This is presented in Table 3.

Should a decision to proceed be made, the Supplier will complete a full due diligence of the proposed delivery organisation prior to any funds being disbursed and ensure action is taken to mitigate issues, risks, or conflicts of interests.

Should the screening process find the proposed activity or project to be feasible and recommended to support but that the proposed downstream delivery partner is not suitable, the Supplier will assess and recommend whether the Supplier may undertake this proposal or conduct a procurement or call for proposals to deliver the proposal. The Supplier will need to follow all commercial rules should this approach be recommended.

**Table 3: Indicative Screening Criteria Overview**

Indicative Criteria	Indicative Weighting	Indicative Scoring Guidance
Strength of potential people, climate and/or nature impact	50%	<p><i>This criterion seeks to evaluate whether a proposal is aligned to COAST's aim, objectives, themes and ToC and test its potential for robust, medium-long term development and climate impact, as well as nature impact.</i></p> <p>3 – Good underpinning evidence and clear rationale with strong linkages to COAST's aim, objectives, themes and ToC for the proposal's potential across: (a) poverty reduction or sustainable blue economy development benefits; (b) marine environment or nature benefits; (c) climate adaptation or mitigation benefits, and; (d) other development benefits. A proposal must score highly for (a) and (c). A good MEL and risk management approach is proposed, or one may be developed if not available now.</p> <p>2 – Some good underpinning evidence for the proposal across (a), (b), (c) or (d), but some limitations that suggest the proposal is novel and presents risk, with a key issue being a low score for (a) and/or (c). Generally well aligned with COAST's themes, but there may be some unalignment. A good MEL and risk management approach is proposed, or one may be developed if not available now.</p> <p>1 – Weak underpinning evidence, gaps and risks overall with very limited evidence suggesting high potential for results. Potentially limited linkage to COAST's aims, objectives, themes and ToC. Gaps in MEL (with or without potential to address them).</p> <p>0 – No underpinning evidence available, no consideration to gaps and risks, and no M&amp;E approach is proposed or possible to be developed.</p>
Country alignment and political economy	20%	<p><i>This criterion seeks to evaluate whether a proposal is aligned to a country's needs and priorities, through using the Country Strategies where possible, and determine whether there is a favourable political economy to deliver the proposal (drawing on the COAST Priority Country Strategies and undertaking a light touch political economy assessment if required). Through Component A Annual Workplans being reviewed by posts and potentially host governments, this should capture in-country stakeholder buy-in and alignment with their priorities, with the option for more in depth approaches if needed.</i></p> <p>3 – The proposal is highly aligned to regional/national/sub-national priorities and needs, including the Country Strategy, and there is a favourable political economy suggesting a low chance of failure.</p> <p>2 – The proposal has some alignment to regional/national/sub-national priorities and needs, including the Country Strategy, and there is a favourable or somewhat political economy suggesting a low or medium chance of failure.</p> <p>1 – The proposal has a limited alignment to regional/national/sub-national priorities and needs, including the Country Strategy, and/or there is an unfavourable political economy suggesting a high chance of failure.</p> <p>0 – The proposal is not aligned to regional/national/sub-national priorities and/or there is an unfavourable political economy suggesting a high chance of failure.</p>
VfM assessment	10%	<p><i>This criterion assesses whether the proposal represents VfM.</i></p> <p>3 – The proposal represents VfM now and is highly likely to continue to represent VfM over time.</p> <p>2 – The proposal represents VfM now but will require close monitoring to ensure VfM continues.</p>

