



Foreign, Commonwealth & Development Office

CONTRACT FOR SUPPLIER SERVICES

Section 1 - FORM OF CONTRACT

Contract for: Investments in Forests and Sustainable Land Use Programme – Phase 2 (IFSLU2) - Component 1 and Component 2

Contract Reference Number: ecm_7167

THIS CONTRACT is made

BETWEEN: The Secretary of State for Foreign, Commonwealth and Development Affairs at the Foreign Commonwealth and Development Office, King Charles Street London SW1A 2AH ("**FCDO**");

AND: **Palladium International Limited ("Supplier")** whose company registration number is 02394229 and whose registered office is situated at 16th Floor, Hylo, 105 Bunhill Row, London, England, EC1Y 8LZ

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

WHEREAS:

- A.** FCDO requires the Supplier to provide the Services to businesses, small and medium-sized enterprises (SMEs), community organisations and non-profit organisations in developing tropical forest countries (the "Recipients"); 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 (ToR)
Section 4	Special Conditions
Section 5	Schedule of Prices

2. Contract Signature

If the Form of Contract is not signed and dated on behalf of the Supplier within 15 Working Days of the date on which it was sent for electronic signature, 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 the Form of Contract is signed on behalf of both Parties.

3. Commencement Date and End Date of Contract

The Services shall commence on 01 February 2025 and the end date of the Contract shall be 31 January 2030.



Foreign, Commonwealth & Development Office

4. Financial Limit


Payments under this Contract shall not exceed £129,744,000 (one hundred twenty-nine million seven hundred forty-four thousand) exclusive of UK Value Added Tax (VAT) but inclusive of any government or local tax, if applicable.

5. Programme Name

The Programme Name to which this Contract relates is **Investments in Forests and Sustainable Land Use Programme – Phase 2 (IFSLU2)** consisting of Components 1 – 5.

6. Time of the Essence

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



Foreign, Commonwealth and Development Office (FCDO)

Standard Terms and Conditions – Service Contracts

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Preliminaries

1. DEFINITIONS AND INTERPRETATION

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

2. REPRESENTATIONS AND WARRANTIES

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

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

- 2.8 Except as expressly stated in this Contract, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

3. FINANCIAL LIMIT

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

Term of Contract

4. CONTRACT TERM

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

Provision of Services

5. OBLIGATIONS OF THE SUPPLIER

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

Supplier Personnel and Supply Chain Matters

6. SUPPLIER PERSONNEL

- 6.1 The Supplier shall not remove or replace any Key Personnel (including when carrying out its obligations under Clause 16 (Exit Management)) unless:
- 6.1.1 requested to do so by FCDO;
 - 6.1.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
 - 6.1.3 the person's employment or contractual arrangement with the Supplier or a Sub-Contractor is terminated by the employer for material breach of contract; or
 - 6.1.4 the Supplier obtains Approval (such Approval not to be unreasonably withheld or delayed).
- 6.2 The Supplier shall:
- 6.2.1 provide a list of the names of all Supplier Personnel requiring admission to FCDO Sites, specifying the capacity in which they require admission and giving such other particulars as FCDO may reasonably require;
 - 6.2.2 ensure that all Supplier Personnel:
 - (a) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - (b) are vetted in accordance with Good Industry Practice and in compliance with the Staff Vetting Procedure;
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/301861/Security_Policy_for_Contractors_Consultants_Suppliers.pdf
 - (c) shall be subject to pre-employment checks that include, as a minimum, employment history for the last three years, identity checks, unspent criminal convictions and right to work (including nationality and immigration status);
 - (d) obey all lawful instructions and reasonable directions of FCDO (including, if so required by FCDO, the ICT Policy) and provide the Services to the reasonable satisfaction of FCDO; and
 - (e) comply with:
 - (i) all reasonable requirements of FCDO concerning conduct at FCDO Sites, including any security requirements; and
 - (ii) any FCDO policies, provided to the Supplier or Supplier Personnel from time to time
 - 6.2.3 subject to Schedule 2 (Staff Transfer), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or Contractors of FCDO;
 - 6.2.4 be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Contract shall be a Default by the Supplier;
 - 6.2.5 use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
 - 6.2.6 subject to Clause 6.1, replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
 - 6.2.7 bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
 - 6.2.8 procure that the Supplier Personnel shall vacate FCDO Sites immediately upon the Expiry Date.
- 6.3 If FCDO reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Contract, it may:
- 6.3.1 refuse admission to the relevant person(s) to FCDO Sites and/or

- 6.3.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).
- 6.3.3 require the Supplier to replace the relevant person(s) without direct or indirect charge to FCDO and the Supplier shall fully indemnify and hold FCDO harmless against any claims of any kind that may arise with regard to the replacement of such Supplier Personnel.

7. SUB-CONTRACTORS AND EXCLUSIVITY

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

- 7.7 The Supplier shall ensure that all Sub-Contracts contain provisions:
- 7.7.1 requiring the Sub-Contractor to comply with the FCDO's Supply Partner Code of Conduct (Appendix B) at all times;
 - 7.7.2 requiring the Supplier to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice;
 - 7.7.3 requiring that any invoices submitted by a Sub-Contractor shall be considered and verified by the Supplier in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed;
 - 7.7.4 conferring a right to FCDO to publish the Supplier's compliance with its obligation to pay undisputed invoices to the Sub-Contractor within the specified payment period;
 - 7.7.5 giving the Supplier a right to terminate the Sub-Contract if the Sub-Contractor fails to comply in the performance of the Sub-Contract with legal obligations in the fields of environmental, social or labour law; and
 - 7.7.6 requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by this Clause 7.7.
- 7.8 The Supplier shall:
- 7.8.1 pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days from the receipt of a valid invoice;
 - 7.8.2 include within the Performance Monitoring Reports required under Clause 13.3 a summary of its compliance with this Clause 7.8.1, such data to be certified each quarter by a director of the Supplier as being accurate and not misleading;
 - 7.8.3 not include in any Sub-Contract any provision the effect of which would be to limit or restrict the ability of the Sub-Contractor to contract directly with FCDO, a Replacement Supplier, or with any other organisation and Sub-Contractors shall be free to assert their rights independently regarding contractual exclusivity.
 - 7.8.4 where Sub-Contracting has been Approved by FCDO, promptly provide FCDO with written confirmation from each Sub-Contractor identified within Section 4 of the Contract that they accept provisions set out at Clauses 50.1 to 50.7, which shall be included in all Supplier Sub-Contracts.

8. VISIBILITY OF SUBCONTRACT OPPORTUNITIES

- 8.1 The Supplier shall:
- 8.1.1 subject to Clause 8.3, advertise on Contracts Finder all subcontract opportunities arising from or in connection with the provision of the Goods and/or Services and/or Works above a minimum threshold of £25,000 that arise during the Term;
 - 8.1.2 within 90 days of awarding a Sub-Contract to a Sub-Contractor, update the notice on Contracts Finder with details of the successful Sub-Contractor;
 - 8.1.3 monitor the number, type and value of the Sub-Contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;
 - 8.1.4 provide reports on the information at clause 8.1.3 to FCDO in the format and frequency as reasonably specified by FCDO; and
 - 8.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 8.2 Each advert referred to at Clause 8.1 above shall provide a full and detailed description of the Sub-Contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.
- 8.3 The obligation at Clause 8.1 shall only apply in respect of Sub-Contract opportunities arising after the Commencement Date.
- 8.4 Notwithstanding Clause 8.1, FCDO may by giving its Approval, agree that a Sub-Contract opportunity is not required to be advertised on Contracts Finder.

9. STAFF TRANSFER

- 9.1 The Parties agree that:
- 9.1.1 where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 2 (Staff Transfer) shall apply as follows:
- (a) where the Relevant Transfer involves the transfer of Transferring FCDO Employees, Part A of Schedule 2 (Staff Transfer) shall apply;
 - (b) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B of Schedule 2 (Staff Transfer) shall apply;
 - (c) where the Relevant Transfer involves the transfer of Transferring FCDO Employees and Transferring Former Supplier Employees, Parts A and B of Schedule 2 (Staff Transfer) shall apply; and
 - (d) Part C of Schedule 2 (Staff Transfer) shall not apply.
- 9.1.2 where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Schedule 2 (Staff Transfer) shall apply and Parts A and B of Schedule 2 (Staff Transfer) shall not apply; and
- 9.1.3 Part D of Schedule 2 (Staff Transfer) shall apply on the expiry or termination of the Services or any part of the Services;
- 9.2 The Supplier shall both during and after the Term indemnify FCDO against all Employee Liabilities that may arise as a result of any claims brought against FCDO by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel.
- 10. DUTY OF CARE**
- 10.1 The Supplier owes a duty of care to the Supplier Personnel and is responsible for the health, safety, security of life and property and general wellbeing of such persons and their property and this includes where the Supplier Personnel carry out the Services.
- 10.2 The Supplier warrants that it has and will throughout the duration of the Contract:
- 10.2.1 carry out the appropriate risk assessment with regard to its delivery of the Services;
 - 10.2.2 provide the Supplier Personnel with adequate information, instruction, training and supervision;
 - 10.2.3 have appropriate emergency procedures in place to enable their provision of the Services so as to prevent damage to the Supplier Personnel's health, safety, security of life and property and general wellbeing.
- 10.3 The provision of information of any kind whatsoever by FCDO to the Supplier shall not in any respect relieve the Supplier from responsibility for its obligations under this Clause 10. The positive evaluation of the Supplier's proposal for the provision of the Services and the award of this Contract is not an endorsement by FCDO of any arrangements which the Supplier has made for the health, safety, security of life and property and wellbeing of the Supplier Personnel in relation to the provision of the Services.
- 10.4 The Supplier acknowledges that the FCDO accepts no responsibility for the health, safety, security of life and property and general wellbeing of the Supplier Personnel with regard to the Supplier Personnel carrying out the Services under this Contract.
- 10.5 The Supplier will ensure that such insurance arrangements as are made to cover the Supplier Personnel, or any person employed or otherwise engaged by the Supplier, and pursuant to the Suppliers duty of care as referred to in this Clause 10, are reasonable and prudent in all circumstances, including in respect of death, injury or disablement, and emergency medical expenses.
- 10.6 The costs of any insurance specifically taken out by the Supplier to support the performance of this Contract in relation to the Supplier's duty of care may be included as part of the management costs of the project, and must be separately identified in all financial reporting relating to the project.
- 10.7 Where FCDO is providing any specific security arrangements for the Supplier or Supplier Personnel in relation to the Contract, these will be as detailed in the Section 3 (Terms of Reference).
- 10.8 The Supplier shall provide training on a continuing basis for all Supplier Personnel, in compliance with the Security Policy and the security plan.

11. PROCUREMENT OF EQUIPMENT

- 11.1 The Supplier shall ensure that procurement of goods and equipment shall:
- 11.1.1 be undertaken in accordance with best practice principles of openness fairness and transparency;
 - 11.1.2 achieve "Value for Money" defined as the optimum combination of whole-life cost and quality to meet requirements in a fully transparent manner and the procurement may be subject to audit by FCDO;
 - 11.1.3 be carried out using strict due diligence processes that ensure the protection of FCDO's interests and reputation, with particular emphasis on anti-terrorism, anti-corruption and fraud throughout the delivery chain; and
 - 11.1.4 be on the basis that the ownership of Equipment shall vest in FCDO, and shall be so marked.

12. USE OF AND RESPONSIBILITY FOR EQUIPMENT

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

Contract Governance

13. MONITORING OF CONTRACT PERFORMANCE

- 13.1 Unless Section 4 (Special Conditions) specifies that obligations relating to the monitoring of Contract performance shall be those set out in Section 3 (Terms of Reference), the remaining provisions of this Clause 13 shall apply.
- 13.2 Within twenty (20) Working Days of the Commencement Date the Supplier shall provide FCDO with details of how the process in respect of the monitoring and reporting of the performance of the Supplier's obligations under this Contract will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.
- 13.3 The Supplier shall provide FCDO with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process and timescales agreed pursuant to Clause 13.2 above which shall contain, as a minimum, the following information:
- 13.3.1 details of compliance with its obligations under Clause 7.8.2
 - 13.3.2 details of compliance with any additional obligations set out in Section 3 (Terms of Reference);
 - 13.3.3 details of compliance with its obligations under Annex 1b of Section 2 (Contractual Annual Compliance Declaration); and
 - 13.3.4 such other details as FCDO may reasonably require from time to time.
- 13.4 The Parties shall attend meetings to discuss Performance Monitoring Reports ("**Performance Review Meetings**") on a monthly basis (unless otherwise agreed). The Performance Review Meetings will be the forum for the review by the Supplier and FCDO of the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):
- 13.4.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier;
 - 13.4.2 take place at such location and time (within normal business hours) as FCDO shall reasonably require unless otherwise agreed in advance;
 - 13.4.3 be attended by the Supplier's Contract Officer and the FCDO's Project Officer; and

13.4.4 be fully minuted by the Supplier. The prepared minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the FCDO Project Officer and any other recipients agreed at the relevant meeting. The minutes of the preceding month's Performance Review Meeting will be agreed and signed by both the Supplier's Contract Officer and the FCDO's Project Officer at each meeting.

13.5 In order to assess the level of performance of the Supplier, FCDO may undertake satisfaction surveys in respect of the Supplier's provision of the Services and FCDO shall be entitled to notify the Supplier of any aspects of their performance of the provision of the Services which the responses to the satisfaction surveys reasonably suggest are not in accordance with this Contract.

14. PROGRESS & FINANCIAL REPORTS

14.1 Where progress and financial reports are to be submitted under the Contract, the Supplier shall render those reports at such time and in such form as may be specified by FCDO or where not specified by FCDO, as otherwise agreed between the Parties.

15. OPEN BOOK ACCOUNTING AND AUDIT

15.1 The Supplier shall keep and maintain for seven (7) years after the expiry of the Term (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Contract including the Services provided under it, any Sub-Contracts and the amounts paid by FCDO.

15.2 If so stated in Section 3 (Terms of Reference), FCDO shall be entitled to apply the principles of open book contract management set out in Procurement Policy Note 05/16 (<https://www.gov.uk/government/publications/procurement-policy-note-0516-open-book-contact-management>), or any other replacement guidance or policy issued from time to time to this Contract. FCDO shall apply the appropriate tier level which, in FCDO's reasonable opinion, is commensurate with the delivery model of the Services and the Supplier shall comply with the principles etc. (as more particular described in the OBMC guidance).

15.3 The Supplier shall:

15.3.1 keep the records and accounts referred to in Clause 15.1 in accordance with Good Industry Practice and Law; and

15.3.2 afford FCDO and/or its Auditors access to the records and accounts referred to in Clause 15.1 at the Supplier's premises and/or provide records and accounts (including copies of the Supplier's published accounts) or copies of the same, as may be required by any of the Auditors from time to time during the Term and the period specified in Clause 15.1, in order that the Auditor(s) may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this Contract including in order to:

- (a) verify the accuracy of the Charges and any other amounts payable by FCDO under this Contract (and proposed or actual variations to them in accordance with this Contract);
- (b) verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Services;
- (c) verify the Open Book Data;
- (d) verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;
- (e) identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances FCDO shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
- (f) identify or investigate any circumstances which may impact upon the financial stability of the Supplier and/or any Sub-Contractors or their ability to perform the Services;
- (g) obtain such information as is necessary to fulfil FCDO's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
- (h) review any books of account and the internal contract management accounts kept by the Supplier in connection with this Contract;

- (i) carry out FCDO's internal and statutory audits and to prepare, examine and/or certify FCDO's annual and interim reports and accounts;
 - (j) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which FCDO has used its resources;
 - (k) review any records relating to the Supplier's performance of the provision of the Services and to verify that these reflect the Supplier's own internal reports and records;
 - (l) verify the accuracy and completeness of any information delivered or required by this Contract;
 - (m) review the Supplier's quality management systems (including any quality manuals and procedures);
 - (n) review the Supplier's compliance with any standards referred to in this Contract or applicable to the provision of the Services;
 - (o) inspect any of FCDO's assets, including FCDO's IPRs, equipment and facilities, for the purposes of ensuring that any of FCDO's assets are secure and that any register of assets is up to date; and/or
 - (p) review the integrity, confidentiality and security of FCDO Data.
- 15.4 FCDO shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of FCDO.
- 15.5 Subject to the Supplier's rights in respect of Confidential Information, the Supplier shall on demand provide the Auditor(s) with all reasonable co-operation and assistance in:
- 15.5.1 all reasonable information requested by FCDO within the scope of the audit;
 - 15.5.2 reasonable access to sites controlled by the Supplier and to any Supplier Equipment used in the provision of the Services; and
 - 15.5.3 access to the Supplier Personnel.
- 15.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 15, unless the audit reveals a Default by the Supplier in which case the Supplier shall reimburse FCDO for the FCDO's reasonable costs incurred in relation to the audit.
- 16. EXIT MANAGEMENT**
- 16.1 On reasonable notice at any point during the Term, the Supplier shall provide to FCDO and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by FCDO of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:
- 16.1.1 details of the Service(s);
 - 16.1.2 a copy of the Register, updated by the Supplier up to the date of delivery of such Registers;
 - 16.1.3 an inventory of FCDO Data in the Supplier's possession or control;
 - 16.1.4 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
 - 16.1.5 a list of on-going and/or threatened disputes in relation to the provision of the Services;
 - 16.1.6 all information relating to Transferring Supplier Employees or those who may be Transferring Supplier Employees required to be provided by the Supplier under this Contract such information to include the Staffing Information as defined in Schedule 2 (Staff Transfer); and
 - 16.1.7 such other material and information as FCDO shall reasonably require,
- (together, the "**Exit Information**").

- 16.2 The Supplier acknowledges that FCDO may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom FCDO is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that FCDO may not disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-Contractors' prices or costs).
- 16.3 if the Exit Information materially changes from the Exit Information previously provided and it could reasonably adversely affect:
- 16.3.1 the provision of the Services; and/or
 - 16.3.2 the delivery of the exit services/exit plan; and/or
 - 16.3.3 any re-tender exercise by FCDO,
- then the Supplier shall notify FCDO within a reasonable period of time and consult and shall consult with FCDO regarding such proposed material changes and provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from FCDO.
- 16.4 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:
- 16.4.1 prepare an informed offer for those Services; and
 - 16.4.2 not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).
- 16.5 The Supplier shall, within three (3) months after the Commencement Date, deliver to FCDO an Exit Plan which:
- 16.5.1 sets out the Supplier's proposed methodology for achieving an orderly transition of the Services from the Supplier to FCDO and/or its Replacement Supplier on the expiry or termination of this Contract;
 - 16.5.2 complies with the requirements set out in Clause 16.7 below;
 - 16.5.3 is otherwise reasonably satisfactory to FCDO.
- 16.6 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 16.7 Unless otherwise specified by FCDO, the Exit Plan shall set out, as a minimum:
- 16.7.1 how the Exit Information is obtained;
 - 16.7.2 the management structure to be employed during both transfer and cessation of the Services;
 - 16.7.3 the management structure to be employed whilst carrying out the activities to be performed by the Supplier as identified in the Exit Plan;
 - 16.7.4 a detailed description of both the transfer and cessation processes, including a timetable;
 - 16.7.5 how the Services will transfer to the Replacement Supplier and/or FCDO, including details of the processes, documentation, data transfer, systems migration, security and the segregation of FCDO's technology components from any technology components operated by the Supplier or its Sub-Contractors (where applicable);
 - 16.7.6 details of contracts (if any) which will be available for transfer to FCDO and/or the Replacement Supplier upon the Expiry Date together with any reasonable costs required to effect such transfer (and the Supplier agrees that all assets and contracts used by the Supplier in connection with the provision of the Services will be available for such transfer);
 - 16.7.7 proposals for the training of key personnel of the Replacement Supplier in connection with the continuation of the provision of the Services following the Expiry Date charged at rates agreed between the Parties at that time;
 - 16.7.8 proposals for providing FCDO or a Replacement Supplier copies of all documentation:
 - (a) used in the provision of the Services and necessarily required for the continued use of the Replacement Services, in which the Intellectual Property Rights are owned by the Supplier; and
 - (b) relating to the use and operation of the Services;

- 16.7.9 proposals for the assignment or novation of the provision of all services, leases, maintenance agreements and support agreements utilised by the Supplier in connection with the performance of the supply of the Services;
- 16.7.10 proposals for the identification and return of all Equipment in the possession of and/or control of the Supplier or any third party (including any Sub-Contractor);
- 16.7.11 proposals for the disposal of any redundant Services and materials;
- 16.7.12 procedures to:
 - (a) deal with requests made by FCDO and/or a Replacement Supplier for Staffing Information pursuant to Schedule 2 (Staff Transfer);
 - (b) determine which Supplier Personnel are or are likely to become Transferring Supplier Employees; and
 - (c) identify or develop any measures for the purpose of the Employment Regulations envisaged in respect of Transferring Supplier Employees;
- 16.7.13 how each of the issues set out in this Clause 16 will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or FCDO with the aim of ensuring that there is no disruption to or degradation of the Services;
- 16.7.14 proposals for the supply of any other information or assistance reasonably required by FCDO or a Replacement Supplier in order to effect an orderly handover of the provision of the Services.

PAYMENT AND TAXATION

17. Charges

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

18. VAT

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

19. RETENTION AND SET OFF

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

20. SUPPLIER PROFIT

20.1 On completion of each Contract Year (or on a six-monthly basis if requested by FCDO giving reasonable written notice), and for any Variation, the Supplier is required to send a written report (the “**Actual Profit Margin Report**”) in an overall format determined by FCDO but to include an updated cost pro-forma template, setting out the Actual Profit Margin including any change to the Projected Profit Margin.

20.2 Where the Actual Profit Margin Report identifies that the Supplier has exceeded the Projected Profit Margin over the period set out in the Actual Profit Margin Report (“the **Exceeded Amount**”), the Parties shall agree within a reasonable period of time following receipt by FCDO of the Actual Profit Margin Report how the Exceeded Amount should be apportioned. Where the Parties are unable to agree FCDO shall be entitled to require the Supplier to do any of the following:

20.2.1 pay FCDO an amount equal to the difference between the Projected Profit Margin and the Exceeded Amount; or

20.2.2 redirect an amount equal to the difference between the Projected Profit Margin and the Exceeded Amount back in to the programme being delivered as part of the Services; or

20.2.3 adjust the Charges.

21. SATISFACTORY PERFORMANCE

21.1 Payments made pursuant to Clause 17.1 are subject to the satisfactory performance by the Supplier of its obligations under the Contract as determined by the FCDO Project Officer in addition to verification by the FCDO Project Officer that all prior payments made to the Supplier under this Contract were properly due.

21.2 If for any reason the Services are not provided in accordance with this Contract, or FCDO is dissatisfied with the performance of this Contract, FCDO, without prejudice to any other rights or remedies howsoever arising, shall be entitled to withhold payment of the applicable Charges for the Services that were not so provided until such time as the applicable Services are provided in accordance with this Contract.

21.3 Should FCDO determine after paying for a particular part of the Services that this has not been provided in accordance with this Contract, FCDO may recover, or withhold from further payments, an amount not exceeding the applicable Charges paid for that part of the Service until the unsatisfactory part of the Services is remedied to FCDO’s satisfaction.

22. PAYMENTS & INVOICING INSTRUCTIONS

22.1 Subject to FCDO being satisfied that the Supplier is or has been carrying out their duties, obligations and responsibilities under this Contract, the applicable Charges shall be paid within 30 days of receipt of an undisputed Valid Invoice and payment shall be made in sterling in the UK or any other currency in any other country as determined from FCDO from time to time.

22.2 Expenses (if any) arising in foreign currency shall be reimbursed at the exchange rate stated in OANDA (www.oanda.com) on the Friday immediately preceding the date on which the purchase was made or services acquired by the Supplier or, if this took place on a Friday, at the rate so stated on that day.

22.3 Unless otherwise expressly provided in Section 4 (Special Conditions) or Section 5 (Schedule of Prices), invoices should be submitted electronically monthly in arrears to the Accounts Payable Section, FCDO Financial Management Group e-invoicing@FCDO.gov.uk, and in accordance with this Clause 22.

22.4 FCDO shall unless otherwise expressly provided in Section 4 (Special Conditions) make payments due by direct credit through the UK Bank Clearing Systems (BACS). For an invoice to be valid, it must contain:

22.4.1 details of the bank account to which payments are to be made (i.e. name and address of bank, sort code, account name and number).

22.4.2 the date of the invoice;

22.4.3 a unique invoice number;

22.4.4 the period(s) to which the relevant charge(s) relate;

22.4.5 the correct reference for this Agreement and the purchase order to which it relates;

22.4.6 a contact name and telephone number of a responsible person in the supplier’s finance department;

22.4.7 a detailed breakdown of the Services and the appropriate Charges and supported by any other documentation required by FCDO to substantiate the invoice.

22.5 All Valid Invoices should correspond with the budget lines identified in Section 5 (Schedule of Prices) of this Contract.

22.6 FCDO may request proof of purchase in respect of any item and shall be entitled to refuse to meet a claim if this cannot be provided.

22.7 Where an invoice is not a Valid Invoice it may be rejected by FCDO and in any event shall be liable to query and delay in payment. FCDO reserves the right to not pay any amount due in respect of any invoice received by FCDO more than 90 days after the day of the Supplier becoming entitled to invoice for the payment to which it relates.

23. UNITED KINGDOM INCOME TAX AND NATIONAL INSURANCE CONTRIBUTIONS

23.1 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Contract, the Supplier shall:

23.1.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration;

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

24. TAX COMPLIANCE

24.1 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:

24.1.1 notify FCDO in writing of such fact within 5 Working Days of its occurrence;

24.1.2 promptly provide to FCDO:

(a) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and

(b) such other information in relation to the Occasion of Tax Non-Compliance as FCDO may reasonably require.

Intellectual Property, Security and Information

25. INTELLECTUAL PROPERTY RIGHTS

25.1 Save as expressly granted elsewhere under this Contract:

25.1.1 FCDO shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:

(a) the Supplier Background IPR; and

(b) the Third Party IPR.

25.1.2 the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of FCDO or its licensors, including the:

(a) FCDO Background IPR;

(b) FCDO Data;

(c) Project Specific IPRs; and

(d) Programme Name and any rights and interests in it at all times.

