



# Foreign, Commonwealth & Development Office



## CONTRACT FOR SUPPLIER SERVICES

### Section 1 - FORM OF CONTRACT

**CONTRACT FOR:** Unlocking children's potential to thrive: Research into taking early childhood development (ECD) interventions to scale (THRIVE)

**PURCHASE ORDER NUMBER :** 10087

**THIS CONTRACT is made**

**BETWEEN:** The Secretary of State for International Development at the Foreign Commonwealth and Development Office, [Insert Address] ("**FCDO**");

**AND:** Oxford Policy Management Limited ("**Supplier**")  
whose registered office is situate at Level 3, Clarendon House 52 Cornmarket Street Oxford OX1 3HJ United Kingdom

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

### WHEREAS:

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

**IT IS HEREBY AGREED** as follows:

### 1. Documents

This Contract shall be comprised of the following documents:

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

### 2. Contract Signature

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

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

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

The Services shall commence on 7<sup>th</sup> April 2022 and the end date of the Initial Period shall be 31<sup>st</sup> December 2026. The FCDO may scale-up or extend the programme's budget up to £10m and timeframe (up to 3 years)

**4. Financial Limit**

Payments under this Contract shall not, in any circumstances, exceed £15,724,357 (Fifteen Million, Seven Hundred and Twenty Four Thousand, Three Hundred and Fifty Seven Pounds) for the Initial Period inclusive of any government tax.

**5. Programme Name**

The Programme Name to which this Contract relates is - Unlocking children’s potential to thrive: Research into taking early childhood development (ECD) interventions to scale (THRIVE).

**6. Time of the Essence**

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

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

Name:  
  
Position:  
  
Signature:  
  
Date:

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

Name:  
  
Position:  
  
Signature:  
  
Date:



Foreign, Commonwealth and Development Office (FCDO)

# Standard Terms and Conditions – Service Contracts

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## Preliminaries

### 1. DEFINITIONS AND INTERPRETATION

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

### 2. REPRESENTATIONS AND WARRANTIES

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

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

**3. FINANCIAL LIMIT**

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

**Term of Contract****4. CONTRACT TERM**

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

**Provision of Services****5. OBLIGATIONS OF THE SUPPLIER**

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

**Supplier Personnel and Supply Chain Matters****6. SUPPLIER PERSONNEL**



- 6.1 The Supplier shall not remove or replace any Key Personnel (including when carrying out its obligations under Clause 16 (Exit Management)) unless:
- 6.1.1 requested to do so by FCDO;
  - 6.1.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
  - 6.1.3 the person's employment or contractual arrangement with the Supplier or a Sub-Contractor is terminated by the employer for material breach of contract; or
  - 6.1.4 the Supplier obtains Approval (such Approval not to be unreasonably withheld or delayed).
- 6.2 The Supplier shall:
- 6.2.1 provide a list of the names of all Supplier Personnel requiring admission to FCDO Sites, specifying the capacity in which they require admission and giving such other particulars as FCDO may reasonably require;
  - 6.2.2 ensure that all Supplier Personnel:
    - (a) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
    - (b) are vetted in accordance with Good Industry Practice and in compliance with the Staff Vetting Procedure;  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/301861/Security\\_Policy\\_for\\_Contractors\\_Consultants\\_Suppliers.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/301861/Security_Policy_for_Contractors_Consultants_Suppliers.pdf)
    - (c) shall be subject to pre-employment checks that include, as a minimum, employment history for the last three years, identity checks, unspent criminal convictions and right to work (including nationality and immigration status);
    - (d) obey all lawful instructions and reasonable directions of FCDO (including, if so required by FCDO, the ICT Policy) and provide the Services to the reasonable satisfaction of FCDO; and
    - (e) comply with:
      - (i) all reasonable requirements of FCDO concerning conduct at FCDO Sites, including any security requirements; and
      - (ii) any FCDO policies, provided to the Supplier or Supplier Personnel from time to time
  - 6.2.3 subject to Schedule 2 (Staff Transfer), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or Contractors of FCDO;
  - 6.2.4 be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Contract shall be a Default by the Supplier;
  - 6.2.5 use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
  - 6.2.6 subject to Clause 6.1, replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
  - 6.2.7 bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
  - 6.2.8 procure that the Supplier Personnel shall vacate FCDO Sites immediately upon the Expiry Date.
- 6.3 If FCDO reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Contract, it may:
- 6.3.1 refuse admission to the relevant person(s) to FCDO Sites and/or
  - 6.3.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).
  - 6.3.3 require the Supplier to replace the relevant person(s) without direct or indirect charge to FCDO and the Supplier shall fully indemnify and hold FCDO harmless against any claims of any kind that may arise with regard to the replacement of such Supplier Personnel.

**7. SUB-CONTRACTORS AND EXCLUSIVITY**

- 7.1 FCDO has consented to the appointment of the Sub-Contractors set out in Section 4 (Special Conditions).
- 7.2 The Supplier shall exercise due skill and care in the selection of any Sub-Contractors to ensure that the Supplier is able to:
- 7.2.1 manage any Sub-Contracts in accordance with Good Industry Practice;
  - 7.2.2 comply with its obligations under this Contract in the provision of the Services; and
  - 7.2.3 assign, novate or otherwise transfer to FCDO or any Replacement Supplier any of its rights and/or obligations under each Sub-Contract that relates exclusively to this Contract.
- 7.3 Prior to sub-contacting any of its obligations under this Contract, the Supplier shall both act in accordance with Clause 8 below and notify FCDO and provide FCDO with:
- 7.3.1 the proposed Sub-Contractor's name, registered office and company registration number;
  - 7.3.2 the scope of any Services to be provided by the proposed Sub-Contractor; and
  - 7.3.3 where the proposed Sub-Contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of FCDO that the proposed Sub-Contract has been agreed on "arm's-length" terms.
- 7.4 If requested by FCDO within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 7.3, the Supplier shall also provide:
- 7.4.1 a copy of the proposed Sub-Contract; and
  - 7.4.2 any further information reasonably requested by FCDO.
- 7.5 FCDO may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 7.3 (or, if later, receipt of any further information requested pursuant to Clause 7.4), object to the appointment of the relevant Sub-Contractor if they consider that:
- 7.5.1 the appointment of a proposed Sub-Contractor may prejudice the provision of the Services or may be contrary to the interests of FCDO under this Contract;
  - 7.5.2 the proposed Sub-Contractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
  - 7.5.3 the proposed Sub-Contractor employs unfit persons,
- in which case, the Supplier shall not proceed with the proposed appointment.
- 7.6 If FCDO has not notified the Supplier that it objects to the proposed Sub-Contractor's appointment by the later of ten (10) Working Days of receipt of:
- 7.6.1 the Supplier's notice issued pursuant to Clause 7.3; or
  - 7.6.2 any further information requested by FCDO pursuant to Clause 7.4,
- the Supplier may proceed with the proposed appointment.
- 7.7 The Supplier shall ensure that all Sub-Contracts contain provisions:
- 7.7.1 requiring the Sub-Contractor to comply with the FCDO's Supply Partner Code of Conduct (Appendix B) at all times;
  - 7.7.2 requiring the Supplier to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice;

- 7.7.3 requiring that any invoices submitted by a Sub-Contractor shall be considered and verified by the Supplier in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed;
- 7.7.4 conferring a right to FCDO to publish the Supplier's compliance with its obligation to pay undisputed invoices to the Sub-Contractor within the specified payment period;
- 7.7.5 giving the Supplier a right to terminate the Sub-Contract if the Sub-Contractor fails to comply in the performance of the Sub-Contract with legal obligations in the fields of environmental, social or labour law; and
- 7.7.6 requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by this Clause 7.7.

**7.8 The Supplier shall:**

- 7.8.1 pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days from the receipt of a valid invoice;
- 7.8.2 include within the Performance Monitoring Reports required under Clause 13.3 a summary of its compliance with this Clause 7.8.1, such data to be certified each quarter by a director of the Supplier as being accurate and not misleading;
- 7.8.3 not include in any Sub-Contract any provision the effect of which would be to limit or restrict the ability of the Sub-Contractor to contract directly with FCDO, a Replacement Supplier, or with any other organisation and Sub-Contractors shall be free to assert their rights independently regarding contractual exclusivity.
- 7.8.4 where Sub-Contracting has been Approved by FCDO, promptly provide FCDO with written confirmation from each Sub-Contractor identified within Section 4 of the Contract that they accept provisions set out at Clauses 50.1 to 50.7, which shall be included in all Supplier Sub-Contracts.

**8. VISIBILITY OF SUBCONTRACT OPPORTUNITIES**

**8.1 The Supplier shall:**

- 8.1.1 subject to Clause 8.3, advertise on Contracts Finder all subcontract opportunities arising from or in connection with the provision of the Goods and/or Services and/or Works above a minimum threshold of £25,000 that arise during the Term;
- 8.1.2 within 90 days of awarding a Sub-Contract to a Sub-Contractor, update the notice on Contracts Finder with details of the successful Sub-Contractor;
- 8.1.3 monitor the number, type and value of the Sub-Contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;
- 8.1.4 provide reports on the information at clause 8.1.3 to FCDO in the format and frequency as reasonably specified by FCDO; and
- 8.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.

8.2 Each advert referred to at Clause 8.1 above shall provide a full and detailed description of the Sub-Contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.

8.3 The obligation at Clause 8.1 shall only apply in respect of Sub-Contract opportunities arising after the Commencement Date.

8.4 Notwithstanding Clause 8.1, FCDO may by giving its Approval, agree that a Sub-Contract opportunity is not required to be advertised on Contracts Finder.

**9. STAFF TRANSFER**

**9.1 The Parties agree that:**

- 9.1.1 where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 2 (Staff Transfer) shall apply as follows:
  - (a) where the Relevant Transfer involves the transfer of Transferring FCDO Employees, Part A of Schedule 2 (Staff Transfer) shall apply;

- (b) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B of Schedule 2 (Staff Transfer) shall apply;
- (c) where the Relevant Transfer involves the transfer of Transferring FCDO Employees and Transferring Former Supplier Employees, Parts A and B of Schedule 2 (Staff Transfer) shall apply; and
- (d) Part C of Schedule 2 (Staff Transfer) shall not apply.

9.1.2 where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Schedule 2 (Staff Transfer) shall apply and Parts A and B of Schedule 2 (Staff Transfer) shall not apply; and

9.1.3 Part D of Schedule 2 (Staff Transfer) shall apply on the expiry or termination of the Services or any part of the Services;

9.2 The Supplier shall both during and after the Term indemnify FCDO against all Employee Liabilities that may arise as a result of any claims brought against FCDO by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel.

## **10. DUTY OF CARE**

10.1 The Supplier owes a duty of care to the Supplier Personnel and is responsible for the health, safety, security of life and property and general wellbeing of such persons and their property and this includes where the Supplier Personnel carry out the Services.

10.2 The Supplier warrants that it has and will throughout the duration of the Contract:

10.2.1 carry out the appropriate risk assessment with regard to its delivery of the Services;

10.2.2 provide the Supplier Personnel with adequate information, instruction, training and supervision;

10.2.3 have appropriate emergency procedures in place to enable their provision of the Services so as to prevent damage to the Supplier Personnel's health, safety, security of life and property and general wellbeing.

10.3 The provision of information of any kind whatsoever by FCDO to the Supplier shall not in any respect relieve the Supplier from responsibility for its obligations under this Clause 10. The positive evaluation of the Supplier's proposal for the provision of the Services and the award of this Contract is not an endorsement by FCDO of any arrangements which the Supplier has made for the health, safety, security of life and property and wellbeing of the Supplier Personnel in relation to the provision of the Services.

10.4 The Supplier acknowledges that the FCDO accepts no responsibility for the health, safety, security of life and property and general wellbeing of the Supplier Personnel with regard to the Supplier Personnel carrying out the Services under this Contract.

10.5 The Supplier will ensure that such insurance arrangements as are made to cover the Supplier Personnel, or any person employed or otherwise engaged by the Supplier, and pursuant to the Suppliers duty of care as referred to in this Clause 10, are reasonable and prudent in all circumstances, including in respect of death, injury or disablement, and emergency medical expenses.

10.6 The costs of any insurance specifically taken out by the Supplier to support the performance of this Contract in relation to the Supplier's duty of care may be included as part of the management costs of the project, and must be separately identified in all financial reporting relating to the project.

10.7 Where FCDO is providing any specific security arrangements for the Supplier or Supplier Personnel in relation to the Contract, these will be as detailed in the Section 3 (Terms of Reference).

10.8 The Supplier shall provide training on a continuing basis for all Supplier Personnel, in compliance with the Security Policy and the security plan.

## **11. PROCUREMENT OF EQUIPMENT**

11.1 The Supplier shall ensure that procurement of goods and equipment shall:

11.1.1 be undertaken in accordance with best practice principles of openness fairness and transparency;

11.1.2 achieve "Value for Money" defined as the optimum combination of whole-life cost and quality to meet requirements in a fully transparent manner and the procurement may be subject to audit by FCDO;

11.1.3 be carried out using strict due diligence processes that ensure the protection of FCDO's interests and reputation, with particular emphasis on anti-terrorism, anti-corruption and fraud throughout the delivery chain; and

11.1.4 be on the basis that the ownership of Equipment shall vest in FCDO, and shall be so marked.

## **12. USE OF AND RESPONSIBILITY FOR EQUIPMENT**

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

## **Contract Governance**

### **13. MONITORING OF CONTRACT PERFORMANCE**

- 13.1 Unless Section 4 (Special Conditions) specifies that obligations relating to the monitoring of Contract performance shall be those set out in Section 3 (Terms of Reference), the remaining provisions of this Clause 13 shall apply.
- 13.2 Within twenty (20) Working Days of the Commencement Date the Supplier shall provide FCDO with details of how the process in respect of the monitoring and reporting of the performance of the Supplier's obligations under this Contract will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.
- 13.3 The Supplier shall provide FCDO with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process and timescales agreed pursuant to Clause 13.2 above which shall contain, as a minimum, the following information:
- 13.3.1 details of compliance with its obligations under Clause 7.8.2
  - 13.3.2 details of compliance with any additional obligations set out in Section 3 (Terms of Reference);
  - 13.3.3 details of compliance with its obligations under Annex 1b of Section 2 (Contractual Annual Compliance Declaration); and
  - 13.3.4 such other details as FCDO may reasonably require from time to time.
- 13.4 The Parties shall attend meetings to discuss Performance Monitoring Reports ("**Performance Review Meetings**") on a monthly basis (unless otherwise agreed). The Performance Review Meetings will be the forum for the review by the Supplier and FCDO of the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):
- 13.4.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier;
  - 13.4.2 take place at such location and time (within normal business hours) as FCDO shall reasonably require unless otherwise agreed in advance;
  - 13.4.3 be attended by the Supplier's Contract Officer and the FCDO's Project Officer; and
  - 13.4.4 be fully minuted by the Supplier. The prepared minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the FCDO Project Officer and any other recipients agreed at the relevant meeting. The minutes of the preceding month's Performance Review Meeting will be agreed and signed by both the Supplier's Contract Officer and the FCDO's Project Officer at each meeting.
- 13.5 In order to assess the level of performance of the Supplier, FCDO may undertake satisfaction surveys in respect of the Supplier's provision of the Services and FCDO shall be entitled to notify the Supplier of any aspects of their performance of the provision of the Services which the responses to the satisfaction surveys reasonably suggest are not in accordance with this Contract.
- ### **14. PROGRESS & FINANCIAL REPORTS**
- 14.1 Where progress and financial reports are to be submitted under the Contract, the Supplier shall render those reports at such time and in such form as may be specified by FCDO or where not specified by FCDO, as otherwise agreed between the Parties.