		<p>1 – The proposal represents VfM however there is a high likelihood this will downgrade in the future.</p> <p>0 – The proposal does not represent VfM now.</p>
Unlocking action at scale and replicability	10%	<p><i>This criterion assesses whether the proposal will lead to greater action at greater scales and be replicable elsewhere.</i></p> <p>3 – The proposal directly targets unlocking finance or other action and is deemed to a very high likelihood this will lead to results at scale beyond the level of COAST support and for a long period of time (e.g. helping to establish a pipeline of investment grade projects for multilateral or private sector organisations to scale) and the proposal is replicable across the country and potentially in other countries.</p> <p>2 – The proposal targets unlocking finance or other action by improving enabling environments (e.g. improved policies or regulatory frameworks), and the proposal is replicable across the country and potentially in other countries.</p> <p>1 – The proposal does not target unlocking finance or other action at scale, however some indirect gains may be achieved and the proposal has limited replicability in country or elsewhere.</p> <p>0 – The proposal will not unlock finance flows or other action and has very low replicability.</p>
Inclusion	10%	<p><i>This criterion assesses a proposal's GESI strengths and weaknesses, in recognition of the important role different groups play and evidence for robust coastal management and governance captured in the COAST ToC.</i></p> <p>3 – The proposal has a strong GESI focus and a clear consultation process and/or involvement of different groups in the design and/or delivery or the proposal is for an activity or project where a strong GESI focus may not be required and is strongly justifiable.</p> <p>2 – The proposal has a good GESI focus during design and delivery with gaps that can be addressed or the proposal is for an activity or project where a strong GESI focus may not be required and is strongly justifiable.</p> <p>1 – The proposal has a limited focus on GESI when there should be and gaps are challenging to address without significant proposal redesign.</p> <p>0 – The proposal does not focus on GESI when it should and it is not possible to redesign the proposal to address gaps.</p>
<b>Additional checks</b>		
Do no harm	Proceed / Stop	<p>Proceed – The proposal does not present risk of harm to people, the climate or the environment as per FCDO's ProF guidance.</p> <p>Stop – The proposal presents risk of harm to people, the climate or the environment as per FCDO's ProF guidance.</p>
Security management	Proceed / Stop	<p><i>To be used for proposals in areas with security risks. If No, the proposal does not proceed unless an alternative suitable partner is identified, at which point screening should recommence.</i></p> <p>Not applicable – the proposal is not delivering in an area with security risks; this criterion is not applied.</p> <p>Proceed – The proposal is within HMG security risk in country and the proposed delivery partner has experience working in the location, has appropriate duty of care, evacuation and security management policies, and all staff are trained appropriately.</p>



		<p>Stop – The proposal is not within HMG security risk in country and/or proposed delivery partner does not have appropriate experience to deliver in the project location and/or lacks appropriate security management policies and procedures and/or staff are insufficiently trained.</p>
Deliverability	Proceed / Adapt / Redesign / Stop	<p><i>To be used for all proposals to determine whether they can be delivered in their proposed timeframes and budgets.</i></p> <p>Proceed – The proposal scores well technically and is fully expected to be delivered within the proposed timeframe and budget with negligible or manageable risks. This can be progressed.</p> <p>Adapt – The proposal scores well technically and is expected to be delivered within the proposed timeframe and budget but there are some risks that require further adaptations to the proposal before approval. This does not require re-screening, but requires confirmation of actions to address these risks before approval.</p> <p>Redesign – The proposal scores well technically but there are risks to delivery in the current timeframe and budget that requires more significant redesign and re-screening.</p> <p>Stop – The project scores well or low technically (or does not) but there are major risks to the proposal's delivery, timeline and budget that are unable to be mitigated, including through redesign .</p>
Downstream partner capacity	Proceed / Procure / Stop	<p>Proceed – The proposed downstream delivery partner has appropriate experience delivering similar projects in the country with a good team proposed and sound project plan/concept note. Where there are some weaknesses identified, these are deemed manageable and the Supplier can offer appropriate support and/or mentoring to overcome them whilst ensuring VfM. In combination with this proposal achieving sufficient scores following the technical review, there is good confidence that this proposal is robust with a capable delivery partner.</p> <p>Procure – The proposed activity or proposal has achieved sufficient and appropriate scores following the technical review however the proposed downstream delivery partner is not considered to have appropriate experience in this type of project, appropriate in-country experience, has limitations within the proposed teams' experience, expertise, capacity, or capability or another weakness has been identified. The Supplier will consider options to procure for a downstream partner or to directly deliver this proposal as appropriate and possible within commercial rules and good practice.</p> <p>Stop – The proposal does not achieve sufficient technical scores and there are weaknesses identified in the downstream partner as set out in the 'Procure' overview. The Supplier will not recommend this proposal be advanced, including with the option of a different delivery partner as implementor.</p>

## Annex D: Supplier Key Performance Indicator Assessment Criteria

Table 4 shows the Supplier Performance KPIs.