- 25.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 25.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).
- 25.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.
- 25.4 Any Project Specific IPRs created under this Contract shall be owned by FCDO. FCDO grants the Supplier a licence to use any FCDO Background IPR and Project Specific IPRs for the purpose of fulfilling its obligations under this Contract during its Term.
- 25.5 Subject to Clause 25.7, to the extent that it is necessary to enable FCDO to obtain the full benefits of ownership of the Project Specific IPRs, the Supplier hereby grants to FCDO and shall procure that any relevant third party licensor shall grant to FCDO a perpetual, irrevocable, non-exclusive, assignable, royalty-free licence to use, sub-license and/or commercially exploit any Supplier Background IPRs or Third Party IPRs that are embedded in or which are an integral part of the Project Specific IPR Items.
- 25.6 The Supplier shall promptly notify FCDO if it is reasonably believes that it will be unable to grant or procure the grant of the licences set out in Clause 25.5 above and the Supplier shall provide full details of the adverse effect this may have on FCDO's use of the Project Specific IPRs.
- 25.7 Where the Supplier is unable to comply with Clause 25.5, the Supplier shall refrain from embedding or integrating any Supplier Background IPRs and/or Third Party IPRs with the Project Specific IPRs in such a way that could affect FCDO obtaining full benefit of the ownership of those Project Specific IPRs, except where FCDO has provided express written Approval to do so.
- 25.8 The Supplier shall, during and after the Term, on written demand, indemnify FCDO against all Losses incurred by, awarded against, or agreed to be paid by FCDO (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.
- 25.9 If an IPR Claim is made or anticipated, the Supplier must at its own expense and FCDO's sole option, either:
- 25.9.1 procure for FCDO the rights in Clause 25.5 without infringing the IPR of any third party; or
- 25.9.2 replace or modify the relevant item with non-infringing substitutes with no detriment to functionality of performance of the Services.
- 26. SECURITY REQUIREMENTS**
- 26.1 The Supplier shall comply, and shall procure that the Supplier Personnel comply, with the Security Policy and any security plan requested by FCDO, and the Supplier shall ensure that the security plan produced by the Supplier fully complies with the Security Policy.
- 26.2 The Supplier shall ensure that it keeps up to date with the latest version of the Security Policy.
- 26.3 If the Supplier believes that a change to the Security Policy will have a material and unavoidable cost implication to the Services it may submit a variation in accordance with Clause 38. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in discussion with the FCDO Contract Officer.
- 26.4 Until and/or unless a change to the Charges is agreed by FCDO pursuant to Clause 26.3 the Supplier shall continue to perform the Services in accordance with its obligations and for the Charges applicable prior to any change request.
- 27. MALICIOUS SOFTWARE**
- 27.1 The Supplier shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.
- 27.2 Notwithstanding Clause 27.1 if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of FCDO Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.
- 27.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 27.2 shall be borne by the Parties as follows:
- 27.3.1 by the Supplier where the Malicious Software originates from the Supplier Software, the Third Party Software or the FCDO Data (whilst the FCDO Data was under the control of the Supplier); and

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

28. TRANSPARENCY

- 28.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of Clause 30 (Freedom of Information), the content of this Contract is not confidential information. FCDO shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- 28.2 Notwithstanding any other term of this Contract, the Supplier hereby gives their consent for FCDO to publish the Contract in its entirety, including from time to time agreed changes to the Contract, to the general public.
- 28.3 FCDO may consult with the supplier to inform its decision regarding any exemptions with regard to FOIA but FCDO shall have the final decision in its absolute discretion.
- 28.4 The Supplier shall assist and cooperate with FCDO to enable FCDO to publish this Contract.
- 28.5 The Supplier acknowledges that FCDO endorses/supports the requirements of the IATI standard and shall assist and cooperate with FCDO, to enable the Supplier to understand the different elements of IATI implementation and to comply with the different data, policy and technical considerations that need to be taken into account.
- 28.6 The Supplier shall:
- 28.6.1 publish information data to the IATI standard, that relates to a specific activity in a single, common, electronic format for the transparent, accurate, timely and comprehensive publishing of data, on all activities in the delivery chain, in the delivery of development cooperation and humanitarian aid; and
 - 28.6.2 provide all necessary assistance as reasonably requested by FCDO to enable FCDO to respond to the IATI requirements.
- 28.7 The Supplier shall maintain an up-to-date and accurate record of named downstream delivery partners in receipt of FCDO funds and/or FCDO funded inventory or assets. This record should demonstrate how funds flow from initial source to end beneficiaries. This record should be made available to FCDO upon written request and within the time set out in the request. This record should be updated by the Supplier;
- 28.7.1 as required in the terms of reference;
 - 28.7.2 annually;
 - 28.7.3 when there are material changes in the delivery chain; and
 - 28.7.4 as part of the project completion process.

29. CONFIDENTIALITY

- 29.1 Except to the extent set out in this Clause 29 or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
- 29.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly;
 - 29.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 29.2 Clause 29.1 shall not apply to the extent that:
- 29.2.1 such disclosure is a requirement of Law applicable to the Party making the disclosure, including any requirements for disclosure under the FOIA, the Environmental Information Regulations and associated codes of practice pursuant to Clause 30 (Freedom of Information);
 - 29.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 29.2.3 such information was obtained from a third party without obligation of confidentiality;
 - 29.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or

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

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

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

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

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

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

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

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

29.6.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 29.6.1 (including any benchmarking organisation) for any purpose relating to or connected with this Contract;

29.6.5 on a confidential basis for the purpose of the exercise of its rights under this Contract, including the Audit Rights, its step-in rights pursuant to Clause 15 (Open Book Accounting and Audit), its rights to appoint an advisor pursuant to Clause 47 (Dispute Resolution) and any rights set out in Clause 16 (Exit Management);

29.6.6 on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract; or

29.6.7 for the purpose of the examination and certification of FCDO's accounts,

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

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

30. FREEDOM OF INFORMATION

30.1 The Supplier acknowledges that FCDO is subject to the requirements of the FOIA, the Environmental Information Regulations and associated codes of practice and shall assist and cooperate with FCDO to enable FCDO to comply with its Information disclosure obligations.

30.2 The Supplier shall and shall ensure that its Sub-Contractors shall:

30.2.1 transfer to FCDO all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;

30.2.2 provide FCDO with a copy of all Information in its possession, or power in the form that FCDO requires within five (5) Working Days (or such other period as FCDO may specify) of FCDO's request; and

30.2.3 provide all necessary assistance as reasonably requested by FCDO to enable FCDO to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

- 30.3 FCDO shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA, the Environmental Information Regulations and associated codes of practice.
- 30.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by FCDO.
- 30.5 The Supplier acknowledges that FCDO may, acting in accordance with any code of practice issued pursuant to Section 45 of FOIA ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Services:
- 30.5.1 in certain circumstances without consulting the Supplier;
 - 30.5.2 following consultation with the Supplier and having taken their views into account;
 - 30.5.3 provided always that where Clause 30.5.1 applies FCDO shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 30.6 The Supplier shall ensure that all Information is retained for disclosure in accordance with Clauses 30.7 and 30.8 and shall permit FCDO to inspect such records as requested by FCDO from time to time.
- 30.7 The Supplier shall, during this Contract and for a period of at least seven years following the expiry or termination of this Contract, retain and maintain all Information:
- 30.7.1 in accordance with Good Industry Practice and Law;
 - 30.7.2 in chronological order;
 - 30.7.3 in a form that is capable of audit;
 - 30.7.4 at its own expense.
- 30.8 Wherever practical, original Information shall be retained and maintained in hard copy form.
- 31. OFFICIAL SECRETS ACT**
- 31.1 The Supplier shall, and shall ensure that the Supplier Personnel shall, comply with any relevant obligations arising under the Official Secrets Acts 1911 to 1989.
- 32. FCDO DATA**
- 32.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to FCDO Data.
- 32.2 The Supplier shall not store, copy, disclose, or use FCDO Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise expressly authorised in writing by FCDO.
- 32.3 To the extent that FCDO Data is held and/or processed by the Supplier, the Supplier shall supply that FCDO Data to FCDO as requested by FCDO in the format(s) specified by FCDO.
- 32.4 Upon receipt or creation by the Supplier of any FCDO Data and during any collection, processing, storage and transmission by the Supplier of any FCDO Data, the Supplier shall take responsibility for preserving the integrity of FCDO Data and preventing the corruption or loss of FCDO Data.
- 32.5 The Supplier shall perform secure back-ups of all FCDO Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Security Policy. The Supplier shall ensure that such back-ups are available to FCDO at all times upon request, with delivery times as specified by FCDO.
- 32.6 The Supplier shall ensure that the system on which the Supplier holds any FCDO Data, including back-up data, is a secure system that complies with the Security Policy.
- 32.7 If FCDO Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, FCDO may:

- 32.7.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of FCDO Data to the extent and in accordance with the Business Continuity and Disaster Recovery Provisions specified in the Security Policy and the Supplier shall do so as soon as practicable but not later than three days following a written request from FCDO; and/or
- 32.7.2 itself restore or procure the restoration of FCDO Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in the Business Continuity and Disaster Recovery provisions specified in the Security Policy.
- 32.8 If at any time the Supplier suspects or has reason to believe that FCDO Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify FCDO immediately and inform FCDO of the remedial action the Supplier proposes to take.
- 32.9 The Supplier shall obtain and maintain certification under the HM Government Cyber Essentials Scheme.

33. PROTECTION OF PERSONAL DATA

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

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

- 33.2.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, FCDO is the Controller and the Supplier is the Processor unless otherwise specified in Appendix A of the Terms of Reference (at Section 3 of the contract). The only processing that the Processor is authorised to do is listed in Appendix A of the Terms of Reference by the Controller and may not be determined by the Processor.
- 33.2.2 The Processor shall notify the Controller immediately if it considers that any of Controller's instructions infringe the Data Protection Legislation.
- 33.2.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the services.
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 33.2.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- (a) process that Personal Data only in accordance with the Appendix A referred to in Clause 33.2.1, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject. In the event of the Controller reasonably rejecting Protective measures put in place by the Processor, the Processor must propose alternative measures to the satisfaction of the Controller. Failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures. Protective Measures must take account of the:
 - a. nature of the data to be protected;
 - b. harm that might result from a Data Loss Event;
 - c. state of technological development; and
 - d. cost of implementing any measures;

- (c) ensure that:
 - I. the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Appendix A referred to in Clause 33.2.1);
 - II. it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - a. are aware of and comply with the Processor's duties under this clause;
 - b. are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - c. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
 - d. have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - a. the destination country has been recognised as adequate by the UK Government in accordance with Article 45 UK GDPR or section 74 of the DPA 2018
 - b. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or section 75 DPA 2018) as determined by the Controller
 - c. the Data Subject has enforceable rights and effective legal remedies;
 - d. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - e. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- (e) At the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

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

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

33.2.6 The Processor's obligation to notify under clause 33.2.5 shall include the provision of further information to the Controller, as details become available

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

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

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

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

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

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

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

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

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

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

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

33.3 Where the Parties both Control Personal Data Independently

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

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

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

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

(b) it becomes aware of a Personal Data Breach;

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

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

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

33.4 **Where the Parties are both Controllers of Personal Data Jointly**

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

34. **PUBLICITY AND BRANDING**

34.1 The Supplier shall not:

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

34.1.2 use FCDO's name or brand (including the 'UK International Development Partnership, Progress Prosperity logo (UK Dev logo') in any promotion, marketing, communications or announcement of orders;
without the prior written consent of the FCDO.

34.2 Where and to the extent that FCDO has provided consent pursuant to Clause 34.1, then the Supplier:

34.2.1 shall collaborate with FCDO and proactively look for ways to build support for development and raise awareness of FCDO's funding.

34.2.2 shall explicitly acknowledge FCDO's funding, in written and verbal communications about activities related to the funding, to the public or third parties, including in announcements, and through use, where appropriate, of FCDO's "UK International Development – Partnership, Progress Prosperity" logo ('UK Dev logo') in accordance with FCDO standards for use of the UK Dev logo unless otherwise agreed in advance by FCDO and in all cases subject to security and safety considerations of the Supplier.

34.2.3 shall provide a visibility statement of how and when they or Sub-Contractors will acknowledge funding from FCDO and where they will use the UK Dev Logo. The Supplier shall include reference to this in its progress reports and annual reviews.

- 34.2.4 may use the UK Dev Logo in conjunction with other donor logos, and where the number of donors to a programme or project is such as to make co-branding impractical, acknowledgement of funding from FCDO shall be equal to that of other co-donors making contributions of equivalent amounts to the programme or project.

Liabilities

35. LIMIT OF LIABILITY

35.1 Neither Party limits its liability for:

- 35.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
- 35.1.2 fraud or fraudulent misrepresentation by it or its employees;
- 35.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- 35.1.4 any liability to the extent it cannot be limited or excluded by Law.

35.2 Subject to Clause 35.1, the Supplier's total aggregate liability in respect of all Losses (whether in tort, contract or otherwise) incurred by FCDO under or in connection with the Contract as a result of Defaults by the Supplier shall not exceed the Financial Limit unless a different amount has been stated in Section 4 (Special Conditions) in which case that amount shall apply.

35.3 Subject to Clause 35.1, FCDO's total aggregate liability in respect of all Losses (whether in tort, contract or otherwise) shall not exceed one hundred thousand pounds (£100,000).

35.4 Subject to Clause 35.1 neither Party be liable to the other for any:

- 35.4.1 loss of profits, turnover, savings business opportunities, revenue or damage to goodwill (in each case whether direct or indirect); and/or
- 35.4.2 indirect, special or consequential loss or damage of any nature and howsoever caused, even if the losses were reasonably foreseeable or the Party has been advised of the possibility of such losses occurring.

35.5 Subject to Clause 35.2, and notwithstanding Clause 35.4, the Supplier acknowledges that FCDO may, amongst other things, recover from the Supplier the following losses incurred by FCDO to the extent that they arise as a result of a Default by the Supplier:

- 35.5.1 any additional operational and/or administrative costs and expenses incurred by FCDO, including costs relating to time spent by or on behalf of FCDO in dealing with the consequences of the Default;
- 35.5.2 any wasted expenditure or charges;
- 35.5.3 the additional cost of procuring Replacement Services for the remainder of the Term, which shall include any incremental costs associated with such Replacement Services above those which would have been payable under this Contract;
- 35.5.4 any compensation or interest paid to a third party by FCDO; and
- 35.5.5 any fine, penalty or costs incurred by FCDO pursuant to Law.

36. INDEMNITY

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

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

37. INSURANCE

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

- 37.2 The Supplier shall ensure that its Sub-Contractors shall effect and maintain insurances (where appropriate) in relation to the performance of their obligations under any Sub-Contracts appropriate to Services being provided.
- 37.3 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities arising under this Contract.

Control of Contract

38. VARIATIONS

- 38.1 Either Party may request a variation to this Contract provided that such variation does not amount to a material change of this Contract within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a **"Variation"**.
- 38.2 A Party may request a Variation at any time by sending the request in writing to the relevant Contract Officer. The request shall contain sufficient information setting out:
- 38.2.1 the extent of the proposed Variation and any additional cost that may be incurred; and
 - 38.2.2 a formal, technical and commercial justification.
- 38.3 In the event that the Parties are unable to agree a change to the Contract that may be included in a request of a Variation or response to as a consequence thereof FCDO may:
- 38.3.1 agree to continue to perform its obligations under this Contract without the Variation; or
 - 38.3.2 terminate this Contract with immediate effect, except where the Supplier has already fulfilled part or all of the provision of the Services in accordance with this Contract or where the Supplier can show evidence of substantial work being carried out to provide the Services under this Contract, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.
- 38.4 If the Parties agree the Variation, the Variation shall be effected upon both Parties signing the Contract Amendment Letter (Appendix A) and the Supplier shall implement such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in this Contract. FCDO shall not be liable for any costs for any additional activity or otherwise undertaken by the Supplier where the Parties have not agreed in writing in an executed Contract Amendment Letter in accordance with this Clause 38 for such costs to be incurred or for the additional activity to be undertaken. The Supplier shall promptly return on request by FCDO, any monies which FCDO may have paid the Supplier in respect of activities or payments which have not been authorised by FCDO in accordance with this Clause 38.

39. ASSIGNMENT AND NOVATION

- 39.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Contract without Approval.
- 39.2 Subject to Clause 39.1, the Supplier may assign to a third party ("the Assignee") the right to receive payment of the Charges or any part thereof due to the Supplier under this Contract (including any interest to which FCDO is liable under the Late Payments of Commercial Debts (Interest) Act 1998). Any assignment under this Clause 39.2 shall be subject to:
- 39.2.1 deduction of any sums in respect of which FCDO exercises its right of recovery under Clause 19 (Retention and Set Off);
 - 39.2.2 all related rights of FCDO under the Contract in relation to the recovery of sums due but unpaid; and
 - 39.2.3 FCDO receiving notification under both Clauses 39.3 and 39.4.
- 39.3 In the event that the Supplier assigns the right to receive the Charges under Clause 39.2, the Supplier shall notify FCDO in writing of the assignment and the date upon which the assignment becomes effective.
- 39.4 The Supplier shall notify FCDO of the assignee's contact information and bank account details to which FCDO shall make payment.

Default and Termination

40. FCDO REMEDIES FOR DEFAULT

40.1 Remedies

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

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

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

40.2 Rectification Plan Process

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

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

40.2.2 The Supplier shall promptly provide to the FCDO any further documentation that the FCDO requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with Dispute Resolution Procedure.

40.2.3 FCDO may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:

- (a) is insufficiently detailed to be capable of proper evaluation;
- (b) will take too long to complete;

- (c) will not prevent reoccurrence of the Default; and/or
- (d) will rectify the Default but in a manner which is unacceptable to FCDO.

40.2.4 FCDO shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If FCDO rejects the draft Rectification Plan, FCDO shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to FCDO for review within five (5) Working Days (or such other period as agreed between the Parties) of the FCDO's notice rejecting the first draft.

40.2.5 If FCDO consents to the Rectification Plan, the Supplier shall immediately start work on the actions set out in the Rectification Plan.

41. FINANCIAL DISTRESS

41.1 The Supplier acknowledges and agrees that the financial stability and solvency of the Supplier and its key Sub-Contractors is critical to the successful delivery of the Services and that any deterioration or potential deterioration of their financial position may have an adverse effect on the performance of the Contract. The Supplier shall monitor its own financial standing and that of its key Sub-Contractors on a regular basis throughout the term using a Financial Monitoring Plan and shall report on this to FCDO.

41.2 The Financial Monitoring Plan shall be designed by the Supplier to ensure that FCDO has an early and clear warning indicator of any financial distress of the Supplier and key Sub-Contractors which may affect the Services; such design to be proportionate for the circumstances; taking into account the nature of the Services and the identity of the suppliers.

41.3 Except where FCDO has agreed otherwise, the Supplier shall within four (4) weeks of the Commencement Date, prepare and submit via the Project Officer for Approval by FCDO, a Financial Monitoring Plan which shall set out the Supplier's proposals for the monitoring and reporting of its financial stability, and the financial stability of its key Sub-Contractors to FCDO on a regular basis throughout the Term.

41.4 The Financial Monitoring Plan may include (but shall not be limited to):

41.4.1 A summary of the Supplier's and key Sub-Contractors' financial positions at the date of submission of the Financial Distress Plan and on a regular basis thereafter to FCDO (including credit ratings, financial ratios, details of current liabilities, value of marketable securities, cash in hand and bank, account receivables etc.);

41.4.2 An objective means of measuring the Supplier and key Sub-Contractor's financial standing on a regular basis throughout the Term against historical financial standing to show trend (including use of credit ratings, financial ratios and/or other financial indicators);

41.4.3 The Supplier's proposals for reporting financial standing to FCDO (including the template reporting forms which the Supplier intends to use);

41.4.4 The frequency of monitoring and reporting activity;

41.4.5 Provision of reporting lines for the supply chain to notify FCDO of incidents of non-payment of valid and undisputed invoices;

41.4.6 Any other provisions which in the reasonable opinion of the Supplier may be required by FCDO to assess current financial standing of the Supplier and key Sub-Contractors and which enable quick and easy assessment of any movement in financial standing.

41.5 The Supplier shall make any reasonable amendments to the Financial Monitoring Plan as may be requested by FCDO and shall resubmit it for Approval. If Approved by FCDO, the Supplier shall promptly implement the Financial Monitoring Plan throughout the Term.

41.6 In addition to its obligations under the Financial Monitoring Plan, the Supplier shall promptly notify FCDO in writing if any of the following "Financial Distress Events" occurs in respect of the Supplier or a key Sub-Contractor:

41.6.1 there is a material deterioration of its financial standing;

41.6.2 the appointment of an administrator or receiver;

- 41.6.3 late filing of statutory accounts with Companies House;
 - 41.6.4 it issues a profits warning or other similar public announcement about a deterioration in its finances or prospects;
 - 41.6.5 it is being publicly investigated for improper financial accounting and reporting, fraud or any other financial impropriety;
 - 41.6.6 it commits a material breach of covenant to its lenders;
 - 41.6.7 a key Sub-Contractor not being paid any sums properly due under a specified invoice that is not subject to a genuine dispute;
 - 41.6.8 it is subject to any claims, litigation, investigations, actions or decisions in respect of financial indebtedness.
- 41.7 In the event of a Financial Distress Event occurring, then the Supplier shall and shall procure that any affected key Sub-Contractor shall, as soon as reasonably practicable review the effect of the Financial Distress Event on the continued performance of the Services under this Contract and provide a report to FCDO. Where FCDO reasonably believes that the Financial Distress Event is likely to adversely impact on the performance of the Services, the Supplier shall submit to FCDO for Approval a Financial Distress Service Continuity Plan as soon as is reasonably practicable and shall provide any further financial information as FCDO may reasonably require to assess financial standing and risks.
- 41.8 If FCDO acting reasonably considers that the Financial Distress Service Continuity Plan is insufficient to remedy the effects of the Financial Distress Event on the Service, then it may require the Supplier (and/or key Sub-Contractor) to redraft and resubmit an improved and updated plan or may require the issue to be escalated via the Dispute Resolution Procedure.
- 41.9 If FCDO Approves the Financial Distress Service Continuity Plan, then the Supplier shall execute and continue to review the plan (with submissions to FCDO for Approval where it is updated).
- 41.10 Where the Parties agree that the Financial Distress Event no longer adversely affects the delivery of the Services, the Supplier shall be relieved of its obligations in respect of the current Financial Distress Service Continuity Plan.
- 41.11 FCDO shall be entitled to terminate this Contract for material Default if:
- 41.11.1 The Supplier fails to notify FCDO of a Financial Distress Event in accordance with Clause 41.6;
 - 41.11.2 FCDO and the Supplier fail to agree a Financial Distress Service Continuity Plan or any updates to a plan within a reasonable timescale (taking into account the effects of the Financial Distress Event on the Services);
 - 41.11.3 The Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan or any updates to the plan.
- 42. FORCE MAJEURE**
- 42.1 Subject to the remainder of this Clause 42, a Party may claim relief under this Clause 42 from liability for failure to meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- 42.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 42.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 42 to the extent that consequences of the relevant Force Majeure Event:
- 42.3.1 are capable of being mitigated by any of the provision of any Services but the Supplier has failed to do so; and/or
 - 42.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Contract.
- 42.4 Subject to FCDO's right to terminate set out in Clause 42.5, the Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

- 42.5 Where FCDO receives a Force Majeure Notice, from the date of receipt of the Force Majeure Notice, FCDO may, at its sole discretion, either suspend this Contract for a period of up to six (6) months ("the Suspension Period") or terminate this Contract forthwith.
- 42.6 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract.
- 42.7 Relief from liability for the Affected Party under this Clause 42 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under Clause 42.6.
- 42.8 If by the end of the Suspension Period the Parties have not agreed a further period of suspension or re-instatement of the Contract, this Contract shall terminate automatically.

43. TERMINATION WITHOUT DEFAULT OF THE SUPPLIER

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

44. TERMINATION WITH DEFAULT OF THE SUPPLIER

- 44.1 FCDO may terminate this Contract for material Default by issuing a Termination Notice to the Supplier where:
- 44.1.1 any representation or warranty given by the Supplier pursuant to Clause 2 (Representations and Warranties) is materially untrue or misleading, and the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of FCDO are acceptable;
 - 44.1.2 FCDO expressly reserves the right to terminate this Contract for material Default;
 - 44.1.3 the Supplier commits any material Default of the Contract which is not, in the reasonable opinion of FCDO, capable of remedy; and/or
 - 44.1.4 the Supplier commits a Default, including a material Default, which in the opinion of FCDO is remediable but has not remedied such Default to the satisfaction of FCDO in accordance with the Rectification Plan Process.
- 44.2 For the purpose of Clause 44.1, a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default.
- 44.3 FCDO may, without prejudice to its other rights, including but not limited to the right to claim for Losses incurred, issue a Termination Notice where:
- 44.3.1 the Supplier or any Supplier Personnel, either directly or through their servants or agents or Sub-Contractors breaches any of their obligations under this Contract; or
 - 44.3.2 the Supplier, Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf has committed an offence under the Bribery Act 2010 or the Terrorism Act 2000 in breach of Clauses 48 or 49 of this Contract; or
 - 44.3.3 FCDO has the right to terminate under Clause 38.3.2; or
 - 44.3.4 the Supplier is an individual or a partnership and at any time:
 - (a) becomes bankrupt; or
 - (b) is the subject of a receiving order or administration order; or
 - (c) makes any composition or arrangement with or for the benefit of the Supplier's creditors; or
 - (d) makes any conveyance or assignment for the benefit of the Supplier's creditors; or

- (e) the warranty given by the supplier pursuant to Clause 24 (Tax Compliance) is materially untrue; or
- (f) the Supplier commits a material breach of its obligation to notify FCDO of any Occasion of Tax Non-Compliance as required by Clause 24 (Tax Compliance); or
- (g) the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of FCDO, are acceptable; or

44.3.5 the Supplier is a company and:

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

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

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

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

45. PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION

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

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

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

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

45.3.2 reject the Variation.