**15. OPEN BOOK ACCOUNTING AND AUDIT**

- 15.1 The Supplier shall keep and maintain for seven (7) years after the expiry of the Term (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Contract including the Services provided under it, any Sub-Contracts and the amounts paid by FCDO.
- 15.2 If so stated in Section 3 (Terms of Reference), FCDO shall be entitled to apply the principles of open book contract management set out in Procurement Policy Note 05/16 (<https://www.gov.uk/government/publications/procurement-policy-note-0516-open-book-contact-management>), or any other replacement guidance or policy issued from time to time to this Contract. FCDO shall apply the appropriate tier level which, in FCDO's reasonable opinion, is commensurate with the delivery model of the Services and the Supplier shall comply with the principles etc. (as more particular described in the OBMC guidance).
- 15.3 The Supplier shall:
- 15.3.1 keep the records and accounts referred to in Clause 15.1 in accordance with Good Industry Practice and Law; and
- 15.3.2 afford FCDO and/or its Auditors access to the records and accounts referred to in Clause 15.1 at the Supplier's premises and/or provide records and accounts (including copies of the Supplier's published accounts) or copies of the same, as may be required by any of the Auditors from time to time during the Term and the period specified in Clause 15.1, in order that the Auditor(s) may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this Contract including in order to:
- (a) verify the accuracy of the Charges and any other amounts payable by FCDO under this Contract (and proposed or actual variations to them in accordance with this Contract);
  - (b) verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Services;
  - (c) verify the Open Book Data;
  - (d) verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;
  - (e) identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances FCDO shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
  - (f) identify or investigate any circumstances which may impact upon the financial stability of the Supplier and/or any Sub-Contractors or their ability to perform the Services;
  - (g) obtain such information as is necessary to fulfil FCDO's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
  - (h) review any books of account and the internal contract management accounts kept by the Supplier in connection with this Contract;
  - (i) carry out FCDO's internal and statutory audits and to prepare, examine and/or certify FCDO's annual and interim reports and accounts;
  - (j) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which FCDO has used its resources;
  - (k) review any records relating to the Supplier's performance of the provision of the Services and to verify that these reflect the Supplier's own internal reports and records;
  - (l) verify the accuracy and completeness of any information delivered or required by this Contract;
  - (m) review the Supplier's quality management systems (including any quality manuals and procedures);
  - (n) review the Supplier's compliance with any standards referred to in this Contract or applicable to the provision of the Services;

- (o) inspect any of FCDO's assets, including FCDO's IPRs, equipment and facilities, for the purposes of ensuring that any of FCDO's assets are secure and that any register of assets is up to date; and/or
- (p) review the integrity, confidentiality and security of FCDO Data.

- 15.4 FCDO shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of FCDO.
- 15.5 Subject to the Supplier's rights in respect of Confidential Information, the Supplier shall on demand provide the Auditor(s) with all reasonable co-operation and assistance in:
- 15.5.1 all reasonable information requested by FCDO within the scope of the audit;
  - 15.5.2 reasonable access to sites controlled by the Supplier and to any Supplier Equipment used in the provision of the Services; and
  - 15.5.3 access to the Supplier Personnel.
- 15.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 15, unless the audit reveals a Default by the Supplier in which case the Supplier shall reimburse FCDO for the FCDO's reasonable costs incurred in relation to the audit.

## 16. EXIT MANAGEMENT

- 16.1 On reasonable notice at any point during the Term, the Supplier shall provide to FCDO and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by FCDO of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:
- 16.1.1 details of the Service(s);
  - 16.1.2 a copy of the Register, updated by the Supplier up to the date of delivery of such Registers;
  - 16.1.3 an inventory of FCDO Data in the Supplier's possession or control;
  - 16.1.4 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
  - 16.1.5 a list of on-going and/or threatened disputes in relation to the provision of the Services;
  - 16.1.6 all information relating to Transferring Supplier Employees or those who may be Transferring Supplier Employees required to be provided by the Supplier under this Contract such information to include the Staffing Information as defined in Schedule 2 (Staff Transfer); and
  - 16.1.7 such other material and information as FCDO shall reasonably require,
- (together, the "Exit Information").
- 16.2 The Supplier acknowledges that FCDO may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom FCDO is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that FCDO may not disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-Contractors' prices or costs).
- 16.3 if the Exit Information materially changes from the Exit Information previously provided and it could reasonably adversely affect:
- 16.3.1 the provision of the Services; and/or
  - 16.3.2 the delivery of the exit services/exit plan; and/or
  - 16.3.3 any re-tender exercise by FCDO,
- then the Supplier shall notify FCDO within a reasonable period of time and consult and shall consult with FCDO regarding such proposed material changes and provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from FCDO.
- 16.4 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:

- 16.4.1 prepare an informed offer for those Services; and
- 16.4.2 not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).
- 16.5 The Supplier shall, within three (3) months after the Commencement Date, deliver to FCDO an Exit Plan which:
  - 16.5.1 sets out the Supplier's proposed methodology for achieving an orderly transition of the Services from the Supplier to FCDO and/or its Replacement Supplier on the expiry or termination of this Contract;
  - 16.5.2 complies with the requirements set out in Clause 16.7 below;
  - 16.5.3 is otherwise reasonably satisfactory to FCDO.
- 16.6 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 16.7 Unless otherwise specified by FCDO, the Exit Plan shall set out, as a minimum:
  - 16.7.1 how the Exit Information is obtained;
  - 16.7.2 the management structure to be employed during both transfer and cessation of the Services;
  - 16.7.3 the management structure to be employed whilst carrying out the activities to be performed by the Supplier as identified in the Exit Plan;
  - 16.7.4 a detailed description of both the transfer and cessation processes, including a timetable;
  - 16.7.5 how the Services will transfer to the Replacement Supplier and/or FCDO, including details of the processes, documentation, data transfer, systems migration, security and the segregation of FCDO's technology components from any technology components operated by the Supplier or its Sub-Contractors (where applicable);
  - 16.7.6 details of contracts (if any) which will be available for transfer to FCDO and/or the Replacement Supplier upon the Expiry Date together with any reasonable costs required to effect such transfer (and the Supplier agrees that all assets and contracts used by the Supplier in connection with the provision of the Services will be available for such transfer);
  - 16.7.7 proposals for the training of key personnel of the Replacement Supplier in connection with the continuation of the provision of the Services following the Expiry Date charged at rates agreed between the Parties at that time;
  - 16.7.8 proposals for providing FCDO or a Replacement Supplier copies of all documentation:
    - (a) used in the provision of the Services and necessarily required for the continued use of the Replacement Services, in which the Intellectual Property Rights are owned by the Supplier; and
    - (b) relating to the use and operation of the Services;
  - 16.7.9 proposals for the assignment or novation of the provision of all services, leases, maintenance agreements and support agreements utilised by the Supplier in connection with the performance of the supply of the Services;
  - 16.7.10 proposals for the identification and return of all Equipment in the possession of and/or control of the Supplier or any third party (including any Sub-Contractor);
  - 16.7.11 proposals for the disposal of any redundant Services and materials;
  - 16.7.12 procedures to:
    - (a) deal with requests made by FCDO and/or a Replacement Supplier for Staffing Information pursuant to Schedule 2 (Staff Transfer);
    - (b) determine which Supplier Personnel are or are likely to become Transferring Supplier Employees; and
    - (c) identify or develop any measures for the purpose of the Employment Regulations envisaged in respect of Transferring Supplier Employees;



- 16.7.13 how each of the issues set out in this Clause 16 will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or FCDO with the aim of ensuring that there is no disruption to or degradation of the Services;
- 16.7.14 proposals for the supply of any other information or assistance reasonably required by FCDO or a Replacement Supplier in order to effect an orderly handover of the provision of the Services.

## PAYMENT AND TAXATION

### 17. Charges

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

### 18. VAT

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

### 19. RETENTION AND SET OFF

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

### 20. SUPPLIER PROFIT

- 20.1 On completion of each Contract Year (or on a six-monthly basis if requested by FCDO giving reasonable written notice), and for any Variation, the Supplier is required to send a written report (the "**Actual Profit Margin Report**") in an overall format determined by FCDO but to include an updated cost pro-forma template, setting out the Actual Profit Margin including any change to the Projected Profit Margin.
- 20.2 Where the Actual Profit Margin Report identifies that the Supplier has exceeded the Projected Profit Margin over the period set out in the Actual Profit Margin Report ("the **Exceeded Amount**"), the Parties shall agree within a reasonable period of time following receipt by FCDO of the Actual Profit Margin Report how the Exceeded Amount should be apportioned. Where the Parties are unable to agree FCDO shall be entitled to require the Supplier to do any of the following:
- 20.2.1 pay FCDO an amount equal to the difference between the Projected Profit Margin and the Exceeded Amount; or
- 20.2.2 redirect an amount equal to the difference between the Projected Profit Margin and the Exceeded Amount back in to the programme being delivered as part of the Services; or
- 20.2.3 adjust the Charges.

### 21. SATISFACTORY PERFORMANCE

- 21.1 Payments made pursuant to Clause 17.1 are subject to the satisfactory performance by the Supplier of its obligations under the Contract as determined by the FCDO Project Officer in addition to verification by the FCDO Project Officer that all prior payments made to the Supplier under this Contract were properly due.
- 21.2 If for any reason the Services are not provided in accordance with this Contract, or FCDO is dissatisfied with the performance of this Contract, FCDO, without prejudice to any other rights or remedies howsoever arising, shall be entitled to withhold payment of the applicable Charges for the Services that were not so provided until such time as the applicable Services are provided in accordance with this Contract.
- 21.3 Should FCDO determine after paying for a particular part of the Services that this has not been provided in accordance with this Contract, FCDO may recover, or withhold from further payments, an amount not exceeding the applicable Charges paid for that part of the Service until the unsatisfactory part of the Services is remedied to FCDO's satisfaction.

## **22. PAYMENTS & INVOICING INSTRUCTIONS**

- 22.1 Subject to FCDO being satisfied that the Supplier is or has been carrying out their duties, obligations and responsibilities under this Contract, the applicable Charges shall be paid within 30 days of receipt of an undisputed Valid Invoice and payment shall be made in sterling in the UK or any other currency in any other country as determined from FCDO from time to time.
- 22.2 Expenses (if any) arising in foreign currency shall be reimbursed at the exchange rate stated in OANDA ([www.oanda.com](http://www.oanda.com)) on the Friday immediately preceding the date on which the purchase was made or services acquired by the Supplier or, if this took place on a Friday, at the rate so stated on that day.
- 22.3 Unless otherwise expressly provided in Section 4 (Special Conditions) or Section 5 (Schedule of Prices), invoices should be submitted electronically monthly in arrears to the Accounts Payable Section, FCDO Financial Management Group [e-invoicing@FCDO.gov.uk](mailto:e-invoicing@FCDO.gov.uk), and in accordance with this Clause 22.
- 22.4 FCDO shall unless otherwise expressly provided in Section 4 (Special Conditions) make payments due by direct credit through the UK Bank Clearing Systems (BACS). For an invoice to be valid, it must contain:
- 22.4.1 details of the bank account to which payments are to be made (i.e. name and address of bank, sort code, account name and number).
  - 22.4.2 the date of the invoice;
  - 22.4.3 a unique invoice number;
  - 22.4.4 the period(s) to which the relevant charge(s) relate;
  - 22.4.5 the correct reference for this Agreement and the purchase order to which it relates;
  - 22.4.6 a contact name and telephone number of a responsible person in the supplier's finance department;
  - 22.4.7 a detailed breakdown of the Services and the appropriate Charges and supported by any other documentation required by FCDO to substantiate the invoice.
- 22.5 All Valid Invoices should correspond with the budget lines identified in Section 5 (Schedule of Prices) of this Contract.
- 22.6 FCDO may request proof of purchase in respect of any item and shall be entitled to refuse to meet a claim if this cannot be provided.
- 22.7 Where an invoice is not a Valid Invoice it may be rejected by FCDO and in any event shall be liable to query and delay in payment. FCDO reserves the right to not pay any amount due in respect of any invoice received by FCDO more than 90 days after the day of the Supplier becoming entitled to invoice for the payment to which it relates.
- ## **23. UNITED KINGDOM INCOME TAX AND NATIONAL INSURANCE CONTRIBUTIONS**
- 23.1 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Contract, the Supplier shall:
- 23.1.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration;

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

## **24. TAX COMPLIANCE**

- 24.1 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- 24.1.1 notify FCDO in writing of such fact within 5 Working Days of its occurrence;
- 24.1.2 promptly provide to FCDO:
- (a) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
  - (b) such other information in relation to the Occasion of Tax Non-Compliance as FCDO may reasonably require.

## **Intellectual Property, Security and Information**

### **25. INTELLECTUAL PROPERTY RIGHTS**

- 25.1 Save as expressly granted elsewhere under this Contract:
- 25.1.1 FCDO shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:
- (a) the Supplier Background IPR; and
  - (b) the Third Party IPR.
- 25.1.2 the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of FCDO or its licensors, including the:
- (a) FCDO Background IPR;
  - (b) FCDO Data;
  - (c) Project Specific IPRs; and
  - (d) Programme Name and any rights and interests in it at all times.
- 25.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 25.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).
- 25.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.
- 25.4 Any Project Specific IPRs created under this Contract shall be owned by FCDO. FCDO grants the Supplier a licence to use any FCDO Background IPR and Project Specific IPRs for the purpose of fulfilling its obligations under this Contract during its Term.
- 25.5 Subject to Clause 25.7, to the extent that it is necessary to enable FCDO to obtain the full benefits of ownership of the Project Specific IPRs, the Supplier hereby grants to FCDO and shall procure that any relevant third party licensor shall grant to FCDO a perpetual, irrevocable, non-exclusive, assignable, royalty-free licence to use, sub-license and/or commercially exploit any Supplier Background IPRs or Third Party IPRs that are embedded in or which are an integral part of the Project Specific IPR Items.
- 25.6 The Supplier shall promptly notify FCDO if it is reasonably believes that it will be unable to grant or procure the grant of the licences set out in Clause 25.5 above and the Supplier shall provide full details of the adverse effect this may have on FCDO's use of the Project Specific IPRs.
- 25.7 Where the Supplier is unable to comply with Clause 25.5, the Supplier shall refrain from embedding or integrating any Supplier Background IPRs and/or Third Party IPRs with the Project Specific IPRs in such a way that could affect FCDO obtaining full benefit of the ownership of those Project Specific IPRs, except where FCDO has provided express written Approval to do so.

25.8 The Supplier shall, during and after the Term, on written demand, indemnify FCDO against all Losses incurred by, awarded against, or agreed to be paid by FCDO (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.

25.9 If an IPR Claim is made or anticipated, the Supplier must at its own expense and FCDO's sole option, either:

25.9.1 procure for FCDO the rights in Clause 25.5 without infringing the IPR of any third party; or

25.9.2 replace or modify the relevant item with non-infringing substitutes with no detriment to functionality of performance of the Services.

## **26. SECURITY REQUIREMENTS**

26.1 The Supplier shall comply, and shall procure that the Supplier Personnel comply, with the Security Policy and any security plan requested by FCDO, and the Supplier shall ensure that the security plan produced by the Supplier fully complies with the Security Policy.

26.2 The Supplier shall ensure that it keeps up to date with the latest version of the Security Policy.

26.3 If the Supplier believes that a change to the Security Policy will have a material and unavoidable cost implication to the Services it may submit a variation in accordance with Clause 38. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in discussion with the FCDO Contract Officer.

26.4 Until and/or unless a change to the Charges is agreed by FCDO pursuant to Clause 26.3 the Supplier shall continue to perform the Services in accordance with its obligations and for the Charges applicable prior to any change request.