**Table 4: Supplier Performance KPIs**

Supplier Performance KPI	Targets	Weighting	Evidence	Score - 4 Criteria Met	Score – 3 Approaching target	Score – 2 Requires Improvement	Score – 1 Inadequate
<b>1. Management and responsiveness</b>  The Supplier submits all monitoring reports on time and responds proactively to FCDO requests.	1a) Timely submission of quarterly and annual monitoring reports  1b) Core Team and Country Leads are responsive to COAST team and Priority Countries' posts' requests	1a: 5%  1b: 7.5%  Total: 12.5%	<ul style="list-style-type: none"> <li>Monitoring reports</li> <li>Correspondence</li> <li>Survey feedback from posts</li> </ul>	1a) Submission on agreed date  1b) Responses within timeframe requested	1a) Not Applicable  1b) Responses late by ≤2 working days without adequate reason (e.g. illness, travel, leave)	1a) 1 day late  1b) Responses late by ≤5 working days without adequate reason	1a) ≥2 days late  1b) Responses late by >5 days without adequate reason
<b>2. Quality</b>  The Supplier maintains a high quality of delivery supported by robust, evidence led project screening	2a) Quality screening of proposed activities and projects by the Supplier  2b) Quality of reports, workplans and strategies submitted	Total: 2a: 15%  2b) 10%	<ul style="list-style-type: none"> <li>Screening proposals</li> <li>Feedback from FCDO</li> <li>Supplier reports, workplans and strategies</li> </ul>	2a) SRO does not approve ≤3 activities or projects proposed by the Supplier due to inadequate screening by the Supplier (e.g. technical issues, political economy concerns, lack of review by posts where their inputs required, non-budget reasons)  2b) SRO approves all the Supplier's reports, Strategies and Workplans that quarter at the first time of submission.	2a) SRO does not approve 4-5 activities or projects proposed by the Supplier, due to inadequate screening by the Supplier  2b) Not applicable	2a) SRO does not approve 6-8 activities or projects proposed by the Supplier, due to inadequate screening by the Supplier  2b) SRO approves one of the Supplier's final reports, Strategies or Workplans that quarter at the second time of submission following requests for amendments from FCDO.	2a) SRO does not approve ≥9 activities or projects proposed by the Supplier, due to inadequate screening by the Supplier  2b) SRO approves one of the Supplier's reports, Strategies and Workplans that quarter at the third or more time of submission following requests for amendments from FCDO.
<b>3. Financial Management</b>  The Supplier maintains a high level of financial management, delivering the programme on budget with accurate forecasting and timely reporting	3a) <5% forecasting variance each quarter  3b) Timely invoice submission	3a: 10%  3b: 10%  Total: 20%	<ul style="list-style-type: none"> <li>Quarterly financial forecasts</li> <li>Quarterly financial reports</li> <li>Invoices</li> </ul>	3a) <5%  3b) Submission on agreed date	3a) 6-7%  3b) Not Applicable	3a) 8-9%  3b) 1 day late	3a) ≥10%  3b) ≥2 days late
<b>4. Learning</b>  The Supplier proactively captures and applies	4a) Learning from Component A, COAST evaluations and other COAST	Total: 20%	<ul style="list-style-type: none"> <li>Monitoring reports</li> <li>Progress meetings</li> </ul>	4a) Proactive demonstration of how lessons and evidence are influencing the Supplier's delivery of Component A	4a) Not applicable	4a) Limited demonstration of lessons and evidence being captured and influencing the	4a) Very limited demonstration of lessons and evidence being captured and influencing the

learning from Component A's delivery and from non-Component A experience and evidence	tier-1 delivery partners is used to improve delivery by the Supplier		<ul style="list-style-type: none"> <li>Correspondence</li> <li>Annual Workplans</li> <li>Country Strategies</li> </ul>			Supplier's delivery of Component A	Supplier's delivery of Component A
<b>5. Engagement and collaboration</b>  The Supplier proactively engages and collaborates with COAST's key programme stakeholders to support coherent COAST and BPF delivery	5a) Proactive collaboration, consultation and engagement with other COAST and BPF tier-1 delivery partners	Total: 15%	<ul style="list-style-type: none"> <li>Stakeholder surveys</li> <li>Correspondence</li> <li>Feedback from posts to COAST team</li> <li>Partner Coordination Forum presentation, discussions, planning, and reports</li> </ul>	5a) Regular engagement each quarter by the Supplier with other COAST and BPF tier-1 delivery partners	5a) Not Applicable	5a) Some engagement each quarter by the Supplier with other COAST and BPF tier-1 delivery partners	5a) Limited engagement each quarter by the Supplier with other COAST and BPF tier-1 delivery partners
<b>6. Social Value</b>  Tackling workforce inequality	TBC in Mobilisation Phase, with examples below <ul style="list-style-type: none"> <li>The % of FTE staff from under-represented groups in the workforce employed under the contract, as a proportion of the total FTE contract workforce.</li> <li>The total % of FTE countries of the Global South in the workforce employed under the contract, as a proportion of the total FTE contract workforce.</li> </ul> The total % of FTE in the workforce employed under the contract, that speak languages of partner countries to a professional/fluent level, as a proportion	Total: 7.5%	<ul style="list-style-type: none"> <li>Staff data</li> <li>Staff surveys</li> </ul>	Target to be set in Mobilisation phase	Target to be set in Mobilisation phase	Target to be set in Mobilisation phase	Target to be set in Mobilisation phase