46. CONSEQUENCES OF EXPIRY OR TERMINATION

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

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

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

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

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

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

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

MISCELLANEOUS AND GOVERNING LAW

47. DISPUTE RESOLUTION PROCEDURE

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

48. PREVENTION OF FRAUD AND BRIBERY

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

- 48.4 The Supplier shall immediately notify FCDO in writing if it becomes aware of any breach of Clause 48.1 and/or Clause 48.2, or has reason to believe that it has or any Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf have:
- 48.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 48.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - 48.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.
- 48.5 The Supplier warrants and represents to FCDO that to the best of its knowledge, that neither the Supplier, Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf:
- 48.5.1 has given, offered or agreed to give or accepted, any gift or consideration of any kind as an inducement or reward for doing or for bearing to do or for having done or forborne to do any act in relation to the obtaining or execution of any contract or for showing or forbearing to show favour or disfavour to any person or entity in relation to any contract; or
 - 48.5.2 has entered into any contract in connection with which commission has been paid or agreed to be paid by or to the Supplier or Supplier Personnel or on their behalf or to their knowledge unless, before such contract was made, particulars of any such commission and of the terms of any agreement for the payment of such commission were disclosed in writing to FCDO, whose written consent was subsequently given to such payment.
- 48.6 Neither the Supplier or the Supplier Personnel or any person acting on their behalf shall accept for their own benefit or pass on for the benefit of partner government, recipient or end user, any trade commission, discount, voucher scheme, re-sale or similar payment or benefit in connection with this Contract.
- 48.7 Where the Supplier or Supplier Personnel, or any person acting on their behalf, does any of the acts mentioned in Clause 48.5 or commits any offence under the Bribery Act 2010, with or without the knowledge of the Supplier, in relation to this Contract or any other contract with the Crown, FCDO shall be entitled:
- 48.7.1 to terminate the Contract with immediate effect by written notice to the Supplier and recover from the Supplier the amount of any Losses resulting from the termination;
 - 48.7.2 to recover from the Supplier the amount or value of any such gift, consideration or commission;
 - 48.7.3 to recover from the Supplier any other Losses sustained as a result of any breach of this Clause 48, whether or not the Contract is terminated.
- 48.8 FCDO, the Supplier and the Supplier Personnel shall immediately and without undue delay inform each other of any event that interferes or threatens to materially interfere with the successful delivery of the Services, whether financed in full or in part by FCDO, including credible suspicion of/or actual fraud, bribery, corruption or any other financial irregularity or impropriety.
- FCDO has an expert fraud investigation unit, that should be contacted in the first instance at reportingconcerns@fcdo.gov.uk or +44 (0)1355 843747. All suspicions will be treated with the utmost confidentiality.

49. ANTI-TERRORISM REGULATIONS

- 49.1 In accordance to the Terrorism Act 2000 and all subsequent regulations pursuant to this Act, the Supplier will assure itself to the best of its knowledge that UK funding, including financial assets or economic resources is not made available, either directly or indirectly to, or for the benefit of persons, groups or entities listed in accordance with European Council Regulation EC/2580/2001 (as amended) and/or the Terrorism (United Nations Measures) Orders 2009 of the United Kingdom, or contravene the provisions of those and any subsequent applicable terrorism legislation.
- 49.2 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf, have at any time prior to the Commencement Date and/or during the term of this Contract appeared on the Home Office Proscribed Terrorist Organisations List.
- 49.3 The Supplier shall immediately notify FCDO in writing if it becomes aware of any breach of Clause 49.1 and/or Clause 49.2, or has reason to believe that it has or any Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf have:
- 49.3.1 been subject to an investigation or prosecution which relates to an alleged infringement of Clause 49.1 and/or Clause 49.2;

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

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

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

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

50. SAFEGUARDING

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

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

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

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

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

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

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

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

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

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

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

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

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

- 50.7 The Supplier shall comply with all applicable laws, legislation, codes of practice and government guidance in the UK and additionally, in the territories where the Services are being performed, relevant to safeguarding and protection of children and vulnerable adults, which the Supplier acknowledges may include vetting of the Supplier Personnel by the UK Disclosure and Barring Service in respect of any regulated activity performed by the Supplier Personnel (as defined by the Safeguarding Vulnerable Groups Act 2006 (as amended)) and/or vetting by a local equivalent service. Where FCDO reasonably believes that there is an increased risk to safeguarding in the performance of the Services, the Supplier shall comply with any reasonable request by FCDO for additional vetting to be undertaken.
- 50.8 Failure by the Supplier to:
- 50.8.1 put in place preventative measures to eliminate and/or reduce the risk of Serious Misconduct; or
 - 50.8.2 fully investigate allegations of Serious Misconduct; or
 - 50.8.3 report any complaints to FCDO and where appropriate, the relevant authorities (including law enforcement)

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

51. DISCRIMINATION

- 51.1 The Supplier shall not unlawfully discriminate either directly or indirectly against protected characteristics such as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the provisions of all relevant legislation including the Equality Act 2010, the International Development (Gender Equality) Act 2014 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof. The Supplier shall ensure that in its delivery of the Services, it has due regard for the advancement of equal opportunity and promotes good relations between people who share a protected characteristic and those who do not, as required by the equality legislation.
- 51.2 The Supplier shall adhere to the current relevant codes of practice or recommendations published by the Equality and Human Rights Commission. The Supplier shall take all reasonable steps to secure the observance of these provisions and codes of conduct by all suppliers, employees or agents of the Supplier and all suppliers and Sub-Contractors employed in the execution of this Contract.
- 51.3 The Supplier will comply with any request by FCDO to assist FCDO in meeting its obligations under the Equality Act 2010 and to allow FCDO to assess the Supplier's compliance with its obligations under the Equality Act 2010.
- 51.4 Where any investigation is concluded or proceedings are brought under the Equality Act 2010 which arise directly or indirectly out of any act or omission of the Supplier, its agents or Sub-Contractors, or Supplier Personnel, and where there is a finding against the Supplier in such investigation or proceedings, the Supplier will indemnify FCDO with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment FCDO may have been ordered or required to pay to a third party.

52. LAW AND JURISDICTION

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

53. ENVIRONMENTAL REQUIREMENTS

- 53.1 The Supplier shall provide the Services and any goods & equipment required under the Contract in accordance with applicable national and international laws, including those of the country or countries in which the Services or goods & equipment are to be provided, and FCDO's environmental operations policy, which is to conserve energy, water and other resources, reduce waste, phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 53.2 The Supplier shall work with FCDO and the populations that are potentially affected by its operations under the Contract regarding any environmental issues that could affect the sustainable development provisions of the International Development Act (2002), comply with special conditions as stipulated in the Terms of Reference and carry out any reasonable additional request to ensure the protection of the environment, society and the economy throughout the contract period.
- 53.3 The Supplier shall ensure it has the requisite expertise and controls to identify and mitigate all factors that may affect compliance with the conditions outlined in Clauses 53.1 and 53.2 as a result of its own operations or those of Sub-Contractors working on its behalf.

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

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

54. CONFLICT OF INTEREST

54.1 Neither the Supplier nor any of the Supplier Personnel shall engage in any personal, business or professional activity which conflicts or could conflict with any of their obligations in relation to this Contract.

54.2 The Supplier and the Supplier Personnel shall notify FCDO immediately of any actual or potential conflict together with recommendations as to how the conflict can be avoided.

54.3 The Supplier shall establish and maintain appropriate business standards, procedures and controls to ensure that no conflict of interest arises between Services undertaken for FCDO and that undertaken for other clients. The Supplier shall avoid knowingly committing any acts which are likely to result in any allegation of impropriety against FCDO, including conflicts of interest which are likely to prejudice their independence and objectivity in performing the Contract, howsoever arising.

54.4 The Supplier shall notify FCDO immediately of any circumstances of which it becomes aware which give rise or potentially give rise to a conflict with the Services and shall advise FCDO of how they intend to avoid such a conflict arising or remedy such situation. The Supplier shall, subject to any obligations of confidentiality it may have to third parties, provide all information and assistance reasonably necessary (at the Supplier's cost) that FCDO may request of the Supplier in order to avoid or resolve a conflict of interest and shall ensure that at all times they work together with FCDO with the aim of avoiding a conflict or remedy a conflict.

54.5 Pursuant to Clause 54.4, FCDO shall have the right to require that the Supplier puts in place Ethical Walls and will ensure and satisfy FCDO that all information relating to the Contract and to the Services (including all working papers, draft reports in both tangible and intangible form) are not shared or made available to person(s) other than Supplier Personnel and that such matters are not discussed by any person(s) other than Supplier Personnel.

54.6 In the event of a failure to maintain the Ethical Walls as described above arising during the course of this Contract, FCDO reserves the right to immediately terminate the Contract on giving written notice to the Supplier.

55. WAIVER

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

56. ENTIRE AGREEMENT

56.1 The Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Clause 56.1 shall not exclude liability in respect of any fraudulent misrepresentation.

56.2 The Supplier is not the agent of FCDO and has no authority to represent and shall not purport to represent or enter into any commitments on behalf of FCDO in any respect.

56.3 Nothing in this Contract is intended to make nor shall it make FCDO the employer of the Supplier or any of the Supplier Personnel.

56.4 All communications by the Supplier relating to the Contract must be addressed to the FCDO Contract Officer whose name and address is given in Section 4 (Special Conditions).

57. THIRD PARTY RIGHTS

57.1 The provisions of paragraphs 2.1 and 2.6 of Part A, paragraphs 2.1, 2.6, 3.1 and 3.3 of Part B, paragraphs 2.1 and 2.3 of Part C and paragraphs 1.4, 2.3 and 2.8 of Part D of Schedule 2 (Staff Transfer) (together the **"Third Party Provisions"**) confer benefits on persons named in such provisions other than the Parties (each such person a **"Third Party Beneficiary"**) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the Contracts (Rights of Third Parties) Act 1999 (**"CRTPA"**).

- 57.2 Subject to Clause 57.1, a person who is not a Party to this Contract has no right under the CRTPA to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 57.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of FCDO, which may, if given, be given on and subject to such terms as FCDO may determine.
- 57.4 Any amendments or modifications to this Contract may be made, and any rights created under Clause 57.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

58. NOTICES

- 58.1 Except as otherwise expressly provided within this Contract, any notices sent under this Contract must be in writing. For the purpose of Clause 58, an e-mail is accepted as being "in writing".
- 58.2 Subject to Clause 58.3, the following table sets out the method by which notices may be served under this Contract and the respective deemed time and proof of service:

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

- 58.3 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or Royal Mail Signed For™ 1st Class or other prepaid in the manner set out in the table in Clause 58.2:
- 58.3.1 any Termination Notice (Clause 43 (Termination Without Default of the Supplier) and Clause 44 (Termination With Default of the Supplier)); and
- 58.3.2 any notice in respect of:
- (a) partial termination, suspension or partial suspension (Clause 45 (Partial Termination, Suspension and Partial Suspension)),
 - (b) waiver (Clause 55 (Waiver)); or
 - (c) Default.
- 58.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 58.3 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 58.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.
- 58.5 Clause 58 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 58.6 For the purposes of Clause 58, the address and email address of each Party shall be as specified in Section 4 (Special Conditions).

SCHEDULE 1: DEFINITIONS

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

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

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

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

“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:

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

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

2. INTERPRETATION

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

PART A

TRANSFERRING FCDO EMPLOYEES AT COMMENCEMENT OF SERVICES

1. RELEVANT TRANSFERS

- 1.1 FCDO and the Supplier agree that:
- 1.1.1 the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring FCDO Employees; and
 - 1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between FCDO and the Transferring FCDO Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Notified Sub-Contractor and each such Transferring FCDO Employee.
- 1.2 FCDO shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring FCDO Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) FCDO; and (ii) the Supplier and/or any Notified Sub-Contractor (as appropriate).

2. FCDO INDEMNITIES

- 2.1 Subject to Paragraph 2.2, FCDO shall indemnify the Supplier and any Notified Sub-Contractor against any Employee Liabilities arising from or as a result of:
- 2.1.1 any act or omission by FCDO in respect of any Transferring FCDO Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring FCDO Employee occurring before the Relevant Transfer Date;
 - 2.1.2 the breach or non-observance by FCDO before the Relevant Transfer Date of:
 - (a) any collective agreement applicable to the Transferring FCDO Employees; and/or
 - (b) any custom or practice in respect of any Transferring FCDO Employees which FCDO is contractually bound to honour;
 - 2.1.3 any claim by any trade union or other body or person representing the Transferring FCDO Employees arising from or connected with any failure by FCDO to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;
 - 2.1.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring FCDO Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - (b) in relation to any employee who is not a Transferring FCDO Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from FCDO to the Supplier and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.
 - 2.1.5 a failure of FCDO to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring FCDO Employees arising before the Relevant Transfer Date;

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

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

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

3. SUPPLIER INDEMNITIES AND OBLIGATIONS

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

HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;

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

4. INFORMATION

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

5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

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

6. PENSIONS

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

ANNEX TO PART A: PENSIONS

1. PARTICIPATION

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

2. FUTURE SERVICE BENEFITS

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

3. FUNDING

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

4. PROVISION OF INFORMATION

The Supplier and FCDO respectively undertake to each other:

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

5. INDEMNITY

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

6. EMPLOYER OBLIGATION

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

7. SUBSEQUENT TRANSFERS

The Supplier shall:

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

8. BULK TRANSFER

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

scheme be less than the amount required by the Schemes to fund day for day service ("the Shortfall"), the Supplier agrees to pay the Shortfall to the Schemes; and

- 8.1.4 indemnify FCDO on demand for any failure to pay the Shortfall as required under Paragraph 8.1.3 above.

PART B

TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF SERVICES

9. RELEVANT TRANSFERS

- 9.1 FCDO and the Supplier agree that:

9.1.1 the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and

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

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

10. FORMER SUPPLIER INDEMNITIES

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

10.1.1 any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;

10.1.2 the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:

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

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

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

- 10.1.4 a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
 - 10.1.5 any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Sub-Contractor as appropriate may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
 - 10.1.6 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.
- 10.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
- 10.2.1 arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
 - 10.2.2 arising from the failure by the Supplier and/or any Sub-Contractor to comply with its obligations under the Employment Regulations.
- 10.3 If any person who is not identified by FCDO as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by FCDO as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 10.3.1 the Supplier shall, or shall procure that the Notified Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to FCDO and, where required by FCDO, to the Former Supplier; and
 - 10.3.2 the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier and/or the Notified Sub-Contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 10.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or FCDO, the Supplier shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 10.5 If by the end of the 15 Working Day period specified in Paragraph 2.3.2:
- 10.5.1 no such offer of employment has been made;
 - 10.5.2 such offer has been made but not accepted; or
 - 10.5.3 the situation has not otherwise been resolved,
- the Supplier and/or any Notified Sub-Contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 10.6 Subject to the Supplier and/or any Notified Sub-Contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, FCDO shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 10.7 The indemnity in Paragraph 2.6:

- 10.7.1 shall not apply to:
- (a) any claim for:
 - (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

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

11. SUPPLIER INDEMNITIES AND OBLIGATIONS

- 11.1 Subject to Paragraph 3.2, the Supplier shall indemnify FCDO and/or the Former Supplier against any Employee Liabilities arising from or as a result of:
- 11.1.1 any act or omission by the Supplier or any Sub-Contractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date;
 - 11.1.2 the breach or non-observance by the Supplier or any Sub-Contractor on or after the Relevant Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Former Supplier Employee; and/or
 - (b) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-Contractor is contractually bound to honour;
 - 11.1.3 any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
 - 11.1.4 any proposal by the Supplier or a Sub-Contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
 - 11.1.5 any statement communicated to or action undertaken by the Supplier or a Sub-Contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with FCDO and/or the Former Supplier in writing;
 - 11.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions;

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

12. INFORMATION

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

13. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

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

- 13.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Variation Procedure.

14. PROCUREMENT OBLIGATIONS

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

15. PENSIONS

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

ANNEX TO PART B: PENSIONS

1. PARTICIPATION

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

2. FUTURE SERVICE BENEFITS

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

3. FUNDING

- 3.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.

- 3.2 The Supplier shall indemnify and keep indemnified FCDO on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

4. PROVISION OF INFORMATION

The Supplier and FCDO respectively undertake to each other:

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

5. INDEMNITY

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

6. EMPLOYER OBLIGATION

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

7. SUBSEQUENT TRANSFERS

The Supplier shall:

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

8. BULK TRANSFER

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

comparable pension scheme be less than the amount required by the Schemes to fund day for day service ("the Shortfall"), the Supplier agrees to pay the Shortfall to the Schemes; and

8.1.4 indemnify FCDO on demand for any failure to pay the Shortfall as required under Paragraph 8.1.3 above.

PART C

NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

1. PROCEDURE IN THE EVENT OF TRANSFER

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

2. INDEMNITIES

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

- 2.3 Where any person remains employed by the Supplier and/or any Sub-Contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall indemnify FCDO and any Former Supplier, and shall procure that the Sub-Contractor shall indemnify FCDO and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-Contractor.
- 2.4 The indemnities in Paragraph 2.1:
- 2.4.1 shall not apply to:
- (a) any claim for:
- (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or
- (b) any claim that the termination of employment was unfair because the Supplier and/or any Sub-Contractor neglected to follow a fair dismissal procedure; and
- 2.4.2 shall apply only where the notification referred to in Paragraph 1.2.1 is made by the Supplier and/or any Sub-Contractor to FCDO and, if applicable, Former Supplier within 6 months of the Commencement Date.

3. PROCUREMENT OBLIGATIONS

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

PART D

EMPLOYMENT EXIT PROVISIONS

1. PRE-SERVICE TRANSFER OBLIGATIONS

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

and shall promptly notify, and procure that each Sub-Contractor shall promptly notify, FCDO or, at the direction of FCDO, any Replacement Supplier and any Replacement Sub-Contractor of any notice to terminate employment given by the Supplier or relevant Sub-Contractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.

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

2. EMPLOYMENT REGULATIONS EXIT PROVISIONS

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

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

- 2.5.1 FCDO shall procure that the Replacement Supplier shall, or any Replacement Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
- 2.5.2 the Supplier may offer (or may procure that a Sub-Contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-Contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-Contractor, FCDO shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-Contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 2.7 If after the fifteen (15) Working Day period specified in Paragraph 2.5.2 has elapsed:
- 2.7.1 no such offer of employment has been made;
- 2.7.2 such offer has been made but not accepted; or
- 2.7.3 the situation has not otherwise been resolved
- the Replacement Supplier and/or Replacement Sub-Contractor, as appropriate may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
- 2.8 Subject to the Replacement Supplier and/or Replacement Sub-Contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.9 The indemnity in Paragraph 2.8:
- 2.9.1 shall not apply to:
- (a) any claim for:
- (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-Contractor; or
- (b) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-Contractor neglected to follow a fair dismissal procedure; and
- 2.9.2 shall apply only where the notification referred to in Paragraph 2.5.1 is made by the Replacement Supplier and/or Replacement Sub-Contractor to the Supplier within six (6) months of the Service Transfer Date.
- 2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Supplier or any Sub-Contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-Contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee.
- 2.11 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Personnel List before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly

comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

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

demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;

- 2.13.7 a failure of the Replacement Supplier or Replacement Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List in respect of the period from (and including) the Service Transfer Date; and
 - 2.13.8 any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations.
- 2.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-Contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-Contractor (as applicable) to comply with its obligations under the Employment Regulations.

ANNEX TO SCHEDULE 2: LIST OF NOTIFIED SUB-CONTRACTORS

SCHEDULE 3: INSURANCE REQUIREMENTS

1.OBLIGATION TO MAINTAIN INSURANCES

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

2.GENERAL OBLIGATIONS

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

3.FAILURE TO INSURE

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

4.EVIDENCE OF POLICIES

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

5.AGGREGATE LIMIT OF INDEMNITY

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

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

6. CANCELLATION

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

7. INSURANCE CLAIMS

- 7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Contract for which it may be entitled to claim under any of the Insurances. In the event that FCDO receives a claim relating to or arising out of the Services or this Contract, the Supplier shall co-operate with FCDO and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- 7.2 Except where FCDO is the claimant party, the Supplier shall give FCDO notice within twenty (20) Working Days after any insurance claim in excess of **GBP50,000** relating to or arising out of the provision of the Services or this Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by FCDO) full details of the incident giving rise to the claim.
- 7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from FCDO any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

ANNEX 1: REQUIRED INSURANCES

PART A: THIRD PARTY PUBLIC & PRODUCTS LIABILITY INSURANCE

1.INSURED

1.1 The Supplier

2.INTEREST

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

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

2.1.2 loss of or damage to property;

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

3.LIMIT OF INDEMNITY

3.1 Not less than £20,000,000 in respect of any one occurrence, the number of occurrences being unlimited, but £20,000,000 **any** one occurrence and in the aggregate per annum in respect of products and pollution liability.

4.TERRITORIAL LIMITS

4.1.1 Coverage must extend to cover all aspects of delivery of the Services by the Supplier to the Authority as described in Section 3 – Terms of Reference.

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 £ 50,000 for each and every third-party property damage claim (personal injury claims to be paid in full).

PART B: PROFESSIONAL INDEMNITY INSURANCE

1.INSURED

- 1.1 The Supplier

2.INTEREST

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

3.LIMIT OF INDEMNITY

- 3.1 Not less than £20,000,000 in respect of any one claim and in the aggregate per annum.

4.TERRITORIAL LIMITS

- 4.1 Coverage must extend to cover all aspects of delivery of the Services by the Supplier to the Authority as described in Section 3 – Terms of Reference.

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 £50,000 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.

Redacted under Section 43 Commercial Interests of the Freedom of Information Act FOIA (2000).

APPENDIX A. CONTRACT AMENDMENT LETTER

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

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

File Ref: [
Date: [

Contract Amendment No: [

CONTRACT FOR: [

CONTRACT NUMBER: [

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

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

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

Name: [

Position:

Signature:

Date: [

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

Name: [

Signature:

Date:



Foreign, Commonwealth & Development Office

FCDO Supply Partner Code of Conduct

Principles

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

Overarching Principles for Supply Partners

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

FCDO Supply Partner responsibilities

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

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

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

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

Scope

This Code forms part of 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

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

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

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

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

- ✓ Development and proof of application and embedding of a Staff Recruitment, Management and Retention policy (which must address circumstances where there may be potential or actual conflict of interest and embedding of a Whistleblowing Policy)
- ✓ Ongoing monitoring of potential or existing personal, business or professional conflict of interest and their mitigation and management
- ✓ Ethical training for every staff member and staff updates in ethical working practices suitable to the development sector (e.g. UN Global Compact principles) including awareness of modern day slavery and human rights abuses
- ✓ Procedures setting out how, staff involved in FCDO funded business, can immediately report all suspicions or allegations of aid diversion, fraud, money laundering or counter terrorism finance and any suspicions/allegations/concerns which relate to safeguarding to the FCDO Investigations Department at 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' mailbox³ found on FCDO's external website and of the circumstances in which this should be used;
- ✓ Publication of FCDO funding data in accordance with the International Aid Transparency Initiative (IATI)⁴
- ✓ Supply Partners shall adhere to HMG prompt payment policy and not use restrictive exclusivity agreements with sub-partners.

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

⁴ <http://www.aidtransparency.net/>

4. Environmental issues

Key Performance Indicators KPI 4 a – b

FCDO Supply Partners must be committed to high environmental standards, recognising that FCDO 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 Initiative⁵).

5. Terrorism and Security

Key Performance Indicators KPI 5 a – d

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

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

Specific requirements:

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

6. Safeguarding, Social Responsibility and Human Rights

Key Performance Indicators: KPI 6 a – d

⁵ <https://eiti.org/>

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

⁷ <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 Compact⁸;
- ✓ Practices in line with the International Labour Organisation (ILO) 138⁹ and the Ethical Trading Initiative (ETI) Base Code¹⁰ are to be encouraged throughout the delivery chain;
- ✓ Policies to embed good practice in line with the UN Global Compact Guiding Principles 1 & 2 on business and human rights throughout the delivery chain are required, as detailed in Annex 2;
- ✓ Compliance level 1 Supply Partners to submit a Statement of Compliance outlining how the organisation's business activities help to develop local markets and institutions and further how they contribute to social and environmental sustainability, whilst complying with international principles on Safeguarding and Human Rights labour and ethical employment, social inclusion and environmental protection;
- ✓ Overarching consideration given to building local capacity and promoting the involvement of people whose lives are affected by business decisions.