## **27. MALICIOUS SOFTWARE**

27.1 The Supplier shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.

27.2 Notwithstanding Clause 27.1 if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of FCDO Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.

27.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 27.2 shall be borne by the Parties as follows:

27.3.1 by the Supplier where the Malicious Software originates from the Supplier Software, the Third Party Software or the FCDO Data (whilst the FCDO Data was under the control of the Supplier); and

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

## **28. TRANSPARENCY**

28.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of Clause 30 (Freedom of Information), the content of this Contract is not confidential information. FCDO shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.

28.2 Notwithstanding any other term of this Contract, the Supplier hereby gives their consent for FCDO to publish the Contract in its entirety, including from time to time agreed changes to the Contract, to the general public.

28.3 FCDO may consult with the supplier to inform its decision regarding any exemptions with regard to FOIA but FCDO shall have the final decision in its absolute discretion.

28.4 The Supplier shall assist and cooperate with FCDO to enable FCDO to publish this Contract.

28.5 The Supplier acknowledges that FCDO endorses/supports the requirements of the IATI standard and shall assist and cooperate with FCDO, to enable the Supplier to understand the different elements of IATI implementation and to comply with the different data, policy and technical considerations that need to be taken into account.

28.6 The Supplier shall:

28.6.1 publish information data to the IATI standard, that relates to a specific activity in a single, common, electronic format for the transparent, accurate, timely and comprehensive publishing of data, on all activities in the delivery chain, in the delivery of development cooperation and humanitarian aid; and

28.6.2 provide all necessary assistance as reasonably requested by FCDO to enable FCDO to respond to the IATI requirements.

28.7 The Supplier shall maintain an up-to-date and accurate record of named downstream delivery partners in receipt of FCDO funds and/or FCDO funded inventory or assets. This record should demonstrate how funds flow from initial source to end beneficiaries. This record should be made available to FCDO upon written request and within the time set out in the request. This record should be updated by the Supplier;

28.7.1 as required in the terms of reference;

28.7.2 annually;

28.7.3 when there are material changes in the delivery chain; and

28.7.4 as part of the project completion process.

## **29. CONFIDENTIALITY**

29.1 Except to the extent set out in this Clause 29 or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

29.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly;

29.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

29.2 Clause 29.1 shall not apply to the extent that:

29.2.1 such disclosure is a requirement of Law applicable to the Party making the disclosure, including any requirements for disclosure under the FOIA, the Environmental Information Regulations and associated codes of practice pursuant to Clause 30 (Freedom of Information);

29.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

29.2.3 such information was obtained from a third party without obligation of confidentiality;

29.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or

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

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

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

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

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

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

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

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

- 29.6.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 29.6.1 (including any benchmarking organisation) for any purpose relating to or connected with this Contract;
- 29.6.5 on a confidential basis for the purpose of the exercise of its rights under this Contract, including the Audit Rights, its step-in rights pursuant to Clause 15 (Open Book Accounting and Audit), its rights to appoint an advisor pursuant to Clause 47 (Dispute Resolution) and any rights set out in Clause 16 (Exit Management);
- 29.6.6 on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract; or
- 29.6.7 for the purpose of the examination and certification of FCDO's accounts,

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

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

### **30. FREEDOM OF INFORMATION**

- 30.1 The Supplier acknowledges that FCDO is subject to the requirements of the FOIA, the Environmental Information Regulations and associated codes of practice and shall assist and cooperate with FCDO to enable FCDO to comply with its Information disclosure obligations.
- 30.2 The Supplier shall and shall ensure that its Sub-Contractors shall:
  - 30.2.1 transfer to FCDO all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
  - 30.2.2 provide FCDO with a copy of all Information in its possession, or power in the form that FCDO requires within five (5) Working Days (or such other period as FCDO may specify) of FCDO's request; and
  - 30.2.3 provide all necessary assistance as reasonably requested by FCDO to enable FCDO to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 30.3 FCDO shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA, the Environmental Information Regulations and associated codes of practice.
- 30.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by FCDO.
- 30.5 The Supplier acknowledges that FCDO may, acting in accordance with any code of practice issued pursuant to Section 45 of FOIA ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Services:
  - 30.5.1 in certain circumstances without consulting the Supplier;
  - 30.5.2 following consultation with the Supplier and having taken their views into account;
  - 30.5.3 provided always that where Clause 30.5.1 applies FCDO shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 30.6 The Supplier shall ensure that all Information is retained for disclosure in accordance with Clauses 30.7 and 30.8 and shall permit FCDO to inspect such records as requested by FCDO from time to time.
- 30.7 The Supplier shall, during this Contract and for a period of at least seven years following the expiry or termination of this Contract, retain and maintain all Information:
  - 30.7.1 in accordance with Good Industry Practice and Law;

30.7.2 in chronological order;

30.7.3 in a form that is capable of audit;

30.7.4 at its own expense.

30.8 Wherever practical, original Information shall be retained and maintained in hard copy form.

### **31. OFFICIAL SECRETS ACT**

31.1 The Supplier shall, and shall ensure that the Supplier Personnel shall, comply with any relevant obligations arising under the Official Secrets Acts 1911 to 1989.

### **32. FCDO DATA**

32.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to FCDO Data.

32.2 The Supplier shall not store, copy, disclose, or use FCDO Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise expressly authorised in writing by FCDO.

32.3 To the extent that FCDO Data is held and/or processed by the Supplier, the Supplier shall supply that FCDO Data to FCDO as requested by FCDO in the format(s) specified by FCDO.

32.4 Upon receipt or creation by the Supplier of any FCDO Data and during any collection, processing, storage and transmission by the Supplier of any FCDO Data, the Supplier shall take responsibility for preserving the integrity of FCDO Data and preventing the corruption or loss of FCDO Data.

32.5 The Supplier shall perform secure back-ups of all FCDO Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Security Policy. The Supplier shall ensure that such back-ups are available to FCDO at all times upon request, with delivery times as specified by FCDO.

32.6 The Supplier shall ensure that the system on which the Supplier holds any FCDO Data, including back-up data, is a secure system that complies with the Security Policy.

32.7 If FCDO Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, FCDO may:

32.7.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of FCDO Data to the extent and in accordance with the Business Continuity and Disaster Recovery Provisions specified in the Security Policy and the Supplier shall do so as soon as practicable but not later than three days following a written request from FCDO; and/or

32.7.2 itself restore or procure the restoration of FCDO Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in the Business Continuity and Disaster Recovery provisions specified in the Security Policy.

32.8 If at any time the Supplier suspects or has reason to believe that FCDO Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify FCDO immediately and inform FCDO of the remedial action the Supplier proposes to take.

32.9 The Supplier shall obtain and maintain certification under the HM Government Cyber Essentials Scheme.

### **33. PROTECTION OF PERSONAL DATA**

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

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

33.2.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, FCDO is the Controller and the Supplier is the Processor unless otherwise specified in Appendix A of the Terms of Reference (at Section 3 of the contract). The only processing that the Processor is authorised to do is listed in Appendix A of the Terms of Reference by the Controller and may not be determined by the Processor.

33.2.2 The Processor shall notify the Controller immediately if it considers that any of Controller's instructions infringe the Data Protection Legislation.

33.2.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the services.
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

33.2.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- (a) process that Personal Data only in accordance with the Appendix A referred to in Clause 33.2.1, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
  - a. nature of the data to be protected;
  - b. harm that might result from a Data Loss Event;
  - c. state of technological development; and
  - d. cost of implementing any measures;
- (c) ensure that:
  - I. the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Appendix A referred to in Clause 33.2.1);
  - II. it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
    - a. are aware of and comply with the Processor's duties under this clause;
    - b. are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
    - c. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
    - d. have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
  - a. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
  - b. the Data Subject has enforceable rights and effective legal remedies;
  - c. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
  - d. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;



- (e) At the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

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

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

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

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

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

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

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

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

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

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

- d. provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

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

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

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

### 33.3 Where the Parties both Control Personal Data Independently

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

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

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

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

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

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

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

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

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

## 34. PUBLICITY AND BRANDING

34.1 The Supplier shall not:

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

- 34.1.2 use FCDO's name or brand (including the 'UK aid logo') in any promotion, marketing, communications or announcement of orders;  
without the prior written consent of the FCDO.
- 34.2 Where and to the extent that FCDO has provided consent pursuant to Clause 34.1, then the Supplier:
- 34.2.1 shall collaborate with FCDO and proactively look for ways to build support for development and raise awareness of FCDO's funding.
- 34.2.2 shall explicitly acknowledge FCDO's funding, in written and verbal communications about activities related to the funding, to the public or third parties, including in announcements, and through use, where appropriate, of FCDO's "UK aid – from the British people" logo ('UK aid logo') in accordance with FCDO standards for use of the UK aid logo, unless otherwise agreed in advance by FCDO and in all cases subject to security and safety considerations of the Supplier.
- 34.2.3 shall provide a visibility statement of how and when they or Sub-Contractors will acknowledge funding from FCDO and where they will use the UK aid logo. The Supplier shall include reference to this in its progress reports and annual reviews.
- 34.2.4 may use the UK aid logo in conjunction with other donor logos, and where the number of donors to a programme or project is such as to make co-branding impractical, acknowledgement of funding from FCDO shall be equal to that of other co-donors making contributions of equivalent amounts to the programme or project.

## Liabilities

### 35. LIMIT OF LIABILITY

- 35.1 Neither Party limits its liability for:
- 35.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
- 35.1.2 fraud or fraudulent misrepresentation by it or its employees;
- 35.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- 35.1.4 any liability to the extent it cannot be limited or excluded by Law.
- 35.2 Subject to Clause 35.1, the Supplier's total aggregate liability in respect of all Losses (whether in tort, contract or otherwise) incurred by FCDO under or in connection with the Contract as a result of Defaults by the Supplier shall not exceed the Financial Limit unless a different amount has been stated in Section 4 (Special Conditions) in which case that amount shall apply.
- 35.3 Subject to Clause 35.1, FCDO's total aggregate liability in respect of all Losses (whether in tort, contract or otherwise) shall not exceed one hundred thousand pounds (£100,000).
- 35.4 Subject to Clause 35.1 neither Party be liable to the other for any:
- 35.4.1 loss of profits, turnover, savings business opportunities, revenue or damage to goodwill (in each case whether direct or indirect); and/or
- 35.4.2 indirect, special or consequential loss or damage of any nature and howsoever caused, even if the losses were reasonably foreseeable or the Party has been advised of the possibility of such losses occurring.
- 35.5 Subject to Clause 35.2, and notwithstanding Clause 35.4, the Supplier acknowledges that FCDO may, amongst other things, recover from the Supplier the following losses incurred by FCDO to the extent that they arise as a result of a Default by the Supplier:
- 35.5.1 any additional operational and/or administrative costs and expenses incurred by FCDO, including costs relating to time spent by or on behalf of FCDO in dealing with the consequences of the Default;
- 35.5.2 any wasted expenditure or charges;
- 35.5.3 the additional cost of procuring Replacement Services for the remainder of the Term, which shall include any incremental costs associated with such Replacement Services above those which would have been payable under this Contract;
- 35.5.4 any compensation or interest paid to a third party by FCDO; and

35.5.5 any fine, penalty or costs incurred by FCDO pursuant to Law.

### **36. INDEMNITY**

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

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

### **37. INSURANCE**

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

37.2 The Supplier shall ensure that its Sub-Contractors shall effect and maintain insurances (where appropriate) in relation to the performance of their obligations under any Sub-Contracts appropriate to Services being provided.

37.3 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities arising under this Contract.

## **Control of Contract**

### **38. VARIATIONS**

38.1 Either Party may request a variation to this Contract provided that such variation does not amount to a material change of this Contract within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a **"Variation"**.

38.2 A Party may request a Variation at any time by sending the request in writing to the relevant Contract Officer. The request shall contain sufficient information setting out:

38.2.1 the extent of the proposed Variation and any additional cost that may be incurred; and

38.2.2 a formal, technical and commercial justification.

38.3 In the event that the Parties are unable to agree a change to the Contract that may be included in a request of a Variation or response to as a consequence thereof FCDO may:

38.3.1 agree to continue to perform its obligations under this Contract without the Variation; or

38.3.2 terminate this Contract with immediate effect, except where the Supplier has already fulfilled part or all of the provision of the Services in accordance with this Contract or where the Supplier can show evidence of substantial work being carried out to provide the Services under this Contract, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.

38.4 If the Parties agree the Variation, the Variation shall be effected upon both Parties signing the Contract Amendment Letter (Appendix A) and the Supplier shall implement such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in this Contract. FCDO shall not be liable for any costs for any additional activity or otherwise undertaken by the Supplier where the Parties have not agreed in writing in an executed Contract Amendment Letter in accordance with this Clause 38 for such costs to be incurred or for the additional activity to be undertaken. The Supplier shall promptly return on request by FCDO, any monies which FCDO may have paid the Supplier in respect of activities or payments which have not been authorised by FCDO in accordance with this Clause 38.

### **39. ASSIGNMENT AND NOVATION**

39.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Contract without Approval.

39.2 Subject to Clause 39.1, the Supplier may assign to a third party ("the Assignee") the right to receive payment of the Charges or any part thereof due to the Supplier under this Contract (including any interest to which FCDO is liable under the Late Payments of Commercial Debts (Interest) Act 1998). Any assignment under this Clause 39.2 shall be subject to:

39.2.1 deduction of any sums in respect of which FCDO exercises its right of recovery under Clause 19 (Retention and Set Off);

39.2.2 all related rights of FCDO under the Contract in relation to the recovery of sums due but unpaid; and

39.2.3 FCDO receiving notification under both Clauses 39.3 and 39.4.

39.3 In the event that the Supplier assigns the right to receive the Charges under Clause 39.2, the Supplier shall notify FCDO in writing of the assignment and the date upon which the assignment becomes effective.

39.4 The Supplier shall notify FCDO of the assignee's contact information and bank account details to which FCDO shall make payment.

## Default and Termination

### 40. FCDO REMEDIES FOR DEFAULT

#### 40.1 Remedies

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

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

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

#### 40.2 Rectification Plan Process

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

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

- 40.2.2 The Supplier shall promptly provide to the FCDO any further documentation that the FCDO requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with Dispute Resolution Procedure.
- 40.2.3 FCDO may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
- (a) is insufficiently detailed to be capable of proper evaluation;
  - (b) will take too long to complete;
  - (c) will not prevent reoccurrence of the Default; and/or
  - (d) will rectify the Default but in a manner which is unacceptable to FCDO.
- 40.2.4 FCDO shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If FCDO rejects the draft Rectification Plan, FCDO shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to FCDO for review within five (5) Working Days (or such other period as agreed between the Parties) of the FCDO's notice rejecting the first draft.
- 40.2.5 If FCDO consents to the Rectification Plan, the Supplier shall immediately start work on the actions set out in the Rectification Plan.