	of the total FTE contract workforce						
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Appendix A: of Contract Section 3 (Terms of Reference)  
Schedule of Processing, Personal Data and Data Subjects

This schedule must be completed by the Parties in collaboration with each-other before the processing of Personal Data under the Contract.

The completed schedule must be agreed formally as part of the contract with FCDO and any changes to the content of this schedule must be agreed formally with FCDO under a Contract Variation.

Description	Details
Identity of the Controller and Processor for each Category of Data Subject	<p>The Parties acknowledge that for the purposes of the Data Protection Legislation, the following status will apply to personal data under this contract:</p> <p>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:</p> <ul style="list-style-type: none"><li>• Sub-Consultants data for contracting and invoicing</li><li>• Grant applicants and/or recipients</li></ul>
Subject matter of the processing	<ul style="list-style-type: none"><li>• Sub-Consultants data for contracting and invoicing</li><li>• Grant applicants and/or recipients</li></ul>
Duration of the processing	November 2024 – March 2030
Nature and purposes of the processing	<p>To support recruitment, contracting and invoicing</p> <p>To process Grant applications, award and ongoing management</p>
Type of Personal Data [and Special Categories of Personal Data]	Name, address, payment details, references, CVs
Plan for return and destruction of the data once processing complete.	(UNLESS requirement under EU or European member state law to preserve that type of data)

**Section 4**  
**SPECIAL CONDITIONS**

**1. Party Contacts**

**FCDO**

1.1 The Contract Officer is:

[REDACTED]  
[REDACTED]  
[REDACTED]

1.2 The Project Officer is:

[REDACTED]  
[REDACTED]

**Supplier**

1.3 The Contract Officer is:

[REDACTED]  
[REDACTED] Commercial  
[REDACTED]

1.4 The Project Officer is:

[REDACTED]  
[REDACTED]  
[REDACTED]

**2. Expiry Date**

2.1 Initial Period:

No later than 31 March 2030

2.2 Extension Period:

Up to 24 months after the End Date.

2.2 Minimum written notice to Supplier in respect of extension:

90 days

**3. Additional Documents to be included in this Contract**

The following documents are included in and form part of the Contract in addition to Sections 1-5 inclusive:  
Nil

**4. Key Personnel**

The following of the Supplier's Personnel cannot be substituted by the Supplier without FCDO's Approval:

Name	Post	Organisation
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██████████	PROGRAMME DIRECTOR	DAI GLOBAL UK LTD
██████████	TEAM LEADER	DAI GLOBAL UK LTD
██████████	CHIEF TECHNICAL ADVISOR	BLUE GREEN ADVISORS LTD
██████████	DEPUTY TEAM LEADER	DAI GLOBAL UK LTD
██████████	MEL LEAD	DEV LEARN
██████████	INDONESIA TEAM LEADER	BLUE GREEN ADVISORS LTD
██████████ ██████████	MOZAMBIQUE TEAM LEADER	DAI GLOBAL UK LTD
██████████	PHILIPPINES TEAM LEADER	DAI GLOBAL UK LTD
██████████	VIETNAM TEAM LEADER	DAI GLOBAL UK LTD

## 5. Sub-Contractors

FCDO has consented to the appointment of the following Sub-Contractors:

Name of Sub-Contractor	% of Services delivered	SME	Description of Services to be delivered
Monterey Bay Aquarium Foundation	TBC	No	<ul style="list-style-type: none"> <li>Sub-contractor</li> <li>Contribute international best practice in equitable and sustainable supply chains (fisheries, aquaculture), human rights, environmental and socio-economic benefits to ensure the design of COAST Component A activities are evidence driven.</li> </ul>
DAI Global LLC	TBC	No	<ul style="list-style-type: none"> <li>Lead partner</li> <li>We will draw upon the experience and readily available technical expertise from across DAI's global business, including that of our USG portfolio of active programmes</li> </ul>
Blue Green Advisors Ltd	6%	Yes	<ul style="list-style-type: none"> <li>Sub-contractor</li> <li>Contribute to the overall technical leadership and strategic direction of COAST Component A, as well as local context and cultural expertise, technical intervention design and implementation, provision of local team members, strategic partnerships and stakeholder engagement.</li> </ul>
DevLearn Consultancy Ltd	12%	Yes	<ul style="list-style-type: none"> <li>Sub-contractor</li> <li>Lead on Monitoring, Learning and Evaluation activities including resourcing and Performance managing dispersed MEL team members.</li> </ul>
Wildlife Conservation Society	TBC	No	<ul style="list-style-type: none"> <li>Sub-contractor</li> <li>Serve as a key source of contextual understanding and technical expertise in coastal and marine conservation; equitable value chains particularly for small-scale fisheries; and action research to inform policy reform, application and integration.</li> </ul>

## 6. Limitation of Liability

The Supplier's limit of liability shall be as provided for in Clause 35.2 of Section 2 (Standard Terms and Conditions) unless a different amount is provided for below in which event that different amount shall apply.

Supplier's Limit of Liability for the purposes of Clause 35.2 shall be £20,000,000

Where FCDO has inserted a figure in this paragraph 6, then the reference to Financial Limit in Clause 35.2 shall instead be a reference to the limit of liability set out here.

## **7. Reports**

The Supplier is required to submit project reports to the Recipient through the Project Officer at the address shown in Clause 1.2 of Section 4 in accordance with Section 3 (Terms of Reference).

## **8. Medical Insurance**

The Supplier is responsible for ensuring adequate and appropriate medical insurance cover before beginning work overseas under a FCDO contract for services. The Supplier's fee is deemed to include an element to cover the cost of medical insurance.

It is not the responsibility of the local FCDO office, British Embassy or High Commission to meet the cost of the Supplier's medical care nor to make arrangements for evacuation in a medical emergency, although they will provide assistance if they can. On arrival, the Supplier should report to the FCDO local office, British Embassy or High Commission with details of medical insurance arrangements in case of a medical emergency.

## **10. Retention of Rights**

The following Clauses shall continue in force (in addition to those provided for in Clause 46 of Section 2 (Standard Terms and Conditions)) following the termination of this Contract:-

10.1 The Supplier will keep records of all work and expenditure, including for 7 years after contract end, in a form which can be transferred to FCDO and available upon request.

## **11. Commercially Sensitive Information**

Contract Section 3 Annex A – DAI Global Proposal Part A  
Contract Section 3 Annex B – DAI Global Proposal Part B  
Contract Section 3 Annex C – DAI Global Proposal Part C  
Contract Section 3 Annex D – DAI Global Proposal Insurance  
Contract Section 5 – Cost Proforma

## **12. Visibility of Sub-Contract Opportunities**

As provided for in Clause 8 of Section 2 (Standard Terms and Conditions).

## **13. Monitoring of Contract Performance**

As provided for in Clause 13 of Section 2 (Standard Terms and Conditions).

## **14. Management Charges and Information**

14.1 In addition to any other management information requirements set out in this Contract, the Supplier agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME Management Information (MI) Reports to FCDO which incorporate the data described in the MI Reporting template which is:

14.1.1 the total contract revenue received directly on a specific contract;

14.1.2 the total value of sub-contracted revenues under the contract (including revenues for non-SMEs/non-VCSEs); and



14.1.3 the total value of sub-contracted revenues to SMEs and VCSEs.

14.2 The SME Management Information Reports shall be provided in the correct format as required by the MI Reporting Template and any guidance issued by FCDO from time to time. The Supplier shall use the initial MI Reporting Template which is set out in the Annex to this Section 4 and which may be changed from time to time (including the data required and/or format) by FCDO by issuing a replacement version. FCDO shall give at least thirty (30) days notice in writing of any such change and shall specify the date from which it must be used.

14.3 The Supplier further agrees and acknowledges that it may not make any amendment to the current MI Reporting Template without the prior written approval of the Contracting Authority.