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

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

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

Compliance KPIs and contractual checking mechanisms - FCDO Contracts

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

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

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

	must provide proof of compliance with the HMG approval requirements under the business appointment rules		appointment rules	
3.	<u>Transparency and Delivery Chain Management</u>	Updated documentation submitted once annually	Contract Terms and Conditions Clause 28	Tender evaluation Periodic spot checks Compliance checks
a)	IATI compliance for Supply Partner and their delivery chain Supply Partners			
b)				
c)	Up to date and accurate records of all delivery chain Supply Partners	Updated documentation submitted in accordance with Clause 26.7	Contract Terms & conditions Clause 9 & 28 Tender submittal – delivery chain	Annual return Compliance checks Contract management
d)	Policies and practices for the management of delivery chain partners and affiliates aligned to the FCDO Supply Partner Code of Conduct	Updated documentation submitted annually	Contract Terms & conditions Clause 7	Contract management processes Periodic spot checks Compliance checks
e)	Tax evasion, bribery, corruption and fraud -statements of assurance provided	Updated documentation submitted once annually	Contract Terms and Conditions 23 & 24	Periodic and annual return spot checks Compliance checks
f)	All delivery chain partner employees working on FCDO Contracts fully aware of the FCDO reporting concerns mailbox	Updated documentation submitted once annually	Contract Terms & Conditions Clause 48	Periodic and annual return spot checks
	HMG prompt payment policy adhered to by all delivery chain partners	Updated documentation submitted once annually	Contract Terms & conditions 7	HMG spot checks Compliance checks Annual return
4.	<u>Environmental Issues</u>			
a)	1.Steps in place to identify environmental risks (e.g. by maintaining a risk register) Ensuring legislative requirements are being met 2. Formal context specific environmental safeguarding policies in place to ensure legislative requirements are being met	Updated documentation submitted once annually	Contract Terms & Conditions Clause 53 and ToRs	Contract management Periodic and annual return spot checks Compliance checks
b)	Published annual environmental performance reports <u>Net zero by 2050 tracking</u>	Updated documentation submitted once annually	Contracts ToRs	Periodic and annual return spot checks
5.	<u>Terrorism and Security</u>			
a)		Updated documentation submitted if and	Standard Selection Questionnaire (SSQ)	Annual return Spot checks Compliance checks

b) c) d)	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
	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
	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.	<u>Safeguarding, Social Responsibility and Human Rights</u>			
a)	Provision of a current internal document demonstrating good practice and assuring compliance with key legislation on international principles on labour and ethical employment	Confirmation of UN Global Compact Membership	Standard Selection Questionnaire	Tender evaluation Annual return Compliance checks
b)	Agreed level of measures in place and cascaded to assure the prevention of actual, attempted or threatened sexual exploitation or abuse or other forms of inequality or discrimination by employees or any other persons engaged and controlled by the Supply Partner to perform any activities relating to FCDO funded work. Robust procedures for the reporting of suspected misconduct, illegal acts or failures to investigate in place	Updated documentation submitted once annually	Contract T&Cs Clause 50	Tender evaluation, Compliance checks
c)	Recognition of the ILO standards Membership of Ethical Trading Initiative (ETI)	Membership number		Compliance checks
d)	1.Principles cascaded to employees and delivery chain partners via an internal policy or written outline of good practice service delivery approaches to Human	Updated documentation submitted annually	Contract T&Cs Clause 50	Annual return Compliance checks

	<p>Rights and Safeguarding reflecting UN Global Compact Principles 1 & 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			
1.	<u>VfM and Governance standards</u>					
a)	Evidence of how economic and governance policies work in practice	X	O			
b)	VfM maximisation over contract life					
	1. Annual confirmation of % profit on contract	X	X			
	2. timely identification and resolution of issues	X	X			
	3. ensuring lessons learned are shared	X	O			
c)	<u>Tax Declaration (HMRC format)</u>					
	Comply with all tax requirements	X	X			
2.	<u>Ethical Behaviour</u>					
a)	Adherence to agreed conflict of interest management procedures	X	X			

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

	payment policy with all their delivery chain Supply Partners	X	O			
4.	<u>Environmental Issues</u>					
a)	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.	<u>Terrorism and Security</u>					
a)	Up to date status declaration regarding the reporting of terrorist offences or offences linked to terrorist activities or financing	X	X			
b)	No engaged employees or delivery chain partner personnel appears on the Home Office Prescribed Terrorist Organisations List	X	X			
c)	Data is managed in accordance with 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.	<u>Safeguarding, Social Responsibility and Human Rights</u>					
a)	Provision of a document demonstrating current organisational good practice and assuring compliance with key legislation on international principles on labour and ethical employment (to include Modern Day Slavery Act 2015 compliance detail)	X	O			
b)	Organisational procedures in place directly, and within the delivery chain: 1.To prevent actual, attempted or threatened sexual exploitation and abuse or other forms of inequality or discrimination by employees or any other persons engaged and controlled by the Supply Partner to perform any activities relating to FCDO funded work 2.For reporting suspected misconduct, illegal acts or failures to investigate actual attempted or threatened sexual exploitation or abuse	X X	X X			
c)	Current membership of UN Global Compact 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



Foreign, Commonwealth
& Development Office

Section 3: Terms of Reference (ToR)
for
Investments in Forests and Sustainable Land Use
Programme – Phase 2 (IFSLU2)
Component 1 and Component 2

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Acronyms and Key Terms

BE	British Embassy
BHC	British High Commission
COP	Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC)
Component	The wider IFSLU2 programme covered by the Business Case has five underlying Components, of which this Terms of Reference refers to Components 1 and 2
DEFRA	Department for Environment, Food & Rural Affairs
DESNZ	Department for Energy Security and Net Zero
FAO	Food and Agriculture Organization of the United Nations
FCDO	Foreign, Commonwealth & Development Office
FCLP	Forest and Climate Leaders' Partnership
FGMC	Forest Governance, Markets and Climate
FPIC	Free, Prior and Informed Consent
GESI	Gender Equality and Social Inclusion
Grantee	Under Component 2, grantees are recipients of an FCDO grant either directly or through the Supplier
HMG	His Majesty's Government
ICF	International Climate Finance
ICF KPI	International Climate Finance Key Performance Indicator
ICF TA KPI	International Climate Finance Technical Assistance Key Performance Indicator
IDH	IDH - The Sustainable Trade Initiative
IFSLU	Investments in Forests and Sustainable Land Use programme
IFSLU1	Investments in Forests and Sustainable Land Use – Phase 1 programme
IFSLU2	Investments in Forests and Sustainable Land Use – Phase 2 programme
IP	Implementing Partner, an organisation receiving project funding from the Supplier
IPBES	Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services
IPCC	Intergovernmental Panel on Climate Change
IPLCs	Indigenous Peoples and Local Communities
KPI	Key Performance Indicator
MEL	Monitoring, Evaluation and Learning
NDC	Nationally Determined Contribution
NAP	National Adaptation Plan
ODA	Official Development Assistance
Post	A British Embassy or British High Commission
PRO	Programme Responsible Owner – one of two leadership roles in FCDO accountable for programme and contract delivery.
PrOF	FCDO Programme Operating Framework linked here . The PrOF sets the standard for how the FCDO delivers its programmes and projects.
SEAH	Sexual Exploitation, Abuse & Harassment
SHF	Smallholder Farmers
SRO	Senior Responsible Owner – one of two leadership roles in FCDO accountable for programme and contract delivery.
TAF	Technical Assistance Facility
ToR	Terms of Reference
Tranche 1	Tranche 1 refers to the first five years of the wider IFSLU2 programme's 10-year commitment. In this ToR, the first tranche equates broadly to the Contract period.
Tranche 2	Tranche 2 refers to the second five years of the wider IFSLU2 programme's 10-year commitment. In this ToR, the second tranche equates broadly to the Extension Period.
UNFCCC	United Nations Framework Convention on Climate Change
VfM	Value for Money

1 Contract Summary

Investments in Forests and Sustainable Land Use – Phase 2 (IFSLU2) is an umbrella International Climate Finance (ICF) programme of the FCDO. IFSLU2 is managed by the FCDO's Energy, Climate and Environment Directorate (ECED). Under the IFSLU2 umbrella programme there are five Components. This Terms of Reference (ToR) sets out the FCDO's requirements for a supplier to undertake the management and implementation of **Components 1 and 2 of IFSLU2 only**.

The delivery of Component 1 requires the Supplier to provide a Technical Assistance Facility (TAF). Component 2 requires the Supplier to: (i) monitor, report and manage grant agreements (agreed by FCDO and entered into by the Supplier); (ii) source and agree additional grants to build a portfolio of grant-funded projects providing support to smallholders at scale; and (iii) support FCDO to identify and design potential future activities to scale smallholder support.

This Contract will be awarded for 60 months with an optional Extension if certain criteria are met. The Contract will start in approximately Autumn 2024. The Contract will have a value of up to £134 million of this up to £45.5 million is allocated to grants to non-government organisations under Component 2.

Suppliers should note that delivery of Components 3, 4 and 5 is not part of this requirement, but the Supplier will be required to coordinate and foster coherence and coordination between the programme's Components so that they are strategically aligned and deliver collectively on their shared objectives. A key aspect of this will be to share learning and evidence across Components and collaborate to maximise opportunities for replication and scaling of effective approaches.

The Supplier and their key Sub-Contractors for this Contract and Component 3 will be excluded from bidding on the MEL Contract (Component 5) as the Supplier or key Sub-Contractor.

2 Context and Rationale

2.1 Context

The UK is committed to driving the systemic shifts required to address the climate change and biodiversity crises and meet the Paris Agreement Targets and the Sustainable Development Goals.

The Foreign, Commonwealth & Development Office (FCDO) is delivering positive change on the ground, building resilience in poor rural communities and mobilising action at scale to protect and restore forests in developing countries. Refer to [Annex A](#) for an overview of the UK's ICF forest programmes.

Engaging the private sector and catalysing private investment will be key to meeting the scale of these challenges. In November 2023 the UK announced up to £500 million for the second phase of the Investments in Forests and Sustainable Land Use (IFSLU) programme, which provides this focus and will scale up support to help deliver on UK commitments.

2.2 Investments in Forests and Sustainable Land Use – Phase 1 (IFSLU1)

The £140 million IFSLU Phase 1 (IFSLU1, 2014-24) programme was established to accelerate the sustainable transformation of forest landscapes, forest-linked commodity production and trade, and land-use investment flows in ways that deliver benefits for people, climate, and nature.

IFSLU1 sought to change private sector incentives and land use practices through a combination of interventions:

- **demand-side measures** to shape the market forces which drive private sector behaviour and shift incentives towards sustainable practice, both in specific markets and globally;

- **supply-side public-private partnerships** to support producers and businesses to deploy sustainable, profitable and investable business models; and
- **enabling conditions** interventions, including policy and regulatory reform, at the landscape, regional and global levels to create conducive conditions for sustainable business and influence the practices of policymakers, commodity buyers and investors.

IFSLU1 has achieved significant results (see [Annex B](#)). It catalysed over £1.35 billion in private investment into sustainable agriculture, forest protection and restoration, at a ratio of £11 for every £1 of ODA. This has improved management across 8.7 million hectares of land (an area twice the size of Wales), benefiting just under 327,000 people, mainly smallholder farmers and rural communities, and abated carbon at a cost of US\$8 per tonne, a cost-effective rate within the HMG portfolio.

Programme interventions also contributed to systemic change in the international markets driving deforestation, including supporting legislative change to ensure the UK imports of agricultural commodities, such as palm oil, soya and cocoa, are not associated with illegal deforestation in the country of origin.

2.3 Investments in Forests and Sustainable Land Use – Phase 2 (IFSLU2)

Building on the success of IFSLU1, the umbrella programme IFSLU2 is a commitment of up to £500 million over a 10-year period (2023-2033), with a first five-year tranche of up to £195 million starting in Financial Year (FY) 2023/24.

IFSLU2 is a centrally managed programme with activities to be delivered by suppliers, grantees and strategic partners, while FCDO retains responsibility for the overall programme strategy.

As set out in its [Business Case](#) IFSLU2 will catalyse private sector investment into forest protection and restoration, address deforestation associated with agricultural commodity production, scale-up support to smallholder farmers and support jobs and strengthened livelihoods in poor rural communities. Refer to [Annex C](#) for a summary of the IFSLU2 programme, rationale and purpose.

The programme aims to catalyse at least £2 billion in sustainable private investment, as well as supporting transformational change in tropical forest landscapes and the industries and supply chains (such as cattle (beef and leather), cocoa, coffee, maize, palm oil, rubber, and soy) which currently drive tropical deforestation in developing countries. At the same time as supporting producers, particularly smallholders, it will continue to generate demand for sustainable commodities in key consumer markets, using its evidence base and track record from IFSLU1 to engage more with growing producer and consumer markets such as Brazil, Indonesia, India and China. IFSLU2 will be delivered through five linked components (Table 1).

Table 1. IFSLU2 is an umbrella programme with five Components

Component 1 & Component 2		Component 3	Component 4
Business incubation, pipeline development and business enabling conditions. (this ToR)	Enhanced support for smallholder farmers. (this ToR)	Business and market development in the Congo Basin.	Policy support to catalyse transformational change and action at scale.
Component 5			
Monitoring, evaluation, learning (MEL) and knowledge			

3 Impact, Objectives and Scope of this Contract

3.1 Outcomes and Impact

The intended behavioural Intermediate Outcomes from the Contract's interventions are:

- Supply-side: Producers¹ adopt sustainable practices as part of profitable, inclusive and replicable business models and bankable investment opportunities;
- Demand-side: Governments, companies and value chain actors adopt mandatory or voluntary sustainable and equitable sourcing practices that incentivise sustainable practices; and aggregate and empower smallholders; and
- Enabling Conditions: Governments, companies and other actors foster positive enabling environments, reforms, standards, accessible market infrastructure and governance arrangements conducive for crowding-in investment, addressing smallholder development needs.

Over the longer-term and through interactions with other IFSLU2 Components, the Intermediate Outcomes will lead to the following systemic Outcomes:

- forest landscapes transformed into forest positive and climate-resilient systems that meet local development needs;
- increased private investment in sustainable forestry and land use;
- increased support and share of sustainable investment reaching smallholders;
- increased global market for deforestation-free agricultural commodities; and
- complementary policy actions implemented by consumer and producer countries.

These systemic Outcomes will lead to the following Impacts:

- forests and ecosystems protected and restored in forest landscapes and across relevant industries and value chains;
- finance mobilised in support of the Sustainable Development Goals (SDGs) and forest country Nationally-Determined Contribution (NDC) and National Adaptation Plan (NAP) implementation;
- jobs created, incomes increased, capacity strengthened and enhanced ability to adapt to the impacts of climate change (both rapid shocks and slow onset stressors) in rural economies of supported countries; and
- transformational change, aligning the land use sector with the SDGs and the Paris Agreement Targets.

For more details of the IFSLU2 programme's Theory of Change see Table 2 in [Annex C](#).

3.2 Geographical Scope

The IFSLU2 umbrella programme will operate in a range of countries that face critical vulnerabilities in the forest and land sector arising from climate change, and which have an essential role to play in addressing the linked crises affecting climate and nature. It will prioritise the following regions for Components 1 and 2: East Africa, West Africa, Central Africa, Southeast Asia and Latin America. The Supplier will be required to establish programme offices in each of these regions to deliver the programme.

The UK has a strong diplomatic and development presence in countries in these regions, as well as a wider portfolio of energy, climate and environment investments and engagements. These countries include but are not limited to: East Africa (Ethiopia, Kenya, Tanzania, Uganda), West Africa (Sierra Leone, Liberia, Cote d'Ivoire, Nigeria, Ghana), Central Africa

¹ Producers include businesses, social enterprises, community organisations, smallholders, and landholders.

(Cameroon, DRC, Gabon, Republic of Congo), Southeast Asia (Indonesia, Malaysia) and Latin America (Brazil, Colombia, Peru).

This is not a prescriptive list and the final list of countries will be agreed by FCDO and the Supplier during Contract Inception based on the Supplier's analysis of opportunities to deliver impact (across countries, regions and value chains) and ODA/development impact considerations.

3.3 Recipients and Beneficiaries

For Component 1, the recipients (the "Recipients") are the businesses, small and medium sized enterprises (SMEs), community organisations and non-profit organisations receiving grant funding and technical assistance from the TAF. For Component 2, the Recipients are the non-profit organisations receiving grant funding and delivering project activities.

The beneficiaries (the "Beneficiaries") of the Services will be developing country citizens who depend on forests for their livelihoods, resilience and food security; SMEs and community organisations producing sustainable commodities; and developing country governments seeking to manage forests sustainably. Programme benefits and impacts will be realised through a set of partnerships with private companies, non-governmental organisations, and other entities, as well as through the provision of technical assistance to partner governments.

4 Approach and Methodology

Successful implementation will require the Supplier to work collaboratively with FCDO, establish delivery arrangements that facilitate effective cooperation with the private sector and allow for effective provision of support to smallholder farmers via grant management.

4.1 Activities of Components 1 and 2

Component 1 continues the work of IFSLU1, drawing on the strong evidence base it generated (primarily through [Partnerships for Forests](#)). This Component involves TAF interventions oriented towards catalysing forest-positive enterprises in forestry and timber supply chains, non-timber forest products (NTFPs), and agricultural supply chains linked to deforestation and/or restoration in the target countries and regions (Section 3.2); and promoting demand for sustainably produced agricultural and forest commodities and services.

The Supplier will process FCDO funding, manage, monitor and report on the following core TAF activities:

- i. business incubation;
- ii. enabling conditions;
- iii. demand-side measures; and
- iv. associated learning, adaptive management and knowledge sharing.

Component 2 focuses on enhanced support for smallholder farmers. Under Component 2, the FCDO will provide grant funding and form strategic partnerships aimed at developing and implementing approaches to working efficiently with smallholder farmers at scale, to build livelihood resilience and poverty reduction, and engage this key group in efforts to halt and reverse deforestation. This component is informed by evidence generated through IFSLU1 engagement in the cocoa, palm oil, coffee, rubber, and beef supply chains, as well as evidence from FCDO's wider portfolio of work in the agricultural sector.

The Supplier will carry out three core activities:

- i. management of existing grants;
- ii. building and managing a portfolio of additional grants; and
- iii. working with FCDO to scope and design potential future work under Component 2.

Component 1 and 2:

In line with the expected Outcomes and Impact (Section 3.1) the activities of these two Components will aim to:

- catalyse private finance for sustainable forest and land use activities that deliver substantial development and environmental benefits;
- process FCDO funding and provide technical assistance to develop public-private partnerships and sustainable business and investment in forest landscapes in tropical countries;
- improve enabling conditions for private investment in sustainable agriculture and forestry and smallholder-inclusive business models;
- implement demand-side policies to strengthen markets for sustainably produced timber and agricultural commodities; and
- provide support to smallholder farmers at scale to improve livelihoods and resilience, reduce poverty and support their inclusion in a just rural transition, in locations that are often remote.

4.2 Inception Phase

Following the award of the Contract to the Supplier there will be a six-month Inception Phase to mobilise the delivery team and become operational. The Inception Phase will include scoping, researching, developing stakeholder relationships, establishing regional and/or country offices, agreement of a delivery plan (disaggregated by region) and Results Framework, taking over management of Component 2 grants from FCDO, developing policies and systems (e.g. risk management, safeguarding, GESI) in line with FCDO requirements, and knowledge sharing from the FCDO which will enable the Supplier to deliver the Contract.

An up to three-month extension to the Inception Phase may be approved by the SRO if requested by the Supplier; and agreed before the end of the fifth month of the Contract. If applicable, the Supplier will provide an up to 10-page report to the SRO on the Inception Phase's progress and appropriate justification for an extension at least 15 Working Days before the end of the fifth month of Inception. Should the extension be granted, the Parties will review and agree the changes to Inception Milestones (see Section 7.4.1.1).

4.2.1 Inception Activities

The Supplier will update for FCDO's consideration the Inception Phase part of the Workplan with further details of the acceptance criteria, timelines and responsibilities. Once approved by FCDO, the Workplan will be used to ensure that the Inception Outputs (see next Section) are submitted as agreed, with adequate time for FCDO to review them and provide feedback, leaving the Supplier sufficient time to refine Outputs as required, and ensure SRO sign-off on all Outputs before the end of the Inception Phase.

During the Inception Phase the Supplier will be expected to have regular meetings with FCDO and receive documentation to handover the management of Component 2 grant agreements (see Section 4.3.3.1) to be ready to take on full management of the grants by the end of month 5, at the latest. FCDO anticipate this will include:

- introductory meetings with the FCDO delivery team to review all live agreements. Introductory meetings with relevant FCDO teams at Post;
- defining a plan for the grant handover process in month 1;
- to take over grant management strategies, information and data (e.g. Grant Agreement documentation, reporting, output/deliverables, risk, etc).
- the Supplier will receive documentation related to the monitoring and reporting of the agreements from FCDO; please note this task will require the file transfer of relevant documents from FCDO in a manner that maintains all material in a secure, robust and transparent system;
- developing a monitoring and reporting approach under this Contract; and

- to take over any existing communication and engagement with grantees for day-to-day management and reporting.

This list is not designed to be exhaustive and additional documents and processes may be handed over.

The Supplier will establish relationships with suppliers to the other Components of IFSLU2 (where appointed), and have ongoing conversations with them during the process of strategy development, to ensure synergies and complementarity are designed in. This should include mechanisms for checking in and sharing information with other parts of the programme.

4.2.2 Inception Outputs

As soon as possible during the Inception Phase, but no later than by the end of month 5, the Supplier must create and agree the following Outputs with the FCDO (please note that the Outputs 1 and 2, in particular will be based on the Supplier's tender submission and will be formalised):

1. Analysis of stakeholders, barriers and opportunities for the Contract in different geographies and sectors, to inform discussion and agreement with FCDO on the scope and strategy in each of the five focal regions. This will include political economy and conflict analysis to inform the strategy; and the potential for synergy with Component 3 (operating in Central Africa).
2. A Strategy disaggregated by region providing a list of proposed target sectors and/or value chains, potential partners, and an indicative list of potential projects for support via the TAF.
3. A Delivery Plan outlining the indicative budget and activities for each year of Components 1 and 2 (Costed Workplan (see Section 7.1.1), process for approving annual costed Workplans; risk appetite, risk register (see Section 8.1), delivery chain mapping (see Section 8.3) and governance plan.
4. Full recruitment of the Supplier's Key Staff (within 2 months of Inception), and recruitment of other Programme Management Unit (PMU) staff with appropriate expertise and experience across Contract management and delivery, technical areas related to IFSLU2 Components 1 and 2 monitoring and reporting, etc.
5. Set up of regional offices including recruitment of staff in each of the five focal regions.
6. Ways of working including frequency and types of meetings between FCDO and the Supplier.
7. A performance management dashboard to track performance against contractual performance mechanisms on a quarterly and to-date basis (see Section 7.2.1).
8. A budget template for tracking costs of the TAF, each grant under Component 2 and the overall Contract.
9. An initial process for soliciting and identifying projects to be supported through the TAF (see Section 4.3.2). FCDO will provide feedback within 1 month of submission.
10. A robust aid diversion prevention strategy, which includes a set of fraud prevention and error risk management controls that reduce any fiduciary risk or risk of potential misuse of ODA or public funds more generally, both within the Supplier's management of the funds under this Contract and within funds distributed to Implementing Partners (IPs) and grantees, as well as escalation and reporting processes for fraud.
11. Plans for monitoring, reporting and grant management of the existing three grants set up by FCDO under Component 2.
12. A protocol setting out a clear and appropriate approach to awarding and managing onward grants/contracts to support the delivery of activities under this Contract.
13. A robust set of controls and measures for the prevention of sexual exploitation, abuse, and harassment (SEAH), which can apply to the Supplier, IPs and grantees, as well as escalation and reporting processes for safeguarding concerns.

14. A downstream partner due diligence process to be followed by the Supplier prior to signing any agreements with, and transferring funds to, downstream partners.
15. Guidance and training for IPs and grantees. A handbook or similar document(s) will be developed that summarises the policies and processes of the Contract for IPs/grantees managing projects. Training materials may be required for some aspects, e.g. around how to meet the Contract's requirements (e.g. having adequate policies on fraud, anti-corruption and bribery, modern slavery, safeguarding, SEAH, GESI) as assessed during due diligence.
16. A Gender Equality and Social Inclusion (GESI) strategy including ideas for how to build capacity of IPs and grantees to mainstream GESI, how to encourage sharing of GESI experiences and expertise across the portfolio including demonstrating the meaningful participation and involvement of those individuals (including Organisations of Persons with Disabilities, Women's Rights Organisations, Indigenous Peoples' Organisations), and how to explore synergies between activities to maximise benefits for marginalised groups. This should also include an approach to tracking the implementation of the strategy through collection of data disaggregated by gender, age and disability. Data on Indigenous Peoples and Local Communities (IPLCs) should also be collected, using an approach that takes into consideration different definitions of IPLC in different geographical contexts.
17. An emissions reduction strategy – a substantive consideration of how emissions as a direct result of Supplier and IP activities can be minimised with a practical and proportionate plan of action identified, with annual reporting on progress.
18. A Results Framework and Monitoring, Evaluation and Learning (MEL) strategy – The Supplier is expected to develop a Results Framework (based on the IFSLU2 programme logframe in the published Business Case), monitoring and delivery plan outlining the quarterly and annual reporting cycle, and associated activities and Outputs. See Sections 4.6 and 7 for more detail on the requirements. The Results Framework and MEL strategy can be updated throughout the Contract.
19. A refined set of Supplier Key Performance Indicators (Supplier KPIs) – used to determine Payment by Results (PbR). See Sections 7.3 and 7.4 for PbR and [Annex E](#) for an indicative set of Supplier KPIs.
20. A benefits tracker – The Supplier must record benefits that have been realised over the course of the Contract in terms of Value for Money (VfM) and the 5Es (see Section 5.4). This should include, but is not limited to:
 - a. improvements to ways of managing funds and activities that result in cost savings and efficiencies in terms of Supplier Costs; and
 - b. information on how the Supplier is targeting and supporting SMEs and locally-owned organisations to access IFSLU2 funding.
21. A communications and engagement strategy. This should establish ways of working with FCDO, including British Embassy (BE)/British High Commission (BHC) communications teams for country-level communications, and formalised in a strategy. The Supplier should propose (for agreement by FCDO):
 - a. roles and responsibilities, including sign-off processes, for all communications materials (please note [FCDO guidance](#) on external communications materials);
 - b. frequency and nature of reporting on communications statistics and achievements, and frequency with which key communications products will be updated (i.e. website, core lines, communications strategies, Workplans); and
 - c. the process for working with FCDO on developing the global and country-level communications strategies and delivery plans.
22. An exit management plan (Exit Plan) – developing an Exit Plan as per the terms and conditions of this Contract. In addition, the Exit Plan should include approaches to dealing with staff resourcing to ensure there are adequate staff to deliver the programme in the final months of the Contract period. The Exit Plan will aim to ensure

activities proactively embed consideration and prioritisation of achieving impact and sustainable exits from delivery to support expectation management with Beneficiaries.

23. An Inception Report collating and synthesising the Outputs of the Inception Phase to inform the FCDO's decision to move into Implementation.

All Outputs must be finalised before the end of the Inception Phase. The FCDO will require a progress update, including drafts if available, by the end of month 3. At month 3 of Inception, the Supplier will be required to provide Inception Outputs 1, 4 and an outline structure of 23 (Inception Report).

4.3 Implementation Phase

4.3.1 Programme Management Unit

The Supplier will establish a Programme Management Unit (PMU) or equivalent structure to support the delivery of both Components 1 and 2, deploying the necessary capability to ensure VfM. The PMU will be responsible for Contract strategy and management, including but not limited to:

- leadership and strategic direction;
- overall coordination with FCDO and compliance with all FCDO programme management requirements, including but not limited to: meeting International Aid Transparency Initiative (IATI) requirements; participation with FCDO internal audits; participation with Independent Commission on Aid Impact (ICAI);
- leading internal corporate functions and resourcing;
- robust financial management and activity reporting, including regular analysis of projected spend against programme budget and forecast and implementing strategies for course correction as needed to meet expected spend targets and ensure accurate financial data are reported to FCDO;
- effective risk management, tracking risk trends and ensuring robust mitigations are in place;
- monitoring, evaluation and learning (MEL); working closely with the independent MEL supplier once procured (IFSLU2 Component 5); collecting, aggregating, synthesising and reporting key project data as requested;
- communications, including developing and implementing a clear strategy for identifying and disseminating knowledge and data across relevant IFSLU2 partners and external stakeholders;
- GESI; understanding and adapting to issues related to gender equality and social, economic and political marginalisation and strategies to strengthen inclusion; and
- management of smallholder grants portfolio (see Section 4.3.3).