#### **41. FINANCIAL DISTRESS**

- 41.1 The Supplier acknowledges and agrees that the financial stability and solvency of the Supplier and its key Sub-Contractors is critical to the successful delivery of the Services and that any deterioration or potential deterioration of their financial position may have an adverse effect on the performance of the Contract. The Supplier shall monitor its own financial standing and that of its key Sub-Contractors on a regular basis throughout the term using a Financial Monitoring Plan and shall report on this to FCDO.
- 41.2 The Financial Monitoring Plan shall be designed by the Supplier to ensure that FCDO has an early and clear warning indicator of any financial distress of the Supplier and key Sub-Contractors which may affect the Services; such design to be proportionate for the circumstances; taking into account the nature of the Services and the identity of the suppliers.
- 41.3 Except where FCDO has agreed otherwise, the Supplier shall within four (4) weeks of the Commencement Date, prepare and submit via the Project Officer for Approval by FCDO, a Financial Monitoring Plan which shall set out the Supplier's proposals for the monitoring and reporting of its financial stability, and the financial stability of its key Sub-Contractors to FCDO on a regular basis throughout the Term.
- 41.4 The Financial Monitoring Plan may include (but shall not be limited to):
- 41.4.1 A summary of the Supplier's and key Sub-Contractors' financial positions at the date of submission of the Financial Distress Plan and on a regular basis thereafter to FCDO (including credit ratings, financial ratios, details of current liabilities, value of marketable securities, cash in hand and bank, account receivables etc.);
  - 41.4.2 An objective means of measuring the Supplier and key Sub-Contractor's financial standing on a regular basis throughout the Term against historical financial standing to show trend (including use of credit ratings, financial ratios and/or other financial indicators);
  - 41.4.3 The Supplier's proposals for reporting financial standing to FCDO (including the template reporting forms which the Supplier intends to use);
  - 41.4.4 The frequency of monitoring and reporting activity;
  - 41.4.5 Provision of reporting lines for the supply chain to notify FCDO of incidents of non-payment of valid and undisputed invoices;
  - 41.4.6 Any other provisions which in the reasonable opinion of the Supplier may be required by FCDO to assess current financial standing of the Supplier and key Sub-Contractors and which enable quick and easy assessment of any movement in financial standing.

- 41.5 The Supplier shall make any reasonable amendments to the Financial Monitoring Plan as may be requested by FCDO and shall resubmit it for Approval. If Approved by FCDO, the Supplier shall promptly implement the Financial Monitoring Plan throughout the Term.
- 41.6 In addition to its obligations under the Financial Monitoring Plan, the Supplier shall promptly notify FCDO in writing if any of the following “Financial Distress Events” occurs in respect of the Supplier or a key Sub-Contractor:
- 41.6.1 there is a material deterioration of its financial standing;
  - 41.6.2 the appointment of an administrator or receiver;
  - 41.6.3 late filing of statutory accounts with Companies House;
  - 41.6.4 it issues a profits warning or other similar public announcement about a deterioration in its finances or prospects;
  - 41.6.5 it is being publicly investigated for improper financial accounting and reporting, fraud or any other financial impropriety;
  - 41.6.6 it commits a material breach of covenant to its lenders;
  - 41.6.7 a key Sub-Contractor not being paid any sums properly due under a specified invoice that is not subject to a genuine dispute;
  - 41.6.8 it is subject to any claims, litigation, investigations, actions or decisions in respect of financial indebtedness.
- 41.7 In the event of a Financial Distress Event occurring, then the Supplier shall and shall procure that any affected key Sub-Contractor shall, as soon as reasonably practicable review the effect of the Financial Distress Event on the continued performance of the Services under this Contract and provide a report to FCDO. Where FCDO reasonably believes that the Financial Distress Event is likely to adversely impact on the performance of the Services, the Supplier shall submit to FCDO for Approval a Financial Distress Service Continuity Plan as soon as is reasonably practicable and shall provide any further financial information as FCDO may reasonably require to assess financial standing and risks.
- 41.8 If FCDO acting reasonably considers that the Financial Distress Service Continuity Plan is insufficient to remedy the effects of the Financial Distress Event on the Service, then it may require the Supplier (and/or key Sub-Contractor) to redraft and resubmit an improved and updated plan or may require the issue to be escalated via the Dispute Resolution Procedure.
- 41.9 If FCDO Approves the Financial Distress Service Continuity Plan, then the Supplier shall execute and continue to review the plan (with submissions to FCDO for Approval where it is updated).
- 41.10 Where the Parties agree that the Financial Distress Event no longer adversely affects the delivery of the Services, the Supplier shall be relieved of its obligations in respect of the current Financial Distress Service Continuity Plan.
- 41.11 FCDO shall be entitled to terminate this Contract for material Default if:
- 41.11.1 The Supplier fails to notify FCDO of a Financial Distress Event in accordance with Clause 41.6;
  - 41.11.2 FCDO and the Supplier fail to agree a Financial Distress Service Continuity Plan or any updates to a plan within a reasonable timescale (taking into account the effects of the Financial Distress Event on the Services);
  - 41.11.3 The Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan or any updates to the plan.

## **42. FORCE MAJEURE**

- 42.1 Subject to the remainder of this Clause 42, a Party may claim relief under this Clause 42 from liability for failure to meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- 42.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 42.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 42 to the extent that consequences of the relevant Force Majeure Event:

- 42.3.1 are capable of being mitigated by any of the provision of any Services but the Supplier has failed to do so; and/or
- 42.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Contract.

42.4 Subject to FCDO's right to terminate set out in Clause 42.5, the Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

42.5 Where FCDO receives a Force Majeure Notice, from the date of receipt of the Force Majeure Notice, FCDO may, at its sole discretion, either suspend this Contract for a period of up to six (6) months ("the Suspension Period") or terminate this Contract forthwith.

42.6 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract.

42.7 Relief from liability for the Affected Party under this Clause 42 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under Clause 42.6.

42.8 If by the end of the Suspension Period the Parties have not agreed a further period of suspension or re-instatement of the Contract, this Contract shall terminate automatically.

#### **43. TERMINATION WITHOUT DEFAULT OF THE SUPPLIER**

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

#### **44. TERMINATION WITH DEFAULT OF THE SUPPLIER**

44.1 FCDO may terminate this Contract for material Default by issuing a Termination Notice to the Supplier where:

- 44.1.1 any representation or warranty given by the Supplier pursuant to Clause 2 (Representations and Warranties) is materially untrue or misleading, and the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of FCDO are acceptable;
- 44.1.2 FCDO expressly reserves the right to terminate this Contract for material Default;
- 44.1.3 the Supplier commits any material Default of the Contract which is not, in the reasonable opinion of FCDO, capable of remedy; and/or
- 44.1.4 the Supplier commits a Default, including a material Default, which in the opinion of FCDO is remediable but has not remedied such Default to the satisfaction of FCDO in accordance with the Rectification Plan Process.

44.2 For the purpose of Clause 44.1, a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default.

44.3 FCDO may, without prejudice to its other rights, including but not limited to the right to claim for Losses incurred, issue a Termination Notice where:

- 44.3.1 the Supplier or any Supplier Personnel, either directly or through their servants or agents or Sub-Contractors breaches any of their obligations under this Contract; or
- 44.3.2 the Supplier, Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf has committed an offence under the Bribery Act 2010 or the Terrorism Act 2000 in breach of Clauses 48 or 49 of this Contract; or
- 44.3.3 FCDO has the right to terminate under Clause 38.3.2; or
- 44.3.4 the Supplier is an individual or a partnership and at any time:

- (a) becomes bankrupt; or



- (b) is the subject of a receiving order or administration order; or
- (c) makes any composition or arrangement with or for the benefit of the Supplier's creditors; or
- (d) makes any conveyance or assignment for the benefit of the Supplier's creditors; or
- (e) the warranty given by the supplier pursuant to Clause 24 (Tax Compliance) is materially untrue; or
- (f) the Supplier commits a material breach of its obligation to notify FCDO of any Occasion of Tax Non-Compliance as required by Clause 24 (Tax Compliance); or
- (g) the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of FCDO, are acceptable; or

44.3.5 the Supplier is a company and:

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

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

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

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

#### **45. PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION**

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

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

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

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

45.3.2 reject the Variation.

#### **46. CONSEQUENCES OF EXPIRY OR TERMINATION**

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

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

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

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

- (a) any costs, if any, due before the date of termination, which cannot be avoided by the Supplier using reasonable endeavours; and

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

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

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

## MISCELLANEOUS AND GOVERNING LAW

### 47. DISPUTE RESOLUTION PROCEDURE

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

### 48. PREVENTION OF FRAUD AND BRIBERY

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

- 48.3.2 keep appropriate records of its compliance with its obligations under Clause 48.3.1 and make such records available to FCDO on request.
- 48.4 The Supplier shall immediately notify FCDO in writing if it becomes aware of any breach of Clause 48.1 and/or Clause 48.2, or has reason to believe that it has or any Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf have:
- 48.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- 48.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- 48.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.
- 48.5 The Supplier warrants and represents to FCDO that to the best of its knowledge, that neither the Supplier, Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf:
- 48.5.1 has given, offered or agreed to give or accepted, any gift or consideration of any kind as an inducement or reward for doing or for bearing to do or for having done or forborne to do any act in relation to the obtaining or execution of any contract or for showing or forbearing to show favour or disfavour to any person or entity in relation to any contract; or
- 48.5.2 has entered into any contract in connection with which commission has been paid or agreed to be paid by or to the Supplier or Supplier Personnel or on their behalf or to their knowledge unless, before such contract was made, particulars of any such commission and of the terms of any agreement for the payment of such commission were disclosed in writing to FCDO, whose written consent was subsequently given to such payment.
- 48.6 Neither the Supplier or the Supplier Personnel or any person acting on their behalf shall accept for their own benefit or pass on for the benefit of partner government, recipient or end user, any trade commission, discount, voucher scheme, re-sale or similar payment or benefit in connection with this Contract.
- 48.7 Where the Supplier or Supplier Personnel, or any person acting on their behalf, does any of the acts mentioned in Clause 48.5 or commits any offence under the Bribery Act 2010, with or without the knowledge of the Supplier, in relation to this Contract or any other contract with the Crown, FCDO shall be entitled:
- 48.7.1 to terminate the Contract with immediate effect by written notice to the Supplier and recover from the Supplier the amount of any Losses resulting from the termination;
- 48.7.2 to recover from the Supplier the amount or value of any such gift, consideration or commission;
- 48.7.3 to recover from the Supplier any other Losses sustained as a result of any breach of this Clause 48, whether or not the Contract is terminated.
- 48.8 FCDO, the Supplier and the Supplier Personnel shall immediately and without undue delay inform each other of any event that interferes or threatens to materially interfere with the successful delivery of the Services, whether financed in full or in part by FCDO, including credible suspicion of/or actual fraud, bribery, corruption or any other financial irregularity or impropriety.
- FCDO has an expert fraud investigation unit, that should be contacted in the first instance at [reportingconcerns@fcdo.gov.uk](mailto:reportingconcerns@fcdo.gov.uk) or +44 (0)1355 843747. All suspicions will be treated with the utmost confidentiality.

#### **49. ANTI-TERRORISM REGULATIONS**

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

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

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

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

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

## 50. SAFEGUARDING

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

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

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

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

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

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

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

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

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

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

50.4 The Supplier shall promptly report in writing any complaints, concerns and incidents regarding Serious Misconduct or any attempted or threatened Serious Misconduct by the Supplier Personnel and Supplier Providers to FCDO, including FCDO’s Counter Fraud Section at [reportingconcerns@fcdo.gov.uk](mailto:reportingconcerns@fcdo.gov.uk) or +44 (0)1355 843747, and where necessary, the Appropriate Authorities.

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

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

50.7 The Supplier shall comply with all applicable laws, legislation, codes of practice and government guidance in the UK and additionally, in the territories where the Services are being performed, relevant to safeguarding and protection of children and vulnerable adults, which the Supplier acknowledges may include vetting of the Supplier Personnel by the UK Disclosure and Barring Service in respect

of any regulated activity performed by the Supplier Personnel (as defined by the Safeguarding Vulnerable Groups Act 2006 (as amended)) and/or vetting by a local equivalent service. Where FCDO reasonably believes that there is an increased risk to safeguarding in the performance of the Services, the Supplier shall comply with any reasonable request by FCDO for additional vetting to be undertaken.

50.8 Failure by the Supplier to:

- 50.8.1 put in place preventative measures to eliminate and/or reduce the risk of Serious Misconduct; or
- 50.8.2 fully investigate allegations of Serious Misconduct; or
- 50.8.3 report any complaints to FCDO and where appropriate, the relevant authorities (including law enforcement)

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

**51. DISCRIMINATION**

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

**52. LAW AND JURISDICTION**

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

**53. ENVIRONMENTAL REQUIREMENTS**

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

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

#### **54. CONFLICT OF INTEREST**

- 54.1 Neither the Supplier nor any of the Supplier Personnel shall engage in any personal, business or professional activity which conflicts or could conflict with any of their obligations in relation to this Contract.
- 54.2 The Supplier and the Supplier Personnel shall notify FCDO immediately of any actual or potential conflict together with recommendations as to how the conflict can be avoided.
- 54.3 The Supplier shall establish and maintain appropriate business standards, procedures and controls to ensure that no conflict of interest arises between Services undertaken for FCDO and that undertaken for other clients. The Supplier shall avoid knowingly committing any acts which are likely to result in any allegation of impropriety against FCDO, including conflicts of interest which are likely to prejudice their independence and objectivity in performing the Contract, howsoever arising.
- 54.4 The Supplier shall notify FCDO immediately of any circumstances of which it becomes aware which give rise or potentially give rise to a conflict with the Services and shall advise FCDO of how they intend to avoid such a conflict arising or remedy such situation. The Supplier shall, subject to any obligations of confidentiality it may have to third parties, provide all information and assistance reasonably necessary (at the Supplier's cost) that FCDO may request of the Supplier in order to avoid or resolve a conflict of interest and shall ensure that at all times they work together with FCDO with the aim of avoiding a conflict or remedy a conflict.
- 54.5 Pursuant to Clause 54.4, FCDO shall have the right to require that the Supplier puts in place Ethical Walls and will ensure and satisfy FCDO that all information relating to the Contract and to the Services (including all working papers, draft reports in both tangible and intangible form) are not shared or made available to person(s) other than Supplier Personnel and that such matters are not discussed by any person(s) other than Supplier Personnel.
- 54.6 In the event of a failure to maintain the Ethical Walls as described above arising during the course of this Contract, FCDO reserves the right to immediately terminate the Contract on giving written notice to the Supplier.

#### **55. WAIVER**

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

#### **56. ENTIRE AGREEMENT**

- 56.1 The Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Clause 56.1 shall not exclude liability in respect of any fraudulent misrepresentation.
- 56.2 The Supplier is not the agent of FCDO and has no authority to represent and shall not purport to represent or enter into any commitments on behalf of FCDO in any respect.
- 56.3 Nothing in this Contract is intended to make nor shall it make FCDO the employer of the Supplier or any of the Supplier Personnel.
- 56.4 All communications by the Supplier relating to the Contract must be addressed to the FCDO Contract Officer whose name and address is given in Section 4 (Special Conditions).

#### **57. THIRD PARTY RIGHTS**

- 57.1 The provisions of paragraphs 2.1 and 2.6 of Part A, paragraphs 2.1, 2.6, 3.1 and 3.3 of Part B, paragraphs 2.1 and 2.3 of Part C and paragraphs 1.4, 2.3 and 2.8 of Part D of Schedule 2 (Staff Transfer) (together the **"Third Party Provisions"**) confer benefits on persons named in such provisions other than the Parties (each such person a **"Third Party Beneficiary"**) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the Contracts (Rights of Third Parties) Act 1999 (**"CRTPA"**).
- 57.2 Subject to Clause 57.1, a person who is not a Party to this Contract has no right under the CRTPA to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 57.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of FCDO, which may, if given, be given on and subject to such terms as FCDO may determine.

- 57.4 Any amendments or modifications to this Contract may be made, and any rights created under Clause 57.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

## 58. NOTICES

- 58.1 Except as otherwise expressly provided within this Contract, any notices sent under this Contract must be in writing. For the purpose of Clause 58, an e-mail is accepted as being "in writing".