## **15. FCDO ethical guidance for research, evaluation and monitoring guidance**

15.1 The Supplier shall adhere to the ethical principles and standards specified in “FCDO ethical guidance for research, evaluation and monitoring guidance” when undertaking research and any other forms of data collection and analysis on FCDO funded projects.

15.2 For research studies, the Supplier shall align with these principles and standards and shall provide assurance of this (as detailed in the tender) to the FCDO Programme Manager by submission of evidence of approval of relevant protocols, prior to research commencing, by the researchers’ Institutional Review Board (IRB)/Research Ethics Committee (REC) and the relevant regulatory authority in the country where the research is to be completed.

15.3 For evaluations, monitoring and other activities (where research protocols are not required to be submitted for approval by the IRB or REC) the Supplier shall be responsible for ensuring ethical issues are given prompt consideration throughout the project cycle of research, monitoring and evaluation activities.

15.4 The Supplier must inform the Senior Responsible Officer and Contract Manager at FCDO immediately, in writing, of any issues arising that may be in breach of FCDO’s ethical standards and principles and shall fully investigate and document all or all potential cases of a breach. Failure by the Supplier to report any breach(es) to FCDO may be a material default to the Contract and may entitle FCDO to terminate the Contract’.

## **16. Transparency Information**

**The following clauses shall be applied and included as part of Clause 28 of Section 2**

28.8 The Parties acknowledge that:

- a) the Transparency Reports;
- b) the Publishable Performance Information

(together the “**Transparency Information**”) are not Confidential Information except for any information which is exempt from disclosure in accordance with the provisions of Clause 30 (Freedom of Information) of Section 2 (Standard Terms and Conditions).

28.9 Notwithstanding any other provision of this Agreement, the Supplier hereby gives its consent for the Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

28.10 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Schedule 5.

28.11 If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.

28.12 The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.

## **18. Definitions**

**The following definitions shall be inserted into Schedule 1: Definitions.**

- **“Publishable Performance Information”** means – where clause 13 of Section 2 (Terms and Conditions) applies, the Performance Monitoring Reports in combination with those parts of the minutes of the Performance Review Meetings (as agreed in accordance with clause 13.4.4 of Section 2) which relate to the relevant Performance Monitoring Reports ; and where that clause does not apply by virtue of clause 13 of this Section 4, it means the reports and information produced pursuant to the Terms of Reference at Section 3.;
- **“Transparency Information”** has the meaning given in Clause 28.8;
- **“Transparency Reports”** has the meaning given in Schedule 5 (Transparency Reports) at paragraph 1.1;

## **19. Transparency Reports**

**Schedule 5: Transparency Reports shall be completed and inserted into Section 2.**

### **Schedule 5: Transparency Reports**

- 1.1 Within three (3) months of the Effective Date the Supplier shall provide to the Authority for its approval (such approval not to be unreasonably withheld or delayed) draft reports in accordance with Annex 1 (once approved, the “Transparency Reports”).
- 1.2 If the Authority rejects any draft Transparency Report, the Supplier shall submit a revised version of the relevant report for further approval by the Authority within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Authority. If the Parties fail to agree on a draft Transparency Report the Authority shall determine what should be included.
- 1.3 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Authority at the frequency referred to in Annex 1.
- 1.4 Any disagreement in connection with the preparation and/or approval of Transparency Reports, other than under paragraph 1.2 above in relation to the contents of a Transparency Report, shall be treated as a Dispute.
- 1.5 The requirements for Transparency Reports are in addition to any other reporting requirements in this Agreement.
- 1.6 The Supplier may be required to submit the Publishable Performance Information electronically via the Buyer’s IT system

## Annex 1: Transparency Reports

TITLE	CONTENT	FORMAT	FREQUENCY
<i>(Performance)</i>	Performance against Key Performance Indicators (KPIs)	Reporting Format (e.g. PDF) to be agreed during mobilisation	Quarterly
	Annual Review	Reporting Format (e.g. PDF) to be agreed during mobilisation	Annually
<i>(Charges)</i>	contract prices and any incentivisation mechanisms in the contract	Reporting Format (e.g. PDF) to be agreed during mobilisation	Quarterly
<i>(Major sub-contractors)</i>	Governance arrangements for supply chains	Reporting Format (e.g. PDF) to be agreed during mobilisation	Quarterly
<i>(Technical)</i>	Resource Plans	Reporting Format (e.g. PDF) to be agreed during mobilisation	Quarterly
	Service Improvement Plans	Reporting Format (e.g. PDF) to be agreed during mobilisation	Quarterly
<i>(Performance management)</i>	Plans for management of underperformance	Reporting Format (e.g. PDF) to be agreed during mobilisation	Quarterly