4.3.2 Component 1

4.3.2.1 Technical Assistance Facility (TAF)

Working closely with FCDO, the Supplier will establish and manage a TAF to implement IFSLU2 Component 1. Activities which the TAF will implement comprise:

- establish and manage facilitation and Technical Assistance (TA) in the five target regions within the Geographical Scope of the Contract;
- provide TA and issue and manage grants (including reimbursable grants to for-profit organisations) to incubate businesses and business models in line with IFSLU2 programme objectives;
- support and catalyse demand-side measures in the UK and other large and/or growing consumer markets;

- support improved enabling conditions for sustainable private investment in producer countries;
- provide grants and TA to support scalable public-private partnerships that tackle deforestation and support sustainable forest management, conservation and restoration;
- incubate and develop a pipeline of potential public-private partnerships for future investment and scale-up through other channels (e.g. climate funds, development capital, impact funds, blended finance, commercial investment); and
- other complementary activities that support delivery of the Contract's objectives as agreed with the FCDO.

4.3.2.1.1 Business Incubation

The Supplier will use the TAF to provide grant funding and TA to take innovative, sustainable, scalable and/or replicable businesses and/or business models from early stages of development to financial sustainability and commercially financed scale-up. This objective will be achieved by the Supplier through:

- i. partnering with and supporting scalable and potentially transformational businesses which are committed to sustainable land use and/or investment practices;
- ii. providing support to develop new and inclusive business models based on sustainable land use and the protection and restoration of forests, to enable them to attract private investment or increase revenues; and
- iii. providing support to public-private partnerships to develop a pipeline of future public-private investment opportunities.

4.3.2.1.2 Enabling Conditions

The Supplier will use the TAF to strengthen the enabling conditions and incentives for investment, scaling and replication. This includes policy and regulatory reform at the landscape, national, regional and global levels to create conducive conditions for sustainable business and influence the practices of policymakers, commodity buyers and investors. This objective will be achieved by the Supplier through:

- i. consulting stakeholders to determine what elements of the governance and market systems currently present a barrier or an opportunity to the types of sustainable forest and land use practices and investments being targeted by the business incubator;
- ii. partnering with the business, non-profit, academic and governmental sectors to determine, co-develop and implement high-impact changes to enabling conditions (existing market and governance structures and systems); and
- iii. using a range of mechanisms including: pre-competitive collaboration, multistakeholder dialogues, TA, partnerships, support for reforms to policies, regulations and standards, and strengthening capacity.

4.3.2.1.3 Demand-side Measures

The Supplier will use the TAF to catalyse changes in policy and market standards to shift incentives in favour of sustainable practices. This objective will be achieved by the Supplier through:

- i. partnering with market actors and policymakers to determine and implement high-impact, catalytic measures to shape the market forces which drive private sector behaviour and shift incentives towards sustainable practice, both in specific markets and globally;
- ii. creating demand-side market pull for sustainable commodities in the UK and other major consumer markets; and

- iii. using its evidence base, track-record and partnerships to increase engagement with large and/or growing markets such as India, China, Indonesia and Brazil.

4.3.2.2 Learning, knowledge sharing and adaptive management of the portfolio

The Supplier will use monitoring data and analysis to learn lessons, adapt the running of the TAF, and share knowledge with stakeholders to promote replication, scaling and transformational change in line with Section 4.6. The Supplier will deliver the activities set out in the GESI strategy. The Supplier will ensure information sharing and coordination with Component 2, to seek synergies between the TAF's interventions and the grants to scale support to smallholders (Component 2). The Supplier will also contribute to the MEL work led by the independent evaluation supplier (Component 5) once procured (see Section 4.6.4).

4.3.2.3 Approval of projects under Component 1

The provision of grant funding and/or TA to partners under Component 1 will be based on a set of selection criteria to be developed by the Supplier and agreed by the FCDO SRO, including additionality and potential for impact. The Supplier will need to conduct due diligence on potential partner businesses to ensure compliance with FCDO requirements and guidance, available [here](#). The SRO will have final approval for all projects supported by the TAF and overseen and/or delivered 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 1's delivery based on the ongoing monitoring of the efficiency and effectiveness of the process. The SRO will agree any delegated approval thresholds to be followed by the Supplier and any updated Component 1 governance requirements that result.

Should delegated approval thresholds be agreed, FCDO will retain the right to remove these and revert to approving all projects through Component 1.

4.3.3 Component 2

There will be three parts to the Supplier's role in Component 2:

- i. to take on management of three existing FCDO grants;
- ii. to work collaboratively with FCDO to further develop the portfolio of grants; and
- iii. to support FCDO to scope potential future smallholder support.

4.3.3.1 Smallholder Portfolio management

FCDO arranged three grants with non-profit organisations in late 2023 (see Table 2). The Supplier will be required to take on oversight, as well as direct monitoring, management (including the disbursement of grant payments) and reporting of these grants, working alongside the FCDO who will continue to provide technical and strategic inputs, and represent the UK as donor in project-relevant governance structures. These grants have a total value of approximately £28.3 million and cover the period 2023-2028. Further details on the projects are provided in [Annex D](#).

Table 2. Accountable Grants agreed by FCDO in late 2023

Grantee	Project title	Value and disbursement arrangements	Main countries
IDH Sustainable Trade Initiative (IDH)	National Initiatives for Sustainable & Climate-smart Oil-Palm Smallholders (NI-SCOPS) Phase II (IDH elements)	£8.04 million over 2024-2028, paid quarterly in arrears	Colombia, Europe, India, Indonesia, Malaysia, Nigeria
Solidaridad Netherlands (Solidaridad)	National Initiatives for Sustainable & Climate-smart Oil-Palm Smallholders (NI-SCOPS) Phase II (Solidaridad elements)	£10.01 million over 2024-2028, paid quarterly in advance based on evidence of need	Colombia, Ghana, India, Indonesia, Malaysia, Nigeria,

ISEAL Alliance (ISEAL)	Tackling Deforestation through Smallholder Livelihood Improvements and Sustainable Land Use	£10.23 million over 2024-2028, paid quarterly in advance based on evidence of need	Global
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Smallholder Portfolio management will involve, but not be limited to:

- i. collaboration with the FCDO to ensure coordination on Component 2 objectives;
- ii. linking Component 2 grant-funded activities to the business incubation, enabling conditions, demand-side measures and public-private partnerships in Component 1, where feasible, to strengthen opportunities for scaling and replication of effective approaches to maximise the number of smallholders benefitting from sustainable business models and public-private partnerships;
- iii. handover of management activities of existing grants by FCDO, this will include but will not be limited to financial monitoring, responsibility for managing fund disbursement to the end recipients, ensuring the follow up of fund disbursement and the return or reallocation of unspent funds (subject to SRO approvals);
- iv. monitoring and managing delivery of grant-funded activities against pre-agreed objectives for the life of the grants, this may involve setting up appropriate measures including withholding future grant disbursements until previous deliverables have been achieved;
- v. reporting financials in accordance with FCDO grant requirements for the life of the grants;
- vi. providing FCDO with regular monitoring reports, including the risk register;
- vii. advising and supporting grantees to take adaptive and remedial actions as required to ensure projects deliver on time and budget as per the grant agreements established by FCDO, while complying with standards, e.g. on safeguarding; and
- viii. escalating risks to FCDO according to pre-agreed risk tolerances and FCDO standards.

These activities will be delivered by the PMU itself or by a designated team within PMU.

4.3.3.2 Smallholder Portfolio development

In addition to the three existing grants, the Supplier will work with the FCDO on a strategy to identify additional partners and approaches that would be eligible for grant support. The Supplier will be required to review, agree, sign and manage a small number of additional grants. The SRO will have final approval for all projects supported under Component 2's Smallholder Portfolio and managed by the Supplier.

The portfolio development process will involve, but is not limited to:

- i. developing selection criteria in collaboration with FCDO, including at minimum consideration of potential activities to reach smallholders at scale; achieve impact in line with IFSLU2 ToC (see Figure 2 in [Annex C](#)); and ability to deliver VfM;
- ii. ensuring new grants do not duplicate the three existing Component 2 grants in terms of sector focus;
- iii. conducting due diligence on potential grantees to ensure compliance with FCDO requirements and guidance, for more information see [here](#);
- iv. taking on overall administrative responsibility of the additional grants, including financial and risk management and establishing grant arrangements as needed to meet the Supplier's financial, risk and reporting processes, and driving VfM;
- v. having strategic oversight of the activities and providing technical inputs and expertise;
- vi. ensuring alignment and avoiding duplication where the Component 2 grant operates in the same country or sector as Component 1 activities to maximise lesson learning across partners and maximise value-add across Component 1 and 2 activities; and

- vii. being responsible for performance and results management of these grantees.

As set out above, the Supplier will have different responsibilities for existing and new grants, illustrated below.

Responsibilities of the Supplier and FCDO under Component

Table 2. Grants Cycle Roles and Responsibilities

Grantee	Identifies	Approves	Signs	Manages	Advises grantee	Oversees
IDH	FCDO	FCDO	FCDO	FCDO > Supplier	FCDO & Supplier	FCDO
<u>Solidaridad</u>	FCDO	FCDO	FCDO	FCDO > Supplier	FCDO & Supplier	FCDO
ISEAL Alliance	FCDO	FCDO	FCDO	FCDO > Supplier	FCDO & Supplier	FCDO
Grantee 4	Supplier	FCDO	Supplier	Supplier	Supplier	FCDO
Grantee 5	Supplier	FCDO	Supplier	Supplier	Supplier	FCDO
Grantee 6	Supplier	FCDO	Supplier	Supplier	Supplier	FCDO
Grantee 7	Supplier	FCDO	Supplier	Supplier	Supplier	FCDO

4.3.3.3 Scoping of potential future smallholder support (2028-33)

In parallel, the FCDO will collaborate with the Supplier on the scoping and design of possible Component 2 activities for 2028-33. Please note that this element of the requirement is not dependent on the Contract Extension or its likelihood. However, the implementation of these activities would be at the FCDO's discretion, subject to FCDO approvals and may require Contract Extension. The format of this scoping and design will be developed with the Supplier during the Inception and Implementation of the Contract but should, at minimum, include synthesising and providing learning and evidence generated from work during the Contract to inform how to scale support to smallholders effectively. Figure 1 sets out the envisaged structure for the relationship and responsibilities between FCDO and the Supplier.

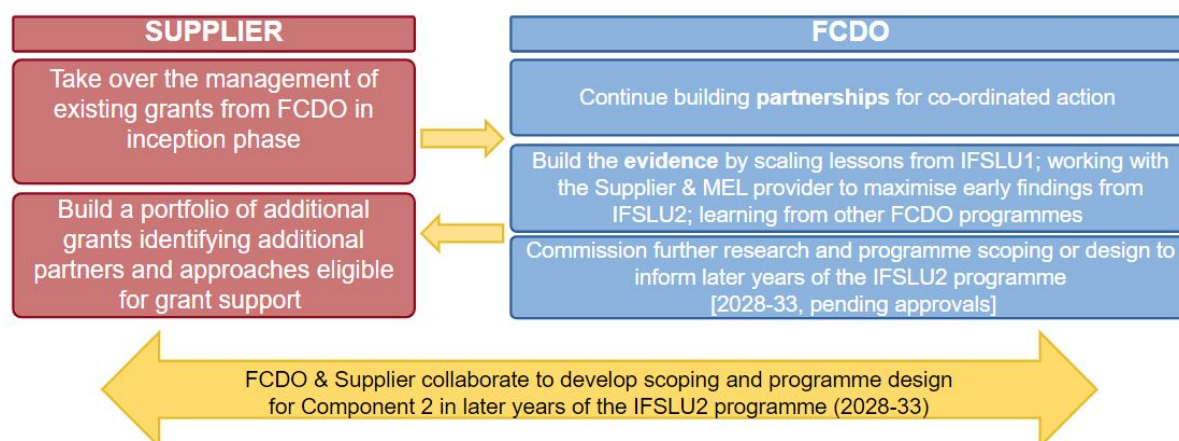


Figure 1. Responsibilities of the Supplier and FCDO under Component 2

4.4 Exit Phase

The final three months of the Implementation Phase will be an Exit Phase.

The Supplier will produce a more detailed update of Exit Plan 18 months before the end of the Contract to be approved by the IFSLU2 SRO. The Supplier will submit a final Exit Plan for approval by the IFSLU2 SRO before entering the final nine months of the Contract, unless FCDO has given notice of its intention to extend the Contract, at which point this will be a requirement for 12 months before the end of the Extension Period. The final Exit Plan shall also detail the 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 lesson learning brief for the

programme (including on managing a complex programme), as well as other details required by FCDO.

The exact detail of the final Exit Plan will be agreed between the Parties during Implementation and may depend on the future of the IFSLU 2 Programme, i.e. whether it will be followed by Investments in Forests and Sustainable Land Use Phase 3 – IFSLU3. For example, if the IFSLU2 programme and / or this Contract is ending at this point (whether extended or not), all projects must be closed, ideally three months before the Contract ends, and the Supplier completes all other closedown and handover tasks required. Should the Contract be followed by new contracts or agreements, the Supplier will hand over all relevant documentation and activities to the FCDO and/or another delivery partner or partners in the final month of the Contract.

4.5 Management and governance

IFSLU2 aims to be a responsive programme, with the ability to grow and strive for VfM. As such, it is important that for Component 1 and Component 2 the Supplier takes a strategic and adaptive management approach, with clear roles and responsibilities, and works collaboratively with the FCDO as well as with the delivery partners for the other IFSLU2 Components.

In conjunction with FCDO, the Supplier will have the remit to deliver Outputs in the manner that they regard as optimal as well as the responsibility for establishing the internal capacities and processes through which to undertake an adaptive approach to delivery, informed by learning.

4.5.1 Roles and Responsibilities

The Supplier will have a responsibility for driving implementation to achieve the Contract (and hence the wider IFSLU2 programme) Outcomes through sets of activities and Outputs that meet identified needs as well as align with the overarching ToC and logframe (see [Annex C](#)).

The Supplier must have access to the necessary skills and experience to meet the requirements set out in the ToR. Whatever the Supplier's approach to staffing the programme, it is crucial that the necessary level of accountability is built in to provide adequate assurance for the FCDO. This includes, but is not limited to, clear reporting lines within the teams, and responsibilities for each role, as well as governance arrangements to enable smooth delivery of the Contract.

4.5.2 FCDO Management Team

The FCDO Management Team (including SRO, PRO, programme manager and advisers) will provide management and oversight functions. The Team will be responsible for routine management tasks such as monthly review of financial forecasts, monitoring of results, writing annual reviews, ensuring compliance with FCDO's programme management rules, liaising with country offices, and working with suppliers to deliver the programme. The Team will also work to ensure complementarity across programme Components, where necessary, and seek to make links between the wider IFSLU2 programme and other relevant HMG programming and policy work.

4.5.3 Governance Arrangements

Governance arrangements for Component 1 need to facilitate effective engagement with the private sector and align with private sector norms and practices, as well as with government stakeholders responsible for policymaking. Resource allocation decisions by the Supplier will need to be made based on business viability and potential long-term, risk-adjusted financial returns (of the Beneficiary), yet they will also need to account for climate, nature and development policy priorities, differing and diverse stakeholder needs, transformational potential, and changing market circumstances.

Consequently, governance arrangements under the Contract will be established during the Inception Phase to draw together FCDO policy expertise with the development and private sector engagement expertise of the Supplier for quick and efficient decision-making, while

providing sufficient oversight, risk management and additionality in the use of public funds. Governance will include inputs from FCDO's embassy network, on a flexible and context-specific basis, to ensure alignment with UK diplomatic and development objectives in the focal countries.

Delivery arrangements need to be flexible and responsive to be able to create, identify and seize opportunities and work effectively in partnership with a range of private sector entities, and support flexible and adaptive management. Hence, governance arrangements established during Inception will be designed to balance FCDO oversight with the space for decentralised decision-making by the Supplier to respond to policy and market opportunities where they arise.

Furthermore, Component 2 will require an approach to design, delivery, management and monitoring which is explicitly adaptive. This is because of the weaker evidence base for how best to support smallholder farmers at the required scale. The Supplier will therefore be required to support Component 2 grantees to manage their grants flexibly to maximise VfM, while ensuring FCDO oversight of decisions involving deviations from agreed scope and objectives.

4.6 Monitoring, Evaluation and Learning

Monitoring, Evaluation and Learning (MEL) is core to the success of the IFSLU2 umbrella programme and its components; the programme is adaptive, and the outcomes from MEL will inform programme decision-making to maximise the impact of IFSLU2's investments.

4.6.1 MEL Strategy

The Supplier will develop a MEL Strategy during the Inception Phase that aligns with the IFSLU2 ToC, logframe and the Supplier's Results Framework. The MEL Strategy will guide the Supplier to achieve the following objectives:

- i. provide robust evidence of IFSLU2's results for FCDO's reporting processes, including:
 - Leading on the monitoring of results for Component 1; and
 - Providing oversight of Component 2 monitoring (by grantees);
- ii. drive adaptive programme management and VfM by learning and adapting based on evidence; and
- iii. communicate findings and lessons learned to FCDO and other IFSLU2 delivery partners and stakeholders (see [Annex C](#)) to support transformational change, including:
 - supporting the dissemination of lessons and data from Component 2 grants with Component 1 and vice versa; and
 - leading aspects of learning within Component 2 to support portfolio building and scoping of potential future smallholder support (2028-2033) see Section 4.3.3.3.

Note that all data gathering and monitoring carried out under this Contract must adhere to the FCDO's Ethical Guidance for Research, Evaluation and Monitoring Activities², and may be subject to additional approvals before a research activity begins. Risks associated with MEL activities are expected to be incorporated into a risk register, with appropriate mitigations put in place by the Supplier.

4.6.2 Results Framework

The Supplier will develop a detailed Results Framework specific to Component 1 and aligned with the overarching programme logframe. This Results Framework will include Outputs, Outcomes and Impact level statements along with annual results targets and milestones for

² Available at: [FCDO Ethical Guidance for Research, Evaluation and Monitoring Activities - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/674442/FCDO_Ethical_Guidance_for_Research_Evaluation_and_Monitoring_Activities.pdf)

each level. These should provide a full overview of Component 1's activities, results and performance.

The Supplier will undertake regular monitoring and evaluations of activities delivered under Component 1 to ensure results are accurately monitored, captured and reported. These will be shared with FCDO in Quarterly and Annual Reports. The IFSLU2 SRO will approve any proposed changes to the Supplier's Component 1 Results Framework.

Once the Supplier has taken over grant management of the grants under Component 2, the Supplier will be responsible for ongoing monitoring of results as set out in the Accountable Grants signed by FCDO and the associated project proposals. As with Component 1, the Supplier will develop a Component 2 Results Framework that is aligned with and appropriately nested under the overarching IFSLU2 logframe, the latter to be developed by FCDO with the Component 5 Independent MEL supplier.

The Supplier will report ICF spend and results using FCDO's methodologies available at [UK International Climate Finance Results: methodologies and reports - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/collections/international-climate-finance-results-methodologies-and-reports). Further information on ICF KPIs is included in [Annex C](#).

4.6.3 Lessons Learning

The Supplier will proactively identify, collate and share evidence and lessons generated through Component 1 and 2's delivery. This work may result in tasks for the Supplier, which can be included in Workplans.

The learning-related tasks delivered by the Supplier under this Contract will aim to:

- share learning on successes, challenges and maximising benefits;
- encourage lesson sharing and learning about how IFSLU2 is delivered across the Supplier team to make sure best practice is embedded (for example, a more efficient way of running a call for proposals, or an equally effective but less burdensome way of managing projects could be shared) and to support staff learning and development;
- encourage lesson sharing and learning from IFSLU2 between IPs, beneficiaries, and stakeholders to maximise Outcomes and Impacts (for example, sharing successful approaches on the bioeconomy between partners/stakeholders working in different countries, approaches to integrating GESI into activities, or common challenges facing business models that have not worked). Working groups or similar mechanisms may be proposed;
- encourage lesson sharing and learning across IFSLU2 components to ensure that effective models and pilots are scaled, opportunities responded to quickly, and that risks are managed effectively; and
- particularly consider looking at sectoral and GESI issues across the portfolio.

The Supplier will share lessons via the Quarterly and Annual Reports to FCDO.

4.6.4 Collaboration with Independent MEL supplier (Component 5)

An Independent MEL supplier for the IFSLU2 programme as a whole (Components 1 to 4) will be procured through a separate procurement process (it is expected that the Independent MEL supplier will not be contracted until after this Contract for Components 1 and 2 is in place). The Independent MEL supplier will conduct evaluation, review monitoring processes, contribute to learning, and complete VfM assessments for the programme. FCDO will work with the Supplier to refine methodologies and reporting cycles, and to build a collaborative approach when the Component 5 Independent MEL supplier has been appointed.

Effective collaboration and coordination between IFSLU2 partners (i.e. suppliers of different Components) will allow FCDO to have a comprehensive and accurate overview of IFSLU2's activities and impact. The Supplier's effectiveness in collaborating with IFSLU2's Component 5 Independent MEL supplier will be measured through Suppliers KPIs (see [Annex E](#)).

This collaboration will include:

- i. nesting Component 1 and 2's Results Frameworks under the IFSLU2 logframe;

- ii. the Supplier engaging and supporting the Component 5 Independent MEL supplier to undertake any evaluations of Component 1 activities at the request of FCDO and include: providing applicable information, supporting Independent MEL supplier's engagement with stakeholders and other activities to be set out in any terms of reference for selected evaluations;
- iii. responding to the Independent MEL supplier's recommendations in consultation with FCDO;
- iv. The Supplier providing lessons identified through Component 1 and 2's delivery to the Independent MEL supplier when the latter requests and
- v. The Supplier's proactive participation in periodic sharing and coordination meetings, as agreed with FCDO.

4.6.5 Collaboration with Component 3 – Congo Basin

This Contract will have several synergies and connections to Component 3. Component 1 will provide incubation services to enable businesses to achieve commercial investment-readiness ('bankability'), whereas Component 3 will focus on pre-incubation and broader business environment support to create a more vibrant sustainable business ecosystem. Less mature businesses supported by Component 3 could go on to receive support from Component 1 as projects become more mature. FCDO will support the close interaction between this Contract and the Component 3 supplier during Inception and Implementation Phases.

5 Design of the Contract

5.1 Timeframe and Decision Points

The Contract will start in approximately Autumn 2024 and will run for up to 60 months. The Contract's timeline will include the following phases:

- Inception Phase – months 1-6 (see Section 4.2.2 for a detailed breakdown);
- Implementation Phase (see Section 4.3) month 7 onwards, with the Exit Phase during the last 3 months of the Contract / extended Contract;
- Extension Decision Point on whether the Contract should be extended or not (Contract ends: Extension Decision Point on whether the Contract should be extended or not (see Section 5.3.4) one year before the Contract ends.

FCDO will conduct specific reviews ('the Reviews') at the following points:

- Inception Review - at the end of the Inception Phase;
- Mid-Term Review -at the mid-term / 30 months into the Contract;
- Extension Decision Review - 12 months prior to the end of Contract;
- prior to entering into Contract Extension, if applicable, and
- Extension Mid-Term Review - at the mid-point of the Extension Period, if applicable.

These Reviews will act as decision points to determine if any adjustments to the scale, non-material changes in the scope and / or direction of the programme are required (see Section 5.3). In addition, there will be Annual Review to assess Contract delivery and Supplier performance (see Section 7).

Should a decision not to continue with the Contract be taken at any of the Review Points or any other time during the Contract duration, the standard provisions of the Contract (including Default and Termination clauses in Section 2 of FCDO's Standard Terms and Conditions).

5.2 Budget and Length of the Contract

The maximum Contract value is £134 million*, with an option to increase its total value up to *£473 million (see breakdown in Table 3). The Contract value is exclusive of UK VAT but inclusive of all applicable local taxes.

The Contract length and value increase options are as follows:

- up to 60 months and value of up to *£134 million - minus the amount already spent at Contract award point on the 3 FCDO grants under the Component 2, the management of which will be transferred to this Contract (see Section 5.2.1).
- Extension Option: up to an additional 60 months and a value of up to a maximum of *£239 million.
- Scale up Option (value extension only): up to £100 million over the life of the Contract (including the Extension Period) (see Section 5.3.2).

Table 4: Allocation of funds to Components 1 and 2, in £ million. All figures are 'up to' the amounts shown.

	Contract (without the Extension)	Optional Extension (only)	Total (including the Extension and Scale up)
Component 1	88.5	128	216.5
Component 2	*45.5	111	156.5
Optional Scale Up	TBC	TBC	100.0
Total	*134	*239	*473

*Please note, the Component 2 figure and therefore the total value of the Contract will be adjusted at the point of Contract award to reflect the budget already spent under the 3 Grants awarded and run by FCDO (see Section 5.2.1).

Contract Extension will be dependent on the approval of budget availability for a second tranche of the overall IFSLU2 programme and will be at FCDO's discretion. Any decision to extend will also be based on evidence, results, evaluation and Ministerial oversight of the programme and approval of any Contract Extension (see Section 5.3.4).

FCDO currently plans for all IFSLU2's budget to be ODA RDEL (resource) spend. FCDO and the Supplier will maximise the proportion of budget that is directed to activities under each Component that will benefit Beneficiaries, aim to minimise direct and indirect delivery costs, and focus on achieving sustainable results and VfM.

5.2.1 Costs of Component 1 and Component 2

The indicative budget allocation across the financial years (FY) broken down between the Component 1 and 2 for the length of the Contract (60 months) is shown in Table 5. FCDO reserve the right to revise the FY allocation, which may require the Supplier to propose changes to the annual budgets and the spend profiles across Components, which will be agreed between the Parties.

Table 5. Component 1 and 2 - estimated annual budgets, in £ million (to be confirmed ahead of each financial year)

	IFSLU2 Programme Component 1 and 2						
	Pre-Contract	Contract for IFSLU2 Component 1 and 2					
FY	23/24	24/25	25/26	26/27	27/28	28/29	Total
Component 1	0.0	7.2	20.0	22.0	25.0	14.3	*88.5
Component 2	*1.0	*5.8	9.0	13.5	13.3	2.9	*45.5

*Please note, Component 2 budget for:

- FY 23/24 was spent by FCDO prior to the start of the Contract;
- FY 24/25 includes amount spent prior to the award of the Contract, however the value of the remaining fund to be disbursed to the grantees under existing agreements will be included in the Contract value; and
- Total includes amount spent prior to the Contract award and must be adjusted accordingly.