- 58.2 Subject to Clause 58.3, the following table sets out the method by which notices may be served under this Contract and the respective deemed time and proof of service:

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

- 58.3 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or Royal Mail Signed For™ 1st Class or other prepaid in the manner set out in the table in Clause 58.2:

- 58.3.1 any Termination Notice (Clause 43 (Termination Without Default of the Supplier) and Clause 44 (Termination With Default of the Supplier)); and

- 58.3.2 any notice in respect of:

- (a) partial termination, suspension or partial suspension (Clause 45 (Partial Termination, Suspension and Partial Suspension)),
- (b) waiver (Clause 55 (Waiver)); or
- (c) Default.

- 58.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 58.3 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 58.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

- 58.5 Clause 58 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

- 58.6 For the purposes of Clause 58, the address and email address of each Party shall be as specified in Section 4 (Special Conditions).

## SCHEDULE 1: DEFINITIONS

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

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

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

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

**“Approval”** means the prior written consent of FCDO and **“Approve”** and **“Approved”** shall be construed accordingly;

**“Auditor”** means:

- (a) FCDO’s internal and external auditors;
- (b) FCDO’s statutory or regulatory auditors;
- (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
- (d) HM Treasury or the Cabinet Office;
- (e) any party formally appointed by FCDO to carry out audit or similar review functions; and
- (f) successors or assigns of any of the above.

**“Appropriate Authorities”** means any and/or all of (as may be relevant under the circumstances) the UK government bodies and/or government bodies/agencies in the territory where Serious Misconduct may have or is suspected of having taken place, which have responsibility for safeguarding, recording, investigating, enforcing and/or determining allegations of Serious Misconduct and which may include (but shall not be limited to), the FCDO, the National Crime Agency, UK Police force, local territory police forces, and social services.

**“Central Government Body”** a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or
- (d) Executive Agency;

**“Change of Control”** means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;

**“Charges”** means the charges raised under or in connection with this Contract from time to time, which shall be calculated in a manner that is consistent with Schedule 5 (Schedule of Prices) and the eligible cost guidance.

**“Commencement Date”** means the date identified in Section 1 Form of Contract.

**“Commercially Sensitive Information”** the information listed in Section 4 (Special Conditions) comprising the information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business of which the Supplier has indicated to FCDO that, if disclosed by FCDO, would cause the Supplier significant commercial disadvantage of material financial loss.

**“Confidential Information”** means all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of either party, including all intellectual property rights, together with all information derived from any of the above, and any other information clearly being designated as being confidential (whether or not it is marked “confidential”) or which ought reasonably be considered to be confidential.

**“Contract”** means this agreement between FCDO and the Supplier consisting of this Section 2 (Standard Terms and Generals) and any attached Schedules and Appendices

**“Contract Amendment Letter”** means the form set out in Appendix A.

**“Contract Officer”** means the person named in Section 4 who is responsible for all contractual aspects of the Contract.

**“Contracts Finder”** means the Government’s publishing portal for public sector procurement opportunities.

**“Control”** means control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and **“Controlled”** shall be construed accordingly;

**“Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer”** take the meaning given in the GDPR.



**“Data Protection Legislation”** (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy.

**“Data Protection Impact Assessment”**: an assessment by the Data Controller of the impact of the envisaged processing on the protection of Personal Data.

**“Data Loss Event”**: any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

**“Data Subject Access Request”**: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

**“DPA 2018”** means the Data Protection Act 2018

**“Default”** means any breach of the obligations of the Supplier (including but not limited to including abandonment of this Contract in breach of its terms) or any other default (including material Default), act, omission, negligence or statement of the Supplier, of the Supplier Personnel howsoever arising in connection with or in relation to the subject-matter of this Contract and in respect of which the Supplier is liable to FCDO;

**“Delivery Chain”** means all of the Supplier’s Sub-Contractors, Supplier Providers and partners involved in delivering a specific good, service or change for the purposes of the Services provided under this Agreement, down to the end beneficiary;

**“FCDO Background IPR”** means:

- a) IPRs owned by FCDO before the Commencement Date, including IPRs contained in any of FCDO's know-how, documentation, software, processes and procedures;
- b) IPRs created by FCDO independently of this Contract; and/or
- c) Crown Copyright which is not available to the Supplier otherwise than under this Contract;

**“FCDO Data”** means (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Supplier by or on behalf of FCDO; or (ii) which the Supplier is required to generate, process, store or transmit pursuant to this Contract; or (b) any Personal Data for which FCDO is the Data Controller.

**“FCDO System”** FCDO's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by FCDO or the Supplier in connection with this Contract which is owned by FCDO or licensed to it by a third party and which interfaces with the Supplier System or which is necessary for FCDO to receive the Services;

**“Dispute”** any dispute, difference or question of interpretation arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Variation Procedure or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;

**“Dispute Resolution Procedure”** means the dispute resolution procedure set out in Clause 47;

**“DOTAS”** means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

**“Employee Liabilities”** means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:

- a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- b) unfair, wrongful or constructive dismissal compensation;
- c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- d) compensation for less favourable treatment of part-time workers or fixed term employees;
- e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by FCDO or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Sub-Contractor if such payment should have been made prior to the Service Transfer Date;
- f) claims whether in tort, contract or statute or otherwise;
- g) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

**“Employment Regulations”** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;

**“Employment Business”** means an employment agency is an organization which matches employers to employees. In all developed countries there is a publicly funded employment agency and multiple private businesses which also act as employment agencies.

**“Environmental Information Regulations”** means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;

**“Ethical Walls”** means a process for avoiding conflicts of interest by limiting disclosure of information to certain individuals within an organisation, thereby building a metaphorical wall between the holders of information and colleagues who represent interests or hold opinions which conflict.

**“Euro Compliant”** means that:

- (i) the introduction of the euro within any part(s) of the UK shall not affect the performance or functionality of any relevant items nor cause such items to malfunction, end abruptly, provide invalid results or adversely affect FCDO’s business;
- (ii) all currency-reliant and currency-related functions (including all calculations concerning financial data) of any relevant items enable the introduction and operation of the euro; and
- (iii) in particular each and every relevant item shall, to the extent it performs or relies upon currency-related functions (including all calculations concerning financial data):
  - (a) be able to perform all such functions in any number of currencies and/or in euros;
  - (b) during any transition phase applicable to the relevant part(s) of the UK, be able to deal with multiple currencies and, in relation to the euro and the national currency of the relevant part(s) of the UK, dual denominations;
  - (c) recognise accept, display and print all the euro currency symbols and alphanumeric codes which may be adopted by any government and other European Union body in relation to the euro;
  - (d) incorporate protocols for dealing with rounding and currency conversion;
  - (e) recognise data irrespective of the currency in which it is expressed (which includes the euro) and express any output data in the national currency of the relevant part(s) of the UK and/or the euro; and
  - (f) permit the input of data in euro and display an outcome in euro where such data, supporting FCDO’s normal business practices, operates in euro and/or the national currency of the relevant part(s) of the UK.

**“Equipment”** means any equipment, computer hardware or software, materials, goods and vehicles and associated services necessarily required for the implementation of the Services, which the Supplier cannot reasonably be expected to provide, which are financed or provided by FCDO for use by the Supplier.

**“Exit Management”** services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Supplier to FCDO and/or a Replacement Supplier.

**“Exit Plan”** the plan produced and updated by the Supplier during the Term in accordance with Terms of Reference and Clause 16;

**“Expiry Date”** means:

- (a) the end date of the Initial Period or, if exercised, the end date of any Extension Period; or
- (b) if this Contract is terminated before the date specified in (a) above, the earlier date of termination of this Contract;

**“Extension Period”** means such period or periods up to a maximum of the number of years in total as may be specified by FCDO, pursuant to Clause 4.2 and in Section 4 (Special Conditions);

**“Financial Limit”** means the amount specified in Section 1 (Form of Contract) and is the maximum amount of Charges paid by FCDO and which FCDO has agreed are duly payable under this Contract for the receipt of the Services.

**“FOIA”** means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation.

**“Force Majeure Event”** any event outside the reasonable control of either Party affecting its performance of its obligations under this Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, government or regulatory bodies, fire, flood, storm

or earthquake, or disaster but excluding any industrial dispute relating to the Supplier or the Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf or any other failure in the Supplier's or a Sub-Contractor's supply chain;

**"Force Majeure Notice"** a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;

**"Former Supplier"** means a supplier supplying services to FCDO before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any Sub-Contractor of such supplier (or any Sub-Contractor of any such Sub-Contractor);

**"GDPR"** the General Data Protection Regulation (*Regulation (EU) 2016/679*).

**"General Anti-Abuse Rule"** means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions.

**"Good Industry Practice"** at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like FCDO, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;

**"Halifax Abuse Principle"** means the principle explained in the CJEU Case C-255/02 Halifax and others.

**"HM Government Cyber Essentials Scheme"** means the HM Government Cyber Essentials Scheme as further defined in the documents relating to this scheme published at <https://www.gov.uk/government/publications/cyber-essentials-scheme-overview>

**"IATI"** means the International Aid Transparency Initiative standard and is a technical publishing framework allowing data to be compared. It is designed to report forward-looking aggregate budget information for the reported organisations, and planned future budgets to recipient institutions or countries.

**"ICT Environment"** means the FCDO System and the Supplier System;

**"Information"** has the meaning given under Section 84 of the Freedom of Information Act 2000; including all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);

**"Initial Period"** means the initial term of this Contract from the Commencement Date to the end date of the initial term stated in Section 4 (Special Conditions);

**"Intellectual Property Rights" or "IPRs"** means

- (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semiconductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;
- (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and

all other rights having equivalent or similar effect in any country or jurisdiction;

**"IPR Claim"** means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to FCDO (including any claims arising from the publication of the Project Specific IPRs as open source) in the fulfilment of its obligations under this Contract

**"Joint Control"** means Personal Data which under the Control of Joint Controllers in accordance with GDPR Article 26;

**"Joint Controllers"** means where two or more Controllers jointly determine the purposes and means of processing;

**"Key Personnel"** means the individuals (if any) identified as such in Section 4 (Special Conditions);

**"Key Performance Indicators" or "KPIs"** means a set of quantifiable measures that FCDO and Supplier will use to measure the performance of the Services provided by the Supplier under the Contract (as defined in Section 3 Terms of Reference).

**"Law"** means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;

**"LED"** means Law Enforcement Directive (*Directive (EU) 2016/680*)

**“Licensed Software”** all and any Software licensed by or through the Supplier, its Sub-Contractors or any third party to FCDO for the purposes of or pursuant to this Contract, including any Supplier Software, Third Party Software and/or any Specially Written Software;

**“Losses”** means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and **“Loss”** shall be interpreted accordingly;

**“Malicious Software”** any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;

**“Milestone”** an event or task described in the Implementation Plan which, if applicable, shall be completed by the relevant Milestone Date;

**“Milestone Payment”** a payment identified in Section 5 to be made following the issue of a Milestone Achievement Certificate;

**“Occasion of Tax Non-Compliance”** means:

- (a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:
  - i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
  - ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud evasion.

**“Open Book Data”** means complete and accurate financial and non-financial information which is sufficient to enable FCDO to verify the Charges already paid or payable and Charges forecast to be paid during the Term, including details and all assumptions relating to costs.

**“Overhead”** means those amounts which are intended to recover a proportion of the Supplier’s or the Sub-Contractor’s (as the context requires) indirect corporate costs;

**“Parties”** and **“Party”** have the meanings respectively given in Section 1 of this Contract;

**“Performance Indicators”** means the Key Performance Indicators and the subsidiary Performance Indicators;

**“Personal Data”** means personal data (as defined in the Data Protection Act 1998) which is Processed by the Supplier or any Sub-Contractor on behalf of FCDO or a Central Government Body pursuant to or in connection with this Contract;

**“Process”** has the meaning given to it under the Data Protection Legislation but, for the purposes of this Contract, it shall include both manual and automatic processing and **“Processing”** and **“Processed”** shall be interpreted accordingly;

**“Processor Personnel”** means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement.

**“Programme Name”** means the name given to the programme to which this Contract relates as identified in Section 1 (Form of Contract);

**“Prohibited Act”** has the meaning;

- (a) to directly or indirectly offer, promise or give any person working for or engaged by FCDO a financial or other advantage to:

- (i) induce that person to perform improperly a relevant function or activity; or

- (ii) reward that person for improper performance of a relevant function or activity;

- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;

- (c) an offence:

- (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);

- (ii) under legislation or common law concerning fraudulent acts; or
- (iii) defrauding, attempting to defraud or conspiring to defraud FCDO; or
- (d) any activity, practice or conduct which would constitute one of the offences listed under
- (e) above if such activity, practice or conduct had been carried out in the UK;

**“Project”** means a set of co-ordinated activities, with definite starting and finishing points, undertaken by an individual or team to meet specific objectives within defined time, cost and performance parameters

**“Project Officer”** means the person named in Section 4 who is responsible for issuing instructions and dealing with all correspondence in connection with the technical aspects of the Contract;

**“Project Specific IPRs”** means:

- a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Contract and updates and amendments of these items including (but not limited to) database schema; and/or
- b) IPR in or arising as a result of the performance of the Supplier’s obligations under this Contract and all updates and amendments to the same,

but shall not include the Supplier Background IPR;

**“Projected Profit Margin”** means the profit the Supplier expects to achieve over the Term as set out in Schedule 5 (Schedule of Costs);

**“Protective Measures”**: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

**“Register”** means a register which sets out full details of:

- (a) any assets used by the Supplier in connection with the provision of the Services, including details of:
  - (i) make, model and asset number;
  - (ii) ownership and status as whether the assets are used exclusively for the provision of the Services;
  - (iii) condition and physical location; and
  - (iv) use (including technical specifications); and
- (b) Sub-Contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;

**“Regulations”** means the Public Contracts Regulations 2015 as amended or replaced from time to time;

**“Regulatory Bodies”** means those government departments, regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of FCDO and “Regulatory Body” shall be construed accordingly;

**“Relevant Requirements”** all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;

**“Relevant Tax Authority”** means HM Revenue & Customs, or, if applicable, a Tax Authority in the jurisdiction in which the Supplier is established.

**“Relevant Transfer”** means a transfer of employment to which the Employment Regulations applies;

**“Relevant Transfer Date”** means, in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;

**“Replacement Services”** any services which are the same as or substantially similar to any of the Services and which FCDO receives in substitution for any of the Services following the expiry or termination or partial termination of this Contract, whether those services are provided by FCDO internally and/or by any third party;

**“Replacement Sub-Contractor”** means a Sub-Contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any Sub-Contractor of any such Sub-Contractor);

**“Replacement Supplier”** any third party service provider of Replacement Services appointed by FCDO from time to time;

**“Request for Information”** a request for information or an apparent request under the FOIA, the Environmental Information Regulations and associated codes of practice;

**“Security Policy”** means HMG’s security policy, as updated periodically by the Cabinet Office, which can be accessed at <https://www.gov.uk/government/collections/government-security>, or as notified to the Supplier from time to time;

**“Service Transfer”** means any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-Contractor;

**“Service Transfer Date”** means the date of a Service Transfer;

**“Services”** means the services set out in the Terms of Reference (Section 3).

**“Sexual Abuse”** means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions, and all sexual activity with someone under the age of 18, regardless of local age of majority or consent under the laws of the territory in which it takes place and regardless of any mistaken belief (by the relevant individual) as to the age of a child;

**“Sexual Exploitation”** means any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes. Includes profiting monetarily, socially, or politically from sexual exploitation of another;

**“Sexual Harassment”** means unwelcome sexual advances (also but not exclusively without touching). It includes requests for sexual favours, or other verbal or physical behaviour of a sexual nature, which may create a hostile or offensive environment.