### 19. Break points

- 19.1 FCDO, or its appointed reviewer, will conduct a review of the Supplier's performance and the operation of the Contract. Break points are included as follows:
- At the end of the current Spending Review Period, March 2025;
  - At the end of the Mobilisation Phase i.e. 7 months after the signing of the Contract;
  - 31 March 2027 in line with the end of Phase 1 and a planned midterm evaluation of COAST undertaken by the Component D supplier;
  - 31 March 2028 in line with the mid-point of Phase 2, and;
  - At the end of each UK spending review period.

(each a "Review Period")

The Supplier shall cooperate fully with any review.

- 19.2 Without prejudice to the generality of FCDO's rights pursuant to clause 43 of Section 2, FCDO shall consider whether to exercise its right, to terminate this Contract pursuant to clause 43 of Section 2 (and, if appropriate, clause 44 of Section 2), following each Review Period.
- 19.3 If FCDO exercises its right to terminate the Contract with effect from Review Points detailed at 19.1, clause 46.1.3 of Section 2 will apply but by providing notice of the potential Review Period and break dates, FCDO expects any costs incurred pursuant to clause 46.1.3 of Section 2 to be minimised.
- 19.4 After Clause 16.6 of Section 2, a new Clause 16.6A shall be added as follows:
- "16.6A The Supplier will provide an Exit Plan during the Mobilisation Phase and keep it up to date and re-submit it to FCDO annually.

### 20 Scale Up/Down

- 20.1 The Contract may be varied (scaled up or scaled down) in accordance with Section 4.3 of the Terms of Reference. The Supplier should be prepared to amend the strategy, work plans and

budgets should FCDO decide to scale up or down on the programme and should be aware of the need for a contract amendment should this be the case.

## **22 Excessive Profit**

- 22.1 If the Actual Profit Margin exceeds the Projected Profit Margin as identified as a result of the process set out in Clause 8 of Section 20.1 (Standard Terms and Conditions) this will be treated as excessive profit and the process set out in Clause 20.2 of Section 2 (Standard Terms and Conditions) will apply.

Section 5

SCHEDULE OF PRICES

1. It is a requirement that all invoices are presented in the format of the payment basis, and in the case of Fees and Expenses only those categories defined are separately identified. Only one invoice per period, as defined in Section 2, Clause 22, should be submitted.

The amount to be paid for the completion of the Services is a maximum of £101,100,000. The subtotals below are agreed as the maximum for each area of spend.

<b>Summary</b>	
<b>Frontline Programme Delivery*</b>	██████████
<b>Capital Expenditure*</b>	██████████
<b>Programme Team Fees*</b>	██████████
<b>Fund Value**</b>	██████████
<b>Travel/Accommodation/Subsistence*</b>	██████████
<b>NPAC*</b>	██████████
<b>Profit*</b>	██████████
<b>Local Taxes</b>	██████████
<b>TOTAL</b>	<b>£101,100,000</b>
<i>Maximum Profit ***</i>	██████████
<i>Maximum NPAC ***</i>	██████████

\* Figures are for Core and Country Teams, not including on-demand/TA Pool

\*\* Fund value is ringfenced amount for Grant Projects and TA Pool deployment (Gross fees and expenses)

\*\*\* % for Core & Country Team only, as a proportion of total excluding Fund.

See Pro Forma for a full breakdown of the budget and financial ceilings within each category

2. Fees and Expenses

The amount of fees and expenses are shown separately and reflects the financial ceilings within each category. Only expenditure actually incurred will be reimbursed, and receipts for expenditure incurred may be required before any payment is made under this contract.

3. Payment and Milestones

The payment structure for the programme will be broken down into delivery phases (inception and implementation).

**Inception Phase:** Will consist of fixed-cost milestone payments, as per Tab 2.6 of the Pro Forma, totalling ██████████

**Implementation Phase:** Will consist of a hybrid performance-related payment model, as per the Terms of Reference section 6.1.3, totalling a maximum of of ██████████ including all Grant Fund elements.

Payment will be made quarterly in arrears