The Contract value (without increase options) of up to *£134 million comprises of up to £88.5 million for Component 1 and up to *£45.5 million for Component 2.

The cost of PMU will come from Component 1 and 2 budget allocation in proportion to the work undertaken to support and manage their delivery. Please note that currently the funding for smallholder-focused grant initiatives is expected to end in 2028.

The Component 2 budget (up to £45.5 million) consists of:

- up to £28.3 million for the existing 3 grants under IFSLU2 programme's Component 2, this figure includes:
 - the budget already spent by FCDO prior to the Contract Commencement (FY23/24 and part of FY24/25); and
 - the fund value only for 3 grants that will be managed by the Supplier under the Contract following the transfer of the oversight and management activities during the Inception Phase (Section 4.2.1); this fund will be fully disbursed by the Supplier to the grantees; and
- up to £17.2 million to be allocated to:
 - fund value to be disbursed to the grantees of the additional grants to be awarded under the Component 2;
 - all activities related to the management and support of the existing grants – excluding the funds to be disbursed under these agreements;
 - sourcing, establishment, management and support of new grants awarded by the Supplier (in agreement with FCDO);
 - work related to scoping of potential future smallholder support (2028-33); and
 - proportion of any other PMU cost relating the Component 2.

The Contract value will be reduced to reflect the amount already spent under the existing grants prior to the Contract award and potentially further adjusted the end of Inception when the exact figures are confirmed.

Subject to utilising the full Extension option with the increased contract value by up to £239 million, FCDO anticipates the following allocation - up to £128 million for Component 1 and up to £111 million for Component 2.

Additional scale up budget of up to £100 million may be allocated to Components 1 and 2 throughout the life of the Contract, including the Extension period.

5.3 Flexibility within the Contract

IFSLU2 is intended to be a long-term, adaptative programme. The programme seeks to develop innovative solutions for sustainable production in complex landscapes and influence the behaviours and incentives in complex markets. FCDO anticipates there may be need to flex over the duration of the Contract in response to the dynamic context and changes in strategic priorities. The Contract structure has been developed to support this flexibility, including the Review process (see Section 5.1), which will be used to determine if any adjustments to the Contract will be required. The Contract (including any Extension Period) may be modified through:

- non-material changes in scope;
- scale up; or
- scale down.

The Contract Variation may result in the following:

- changing the budget allocations between Component 1 and Component 2, and / or changing the allocations between years;
- addition of new countries beyond the indicative list in Section 3.2 and / or removing them;
- changing the strategy and objectives of Component 1. for example, starting new work in sectors, stopping work in a sector, or adding / removing activities;
- ring-fencing a portion of Component 1 for specific sectors and / or specific countries or regions;
- making changes to the way activities are delivered, as part of maintaining good VfM;
- changing policies regarding programme delivery (for example: safeguarding, risk or due diligence approaches used); and
- changes which may result from the assessment of the external factors impacting the cost to the Supplier, for example inflation, to be agreed between the Parties (see Section 5).

The sub-sections below set out the circumstances of when non-material changes in scope, scale up and scale down will occur and be managed.

5.3.1 Change and Contract amended Process

In certain circumstances, FCDO may need to change the specifications of the agreed work delivered under this Contract, including any Extension Period.

Changes to the Contract could be required as a result of:

- the 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;
- political economy reasons, including a change in the security situation or government stability;
- the results of work completed by the Supplier during the Inception Phase (e.g. to agree policies for the programme), which may highlight changes that are required to follow best practice and / or VfM;
- learning gathered during programme delivery (e.g. more efficient project management processes being developed);
- change in FCDO policy, e.g. safeguarding policy or the FCDO Programme Operating Framework (PrOF);
- recommendations from FCDO annual reviews of the IFSLU2 programme; and
- performance of the Supplier (see Section 7.3).

This is a non-exhaustive list and FCDO cannot foresee all circumstances that would require a change to the Contract.

The decision whether to change the requirements of the Contract 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 Contract.

All changes to the Contract must be captured and agreed in writing between the Parties. The details of the Change Process will be agreed during the Inception Phase and may include

Change Register and Change Request Form for the Supplier. Major contractual changes will be executed through a formal Variation in line with Terms and Conditions of the Contract.

5.3.2 Scale Up

Within the life of the Contract (including the Extension Period), the Components 1 and 2 budgets may be increased by additional funding ('Scale up'). This optional Scale up is a value increase only and separate to the formal Contract Extension (length and increase in value - see Section 5.3.4).

Scale up by up to £100 million may be available, subject to Business Case amendment and Ministerial approvals and depend on demonstration of positive impact of the Contract and its successful delivery.

Scale up would be also possible if FCDO secured additional funding (e.g. through a contribution from country-level bilateral budgets or a contribution from another donor). In the event that additional funding comes from another HMG Department, it is expected that any additional funding would transfer to the Supplier through the FCDO as the Contracting Authority and programme manager. Should the external funding become available, FCDO may use the Crown Agents Bank (CAB) or any other mechanism(s) which will be communicated and agreed with the Supplier to manage donor funds. This may involve direct payment to the Supplier or downstream partners following approval of such a payment by FCDO. The costs of management of donors' funding through CAB or any other mechanism(s) will be met centrally by FCDO and will not be charged to the Supplier.

FCDO will arrange for that Funder to be integrated efficiently into the Contract governance structure.

The additional funding could be used for, but not necessarily limited to expanding existing projects and / or carrying out new projects under Component 1 and 2, including award of additional grants and may result in changes highlighted in the previous section.

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 may vary depending on the size of the uplift in budget and the nature of the change.

The details of Scale up and required changes will be agreed between the Parties and may require a formal Variation. 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 VfM is maintained and delivery of economies of scale.

5.3.3 Scale Down

Under certain circumstances the FCDO reserves the right to scale down the Contract at any point. This could be due to:

- decrease in the overall IFSLU2 programme budget resulting in reductions across the IFSLU2 Components, changes to or the stopping of activities, or the programme ending earlier than planned;
- change in FCDO or HMG priorities (e.g. a change in geographic or thematic focus that means the IFSLU2 programme is less of a priority, or a change in ICF strategy) or a reduction in funding available;
- political economy changes, including a change in the situation of the security, government stability, or necessary government engagement with IFSLU2 focal countries; or
- FCDO's dissatisfaction with performance of this Contract. 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 the IFSLU2 programme. In such scenario, there may be a budget reallocation to other IFSLU2 programme Components or new contract.

This is a non-exhaustive list and FCDO cannot foresee all circumstances that would require the scale down of this Contract.

The decision whether to scale down the Contract 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 Contract. The Supplier's revised costs proposal will be reviewed to ensure robust VfM is maintained and will require FCDO's approval. The details of Scale down and required changes will be agreed between the Parties and may require a formal Variation.

5.3.4 Optional Extension

The Contract can be extended by up to 60 additional months and its value increase by up to £239 million. The extension will build on the work outlined in this ToR.

The decision to extend will be made by the FCDO at its discretion and communicated to the Supplier one year before the end of the Contract and may depend on:

- whether the Contract, and wider IFSLU2 programme, continues to be in line with HMG priorities and its ICF strategy as well as having internal budget approvals to cover the additional time period set out in the Business Case;
- the Supplier is content to continue the Contract;
- the performance of the Contract has been satisfactory, as determined by KPIs and performance management (see Section 7.3);
- the Contract has achieved good results, based on any evaluations;
- the work required of the Supplier during the extension is within the scope of the work set out in this ToR and the Supplier's response to the tender;
- the Supplier being able to provide services during the Extension Period based on the same VfM proposition as the original Contract (e.g. day rates etc).

This is a non-exhaustive list and FCDO cannot foresee all circumstances that would require an extension of the Contract.

The extension may continue a subset of tasks rather than all. this may include tasks which only relate to Component 1. To assist in the determination of the requirements for the Component 2, FCDO will carry out scoping and design work to support the longer-term aim of increasing support available to smallholder farmers. This, combined with lessons from the Component 2 grants, will help to inform the allocation of grant funding under Component 2 in the Extension Period. As part of the design and scoping, FCDO will consider a range of different instruments. This will inform the FCDO's decision on how to implement Component 2 during the extension period.

Following the notification from FCDO regarding decision to extend the Contract, the Supplier will provide a proposal in a template agreed by FCDO, which will set out its plan to deliver these requirements over the Extension Period and along with a Costed Workplan and may require the completion of Commercial Cost Proforma. The Supplier's costs proposal will be reviewed to ensure robust VfM is maintained and will require FCDO's approval. The details of Extension including the length, value and the required changes will be agreed between the Parties through the formal Variation process.

5.4 Value for Money

A very strong Value for Money (VfM) focus will be applied throughout IFSLU2's delivery. The Supplier will be required to integrate this throughout the Contract and track performance against a suite of KPIs to allow the Supplier's delivery and the Contract's performance to be assessed regularly on a VfM basis.

The Supplier will report on VfM performance under Component 1 in Quarterly and Annual Reports, and in Annual Reports for Component 2. The Supplier will develop a set of VfM indicators and targets during the Inception Phase to support this.

IFSLU2 defines VfM in terms of the following 5Es:

- 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:** IFSLU2 produces the intended mix, quality, and quantity of deliverables, aligned with needs of beneficiaries, working adaptively and within the available resources.
- iii. **Effectiveness:** IFSLU2 activities demonstrate impact for beneficiaries in line with IFSLU2's aims and objectives.
- iv. **Cost-effectiveness:** IFSLU2 creates more value than it consumes and/or meets expectations commensurate with the resources invested in the programme.
- v. **Equity:** IFSLU2 contributes to reducing constraints, improving opportunities and influence in sustainable forest and land use matters for women, other marginalised groups, and future generations.

The Supplier 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 IFSLU2-level VfM evaluations undertaken by the Independent MEL supplier (Component 5).

6 Resourcing – Staffing, Skills and Expertise

6.1 Programme Management Unit (PMU)

The Supplier will ensure there is an experienced Programme Management Unit (PMU) to oversee the management, delivery, governance and reporting of IFSLU2 Components 1 and 2 in line with these ToRs (see Section 4.3). The Supplier will ensure the PMU has relevant expertise and experience across Component 1 and 2's aims, objectives, themes, and geographies.

At a minimum, the following roles are considered necessary to deliver this Contract and will form the Key Staff:

- **Programme Director** – will be the most senior member of staff responsible for delivery of the Contract. It is not expected that they spend all their time working on the Contract but they have accountability for its delivery. It is expected that the Programme Director will have high-level strategic and managerial oversight of Components 1 and 2, ensuring that the correct people, resources and processes are in place for efficient and effective delivery. The Programme Director will also hold overall responsibility for the relationship with FCDO. This role requires strong leadership and project management skills applied to relevant development programmes.
- **Team Leader** – the operational lead for the programme on a day-to-day basis. They will have responsibility for managing the team, quality and timeliness of deliverables, and delivering VfM. The Team Leader will manage their programme team and the broader programme on a day-to-day basis, ensuring that all workstreams and activities are contributing to a coherent, focused and effective strategy. The role requires relevant expertise in delivering development programmes, team building, leadership and management.
- **Monitoring, Learning and GESI Lead** – a person(s) who will lead on these cross-cutting issues to ensure that they are embedded throughout the Contract and that best practice is used. If the Monitoring and Learning lead does not have a GESI background, a separate GESI lead is expected to be part of the team. They will manage the relationship with the delivery partner for Component 5 (MEL). They will be FCDO's primary contact for all issues related to results and evaluation. The role(s) require relevant expertise in implementing monitoring and results frameworks of development programmes, developing a deep understanding of FCDO requirements, accurate and clear reporting of results, and identifying opportunities for programme innovation and evolution.

- **Grant Fund Manager** – a person in charge of managing the delivery of the portfolio of grants across both Component 1 and Component 2, ensuring robust due diligence and risk management oversight and appropriate support and guidance to grantees; and accurate and timely financial monitoring and reporting in line with agreements. The role requires relevant expertise in managing grants of differing sizes and geographies, providing grant support to both non-profit and private sector entities.
- **Communications and Stakeholder Engagement Lead** – a person in charge of communicating and sharing lessons with partners and external stakeholders, working closely with the MEL/GESI lead(s) to promote wider uptake and transformational change. They will be responsible for managing the networks, relationships and public-facing communications activities. They will need to ensure the Contract establishes and maintains effective working relationships with a wide range of programme stakeholders, including other development actors and programmes operating in each region, national governments, business organisations and associations, and civil society groups. They will ensure the Contract collaborates with FCDO embassy network communications staff on relevant events and communications. They will also need to ensure that learning, collaboration and communication are prioritised within the Contract, to ensure that learnings are disseminated effectively.

The Supplier will ensure that responsibilities for the following aspects of Components 1 and 2 are clearly mandated within either the roles outlined above or additional roles within the PMU:

- Programme Management
- Financial Management and Financial reporting of Components 1 and 2
- Collaboration with other components of IFSLU2.

The PMU must have appropriate expertise and experience across Component 1 and 2's themes and may appoint technical, thematic or sectoral leads to support coherent and strategic delivery. However, as Component 1 seeks to adapt delivery to suit the context of each region, this expertise will also be required in each region (see Section 6.2).

6.2 Expertise and Experience of Wider PMU Team

The Supplier may designate sub-team(s) within PMU to deliver distinctive requirements, e.g. grant management or to support the regional/country offices. Regardless of the PMU structure, the Supplier must ensure that PMU has the following capabilities to deliver across the regions:

- **Strategic leadership expertise** in, but not limited to, team leadership and strategic direction of projects and programmes; engagement with private sector at senior levels; networking to ensure delivery of organisational objectives;
- **Technical expertise** within the team in, but not limited to, the following areas:
 - i. development impact through nature and climate interventions;
 - ii. forest and agriculture value chains and markets from supply to demand side;
 - iii. natural resource management;
 - iv. resilience and adaptation to climate change for rural livelihoods;
 - v. poverty reduction in smallholder agricultural and forestry livelihoods;
 - vi. gender equality and social inclusion (GESI);
 - vii. private sector engagement and development;
 - viii. developing public-private partnerships for climate and/or development objectives;
 - ix. financial sector and services for development, climate and nature outcomes, including access to finance for smallholders;
 - x. innovative models for climate and supply chain finance including Payments for Ecosystem Services (PES) and carbon finance; and
 - xi. political economy and conflict analysis.
- **Operational expertise** in, but not limited to, the following areas: programme management, monitoring, evaluation and learning; grant management; risk management; budgetary and financial management; risk management, safeguarding and due diligence.

- **Geographic expertise and experience** in, but not limited to, the following areas: East Africa, West Africa, Central Africa, Southeast Asia and Latin America.

7 Planning, Reporting, Performance Management and Payment

7.1 Planning

7.1.1 Annual Workplan

Before the end of each February, the Supplier will agree with the SRO/PRO a Milestone-based Costed Annual Workplan for the upcoming financial year (April-March). If the start of the financial year (FY) occurs during the Inception Phase, then the Annual Workplan will cover the portion of the FY remaining after the Inception Phase. Each Annual Workplan will include:

- an outline of the activities to be undertaken in each country and/or region;
- a revised indicative budget;
- results targets for the year (captured in the Results Framework);
- an overview of wider activities to support the delivery of Component 1 (e.g. collaboration with other IFSLU2 components);
- proposed amendments to Component 1 and 2's delivery based on lessons identified; and
- other relevant information that will be applied to the next 12 months and onwards where relevant.

The Milestones will be Outputs (that contribute to programme Outcomes in the logframe) defined in the agreed Results Framework (see Section 4.6.2), which will include annual targets e.g. number of projects approved for incubation support; number of projects completing business plans; number of projects completing pilots; number of projects receiving commercial support as a result of incubation support. These Milestones will include, for example, the progression of businesses and business models through the incubation process towards commercial scale-up, as supported by the TAF.

7.2 Reports

7.2.1 Quarterly and Annual Reports

The Supplier will provide quarterly monitoring reports (the "Quarterly Reports") and an annual monitoring report (the "Annual Report") to FCDO. The reporting cycle is expected to follow the financial year (FY); the dates for the Quarterly Reports submission will be agreed between the Parties during the Inception Phase with the Annual Report replacing the final Quarterly Report (anticipated to be early May). The Annual Report will cover the previous financial year with clear updates for the final quarter of each reporting year. To ensure alignment with FCDO's bilateral work, the Supplier will include in the Annual Report or provide, on request by FCDO country offices, a descriptive overview (max 2 pages) of delivered and planned activities with up to two case studies for each country.

The templates for the Quarterly and Annual Reports will be developed by the Supplier during the Inception Phase and approved by FCDO. They should at least include an overview of Component 1 and 2's activities, results and performance, management performance, evaluation results and recommendations, accuracy of the previous forecast (versus actual expenditure), VfM, lessons and recommendations, risks, and planned activities for upcoming quarters and years.

The Supplier is required to ensure all the information provided is concise, clearly written and user friendly. 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

IFSLU2 programme (date to be confirmed). Data presented in the Reports should be disaggregated in line with the GESI framework.

All Reports will have to be review against the acceptance criteria and approved by FCDO, in order to ensure the required quality, the Supplier may be required to revise them where needed.

7.2.2 Management meetings

Management arrangements to ensure sufficient oversight and close cooperation between FCDO and the Supplier will be refined during Inception and Implementation, but are likely to include the following:

- a weekly Component 1 operational progress and technical meeting (no longer than one hour), between the Supplier's PMU, regional/country teams, and the FCDO Management 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; these meetings will be used to support day-to-day decision making and progressing live workstreams.
- a weekly senior management meeting (no longer than one hour) for overall programme management (Components 1 and 2), discussion of stakeholder engagement and external events, and key decisions (e.g. grant approvals, risk management and escalation). Each meeting should last no more than one hour.
- a quarterly Performance Review and Planning Meeting (no longer than two hours) following the submission of each Quarterly and Annual Report; 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; these meetings will occur between eight to ten Working Days after each Report is submitted to give FCDO time to review each Report. The meeting will be used to discuss the Report and associated Performance Dashboard (see Section 7.3.1) and allow FCDO to request further information and updates and for further discussions on any recommendations to adapt the programme's delivery.
- the Supplier will provide regular (quarterly or six-monthly) updates to relevant FCDO posts in each region, based on the capacity and demand from post. The frequency of each meeting and the composition of the Supplier and FCDO's representatives will be agreed between the Supplier's regional offices and the FCDO posts in each region; the Supplier will be responsible for establishing these update meetings, setting an agenda and recording and sharing minutes.
- Quarterly meeting of Component (1, 2, 3 and 5) leads, to ensure alignment in delivery.
- Six-monthly field visits and monitoring visits (Component 1).
- Annually accompanying Component 2 grantee monitoring visits (including in the field) to ensure learning across Components 1 and 2 is maximised.
- Annual team meetings, for training, delivery planning and strategy (Components 1 and 2).
- Annual meeting and learning event with partners (Component 1).

The reporting meetings above will form the basis for the following reports and activities, which are linked to the KPIs in the next section:

- Quarterly Report (Narrative and Financial);
- Quarterly Performance Dashboard;
- Annual Report (Narrative and Financial);
- Annual Costed Workplan;
- Annual Learning Event with partners; and
- Final Report.

7.3 Performance Management

The Supplier's performance will be monitored based on their ability to effectively deliver the Contract and achieve results and impact, as well as on the efficiency and effectiveness in managing the Contract in line with the requirements set out in this ToR. FCDO will monitor the Supplier on how they drive innovation and continuous improvement to deliver the Contract's activities and management.

The Supplier's performance will be monitored quarterly and annually by the FCDO and linked to payment (see Section 7.4.2). As well as this formal performance management process, the FCDO wants to foster an honest and positive working relationship with the Supplier, in which delivery challenges and issues are raised pro-actively when they occur so that adjustments can be made, and solutions found where possible. Please see Section 5 for details of the Review / Decision Points.

The FCDO will also undertake an annual performance review of the IFSLU2 programme as a whole, using evidence from the KPIs and results monitoring process.

7.3.1 Performance Dashboard

The Supplier will maintain a Performance Dashboard relating to the performance of the Contract, with data drawn from the corresponding Quarterly / Annual Report. The metrics included will be agreed during the Inception Phase, but are expected to include:

- whether Implementation Plans for each Component are on track, and activities are being delivered as planned, including evidence of this if required;
- whether delivery of KPIs is on track.
- a review of the risk register, financial information and any due diligence issues;
- tracking whether actions are being taken to reduce the direct environmental impact of the programme (see Section 8.5); and
- any issues that require discussion.

The quarterly Performance Review and Planning Meetings will be the forum for the review by the Supplier and FCDO of the Performance Dashboards. The Performance Review Meetings shall (unless otherwise agreed):

- take place within 8-10 Working Days of the Quarterly Report being issued by the Supplier;
- take place at such location (including virtual) and time (within normal UK business hours) as FCDO shall reasonably require unless otherwise agreed in advance;
- be attended by the Supplier's Contract Officer and the FCDO's Contract Manager; and
- be fully-minuted by the Supplier; the prepared minutes will be circulated within 10 Working Days by the Supplier to all attendees at the relevant meeting and also to the FCDO Contract Manager and any other recipients agreed at the relevant meeting; the minutes of the preceding quarter's Performance and Planning Review Meeting will be agreed and signed by both the Supplier and the FCDO PRO at each meeting.

7.3.2 Supplier's Key Performance Indicators

Supplier's Key Performance Indicators (KPIs) and Results Framework will be agreed with the Supplier during the Inception Phase. These will be based on the programme logframe and indicative Supplier KPIs listed in [Annex E](#). FCDO will provide oversight through the FCDO Management Team, through direct engagement with the Supplier, and through monitoring of field activities (see Section 7.4.2 for details of payment linked to performance measured against the KPIs).

FCDO and the Supplier will agree during the Inception Phase the process for the Supplier to address poor performance. This will include the Rectification Plan Process in line with clause

40.2 (Section 2, FCDO's Standard Terms and Conditions) requiring the Supplier to develop a Rectification Plan.

Supplier's poor performance may lead to Termination With Default of the Supplier, Partial Termination, Suspension or Partial Suspension of the Contract in line with clauses 44 and 45 (Section 2, FCDO's Standard Terms and Conditions).

Supplier KPIs may be further revised during the Contract if agreed between the Parties. Revisions could be made to reflect learning during delivery or to improve the Supplier KPIs if issues are identified during delivery.

7.4 Payment Structure

The Supplier will be paid in arrears, based on a financial report detailing expenditure for that quarter:

- Inception and TAF during the Implementation - Milestones (see Section 7.4.1) based payment for the Milestones delivered during the invoicing period subject to FCDO's approval following review against the acceptance criteria) and Expenses based on actuals; and
- grant payments under Component 1 and 2. For audit and transparency, the Supplier should consider opening a dedicated bank account for the grant element of the work. The Supplier shall, as far as possible, disburse funds from the Grant Pot to the grantees on the basis of agreed workplans linked to the required Outputs. The Supplier must ensure appropriate measures are in place to ensure grantees deliver against agreed workplans, including withholding future grant disbursements until previous deliverables have been achieved and making receipt of future grants subject to achievement of these deliverables.

FCDO acknowledges that, from time-to-time, payment in advance may be required for grantees, for example, grants to small voluntary or community bodies where the recipient needs working capital to carry out the commitment for which the grant is paid and private sector finance would reduce value for money. FCDO will consider requests for payment in advance subject to approved workplans and mutually agreed assessment of need. Approval of the advance will, in each case, be based on financial reports and future cost estimates and accompanying justifications that the Supplier will provide to FCDO a minimum of two weeks before the payment is required. Please note that in some circumstances, HM Treasury approval may be required for advance payments. The Supplier will be expected to keep advance funding to an absolute minimum.

FCDO reserves the right to amend the payment process, if required and justified. Any such change will be agreed between the Parties and executed through the Contract Variation.

7.4.1 Payment by Results (PbR) – Milestone Payments

FCDO is seeking to deliver VfM throughout this Contract by using a PbR approach. FCDO's preferred method is to link payment to delivery of Milestones.

7.4.1.1 Inception Phase Milestones

The Contract will utilise a Milestone-based payment model for the Inception Phase. There will be two quarterly payments tied to satisfactory completion of work undertaken in the Inception Phase as well as the delivery of a satisfactory Inception Report.

The two Milestones will be distributed as follows and measured against the anticipated activities below:

- **Milestone 1** delivered approved by FCDO by the end of month 3 - representing 25% of the Inception Cost
 - Main office should be set up and PMU mobilised, with activities to deliver other outputs of the Inception Phase well underway.
 - Inception Outputs 1 and 4 (see Section 4.2.2).
 - Outline structure of the Inception Report.

- **Milestone 2** once all deliverables and Outputs have been approved by FCDO by the end of month 6 - representing 75% of the Inception Cost
 - Completion of all Outputs in section 4.2.2.
 - Acceptance of the final Inception Report.
 - FCDO will accept one review of the Inception Report and provide comments before final submission.

The payment for Milestones delivered during the Inception will be subject to FCDO's approval, following review against detailed acceptance criteria for each Milestone. No payment will be made until the Milestone is judged as delivered in full and accepted by FCDO.

7.4.1.2 Implementation Phase Milestones

During Implementation, the payment for the Milestone will be based on the results achieved by the Component 1 TAF.

Supplier's KPIs will be used to measure the performance against the agreed between Parties Milestone-based Costed Workplan (see Section 4.2.2). The payment for Milestones delivered during a quarter will be subject to FCDO's approval, following review against agreed detailed acceptance criteria for each Milestone. No payment will be made until the Milestone is judged as delivered in full. Should the Supplier fail to deliver the Milestone prior to the end of the Contract 100% of its cost will be at risk (with the exemption to Risk Sharing Milestones). (Please note that the Expenses (Travel, Accommodation and Subsistence) will be paid on the quarterly basis (see Section 7.4).

The Supplier must inform FCDO as soon as possible of any requests for change to the scope, timeline or cost of the Implementation Milestones. In such circumstance, the Supplier will provide FCDO a justification for the requested change and the new proposal for FCDO's consideration. FCDO may, as its sole discretion, agree to the change including the deadline and cost for completion of a Milestone – this approval will be provided in writing and will not be unreasonably withheld. In such a scenario, the payment will reflect the change(s) and will be made in the next invoicing period following the agreed completion of the Milestone and its acceptance by FCDO.