**“Sites”** any premises (including FCDO premises, the Supplier’s premises or third party premises):

(a) from, to or at which:

(i) the Services are (or are to be) provided; or

(ii) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or

(b) where:

(i) any part of the Supplier System is situated;

(ii) any physical interface with FCDO System takes place;

**“Software”** Specially Written Software, Supplier Software and Third Party Software;

**“Specially Written Software”** means any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-Contractor or other third party on behalf of the Supplier) specifically for the purposes of this Contract, including any modifications, configuration, customisation, or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Contract;

**“Staffing Information”** means in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as FCDO may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement, gender and place of work;
- (b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries, bonuses and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and

- (j) any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;

**“Staff Vetting Procedure”** means HMG’s procedures and departmental policies for the vetting of Personnel whose role will involve the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measures, including, but not limited to, the provisions of the Official Secrets Act 1911 to 1989.

**“Sub-Contract”** means any contract or agreement (or proposed contract or agreement) to which a third party:

- a) provides the Services (or any part of them);
- b) provides facilities or goods and services necessary for the provision of the Services (or any part of them); and/or
- c) is responsible for the management, direction or control of the provision of the Services (or any part of them);

**“Sub-Contractor”** means any person other than the Supplier, who is a party to a Sub-Contract and the servants and agents of that person;

**“Sub-processor”**: any third Party appointed to process Personal Data on behalf of that Processor related to this Agreement.

**“Successor Body”** means a body which is not a Central Government Body or if a body which is not a Central Government Body succeeds FCDO;

**“Supplier”** means the person(s), partnership(s) or company (ies) with whom this Contract is placed and as identified in Section 1 (Form of Contract);

**“Supplier Background IPRs”** means;

- (a) Intellectual Property Rights owned by the Supplier before the Effective Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or
- (b) Intellectual Property Rights created by the Supplier independently of this Agreement, which in each case is or will be used before or during the Term for designing, testing implementing or providing the Services but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;

**“Supplier Personnel”** means any person (including Key Personnel) instructed pursuant to this Contract to undertake any of the Supplier's obligations under this Contract, including the Supplier's employees, agents and Sub-Contractors.

**“Supplier Provider”** means persons engaged and/or controlled by or on behalf of the Supplier pursuant to any activities undertaken by the Supplier under this Agreement.

**“Supplier Software”** means any software which is proprietary to the Supplier (or an Affiliate of the Supplier which is or will be used by the Supplier or any Sub-Contractor for the purposes of providing the Services or is embedded in and in respect of such other software as required to be licensed in order for FCDO to receive the benefit of and/or make use of the Services;

**“Supplier System”** the information and communications technology system used by the Supplier in implementing and performing the Services including the Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding FCDO System);

**“Tender”** means the tender submitted by the Supplier to FCDO a copy of which is annexed or referred to in Schedule 4 (Tender);

**“Term”** means the term of this Contract from the Commencement Date until the Expiry Date;

**“Termination Notice”** means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract on a specified date and setting out the grounds for termination;

**“Third Party IPRs”** means Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software;

**“Third Party Software”** means any software which is proprietary to any third party (other than an Affiliate of the Supplier) or any open source which is or will be used by the Supplier for the purposes of providing the Services)

**“Transferring FCDO Employees”** those employees of FCDO to whom the Employment Regulations will apply on the Relevant Transfer Date;

**“Transferring Former Supplier Employees”** in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date;

**“Transferring Supplier Employees”** means those employees of the Supplier and/or the Supplier’s Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date;

**“Valid Invoice”** means an invoice issued by the Supplier to FCDO and containing the information set out in Clause 22.4;

**"Variation"** means a properly executed variation to the Contract in compliance with Clause 38;

**“Variation Procedure”** means the procedure set out in Clause 38;

**“VAT”** means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and

**“Working Day”** means any day other than a Saturday, Sunday or public holiday in England and Wales.



## SCHEDULE 2: STAFF TRANSFER

### 1. DEFINITIONS

In this Schedule 2, the following definitions shall apply:

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

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

## 2. INTERPRETATION

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

**PART A****TRANSFERRING FCDO EMPLOYEES AT COMMENCEMENT OF SERVICES****1. RELEVANT TRANSFERS**

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

**2. FCDO INDEMNITIES**

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

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

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

### 3. SUPPLIER INDEMNITIES AND OBLIGATIONS

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

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

#### 4. INFORMATION

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

#### 5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

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

#### 6. PENSIONS

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

**ANNEX TO PART A: PENSIONS****1. PARTICIPATION**

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

**2. FUTURE SERVICE BENEFITS**

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

**3. FUNDING**

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

**4. PROVISION OF INFORMATION**

The Supplier and FCDO respectively undertake to each other:

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

## 5. INDEMNITY

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

## 6. EMPLOYER OBLIGATION

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

## 7. SUBSEQUENT TRANSFERS

The Supplier shall:

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

## 8. BULK TRANSFER

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



**PART B****TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF SERVICES****9. RELEVANT TRANSFERS**

9.1 FCDO and the Supplier agree that:

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

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

**10. FORMER SUPPLIER INDEMNITIES**

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

- 10.1.1 any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;
- 10.1.2 the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:
  - (a) any collective agreement applicable to the Transferring Former Supplier Employees; and/or
  - (b) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;
- 10.1.3 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
  - (b) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
- 10.1.4 a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
- 10.1.5 any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Sub-Contractor as appropriate may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and

- 10.1.6 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.
- 10.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
- 10.2.1 arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
- 10.2.2 arising from the failure by the Supplier and/or any Sub-Contractor to comply with its obligations under the Employment Regulations.
- 10.3 If any person who is not identified by FCDO as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by FCDO as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 10.3.1 the Supplier shall, or shall procure that the Notified Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to FCDO and, where required by FCDO, to the Former Supplier; and
- 10.3.2 the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier and/or the Notified Sub-Contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 10.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or FCDO, the Supplier shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 10.5 If by the end of the 15 Working Day period specified in Paragraph 2.3.2:
- 10.5.1 no such offer of employment has been made;
- 10.5.2 such offer has been made but not accepted; or
- 10.5.3 the situation has not otherwise been resolved,
- the Supplier and/or any Notified Sub-Contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 10.6 Subject to the Supplier and/or any Notified Sub-Contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, FCDO shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 10.7 The indemnity in Paragraph 2.6:
- 10.7.1 shall not apply to:
- (a) any claim for:
- (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or

- (b) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and

10.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Supplier and/or any Notified Sub-Contractor (as appropriate) to FCDO and, if applicable, the Former Supplier, within 6 months of the Commencement Date.

10.8 If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Sub-Contractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the Supplier or Notified Sub-Contractor and the Supplier shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under the Law.

## 11. SUPPLIER INDEMNITIES AND OBLIGATIONS

11.1 Subject to Paragraph 3.2, the Supplier shall indemnify FCDO and/or the Former Supplier against any Employee Liabilities arising from or as a result of:

11.1.1 any act or omission by the Supplier or any Sub-Contractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date;

11.1.2 the breach or non-observance by the Supplier or any Sub-Contractor on or after the Relevant Transfer Date of:

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

11.1.3 any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

11.1.4 any proposal by the Supplier or a Sub-Contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

11.1.5 any statement communicated to or action undertaken by the Supplier or a Sub-Contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with FCDO and/or the Former Supplier in writing;

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

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

11.1.7 a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date;

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

## 12. INFORMATION

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

## 13. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

- 13.1 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by FCDO relating to pensions in respect of any Transferring Former Supplier Employee as set down in:
  - 13.1.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
  - 13.1.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
  - 13.1.3 HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
  - 13.1.4 the New Fair Deal.
- 13.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Variation Procedure.

## 14. PROCUREMENT OBLIGATIONS

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

## 15. PENSIONS

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

**ANNEX TO PART B: PENSIONS****1. PARTICIPATION**

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

**2. FUTURE SERVICE BENEFITS**

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

**3. FUNDING**

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

#### 4. PROVISION OF INFORMATION

The Supplier and FCDO respectively undertake to each other:

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

#### 5. INDEMNITY

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

#### 6. EMPLOYER OBLIGATION

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

#### 7. SUBSEQUENT TRANSFERS

The Supplier shall:

- 7.1 not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the Service Transfer Date;
- 7.2 provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or FCDO may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and
- 7.3 for the applicable period either
  - 7.3.1 after notice (for whatever reason) is given, in accordance with the other provisions of this Contract, to terminate the Agreement or any part of the Services; or
  - 7.3.2 after the date which is two (2) years prior to the date of expiry of this Contract,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or FCDO, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of FCDO (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

#### 8. BULK TRANSFER

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

**PART C****NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES****1. PROCEDURE IN THE EVENT OF TRANSFER**

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

**2. INDEMNITIES**

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

any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-Contractor.

2.4 The indemnities in Paragraph 2.1:

2.4.1 shall not apply to:

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

in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or
- (b) any claim that the termination of employment was unfair because the Supplier and/or any Sub-Contractor neglected to follow a fair dismissal procedure; and

2.4.2 shall apply only where the notification referred to in Paragraph 1.2.1 is made by the Supplier and/or any Sub-Contractor to FCDO and, if applicable, Former Supplier within 6 months of the Commencement Date.

### 3. PROCUREMENT OBLIGATIONS

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



## PART D

## EMPLOYMENT EXIT PROVISIONS

## 1. PRE-SERVICE TRANSFER OBLIGATIONS

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

and shall promptly notify, and procure that each Sub-Contractor shall promptly notify, FCDO or, at the direction of FCDO, any Replacement Supplier and any Replacement Sub-Contractor of any notice to terminate employment given by the Supplier or

relevant Sub-Contractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.

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

## 2. EMPLOYMENT REGULATIONS EXIT PROVISIONS

- 2.1 FCDO and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Contract or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-Contractor. Such change in the identity of the Supplier of such Services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. FCDO and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-Contractor (as the case may be) and each such Transferring Supplier Employee.
- 2.2 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (but not including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-Contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-Contractor.
- 2.3 Subject to Paragraph 2.4, where a Relevant Transfer occurs the Supplier shall indemnify FCDO and/or the Replacement Supplier and/or any Replacement Sub-Contractor against any Employee Liabilities arising from or as a result of:

- 2.3.1 any act or omission of the Supplier or any Sub-Contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date;
- 2.3.2 the breach or non-observance by the Supplier or any Sub-Contractor occurring on or before the Service Transfer Date of:
- (a) any collective agreement applicable to the Transferring Supplier Employees; and/or
  - (b) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-Contractor is contractually bound to honour;
- 2.3.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- 2.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
  - (b) in relation to any employee who is not identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to FCDO and/or Replacement Supplier and/or any Replacement Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- 2.3.5 a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date;
- 2.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-Contractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List for whom it is alleged FCDO and/or the Replacement Supplier and/or any Replacement Sub-Contractor may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
- 2.3.7 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by FCDO and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.
- 2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-Contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
- 2.4.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-Contractor to occur in the period on or after the Service Transfer Date; or
  - 2.4.2 arising from the Replacement Supplier's failure, and/or Replacement Sub-Contractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 If any person who is not identified in the Supplier's Final Supplier Personnel List claims, or it is determined in relation to any person who is not identified in the Supplier's Final Supplier Personnel List that his/her contract of employment has been transferred from the Supplier or any Sub-Contractor to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
- 2.5.1 FCDO shall procure that the Replacement Supplier shall, or any Replacement Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
  - 2.5.2 the Supplier may offer (or may procure that a Sub-Contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-

Contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

- 2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-Contractor, FCDO shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-Contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 2.7 If after the fifteen (15) Working Day period specified in Paragraph 2.5.2 has elapsed:
- 2.7.1 no such offer of employment has been made;
  - 2.7.2 such offer has been made but not accepted; or
  - 2.7.3 the situation has not otherwise been resolved
- the Replacement Supplier and/or Replacement Sub-Contractor, as appropriate may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
- 2.8 Subject to the Replacement Supplier and/or Replacement Sub-Contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.9 The indemnity in Paragraph 2.8:
- 2.9.1 shall not apply to:
    - (a) any claim for:
      - (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
      - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-Contractor; or
    - (b) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-Contractor neglected to follow a fair dismissal procedure; and
  - 2.9.2 shall apply only where the notification referred to in Paragraph 2.5.1 is made by the Replacement Supplier and/or Replacement Sub-Contractor to the Supplier within six (6) months of the Service Transfer Date.
- 2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Supplier or any Sub-Contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-Contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee.
- 2.11 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Personnel List before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- 2.11.1 the Supplier and/or any Sub-Contractor; and
  - 2.11.2 the Replacement Supplier and/or the Replacement Sub-Contractor.

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

such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations.

- 2.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-Contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-Contractor (as applicable) to comply with its obligations under the Employment Regulations.

**ANNEX TO SCHEDULE 2: LIST OF NOTIFIED SUB-CONTRACTORS**

## SCHEDULE 3: INSURANCE REQUIREMENTS

### 1. OBLIGATION TO MAINTAIN INSURANCES

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

### 2. GENERAL OBLIGATIONS

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

### 3. FAILURE TO INSURE

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

### 4. EVIDENCE OF POLICIES

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

### 5. AGGREGATE LIMIT OF INDEMNITY

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



(b) its proposed solution for maintaining the minimum limit of indemnity specified; and

5.1.2 if and to the extent that the level of insurance cover available falls below that minimum because a claim or claims which do not relate to this Contract are paid by insurers, the Supplier shall:

- (a) ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Contract; or
- (b) if the Supplier is or has reason to believe that it will be unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified, immediately submit to FCDO full details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified.

## 6. CANCELLATION

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

## 7. INSURANCE CLAIMS

7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Contract for which it may be entitled to claim under any of the Insurances. In the event that FCDO receives a claim relating to or arising out of the Services or this Contract, the Supplier shall co-operate with FCDO and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.

7.2 Except where FCDO is the claimant party, the Supplier shall give FCDO notice within twenty (20) Working Days after any insurance claim in excess of **£10,000** relating to or arising out of the provision of the Services or this Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by FCDO) full details of the incident giving rise to the claim.

7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.

7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from FCDO any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

**ANNEX 1: REQUIRED INSURANCES****PART A: THIRD PARTY PUBLIC & PRODUCTS LIABILITY INSURANCE****1.INSURED**

1.1 The Supplier

**2.INTEREST**

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

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

2.1.2 loss of or damage to property;

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

**3.LIMIT OF INDEMNITY**

3.1 Not less than £10,000,000 in respect of any one occurrence, the number of occurrences being unlimited.

**4.TERRITORIAL LIMITS**

4.1.1 Worldwide

**5.PERIOD OF INSURANCE**

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

**6.COVER FEATURES AND EXTENSIONS**

6.1 Indemnity to principals clause.

**7.PRINCIPAL EXCLUSIONS**

7.1 War and related perils.

7.2 Nuclear and radioactive risks.

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

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

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

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

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

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

**8.MAXIMUM DEDUCTIBLE THRESHOLD**

8.1 N/A

**PART B: PROFESSIONAL INDEMNITY INSURANCE****1.INSURED**

1.1 The Supplier

**2.INTEREST**

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

**3.LIMIT OF INDEMNITY**

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

**4.TERRITORIAL LIMITS**

4.1 Worldwide

**5.PERIOD OF INSURANCE**

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

**6.COVER FEATURES AND EXTENSIONS**

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

**7.PRINCIPAL EXCLUSIONS**

7.1 War and related perils

7.2 Nuclear and radioactive risks

**8.MAXIMUM DEDUCTIBLE THRESHOLD**

8.1 N/A

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

### **1.GENERAL**

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

## **SCHEDULE 4: TENDER**

### **1. GENERAL**

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

APPENDIX A. CONTRACT AMENDMENT LETTER

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

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

File Ref: [  
Date: [

Contract Amendment No: [

CONTRACT FOR: [

CONTRACT NUMBER: [

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

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

Signed by an authorised signatory for and on behalf of the Secretary of State for International Development Name: [ Position:

Signature:  
Date: [

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

Signature:  
Date:

## APPENDIX B



## FCDO Supply Partner Code of Conduct

### **Principles**

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

#### **Overarching Principles for Supply Partners**

- ✓ **Act responsibly and with integrity**
- ✓ **Be transparent and accountable**
- ✓ **Seek to improve value for money**
- ✓ **Demonstrate commitment to poverty reduction and FCDO priorities<sup>1</sup>**
- ✓ **Demonstrate commitment to wider HMG priorities<sup>2</sup>**

### **FCDO Supply Partner responsibilities**

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

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

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

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

### **Scope**

This Code forms part of FCDO's standard contractual terms and conditions and full compliance and annual verification via a signed declaration, to be found at Annex 1b, is mandatory for contracted Supply Partners.



Adherence to the Code at the appropriate level is also a requirement for FCDO direct and delivery chain Supply Partners in receipt of funding. FCDO will monitor Supply Partners in six priority areas as set out below using a set of Key Performance Indicators (KPIs) as referenced in Annex 1a and 1b.

## **1. Value for Money and Governance**

Key Performance Indicators KPI 1 a - c

Value for Money and financial transparency is an essential requirement of all FCDO commissioned work. All Supply Partners must seek to maximise development results, whilst driving cost efficiency, throughout the life of commissioned programmes. This includes budgeting and pricing realistically and appropriately to reflect delivery requirements and levels of risk over the life of the programme. It also includes managing uncertainty and change to protect value in the often challenging environments that we work in.

Supply Partners must demonstrate that they are pursuing continuous improvement and applying stringent financial management and governance to reduce waste and improve efficiency in their internal operations and within the delivery chain. FCDO expects Supply Partners to demonstrate openness and honesty and to be realistic about capacity and capability at all times, accepting accountability and responsibility for performance along the full delivery chain, in both every-day and exceptional circumstances.

### **Specific requirements include:**

- ✓ Provision of relevant VfM and governance policies and a description of how these are put into practice to meet FCDO requirements (e.g. Codes on fraud and corruption, due diligence);
- ✓ A transparent, open book approach, which enables scrutiny of value for money;
- ✓ Strict adherence to all UK and in-country government tax requirements;
- ✓ Processes for timely identification and resolution of issues and for sharing lessons learned which might be requested by FCDO at any time.

## **2. Ethical Behaviour**

Key Performance Indicators KPI 2 a- f

FCDO Supply Partners and their delivery chain partners act on behalf of the UK government and interact globally with country governments, other aid donors and their delivery partners, many stakeholders including citizens and directly and indirectly with aid beneficiaries. These interactions must therefore meet the highest standards of ethical and professional behaviour in order to uphold the reputation of the UK government.

Arrangements and relationships entered into, whether with or on behalf of FCDO, must be free from bias, conflict of interest or the undue influence of others. Particular care must be taken by Supply Partner and delivery chain staff who:

- a) are directly involved in the management of a programme or procurement of services; or
- b) who engage with i) frontline FCDO staff ii) other deliverers of aid iii) beneficiaries (of aid)

Where those in a) and b) could be susceptible to undue negative or detrimental influence.

Supply Partners and their delivery chain partners must declare to FCDO where there may be instances or allegations of previous unethical behaviour by an existing or potential staff member or where there is a known or suspected conflict of interest. Where a potential or existing staff member has been employed by FCDO or the Crown in the

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

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

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

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

- ✓ Development and proof of application and embedding of a Staff Recruitment, Management and Retention policy (which must address circumstances where there may be potential or actual conflict of interest and embedding of a Whistleblowing Policy)
- ✓ Ongoing monitoring of potential or existing personal, business or professional conflict of interest and their mitigation and management
- ✓ Ethical training for every staff member and staff updates in ethical working practices suitable to the development sector (e.g. UN Global Compact principles) including awareness of modern day slavery and human rights abuses
- ✓ Procedures setting out how, staff involved in FCDO funded business, can immediately report all suspicions or allegations of aid diversion, fraud, money laundering or counter terrorism finance to the FCDO Counter Fraud and Whistleblowing Unit (CFWU) at [reportingconcerns@fcdo.gov.uk](mailto:reportingconcerns@fcdo.gov.uk) or on +44(0)1355 843747.

### 3. Transparency and Delivery Chain Management

Key Performance Indicators KPI 3 a – f

FCDO requires full delivery chain transparency from all Supply Partners. All direct Supply Partners and their delivery chain partners must adhere to wider HMG policy initiatives including the support and capacity building of micro, small and medium sized enterprises (MSMEs), prompt payment, adherence to human rights and modern slavery policies and support for economic growth in developing countries.

FCDO recognises the critical value that downstream delivery partners contribute. Direct Supply Partners must engage their delivery chain partners in a manner that is consistent with FCDO's treatment of its direct Supply Partners. This includes, but is not limited to: appropriate pricing of services; fiduciary and financial risk management processes; applying transparent and responsive measures where delivery chain partners underperform against the KPI areas; taking a zero tolerance approach to tax evasion, corruption, bribery and fraud in subsequent service delivery or in partnership agreements. Direct Supply Partners must cascade the principles of the Code throughout their delivery chain to ensure FCDO ethical behaviour standards are embedded and maintained.

#### Specific requirements for direct Supply Partners include:

- ✓ Provide assurance to FCDO that the policies and practices of their delivery chain Supply Partners and affiliates comply with the Code;
- ✓ Maintaining and sharing with FCDO up-to-date and accurate records of all downstream partners in receipt of FCDO funds and/or FCDO funded inventory or assets. This should map how funds flow from them to end beneficiaries and identify risks and potential risks along the delivery chain;
- ✓ Ensuring delivery chain partner employees are expressly notified of the FCDO 'reporting concerns' mail box<sup>3</sup> found on FCDO's external website and of the circumstances in which this should be used;
- ✓ Publication of FCDO funding data in accordance with the International Aid Transparency Initiative (IATI)<sup>4</sup>
- ✓ Supply Partners shall adhere to HMG prompt payment policy and not use restrictive exclusivity agreements with sub-partners.

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

<sup>4</sup> <http://www.aidtransparency.net/>

#### 4. Environmental issues

Key Performance Indicators KPI 4 a – b

FCDO Supply Partners must be committed to high environmental standards, recognising that FCDO's activities may change the way people use and rely on the environment, or may affect or be affected by environmental conditions. Supply Partners must demonstrate they have taken sufficient steps to protect the local environment and community they work in, and to identify environmental risks that are imminent, significant or could cause harm or reputational damage to FCDO.

#### **Commitment to environmental sustainability may be demonstrated by:**

- ✓ Formal environmental safeguard policies in place;
- ✓ Publication of environmental performance reports on a regular basis
- ✓ Membership or signature of relevant environmental Codes, both directly and within the delivery chain such as conventions, standards or certification bodies (e.g. the Extractive Industries Transparency Initiative<sup>5</sup>).

#### 5. Terrorism and Security

Key Performance Indicators KPI 5 a – d

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

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

#### **Specific requirements:**

- ✓ Development and proof of application and embedding of a comprehensive Terrorism and Security Policy
- ✓ Development and proof of application and embedding of personal data processing processes within a Data Protection Policy
- ✓ FCDO Supply Partners must safeguard the integrity and security of their IT and mobile communications systems in line with the HMG Cyber Essentials Scheme<sup>6</sup>. Award of the Cyber Essentials or Cyber Essential Plus badges would provide organisational evidence of meeting the UK Government-endorsed standard;
- ✓ All FCDO Supply Partners who manage aid programmes with a digital element must adhere to the global Principles for Digital Development<sup>7</sup>, which sets out best practice in technology-enabled programmes
- ✓ Ensure that FCDO funding is not linked to terrorist offences, terrorist activities or financing.

#### 6. Safeguarding, Social Responsibility and Human Rights

Key Performance Indicators: KPI 6 a – d

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

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

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

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

these and further unethical and illegal employment practices, such as modern day slavery, forced and child labour and other forms of exploitative and unethical treatment of workers and aid recipients. FCDO will expect a particular emphasis on the management of these issues in high risk fragile and conflict affected states (FCAS), with a focus on ensuring remedy and redress if things go wrong.

**Specific requirements:**

- ✓ Development and proof of application and embedding of a Safeguarding Policy;
- ✓ Delivery of Social Responsibility, Human Rights and Safeguarding training throughout the delivery chain;
- ✓ Compliance level 1 Supply Partners must be fully signed up to the UN Global Compact<sup>8</sup>;
- ✓ Practices in line with the International Labour Organisation (ILO) 138<sup>9</sup> and the Ethical Trading Initiative (ETI) Base Code<sup>10</sup> are to be encouraged throughout the delivery chain;
- ✓ Policies to embed good practice in line with the UN Global Compact Guiding Principles 1 & 2 on business and human rights throughout the delivery chain are required, as detailed in Annex 2;
- ✓ Compliance level 1 Supply Partners to submit a Statement of Compliance outlining how the organisation's business activities help to develop local markets and institutions and further how they contribute to social and environmental sustainability, whilst complying with international principles on Safeguarding and Human Rights labour and ethical employment, social inclusion and environmental protection;
- ✓ Overarching consideration given to building local capacity and promoting the involvement of people whose lives are affected by business decisions.

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

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

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

### Compliance KPIs and contractual checking mechanisms - FCDO Contracts

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

Supply Partner and delivery chain compliance checking processes will take place in accordance with the agreed compliance levels and the specific contractual clauses down the delivery chain, FCDO shall undertake compliance checks.

Where appropriate, a plan setting out the Code of Conduct delivery methodology for the Supply Partner arrangements during the contract term may be jointly developed with FCDO during Contract mobilisation.

Contract Checks and Compliance KPIs		KPI target	Specific Contractual link	Checking mechanism
i.	Declaration of acceptance of the FCDO Supply Partner Code of Conduct	Annual declaration submitted by contracted Supply Partner on behalf of delivery chain	Contract Terms and Conditions Clause 5.1 and Clause 7.7	Declaration of acceptance at the applicable level of compliance with each of the 6 sections received
	ii. Declaration of sign up to the UN Global Compact	Annual declaration submitted by the direct Supply Partner	Standard Selection Questionnaire (SSQ)	Declaration of applicable sign up / application received
1.	<b><u>VfM and Governance standards</u></b>			
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 <ol style="list-style-type: none"> <li>1. By confirmation of annual profit level fluctuations since tender submittal</li> <li>2. by timely identification and resolution of issues</li> <li>3. ensuring lessons learned are shared</li> </ol>	Updated documentation submitted once annually	Contract T&Cs Clauses 15 & 20  Terms of Reference  Terms of Reference	Compliance checks  Annual contract review/programme management Compliance checks  Annual contract review/programme management Compliance checks

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

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

		identified since tender submittal		
b)	Certification at or above the level set out in the tender submittal	Updated documentation submitted if changes identified since tender submittal	Standard Selection Questionnaire (SSQ)	Annual return Compliance checks
c)				
d)	Data managed in accordance with FCDO Security Policy and systems in accordance with the HMG Cyber Essentials Scheme	Updated documentation submitted if changes identified since tender submittal	Contract T&Cs Clause 32 & 33	Compliance checks
	Best practice global Principles for Digital Development in place	Updated documentation submitted if changes identified since tender submittal	Terms of reference (TORs)	Annual contract review Compliance checks
6.	<b><u>Safeguarding, Social Responsibility and Human Rights</u></b>			
a)	Provision of a current internal document demonstrating good practice and assuring compliance with key legislation on international principles on labour and ethical employment	Confirmation of UN Global Compact Membership	Standard Selection Questionnaire	Tender evaluation  Annual return Compliance checks
b)	Agreed level of measures in place and cascaded to assure the prevention of actual, attempted or threatened sexual exploitation or abuse or other forms of inequality or discrimination by employees or any other persons engaged and controlled by the Supply Partner to perform any activities relating to FCDO funded work. Robust procedures for the reporting of suspected misconduct, illegal acts or failures to investigate in place	Updated documentation submitted once annually	Contract T&Cs Clause 50	Tender evaluation, Compliance checks
c)	Recognition of the ILO standards  Membership of Ethical Trading Initiative (ETI)	Membership number		Compliance checks
d)	1.Principles cascaded to employees and delivery chain partners via an internal policy or written outline of good practice service delivery approaches to Human Rights and Safeguarding reflecting UN Global Compact Principles 1 & 2	Updated documentation submitted annually  Updated documentation submitted if and	Contract T&Cs Clause 50	Annual return  Compliance checks  Annual checks



	<p>2. Number and details of any organisational safeguarding allegations reported</p> <p>3. Level of commitment in relation to the Contract evident in delivery practices in line with the workplace and community guidance provided in the FCDO Supply Partner Code of Conduct Annex 2</p>	<p>when changes identified since tender submittal</p> <p>Updated documentation submitted annually</p>		<p>Compliance checks</p> <p>Tender evaluation</p> <p>Compliance checks</p>
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**Contractual Annual Compliance Declaration**

Prior to Contract Award and thereafter on an annual basis at the end of each financial year, the Supply Partner is required to submit a Compliance Declaration in connection with the management of any FCDO Contract in place and on behalf of their delivery chain partners. Supply Partners should be aware that spot check compliance monitoring will take place to verify responses.

**Supply Partner Compliance Declaration****Key:****Contractual Requirement:**

**X denotes full compliance 1 required**

**O denotes reduced compliance level 2, unless otherwise stipulated in contractual Terms of Reference**

**Compliance Level 1**

Supply Partners with an individual contract value of £1m or above, or two or more contracts funded by FCDO with a combined value of £5m or above.

**Compliance Level 2**

Supply Partners with an individual contract value below £1m, or two or more contracts funded by FCDO with a value of less than £5m.

**Compliance Level 3**

Supply Partners with an individual contract value or component of a contract funded by FCDO with a value below the EU Threshold. At this level Supply Partners are required to adhere to the overarching Code principles and recognise, mitigate and manage risks but will not be monitored against the contractual KPIs.