7.4.1.3 Implementation Phase - Risk Sharing Milestones

In order to encourage innovation and increase the overall impact of the programme this Contract will include a risk sharing approach.

Based on a risk assessment of Outputs, the Supplier is permitted to designate higher risk Milestones as 'risk-sharing' with FCDO (Risk Sharing Milestones). It is for the Supplier to decide which Milestones are proposed but the expectation is that the mechanism should be used to support work in less mature sectors or with more innovative models, to facilitate taking greater risk. The Supplier will have to provide justification for their nomination for the Risk Sharing Milestone status.

The total value of Risk Sharing Milestones over the life of the Contract shall be up to 10% of the Implementation Phase Milestones cost, where 50% of Risk Sharing Milestone value is at risk if the Supplier fails to deliver on time and in full.

To give a practical example, if a Risk Sharing Milestone is achieved, verified and approved then payment would be made in line with forecast. If the Risk Sharing Milestone is not achieved, then only 50% of the payment would be approved providing it was judged the Supplier had made reasonable effort to achieve it. The 'reasonable effort' for each Risk Sharing Milestone will be defined in agreement with FCDO during the Inception Phase, and should include robust, objective measures of activities. FCDO expects the definition to include rationale for selection (potential benefits), identification of potential causes of failure and how the Supplier will endeavour to overcome these risks. Please note that the Expenses (Travel, Accommodation and Subsistence) will be paid on the quarterly basis (see Section 7.4)

7.4.2 Payment linked to Performance Supplier's KPIs

During Implementation 20% of the Supplier's PMU Staff Fees for each quarter will be contingent on performance against a set of Supplier KPIs. The KPI regime will start during the Implementation Phase, it will not apply during the Inception Phase.

The PMU Staff Fees are defined as the Gross daily rates of all Staff involved in the running and management of Components 1 and 2. This does not include Technical Advisors who are deployed on an as-needed basis and paid through Milestones.

[Annex E](#) provides the indicative Supplier KPIs. FCDO and the Supplier will agree any refinements to these KPIs and the detailed methods for measuring performance against each Supplier KPI during Inception.

Each Supplier KPI will be scored each quarter from 1-4. Each score represents the level of payment related to each Supplier Performance KPI, as listed in Table 6.

Table 6. Payment levels for each Supplier KPI score (see [Annex E](#) for indicative KPIs)

Score	Description	% of KPI amount payable
4	Good performance: The Supplier is meeting or exceeding the KPI targets that are set out within the Contract	100
3	Approaching target: The Supplier is close to meeting the KPI targets that are set out within the Contract	60
2	Requires improvement: The performance of the Supplier is below that of the KPI targets that are set out within the Contract	30
1	Inadequate: The performance of the Supplier is significantly below that of the KPI targets that are set out within the Contract	0

The Supplier will provide evidence on their performance against each Supplier KPI in each Quarterly Report and associated Performance Dashboard. [Annex E](#) sets out the types of evidence for each Supplier KPI that FCDO will consider, and FCDO will consider other evidence where relevant provided in each Quarterly / Annual 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 KPI is weighted. These weightings will be used to allocate how much of the total 20% of the PMU Staff Fees each quarter is applicable to each Supplier KPI. Some Supplier KPIs will only be applicable annually and modified weightings are provided in [Annex E](#) in this instance. Below is an example of how the weightings will be applied:

1. The total PMU Staff Fees in Quarter X are £500,000. £100,000 (20%) is subject to performance against the Supplier KPIs.
2. Supplier KPI 6 has a 25% weighting and therefore applies to 25% of £100,000. £25,000 of the Supplier's PMU Staff Fee is therefore at risk subject to performance against Supplier KPI 6. The Supplier scores a 3 for KPI 6 in Quarter X. FCDO pays the Supplier £15,000 for Quarter X under KPI 6.
3. Some Supplier KPIs have two targets within them. Where this applies, Step 2 is repeated for each target based on their weightings. For example, Supplier KPI 1 has a total weighting of 12.5% with KPI 1a and KPI 1b weighted at 7.5% and 5% respectively. Therefore £7,500 and £5,000 are respectively at risk for KPIs 1a and 1b, and £12,500 at risk for Supplier 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 KPI and their Targets for Quarter X.

8 Other Delivery Requirements

8.1 Risk Management

The Supplier will proactively assess, monitor and review risks to the delivery of Components 1 and 2 and take action to avoid, reduce or mitigate identified risks in line with FCDO's ProOF. The Supplier will ensure a risk register and risk management approach is finalised during the Inception Phase and proactively utilised throughout delivery, including maintaining an accurate risk register and providing regular updates to FCDO through management meetings. The Supplier will report key risks to FCDO through regular meetings and reporting, with prompt reporting of any emerging reputational risks.

8.2 Duty of Care to Suppliers

The Supplier will be responsible and have a duty of care for the safety and well-being of their Personnel (including employees, agents, consultants and contractors and/or of any Sub-Contractors) engaged under this Contract and any 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. The Supplier must ensure it (and its Personnel) are up to date with the latest [FCDO travel advice](#).

The Supplier must have appropriate policies and 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 Components 1 and 2. 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 projects/activities 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.

8.3 Delivery Chain Mapping

The Supplier will be responsible for managing all downstream partners and ensuring that activities throughout Component 1 and Component 2 delivery chains are compliant with FCDO's [Programme Operating Framework](#), and the Supplier's policies, strategies and management processes. The Supplier will undertake due diligence checks (see guidance [here](#)) on all downstream partners prior to appointment and transfer of funds, following the process finalised during the Inception Phase. In the case of existing grant agreements set up by FCDO under Component 2, the FCDO will be responsible for conducting due diligence.

The Supplier will maintain an accurate Delivery Chain Map (see guidance [here](#)) for Component 1 and Component 2 covering all downstream partners and level of IFSLU2 spend. The Supplier will undertake regular monitoring, tracking and spot checks of downstream partners. The Supplier will be responsible for all disbursement, due diligence, and fiduciary oversight of all downstream spend. 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.

Once grant arrangements for Component 2 have been moved over to the responsibility of the Supplier, the Supplier will be responsible for risk, safeguarding, regular monitoring, tracking and spot checks, and other necessary aspects of grant management for downstream partners supported by Component 2 grant recipient organisations.

8.4 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.

8.5 Climate and Environment

The Supplier will assess the climate and environment risks and impacts of activities undertaken throughout delivery of Components 1 and 2 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 and/or joining Race to Zero, and for SMEs joining Race to Zero via the [SME Climate Hub](#).

As a climate-focused programme, the Supplier will consider the direct emissions produced by its work to deliver Components 1 and 2 and take steps to reduce them. The Supplier will produce a plan for reducing these emissions and report against it, with proportionate monitoring, as part of programme management.

As well as greenhouse gas emissions, the FCDO is committed to avoiding other negative environmental impacts of the IFSLU2 Contract and maximising co-benefits. This includes pollution, waste management, water, biodiversity and land degradation. The Supplier is required to include this as part of the activity planning and risk assessment process.

8.6 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 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.

8.7 Women and Girls, Disability and Inclusion

As a signatory of the [Inclusive Data Charter](#), FCDO programming will adhere to principles to Leave No-One Behind in data collection, ensuring data are disaggregated to accurately describe all populations, are drawn from all available sources, adhere to principles of accountability in data collection and seek to improve capacity of those collecting and analysing the data. The Supplier will be expected to adhere to these principles.

IFSLU2 seeks to move past meeting minimum requirements on inclusion and integrate it as an active part of the programme's components in order to effectively mainstream inclusion as a cross-cutting theme. There may be significant opportunities to create transformational change, changing power relations and supporting women's collective action, which the programme will seek to maximise.

The Supplier will identify barriers and take appropriate actions to strengthen Component 1 and 2's support to women and girls, people with disabilities and other groups and their ability to access information and support via Component 1 and 2. To support this, the Supplier will ensure that activities under Component 1 and 2 move beyond being gender and inclusion sensitive (e.g. disaggregated data) and instead seek opportunities to be gender and inclusion transformative (e.g. empowering women and marginalised groups, and tackling root causes of inequality) by maximising engagement, capacity building, benefit distribution and decision making powers where feasible.

The Supplier will engage with people from these groups throughout Component 1 and 2's delivery to assess performance and identify lessons for improvements. These actions and lessons will be summarised within Quarterly and Annual Reports.

The Supplier will collect data and report results from Component 1 & 2's activities disaggregated by gender, age, disability and other factors. This will be used to monitor the Supplier's performance.

These requirements will also be part of the arrangements with grantees under Component 2 and the Supplier will be required to monitor and report results from the Recipients.

8.8 Transparency

FCDO requires 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 all suppliers to comply with this, and to ensure they have the appropriate tools to enable routine financial reporting, publishing of accurate data and providing evidence of this – further IATI information at <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.

8.9 GDPR

The Supplier will comply with UK GDPR requirements which will be set out in clause 33 of the FCDO Standard Terms and Conditions of the Contract. Please refer to the details of the GDPR relationship status and personal data (where applicable) for this Contract, as detailed in [Appendix A](#) of this ToR and the GDD Framework Agreement. Further information on GDPR is available at [ICO Information](#) on GDPR and Cabinet Office [Procurement Policy Note 02/18](#).

8.10 SME Support Reporting

It is now a requirement to report on the levels of contracted work being allocated to SMEs and other sub-contracted organisations to the UK Government SME Small Business 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.

8.11 UK International Development Branding

The Supplier and FCDO will agree a UK International Development “visibility statement” to set out how UK International Development (UK Dev) branding will be used by the Supplier and downstream partners. The Supplier must adhere to [UK Development branding guidance](#). No publicity is to be given to this Contract without the prior written consent of FCDO.

8.12 Digital Spend

All Digital Spend is subject to separate approval by the FCDO, and activities must follow the UK Government's digital standards³ and the Principles of Digital Development⁴. Any communications activities may need to go through additional approvals before they go ahead, including those carried out by IPs as part of projects funded by IFSLU2.

Government Digital and Technology 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 IPs not just the Supplier.

8.13 Asset Management

All Assets procured through Component 1 and 2 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 IFSLU2 funded Assets will be transferred or disposed of at the end of the Contract following the FCDO Standard Terms and Conditions and the

³ Please see: [Guidance on digital spend advice and controls for partners and suppliers - GOV.UK \(www.gov.uk\)](#)

⁴ Please see: <https://digitalprinciples.org>

Financial management rules and processes outlined in FCDO's [Programme Operating Framework](#).

8.14 Supplier Insurance

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

Annex A: Overview of UK ICF Forest Programmes

The UK has a strong comparative advantage for international work on forests. The UK has a track-record of driving international action on tropical forests, working through diplomacy, partnerships, and programmes to achieve its aims.

FCDO has been instrumental in mobilising international efforts to tackle illegal deforestation and deforestation associated with agricultural commodities; and promoting trade and investment in legal and sustainable commodities.

DESNZ (Department for Energy Security and Net Zero) has worked to ensure forests are included within international climate agreements and engaged in the development of the REDD+ emissions reduction framework and forest carbon markets.

Department for Environment, Food & Rural Affairs (Defra) has developed demand-side policy measures to ensure the UK market is aligned with the commitment to reduce deforestation associated with agricultural commodities.

FCDO programmes, including Investments in Forests and Sustainable Land Use (IFSLU) and Forest Governance, Markets and Climate (FGMC), are providing the evidence base for scaled-up interventions to tackle deforestation, support sustainable economic development, provide jobs and livelihoods, and shift incentives towards forest protection and restoration.

IFLSU2 is an up to £500 million commitment over a 10-year period, with a first tranche of up to £195 million over 2023-2028 for the umbrella programme as a whole.

IFSLU2 will use ICF to achieve results for poverty reduction and development, climate resilience, forest and biodiversity protection and restoration, and reduced greenhouse gas emissions. It will achieve this through supporting developing countries to implement a low-carbon and equitable transformation of the land and forests sector.

Market Trends

As of 2023, 40% of the companies and financial institutions with the most exposure to, and influence on, tropical deforestation had not set a policy on deforestation. However, commitments to sustainable and deforestation-free production and sourcing are starting to become embedded in agricultural commodity industries associated with deforestation, including palm oil, cocoa, soya, cattle, rubber, timber and pulp. While there is variability in the quality and integrity of commitments and in their implementation, this trend is influencing global markets for these commodities, and will increasingly do so in the coming decade.

As norms in the market shift, mandatory requirements are being introduced to strengthen voluntary approaches. The UK, EU and US are all introducing legislation which will oblige companies to follow mandatory due diligence requirements to ensure that commodities which they import are not associated with deforestation in countries of origin. UK and US measures are focused on illegally deforested land, while EU measures are focused on all deforestation after a defined cut-off date. The development and implementation of these measures will be an important trend which shapes markets in the coming decade, alongside measures to work with producer countries and companies to comply with and implement the new measures.

The efficacy of these measures in slowing deforestation will also be influenced by positions taken in other major markets, such as China and India, and in major producer-consumers, such as Indonesia and Brazil. IFSLU1 began work to influence these global markets through the Forest, Agriculture and Commodity Trade (FACT) Dialogue, the Tropical Forest Alliance (which established an office in China), and a demand-side project between Brazilian meat producers and Chinese business associations to improve sustainability of beef imports to China. IFSLU2 will continue to expand its potentially high impact global demand-side work while being sensitive to the political economy of such markets.

Consumer awareness of the environmental impacts of consumption and production is also motivating companies to set science-based emission reduction targets that will influence their indirect land-use. The Science Based Targets initiative (SBTi) has emerged as the global body enabling businesses to set voluntary emissions reductions in line with the latest climate science. It is oriented towards galvanising companies to halve emissions before 2030 and achieve net-zero emissions by 2050. 2022 saw the launch of SBTi's Forest, Land and Agriculture guidance (SBTi FLAG), which sets out the requirements for science-based emission reductions targets for companies with land-intensive value chain activities. As of September 2022, 410 FLAG companies have signed up to SBTi. To comply with SBTi FLAG, these companies, among other things, need to account for land-based carbon removal activities in their near-term emissions reductions targets and set a zero-deforestation target for no later than 2025. This guidance is setting the benchmark for what high integrity targets for land sector businesses looks like, strengthening existing market trends and encouraging greater action on land-based carbon sequestration. Businesses will increasingly consider biodiversity as well as carbon.

In the financial sector, nature has historically been perceived as an immature investment market, with the 'greening' process notably less advanced than for other key emitting sectors such as energy or transport. Current investment in nature-based solutions stands at USD133bn annually. By 2050 it is estimated that additional investment totalling USD203bn annually will be required for the preservation, management and restoration of forest assets, USD193bn annually for silvopasture, and USD7bn annually for peatland restoration. Meanwhile, the finance gap for smallholder agriculture is also considerable, with smallholders in Southeast Asia alone requiring an estimated USD100bn in finance of which less than a third is currently being provided.

But the sector is now at an inflection point, and nature-based solutions are emerging as an increasingly relevant theme for private finance, alongside investment in sustainable forestry and agriculture. In part this is driven by the need to finance corporate commitments under the transition to net zero; and in part by government initiatives aimed at increasing awareness and transparency around climate and nature-related risks. These initiatives include the Taskforce for Climate Related Financial Disclosure (TCFD), which aims to improve corporate reporting of financial information related to climate risks, and the Taskforce for Nature Related Financial Disclosures (TNFD), a risk management and disclosure framework for organisations to report and act on nature-related risks.

This creates significant new investment opportunities. The Blended Finance taskforce estimate that investing in nature-based solutions could unlock USD4.5tn in new business opportunities each year by 2030, driven by shifting consumer preferences for healthier food, new policies around responsible production, advances in technology which improve supply chain transparency, and widespread net zero commitments.

Companies are moving to comply with the changes in the market, ensure their operations are not associated with deforestation, seek to meet net zero and nature positive commitments, or attract green finance. This provides an opportunity to catalyse private sector action and investment at scale, through affected industries and supply chains. Public sector engagement is also needed to ensure that shifts in practices take place in ways that deliver development benefits, do not disincentivise sourcing from forested areas that need the most protection and inclusive of small farmers. Enabling smallholders to benefit from these shifts will require public and private sector support, including capacity building, traceability and certification.

Delivery Environment

Almost 90% of deforestation worldwide is due to agricultural expansion. Globally, the area of land dedicated to agricultural crops has expanded by 15% since 1960 and it is estimated that one third of the land that would naturally be forest has now been converted to agriculture. Large-scale commercial agriculture, including cattle ranching, soya, oil palm and cocoa, now

accounts for around 40-60% of tropical deforestation, with local subsistence agriculture accounting for a further 33%.

Forest landscapes are shaped by the practices of the farmers, commodity-producing companies and communities who live and work in these areas. In turn, the practices of these landscape actors are shaped by economic forces of consumption, trade and investment that typically emanate from outside of these landscapes. A large element of deforestation is 'enterprise-driven' rather than 'state-driven'. Private sector entities on all scales, including multinational corporations, national companies, small and medium enterprises, cooperatives and smallholder farmers, play a role in this process of change, connected through markets, supply chains, national and international trade, and related finance. Halting and reversing deforestation and ensuring a land use transition aligned with the Paris Agreement targets, requires interventions that change incentives and practices at all scales for the private sector actors associated with deforestation.

While drivers of deforestation are complex and differ by geography, recent shifts in Indonesia show an increase in forest clearance for small-scale agricultural production while 84% of forest disturbance in the Congo Basin stems from small-scale clearing for subsistence agriculture. Many smallholders establish and expand production by clearing new land, rather than intensifying production on existing land under cultivation, resulting in forest clearance. Smallholder households often lack the means to invest in the sustainable intensification of production, or lack the knowledge and power to secure better prices for their crops and so are left with few options but to expand their cultivated area to improve their income. This is especially the case in areas of absent or weak land governance and enforcement.

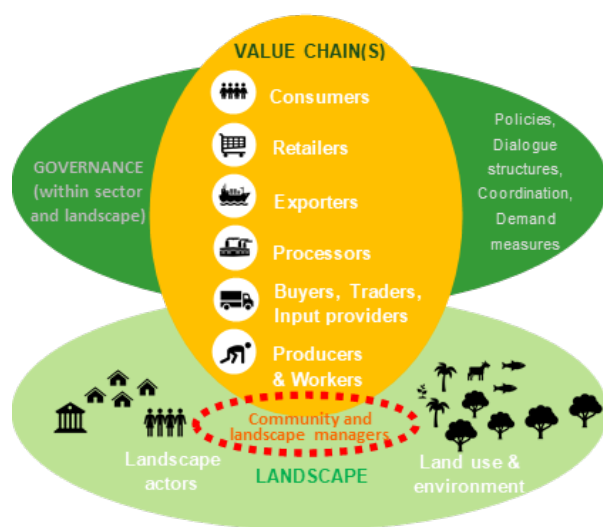
IFSLU2 – particularly Component 3 focused on the Congo Basin – is likely to operate in fragile contexts, where there is a risk that conflict could affect programme delivery and a risk that programme activities may unintentionally exacerbate conflict. On the other hand, although building security cannot be its primary aim, there is potential for IFSLU2-funded activities to help foster the long-term development that helps build long-term peace and stability.

Forest and land-use programming, particularly those involving forest restoration and actions in agricultural lands, carry some environmental risks in respect to land degradation, biodiversity and water resources. The programme has been designed to help reverse land degradation and biodiversity loss, but proactive steps will be required within the Inception and Implementation Phases to ensure that sufficient environmental screening and safeguards are in place at the project level.

Value chain-oriented and nature-related interventions have the potential to provide quality employment opportunities to excluded people/groups, but they can also serve to reinforce social inequalities e.g. keep women in low paid work, exclude poor and marginalised groups when land rights are formalised, transfer costs/risk to women, fail to provide Free, Prior and Informed Consent (FPIC). Moreover, interventions run the risk of delivering limited livelihood and poverty reduction benefits if large-scale forestry is overly prioritised; unevenly distributing benefits or enabling benefits to be captured by elite groups; or negatively impacting indigenous rights and cultural resources through land acquisitions. IFSLU2 will meet minimum equality commitments and seek to proactively address the inequalities facing climate-affected rural economies.

Annex B: IFSLU 1 Programme

Transformational change in markets, supply chains, production systems and landscapes is required to address the major agricultural drivers of deforestation. IFSLU1 has generated evidence around how to achieve this change. Evaluation highlights how changes in land use in tropical forest regions in recent decades mean that control of territories by nation states and local communities has shifted to governance by extra-territorial actors, such as companies and investors in distant countries. As a result, combined interventions, operating across different scales and taking account of the complexity of land use and global trade, are required to deliver transformative change (Figure 1).



Evaluation undertaken during IFSLU Phase I highlights the importance of focusing on forest landscapes, communities, farmers and relevant external market influences, and the connections and flows between these different systems. Interventions to support change in markets, supply chains and practices on the ground in forest landscapes have potential to deliver transformational change, and achieve benefits for people, climate and nature.⁵

Source: Nelson et al (2021)

Figure 1: Transformational change in forest landscapes

IFSLU1 used technical assistance and grants to build partnerships with communities, the private sector and public sector organisations that take socio-economic circumstances, power relationships and political economy into account. This shared-value approach to developing public-private partnerships has been successful in changing land use practices even in relatively challenging situations. A prime example is cocoa, where IFSLU1 has built partnerships between companies and communities, strengthened multi-stakeholder collaboration and governance processes, and helped couple cocoa supply chains to the national carbon finance architecture to align incentives among government, companies and communities.

IFSLU1 provides an important proof-of concept demonstrating how public funds can be deployed to change private sector practices and catalyse private investment. Headline results achieved by IFSLU1 include 8.7 m hectares of land under sustainable management, £1.35 bn of forest-positive private investment mobilised, and a significant contribution to the introduction of due diligence legislation aiming to reduce the impact of UK imports on illegal tropical deforestation. In respect to leveraging private sector investment, IFSLU1 has catalysed investment at a rate of £10 for every £1 of public funds committed. At a more granular level, IFSLU1's incubation model successfully enabled a range of businesses to enhance their revenues, secure subsequent investment and exit aid dependency. The results achieved by IFSLU1 broadly validate its Theory of Change and intervention strategy, and provide an

⁵ V. Nelson, J. J. Kessler, J. W. Molenaar, D. Smith, H. Betts, E. E. K. Damayanti, W. Hasyim, A. Baquero, A. Martins. (2021). Transformative Change in Tropical Forest Landscape Initiatives. NIRAS.

important replicable blueprint for how to pursue transformational change in commodity value chains and forest landscapes.

While IFSLU1 was successful, lessons drawn from the programme, which inform the approach in Phase 2, include the need for enhanced efforts to reach and engage the many millions of smallholder farmers living in and around forest landscapes (the focus of Component 2); and the need to strengthen the approach to working in key regions where the private sector lacks capacity. This latter point is particularly important in the Congo Basin, a key forest region with thin markets and very limited private sector capacity. The second phase of the programme represents an important opportunity to support the enabling conditions for a pipeline of business opportunities in the Congo Basin (the focus of Component 3).

Annex C: IFSLU2 Programme, Rationale and Purpose

Context

The urgency of tackling the twin climate and biodiversity crises – and their impacts on the most vulnerable – is growing and the strategic case for the programme is strong. Over 1 billion people depend on forests for elements of their livelihoods and food security. Net zero commitments depend on the natural capacity of forests to absorb and store carbon. The world's forests hold around 80% of terrestrial biodiversity.

Urgent action is needed to halt and reverse deforestation, and the UK is playing a leading role in driving the international response. Mobilising private sector action and investment will be key to halting and reversing deforestation. Investments in Forests and Sustainable Land Use Phase 2 (IFSLU2) will provide this focus, building on a successful first phase of operations and a tested approach to catalysing private investment into forest protection and restoration, supporting development and creating resilient jobs and livelihoods based on sustainable practices.

Business Case

The IFSLU2 Business Case is available here: [DevTracker Programme GB-GOV-1-301321 \(fcdo.gov.uk\)](https://devtracker.fcdo.gov.uk/programme/GB-GOV-1-301321)

Stakeholders

Transformational change in forest landscapes, forest-linked commodity production and trade, and land-use investment will involve an array of actors. IFSLU2 interventions will target behavioural changes amongst several categories of actor:

- demand-side actors: buyers, retailers, investors;
- supply-side actors: producers (including smallholders, entrepreneurs and agribusinesses), input providers, processors and distributors;
- landscape actors and institutions influencing business enabling conditions: governments and policymakers, governing institutions and mechanisms, knowledge providers, norm-setters;
- financiers and investors, including development finance institutions, impact investors, specialised forestry and agricultural investors, national financial service providers in developing countries, national and local agricultural finance providers, including micro-credit providers, in developing countries;
- policy actors at the national, regional, and global level: policymakers, private and civil-society entities involved in the policymaking process; and
- within HMG, DESNZ and Defra are key stakeholders with complementary programme and policy objectives on sustainable agriculture and forestry.

Structure of the Programme

IFSLU2 has been approved as a ten-year programme of up to £500m in spend. The longer programme cycle reflects evidence of the time required to achieve impact in the forest and land use sector. In IFSLU1, for example, most of the private finance mobilised was recorded in years 5-8, indicating the need to make a long-term commitment to achieve the greatest impact. The anticipated maximum total budget for the IFSLU2 programme (Components 1-5), including all extension options, is up to £500m.

IFSLU2 will be delivered through five linked Components:

- Component 1 – Business incubation, pipeline development and business enabling conditions. Interventions oriented towards catalysing forest-friendly enterprises in forest landscapes in East Africa, West and Central Africa, Latin America and Southeast Asia; and demand for sustainably produced agricultural and forest commodities and services.
- Component 2 – Enhanced support for smallholder farmers. Interventions oriented towards reaching smallholders at scale in order to support their transition to sustainable production in ways that deliver strong developmental and social outcomes.
- Component 3 – Business and market development in the Congo Basin. Interventions oriented towards building the fundamental enabling conditions, capabilities, and structures to enable business-led sustainable production in Congo Basin countries.
- Component 4 – Policy support to catalyse transformational change and action at scale. Interventions oriented towards building political momentum, action, collaboration, demand shifts and policy change through global and regional level collaboration.
- Component 5 – Monitoring, evaluation, learning (MEL) and knowledge: Independent monitoring and evaluation to support programme-wide learning, inform management decisions, programme strategy and delivery and strengthen evidence.

As IFSLU2 is a large, multifaceted programme it will be delivered through a range of mechanisms and arrangements with suppliers: grants, contracts and other partnership arrangements as set out in the table below. Reflecting this complexity, the mobilisation (or 'roll-out') of the programme will be sequenced, with some Components moving ahead before others.

Component	Approach to appointing the suppliers and providers
1 – Business incubation	Contracted through a UK Government competitive procurement
2 – Smallholder support	Grants to non-profit organisations
3 – Congo Basin	Contracted through a UK Government competitive procurement
4 – Policy scale-up	Grants to non-profit organisations and arrangements with other development partners
5 – MEL and knowledge	Contracted through a UK Government competitive procurement

Theory of Change

The IFSLU2 Theory of Change (ToC) draws from the evidence of successful approaches applied to change private sector practices and evidence and experience accumulated in IFSLU1. Figure 2 contains a summary Theory of Change, showing how programme-funded activities through Components 1-4 are expected to lead to outputs, intermediate behavioural outcomes in four domains (demand-side measures, enabling conditions, supply-side support, and policy development & convening), systemic and equity outcomes, and transformational impacts.

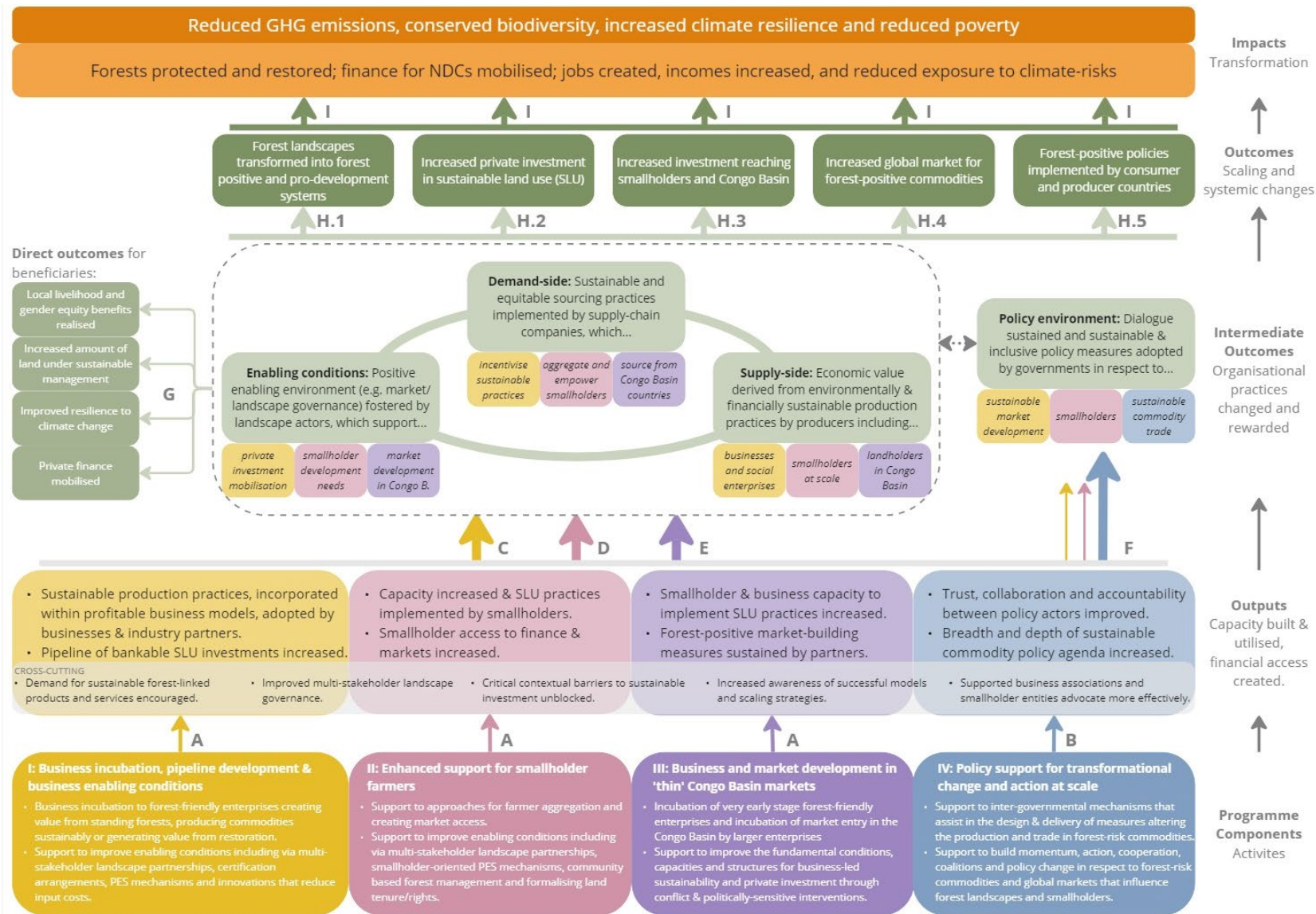


Figure 2 – IFSLU2 Theory of Change

Indicative IFSLU2 Results Framework

Table 1. Indicative summary results framework for IFSLU2

Item	Description	Indicators	Estimated end of programme impact*
Supergoal	Reduced greenhouse gas emissions, reduced poverty and conserved biodiversity by 2030	IPCC, IPBES, FAO, ICF TA KPI 5: GHG emissions mitigation ICF KPI 8: hectares of avoided deforestation	235.8MtCO ₂ e [106.8 MtCO ₂ e] 0.9m hectares [0.3m ha]
Goal	Replication of models that support scaled-up investment in forests and sustainable land use.	ICF KPI 15: transformational change	
Outcome	Increased private investment in forestry and 'reduced-deforestation' agriculture support economic growth, improved livelihoods and reduced poverty.	ICF TA KPI 2 number of supported individuals ICF KPI 10: value of ecosystem services protected/conserved ICF KPI 12 private finance leveraged Hectares of land under sustainable management	1.7m [0.7m] £601m [£264m] £240m [£113m] 2.3m hectares [1.5m ha]
Output 1	Demand-side measures: Enhanced markets for sustainably sourced products through public and private commitments to sustainable sourcing.	Value and volume of agricultural commodities covered by sustainable sourcing and production policies; evidence of implementation.	
Output 2	Enabling conditions: Policy reform and strengthened public-private collaboration; improved business environment for investments in forests and sustainable land use; enhanced capacity for sustainable business in low capacity and fragile regions with high forest cover.	# and impact of policy engagement platforms for multistakeholder collaboration. # and impact of policies, regulations, standards and systems to enable sustainable investment. # early-stage businesses supported.	
Output 3	Partnerships and investments: Partnerships between private sector, public sector and communities supported that seek to deliver investment in forests and sustainable land use.	# of partnerships supported ICF KPI 12 private finance leveraged	
Output 4	Smallholder support and capacity: Increased support and enhanced access to finance for smallholder farmers, to support a transition to sustainable practices.	# farmers supported (ICF TA KPI 2) # cooperatives supported Access to finance	
Output 5	Leadership, collaboration and learning: Models, learning and leadership that support collaboration and investment in forests and sustainable land use.		

* Figures in square brackets refer to the first tranche of funding during 2024-2028.

Indicative ICF KPIs

All HMG ICF programmes must report against the appropriate [ICF KPIs](#) developed to allow ICF to report results at the portfolio level. IFSLU2 is expected to monitor and report against the following KPIs, which will be confirmed with the Supplier during the Inception Phase:

- KPI 1: People supported to better adapt to the impacts of climate change;
- TA KPI 2: Number of individuals and organisations informed by ICF technical assistance;

- TA KPI 5: Volume of emissions reductions/avoided supported by ICF technical assistance;
- KPI 8: Ecosystem Loss Avoided (Ha) as a result of ICF;
- KPI 12: Volume of private finance mobilised for climate change purposes as a result of ICF; and
- KPI 15: Extent to which ICF intervention is likely to lead to Transformational Change.

Annex D: Grants agreed by FCDO under Component

National Initiatives for Sustainable & Climate-smart Oil-Palm Smallholders (NI-SCOPS) Phase II

A copy of Accountable Grant awarded by FCDO to IDH is available [here](#)

A copy of Accountable Grant awarded by FCDO to Solidaridad is available [here](#)

IDH and Solidaridad have jointly developed a second, five-year phase of the National Initiatives for Sustainable & Climate-smart Oil-Palm Smallholders (NI-SCOPS), a flagship oil palm production programme that is currently operating in partnership with the governments of Indonesia, Malaysia, Ghana, Nigeria and the Netherlands. NI-SCOPS Phase II will extend the programme's implementation to Colombia and add a focus on influential market countries and regions, namely India and Asia, the United Kingdom (UK) and the European Union (EU), particularly in the context of the impact of the forthcoming EU Deforestation Regulation (EUDR 2023/1115).

Funding for NI-SCOPS Phase II is being provided by the Netherlands Ministry of Foreign Affairs and the UK Foreign, Commonwealth and Development Office. While the project is jointly delivered by IDH and Solidaridad, the two organisations receive grant funding independently.

The shared vision for NI-SCOPS Phase II can be summarised as 'Landscapes where oil palms are grown and managed sustainably, and smallholders measurably benefit from their inclusion in oil-palm markets'. The Theory of Change (ToC) is predicated on three key impacts: improved land use, better incomes and inclusive markets. The ToC and accompanying individual country analyses provided in the funding proposal set out what is needed to make this vision of sustainable, equitable oil-palm production a reality:

- working through Multi-stakeholder Partnerships (MSPs), the project partners will map, protect and restore forest and ensure that smallholder farmers (SHF) working practices are better adapted to climate change;
- the partners will ensure inclusive interventions which benefit women and youth⁶;
- the partners will raise SHF income through improvements in productivity, pricing, farm diversification, value distribution, access to finance and access to markets for SHF-inclusive and No Deforestation, No Peat and No Exploitation (NDPE) palm oil; and
- the partners will influence the development of SHF-accessible standards and work with the Indian government on minimum import criteria for palm oil in the largest Asian markets; they will test traceability approaches that will support SHF compliance with EU and UK deforestation and Corporate Sustainability Due Diligence (CSDD) legislation.

NI-SCOPS Phase II is designed to benefit approximately 110,000 SHFs. It includes scaling solutions for two of the main unintended consequences of EUDR 2023, namely segregation of the palm-oil supply chain at the expense of SHFs in countries deemed to be high risk, and further leakage of deforestation to African and Asian markets.

⁶ NI-SCOPS expects income diversification and benefits for women and their communities to go hand-in-hand with improvements in SHF income and working practices

Tackling deforestation through smallholder livelihood improvements and sustainable land use; led by ISEAL

A copy of Accountable Grant awarded by FCDO to ISEAL is available [here](#).

ISEAL will lead an ambitious, four-year programme of work focused on scaling the incentives, mechanisms, and enabling conditions for smallholders to engage in sustainable land use and reduce deforestation.

The ultimate goal of this four-year project is to improve smallholder livelihoods and the conditions for sustainable land use by smallholder producers, helping to reduce deforestation. ISEAL will work to achieve impact along two pathways:

- i. Innovating and scaling strategies and mechanisms that improve smallholder income, reduce household poverty, improve resilience to climate and markets, and enable and incentivise smallholders to shift to more sustainable production.
- ii. Strengthening the enabling conditions for smallholder market access and increased corporate commitment to, and investment in, improving livelihoods and sustainable land use.

Programme Approach

To support the programme goal to improve livelihoods and the conditions for sustainable land use by smallholder producers to reduce deforestation, ISEAL's proposed programme of work will advance on two complementary and interconnected impact pathways:

- i. **Innovating and scaling strategies and mechanisms that improve smallholder income and enable and incentivise smallholders to shift to more sustainable production:** ISEAL will work with partners to catalyse innovation and improve systems and mechanisms that raise farmer incomes; support, recognize, and reward sustainable land use by smallholders; and have the potential to be scaled. Activity areas to support this impact pathway will include:
 - a. *Smallholder Innovations Incubator (Grant-making facility and Innovations Accelerator activities)*

The Innovations Incubator will act as an extension to ISEAL's existing Innovations Fund and will provide grants, guidance and support to promising approaches. With our Innovations Accelerator programme approach, we will draw and disseminate lessons from incubator pilots and will facilitate peer learning, collaboration, and further adaptation of the solutions tested through the grants.
 - b. *Innovation scaling*

ISEAL will look to partner with P4F and others to generate further support for promising initiatives and will lead collaborative efforts with the ISEAL community to scale at least two promising initiatives through our network of member organisations.
- ii. **Strengthening the enabling conditions for smallholder market access, increased corporate investment, and improved livelihoods:** ISEAL will use its existing networks to shape understanding, incentives, investments, and solutions that increase company commitment and confidence to invest in, and source from, smallholder communities in high-risk deforestation areas. Activity areas to support this impact pathway will include:
 - a. *Living income strategies*

ISEAL will continue to grow its Living Income Community of Practice network, hosting workshops, webinars and dialogues, and capturing and disseminating successful case studies, to build interest, awareness and understanding of promising strategies and approaches.

b. *Smallholder livelihoods in landscape and jurisdictional approaches*

ISEAL will leverage its convening role in the landscapes space to support over 20 emerging landscape and jurisdictional initiatives with the integration of smallholders and smallholder livelihood concerns.

c. *Technical solutions for smallholder inclusion*

ISEAL will share technical expertise, develop guidance and work with partners to address technical challenges related to smallholder inclusion in emerging market-based approaches to sustainability, including due diligence legislation.

In each of these pathways, ISEAL will support actions that deliver improvements for smallholders operating both within and outside of international sustainable supply chains. Across all the work ISEAL will take a partnership approach, focusing delivery through its global network of partners to support scaling of sustainability systems, innovative solutions, awareness raising, and dissemination of learning.

Annex E: Supplier Key Performance Indicator Assessment Criteria

Table 1. Indicative set of Supplier KPIs; to be agreed between Supplier and FCDO during Inception Phase

Supplier KPI	Targets	Weighting	Evidence	Score - 4 Good performance	Score – 3 Approaching target	Score – 2 Requires Improvement	Score – 1 Inadequate
1. Management and responsiveness The Supplier submits all monitoring reports on time and responds proactively to FCDO requests.	1a) Timely submission and adequate quality of Quarterly and Annual Reports 1b) PMU and Regional Leads are responsive to FCDO Management Team requests	1a: 7.5% 1b: 5% Total: 12.5%	<ul style="list-style-type: none"> • Reports • Performance dashboard • Correspondence 	1a) Submission on agreed date and to a sufficient quality to avoid any FCDO-requested revisions 1b) Responses within timeframe requested	1a) Submission on agreed date and requiring 1-4 FCDO-requested revisions 1b) Responses late by ≤2 Working Days without provision of justification to, and prior agreement with, FCDO.	1a) 1 Working Day late and/or requiring 5-7 FCDO-requested revisions 1b) Responses late by ≤5 Working Days without adequate provision of justification to, and prior agreement with, FCDO.	1a) ≥2 Working Days late and/or requiring ≥8 FCDO-requested revisions 1b) Responses late by >5 Working Days without adequate provision of justification to, and prior agreement with, FCDO.
2. Quality The Supplier maintains a high quality of delivery supported by robust, evidence-led project screening, partner relationship management, grant and technical assistance support.	2a) Quality screening of proposed activities and projects by the Supplier 2b) Quality of programme delivery by the Supplier [applied annually]	2a: 15% OR 2b: 15% Total: 15%	2a: Quarterly: <ul style="list-style-type: none"> • Screening project concept notes and proposals • Feedback from FCDO 2b: Annually (replacing 2a): <ul style="list-style-type: none"> • FCDO's Annual Review 	2a) SRO does not approve ≤10% of 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, insufficient due diligence and risk management) 2b) Annual Review Score ≥ A	2a) SRO does not approve 11-15% of activities or projects proposed by the Supplier, due to inadequate screening by the Supplier 2b) Annual Review Score = B	2a) SRO does not approve 16-20% of activities or projects proposed by the Supplier, due to inadequate screening by the Supplier 2b) Annual Review Score = B	2a) SRO does not approve >20% of activities or projects proposed by the Supplier, due to inadequate screening by the Supplier 2b) Annual Review Score = C
3. Financial Management The Supplier maintains a high level of financial management, delivering the programme on budget with accurate forecasting and timely reporting. Supplier maintains up to date and accurate records of all downstream partners. Supplier proactively tracks foreign exchange rate fluctuations; and variations are proactively flagged with mitigation approaches proposed.	3a) <5% forecasting variance each quarter 3b) Accuracy and timely invoice submission	3a: 10% 3b: 10% Total: 20%	<ul style="list-style-type: none"> • Quarterly financial forecasts • Quarterly financial reports • Invoices 	3a) Quarterly reported spend is within +/- 5% variance of forecast in Q1-2, and +/-3% in Q3-Q4 of each FY 3b) Submission of correct invoices on agreed date	3a) Quarterly reported spend is within +/- 6-7% variance of forecast in Q1-2, and +/- 5% in Q3-Q4 of each FY 3b) Submission on agreed date but simple errors identified, e.g. typos or unclear description	3a) Quarterly reported spend is within +/- 8-9% variance of forecast in Q1-2, and +/- 7% in Q3-Q4 of each FY. 3b) 1 day late or small number of invoicing errors identified	3a) Quarterly reported spend is ≥ +/- 10% variance of forecast in Q1-2, and ≥ +/- 9% in Q3-Q4 of each FY. 3b) ≥2 days late or serious invoicing errors identified

4. Learning The Supplier proactively captures and applies learning from delivery and from experience and evidence beyond immediate programme delivery, resulting in improved systems delivering VfM.	4) Learning from Components 1 & 2, evaluations and other IFSLU2 tier-1 delivery partners is used to improve delivery by the Supplier	Total: 15%	<ul style="list-style-type: none"> Quarterly and Annual Reports Progress meetings Correspondence Annual Workplans Regional Strategies 	4) Comprehensive demonstration of how the Supplier proactively captures and applies lessons and evidence to influence delivery of Components 1 and 2, resulting in significant improvements in systems delivering VfM.	4) Demonstration of how the Supplier proactively captures and applies lessons and evidence to influence delivery of Components 1 and 2, resulting in some improvements in systems delivering VfM.	4) Limited demonstration of lessons and evidence being captured and influencing the Supplier's delivery of Components 1 and 2, resulting in limited improvements in systems delivering VfM.	4) Very limited demonstration of lessons and evidence being captured and influencing the Supplier's delivery of Components 1 and 2, resulting in very limited or no improvements in systems delivering VfM.
5. Engagement and collaboration The Supplier proactively engages and collaborates with IFSLU2's key programme stakeholders to support coherent IFSLU2 delivery	5a) Proactive collaboration, consultation and engagement with delivery partners of other Components of wider IFSLU2 programme 5b) Timely delivery of quality information to the independent MEL provider 5c) Proactive engagement with relevant partners external to IFSLU2 delivery	5a) 5% 5b) 2.5% 5c) 5% Total: 12.5%	<ul style="list-style-type: none"> Stakeholder surveys Correspondence Feedback from Component 5 (MEL) provider Feedback from posts to IFSLU2 team Partner Forum presentation, discussions, planning, and reports 	5a) Regular engagement each quarter by the Supplier with other IFSLU2 delivery partners 5b) Submission on agreed date and to a sufficient quality to avoid any requested revisions from MEL provider 5c) Regular engagement each quarter by the Supplier with external partners through calls, meetings and events	5a) Some engagement each quarter by the Supplier with other IFSLU2 delivery partners 5b) Submission ≤2 Working Days late and requiring minimal revisions requested by MEL provider 5c) Some engagement each quarter by the Supplier with external partners	5a) Limited engagement each quarter by the Supplier with other IFSLU2 delivery partners 5b) Submission ≤3 Working Days late and requiring minimal revisions requested by MEL provider 5c) Limited engagement each quarter by the Supplier with external partners	5a) Very limited engagement each quarter by the Supplier with other IFSLU2 delivery partners 5b) Submission >3 Working Days late and requiring significant revisions requested by MEL provider 5c) Very limited engagement each quarter by the Supplier with external partners
6. Grant management of Component 2 accountable grants The Supplier maintains a high level of grant management of Component 2 grants	6a) Ensuring grantees provide robust monitoring and reporting of activities, finances, results and risks. 6b) Timely grant disbursements to grantees based on evidence 6c) Providing problem-solving and technical support to grantees where necessary to address delivery challenges	6a) 10% 6b) 10% 6c) 5% Total: 25%	<ul style="list-style-type: none"> Quarterly and Annual Reports Financial reports and forecasts Minutes of progress meetings Field visits External evaluation reports Surveys Correspondence Feedback from grantees 	6a) Submission of grantee reports to Supplier on agreed dates and to pre-agreed standard 6b) Disbursement on agreed date 6c) Demonstration of support provided to grantees in response to demand	6a) ≤2 Working Days late (on average across all grants) 6b) ≤2 Working Days late (on average across all grants) 6c) Demonstration of support provided to grantees in response to meet some demand	6a) ≤5 Working Days late (on average across all grants) 6b) ≤5 Working Days late (on average across all grants) 6c) Limited demonstration of support provided	6a) >5 Working Days late (on average across all grants) 6b) >5 Working Days late (on average across all grants) 6c) Very limited or no demonstration of support provided

Appendix A to TOR: Schedule of Processing, Personal Data and 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.

1. The contact details of the Controller's Data Protection Officer are: Data.Protection@fcdo.gov.uk
2. The contact details of the Processor's Data Protection Officer are: privacy@thepalladiumgroup.com.
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor for each Category of Data Subject	<p>The Parties acknowledge that for the purposes of the Data Protection Legislation, the following status will apply to personal data under this Contract:</p> <ol style="list-style-type: none"> 1) The Parties acknowledge that Clause 33.2 and 33.4 (Section 2 of the standard terms and conditions of the Contract) shall not apply for the purposes of the Data Protection Legislation as the Parties are independent Controllers in accordance with Clause 33.3 in respect of the following Personal Data: all personal data handled under this Agreement.



Section 4: SPECIAL CONDITIONS

Redacted under Section 40 (Personal Information) and Section 43 Commercial Interests) of the Freedom of Information Act FOIA (2000).



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Section 5: SCHEDULE OF PRICES

1. The Charges

Any variation to the Charges payable under a Contract must be agreed between the Parties and implemented using the procedure set out in this Schedule.

Except as expressly set out in this Section 5 or ToR, the Charges shall include all costs and Expenses relating to the provision of Services.

2. Pricing Mechanisms

Notwithstanding the provisions of Section 2 (Standard Terms and Conditions) except as expressly set out in this Section 5, the Payments Mechanisms and obligations shall be carried out in accordance with the obligations set out in Section 3 (Terms of Reference).

2.1. Any Fee Rates in this Contract which are expressed to be “subject to Indexation”, as defined in the Schedule of Prices, can be adjusted in accordance with the provisions of this Section to reflect the effects of inflation, after production of substantiated evidence. All other costs, Expenses, Fees and Charges shall not be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Supplier.

2.2 All costs submitted at the point of Tender are to be the maximum costs for the duration of the Contract prior to any Extensions. At the Mid-Term Review, Extension Decision Review and if applicable, when entering into the Extension Period and at the Extension Mid-Term Review (the Review Dates), there will be an opportunity for both Parties to assess the impact of external factors on cost; typically, this will be inflation rate fluctuations.

2.3 The Supplier shall give FCDO at least three (3) months' notice in writing prior to a Review Date where it wants to request an increase. If the Supplier does not give notice in time, then it will only be able to request an increase prior to the next Review Date.

Any notice requesting an increase shall include:

- a list of the Charges to be reviewed;
- written evidence of the justification for the requested increase including:
- a breakdown of the profit and cost components that comprise the relevant part of the Charges at the line item (or similar groups of line items) level;
- details of the movement in the different identified cost components of the relevant Charge at similar groups of line items level;
- reasons for the movement in the different identified cost components of the relevant Charge;
- evidence that the Supplier has attempted to mitigate against the increase in the relevant cost components; and

The FCDO shall consider each request for a price increase. FCDO may grant Approval to an increase at its sole discretion.

Any Approval granted by FCDO except as expressly set out in the clause 2.3 of this Section 5 shall be on the condition that the change to the Charges will not result in the Actual Profit Margin exceeding the Projected Profit Margin.

Where FCDO approves an increase then it will be implemented from the first (1st) Working Day following the relevant Review Date or such later date as FCDO may determine at its sole discretion and Annex 1 shall be updated accordingly.



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2.4 The Charges can also be varied (and Annex 1 to Section 5 will be updated accordingly) due to:

- a Specific Change in Law;
- a request from the Supplier, which it can make at any time, to decrease the Charges;
- indexation, where Annex 1 to Section 5 states that a particular Charge or any component is “subject to Indexation”.

2.5 Notwithstanding any other provisions of this Section, Fee Rates in this Contract shall not be subject to Indexation during the initial 30 months of the Contract (the “Non-Indexation Period”).

2.6 Where any Fee Rates in this Contract are stated to be “subject to Indexation” then they can be indexed on the date which is one year after the end of the Non-Indexation Period to reflect the percentage change in the index or a weighted basket of indices that reflect the underlying costs of delivering the service that will be agreed between the Parties during the Inception Phase. The index basket of indices will be selected based on the specific cost drivers and may differ between the Regions and Countries of the Contract delivery.

2.7 Except as set out in this Section, no Fee Rates shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Supplier or Sub-Contractors of the performance of their obligations.

2.8 Where the price index/ces referred to in Section 2.6 is no longer published, the Parties shall agree an appropriate replacement index which shall cover to the maximum extent possible the same economic activities as the original index.

2.9 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 versus 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 in order to make a decision at this review point.

3.0 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.

3.1 At each of the Review Date FCDO will undertake a review of the size and structure of the PMU and regional/country teams to ensure they are offering VfM in both size and composition. The Parties will agree any changes to the PMU team(s) based on the level of activity undertaken prior to the Review Point and in recognition of the future Workplan, which can fluctuate to meet the level of requirements and activities.



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Annex 1 (Commercial Cost Proforma)

1. The Charges “Subject to Indexation”

The Charges “Subject to Indexation” are the Personal Fee Rates of individuals (Team Member Name) / roles (Job Title) with Country of Operation other than UK as set out in Section 2.3 Programme Staff – Pay or otherwise agreed between the Parties, e.g. Costed Workplan.

Redacted under Section 43 Commercial Interests of the Freedom of Information Act FOIA (2000).