KPI Compliance Area		Supply Partner Compliance Level		Commentary	CEO Signatory	Signature & date of signing
		1	2			
<b>1.</b>	<b><u>VfM and Governance standards</u></b>					
<b>a)</b>	Evidence of how economic and governance policies work in practice	X	O			
<b>b)</b>	VfM maximisation over contract life					
	1. Annual confirmation of % profit on contract	X	X			
	2. timely identification and resolution of issues	X	X			
	3. ensuring lessons learned are shared	X	O			
<b>c)</b>	<b><u>Tax Declaration (HMRC format)</u></b>					
	Comply with all tax requirements	X	X			
<b>2.</b>	<b><u>Ethical Behaviour</u></b>					
<b>a)</b>	Adherence to agreed conflict of interest management procedures	X	X			
<b>b)</b>	Evidence of workforce ethical training updates taking place	X	X			

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

b)	Environmental risks identified (e.g. by maintaining a risk register) with formal context specific environmental safeguarding policies in place	X	O			
	Annual published environmental performance reports	X	O			
5.	<b><u>Terrorism and Security</u></b>					
a)	Up to date status declaration regarding the reporting of terrorist offences or offences linked to terrorist activities or financing	X	X			
b)	No engaged employees or delivery chain partner personnel appears on the Home Office Prescribed Terrorist Organisations List	X	X			
c)	Data is managed in accordance with FCDO security policy and systems are in accordance with the HMG cyber essentials scheme	X	X			
d)	Adherence to the best practice global principles for digital development	X	O			
6.	<b><u>Safeguarding, Social Responsibility and Human Rights</u></b>					
a)	Provision of a document demonstrating current organisational good practice and assuring compliance with key legislation on international principles on labour and ethical employment (to include Modern Day Slavery Act 2015 compliance detail)	X	O			
b)	Organisational procedures in place directly, and within the delivery chain:					
	1.To prevent actual, attempted or threatened sexual exploitation and abuse or other forms of inequality or discrimination by employees or any other persons engaged and controlled by the Supply Partner to perform any activities relating to FCDO funded work 2.For reporting suspected misconduct, illegal acts or failures to investigate actual attempted or threatened sexual exploitation or abuse	X X	X X			
c)	Current membership of UN Global Compact	X	O			
	Current membership of ETI	O	O			
d)	1.Evidence of cascade to employees of an internal policy or written outline of good practice service delivery approaches to Human Rights and Safeguarding reflecting UN Global Compact Principles 1&2 demonstrating an appropriate level of commitment in relation to the Contract	X	O			
		X	X			

	2.Numbers and details of organisational safeguarding allegations reported	X	O			
	3. Examples of delivery practice that demonstrate commitments in line with workplace and community in line with UN Global Compact Principles 1 & 2 (Annex 2)					

**UN Global Compact – Human Rights**

**Principle 1:** businesses should support and respect the protection of internationally proclaimed Human Rights

**Principle 2:** businesses should ensure they are not complicit in Human Rights abuse

Organisations should do this by giving attention to vulnerable groups including women, children, people with disabilities, indigenous groups, migrant workers and older people.

Organisations should comply with all laws, honouring international standards and giving particular consideration to high risk areas with weak governance.

Examples of how suppliers and partners should do this are set out below:

<p><b>In the workplace</b></p> <ul style="list-style-type: none"><li>• by providing safe and healthy working conditions</li><li>• by guaranteeing freedom of association</li><li>• by ensuring non-discrimination in personnel practices</li><li>• by ensuring that they do not use directly or indirectly forced labour or child labour</li><li>• by providing access to basic health, education and housing for the workers and their families, if these are not provided elsewhere</li><li>• by having an affirmative action programme to hire victims of domestic violence</li><li>• by making reasonable accommodations for all employees' religious observance and practices</li></ul>
<p><b>In the community</b></p> <ul style="list-style-type: none"><li>• by preventing the forcible displacement of individuals, groups or communities</li><li>• by working to protect the economic livelihood of local communities</li><li>• 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</li><li>• 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</li><li>• 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</li><li>• 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</li><li>• 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</li></ul>

**Section 3**

**TERMS OF REFERENCE**

## Terms of Reference

12 July 2021 – Version 6.0

**Research Programme Consortium for FCDO’s ‘Unlocking children’s potential to thrive: Research into taking early childhood development (ECD) interventions to scale’**

**(THRIVE: ECD Research at Scale)**

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## Introduction

1. The Foreign, Commonwealth and Development Office (FCDO) are driving the global research agenda on Early Childhood Development. In July 2019, the UK former Department for International Development approved an investment of up to £20.5m over 4 years and nine months (2021 – 2026) to fund new rigorous and operationally relevant research on the most effective approaches to implementing Early Childhood Development (ECD) at scale in low- and middle-income contexts.

2. FCDO is seeking to appoint a dynamic and collaborative Research Programme Consortium (RPC) to design, manage and implement a £15.725m<sup>11</sup> multi-country, interdisciplinary and multi-sectoral research programme on ECD, and foster significant uptake of the research findings. The programme will run for four years and nine months (2021 to 2026) with the potential to extend for a further three years. The RPC will bring together experts in systems thinking, implementation science, as well as specialist researchers across all the ECD domains of the Nurturing Care Framework (NCF)<sup>12</sup> – and develop understanding on how to build coherent multi-sectoral ECD systems which can enable the delivery of quality ECD in a sustainable manner for all children. This programme is co-funded by FCDO (£14.75m) and New Zealand’s Ministry of Foreign Affairs and Trade (MFAT) (£975k). These Terms of Reference set out the ambition for and requirements of the RPC.

### The recipient and beneficiaries

3. The recipient of this service will be FCDO’s Education Research Team (ERT), and associated FCDO/MFAT country offices. The programme will fund in-country implementation research aligned to the strategic priorities of FCDO/MFAT Country Offices and wider programming. It will benefit FCDO/MFAT country offices, Government ECD stakeholders in relevant countries, as well as relevant ECD implementing partners by providing real time feedback and learning, enabling the adaptation of interventions for increased quality, efficiency, and effectiveness.

4. In addition, the programme will benefit the wider ECD sector globally and in target countries, through the creation of global public goods on strategies for ECD implementation at scale, and specific ‘deep dives’ into particular contextual and thematic ECD issues. The research outputs from this programme will be global public goods. The research outputs will be made publicly available in accordance with FCDO’s Open Access Policy.

For the current policy see <https://www.gov.uk/government/publications/FCDO-research-open-and-enhanced-access-policy>. The supplier will be encouraged to share research findings as soon as they become available.

5. The ultimate beneficiaries of this programme will be children and families living in LMICs, particularly those benefitting from the ECD interventions studied in this programme, who will benefit from improved ECD delivery and services through the learning and evidence-based programme adaptations.

<sup>11</sup> This is the maximum budget for the programme and may be subject to VAT in areas of programme management. The successful supplier shall be responsible for ensuring VAT is implemented appropriately.

<sup>12</sup> WHO, UNICEF, World Bank. Nurturing Care for early childhood development: a framework for helping children survive and thrive to transform health and human potential. Geneva, 2018.

[https://www.who.int/maternal\\_child\\_adolescent/child/nurturing-care-framework/en/](https://www.who.int/maternal_child_adolescent/child/nurturing-care-framework/en/)

## The objectives of the programme

6. The intended impact of the programme is to improve early childhood developmental outcomes for children aged 0-8 living in LMICs, through a better understanding of how to implement quality ECD interventions at scale within and across sectors.

7. The aim for the THRIVE RPC will be to generate, disseminate and maximise uptake of robust and rigorous evidence on how to implement quality ECD programming at scale. This will be done through:

- a. Increasing the global evidence base on quality ECD programming at scale through rigorous and robust implementation research in five countries. Indicative countries are Tanzania, Sierra Leone, South-Sudan, Lebanon, and a Pacific island to be confirmed<sup>13</sup>;
- b. Increasing national and sub-national government capacity to deliver evidence based ECD policies and programming, through the provision of high quality, relevant research, and a small technical assistance (TA) component;
- c. Improving the efficiency and effectiveness of ECD programming in five countries by providing clear and evidence-based recommendations to strengthen programme implementation, reach marginalised communities and support scale-up while retaining effectiveness and cost-effectiveness;
- d. Strengthening the academic and research community of interdisciplinary and multi-sectoral ECD practice.

8. Throughout this research programme, the RPC should maintain a sustained research focus on the most marginalised children and families, and how they can be reached effectively through interventions which are being run at scale. This includes marginalised girls and children with disabilities, as well as children in fragile and conflict affected settings (FCAS) including refugee or informal settings and situations of displacement.

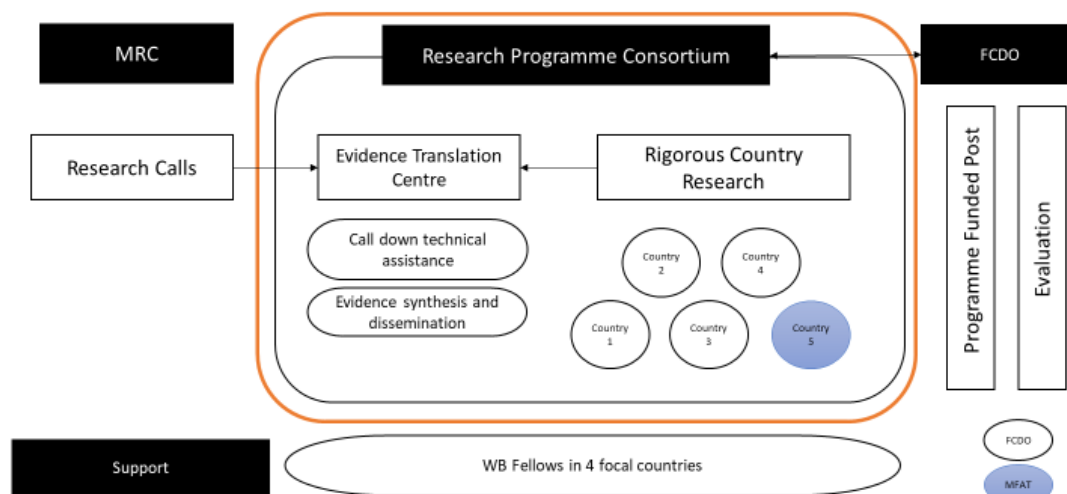
## Scope

9. **The THRIVE programme:** FCDO's THRIVE research programme consists of 5 components (Figure 1). The Supplier will deliver component 1 of the programme: the establishment of an RPC to a) implement research at scale in support of implementation of ECD in-country reforms and programming, and, b) form an 'Evidence Translation Centre' including the provision of a Call-Down Technical Assistance function. Other components are outlined in Annex A).

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<sup>13</sup> These countries have been selected based on a country research scoping study which assessed the feasibility of research across several criteria, including opportunities for alignment of ECD research with ECD/ECE programming in the country and enabling policy environment for scale-up implementation of the Nurturing Care Framework.

Figure 1: THRIVE - ECD research at scale Programme. (Note: This procurement covers the activities under the RPC (highlighted in orange).



10. **Programme outcomes:** The supplier will provide the appropriately skilled services and personnel to deliver the following outcomes:

- i. **A rigorous body of evidence on ‘what works’ to strengthen multi-sectoral systems of ECD service delivery at scale,** through robust and rigorous implementation research in five countries, Indicatively: Tanzania, Sierra Leone, South Sudan, Lebanon and a Pacific island. This research should include a focus on how to ensure that these systems are inclusive and reaching the most marginalised.
- ii. **Increased government engagement in ECD policies and programming.** We expect significant levels of government engagement in the five countries of focus. For example, relevant government officials at the appropriate level for decision-making and influencing should be involved in the co-production of country research projects during the inception phase. We would expect that the country research teams conduct substantial formative research and political economy analysis to understand ECD positioning in the policy sphere, and to assess scalability<sup>14</sup> of any new interventions. We expect that country research teams will be explicit on each intervention’s ambition and potential for scale and ensure that research plans allow for intervention tailoring and adaptation to promote and facilitate scale-up, through regular sharing of findings and lessons learned with relevant national and sub-national government. In addition to the primary research, this programme will provide a demand led, evidence-based TA call down service to the five country governments.
- iii. **Improved efficacy of FCDO’s and MFAT’s ECD influencing and programming in five countries.** Rigorous operational research, alongside country based ‘deep dives’ in specific policy/programming questions or evidence gaps will provide robust recommendations for improvements for FCDO’s and MFAT’s ECD influencing and programming work –ultimately

<sup>14</sup> Zamboni K, Schellenberg J, Hanson C, Betran AP, Dumont A, Assessing scalability of an intervention: why, how and who?, Health Policy and Planning, 34:7, September 2019, P. 544–552

improving delivery of ECD services for children. To note, the work in the Pacific island will focus on MFAT funded programming.

- iv. **A strong network of ECD stakeholders and community of practice to share inter-disciplinary and multi-sectoral learning and promote evidence uptake.** Under this programme, researchers, practitioners, and decision makers will be convened to disseminate findings and promote evidence use. The programme will be expected to link with existing ECD networks, as well as take active steps to continue to build an interdisciplinary and multi-sectoral ECD community of practice for ECD implementation research, and to engage decision-makers to promote evidence uptake and influence intervention and programme design, scale-up and evaluation.

Please refer to the Theory of Change in Annex B for further information on impact and outcomes.

11. **Programme Scope:** This is a research programme, and we intend it to be led and driven by expert academics in the fields of education, health and nutrition, social protection and implementation science. The RPC will spend the Inception Phase designing a conceptual framework and measurement framework, which will underpin the work of the five country research teams, as well as individual tailored workplans for each of the country research teams. We expect this conceptual framework to be grounded in health and education systems research and gender-analysis, and consider the relevance and utility to policy and decision-makers at all stages of development and refinement.

12. **Evidence –** The RPC will generate evidence on how to implement quality ECD programmes at scale. This programme is designed to improve understanding for governments, practitioners and donors on how to design, iterate and scale-up quality ECD interventions. Research would contribute an understanding of what works, for whom, and in what circumstances, the scalability of interventions, and the scale-up processes. This may include: focusing on the identification of critical programme components, dosage and optimal implementation mix to drive results and maintain quality at scale; exploring adaptive programming strategies to tailor implementation to contexts and to ensure quality, reach into vulnerable communities, gender-responsiveness and sustainability; consideration of the socio-political context and political economy factors, the intervention fit with and impact on wider systems; cost-effectiveness studies; comparative evaluation of alternative delivery platforms or implementation models; effectiveness evaluations to determine changes in effectiveness as scale increases. It also includes a study of models for quality multi-agency and multi-sectoral ECD programme implementation and institutionalisation, including their positive and negative implications from an effectiveness and scale-up perspective, and questions about prioritisation of entry points and interventions within and across sectors.

13. While the research questions will be developed during Inception Phase, and may be different in different countries, we expect that most of the time and resources will be spent on implementation research which enables programmes to take a test, learn, adapt approach. There are some critical areas of focus that will need to be included:

- a. Scalability and scale-up of quality ECD interventions, including considerations around identifying critical elements for quality and cost-effective implementation of intervention (including mechanisms of change in relation to contexts, optimal dosage, frequency and duration); optimal service delivery mechanisms to ensure quality delivery at scale and sustained impact; system strengthening strategies and feasible strategies to enable quality delivery, including harnessing community-institutional linkages for continuity of stimulation and support to children and families; political economy factors affecting quality delivery, and opportunities for upstream intervention.

- b. Girls' education. ECD is fundamental to girls' education outcomes. This programme is expected to build on the findings of an ongoing rigorous review, commissioned by FCDO, on gender and ECD. The gender and ECD review is expected to shed light on differential impacts of ECD interventions by gender and outline pathways through which gender affects delivery of ECE and implementation of ECD interventions. Outputs of this review, expected by mid-2021, will include: (i) a framework to understand how gender influences ECD intervention implementation and child development and learning outcomes, aligned with and complementing the Nurturing Care Framework; (ii) a summary of gender considerations and recommendations for the design and implementation of gender-responsive (or where appropriate, gender-transformative) ECD interventions; (iii) gender considerations and recommendations in relation to monitoring ECD quality and equity. Implementation research at country level will be designed to advance the use of this gender framework and the gender considerations for intervention design, implementation or monitoring and evaluation. The research will explicitly consider the context-specific gender influences on ECD outcomes, and explicitly consider gender equality objectives.
- c. Children and caregivers living in emergency contexts. The burden of poor ECD outcomes is acutely high for children living in FCAS situations, including refugee/Internally Displaced Person populations, as well as those acutely affected by emergencies - as has been seen in the wake of the Covid-19 pandemic. Implementation research needs to be conducted to understand the impact of conflict and crisis on cross-sectoral ECD outcomes, including the impacts of toxic stress and socio-economic (and other types of) shock on cognitive development; effective interventions to support caregivers' mental health; the implementation and evaluation of Psycho-social support (PSS) for children and effective social protection mechanisms for displaced populations. Education and health outcomes face unique barriers in emergency and crisis contexts in which populations face trauma, language barriers to information and the movement of populations can cause challenges in the tracking, and follow up, of outcomes. Implementation research would support better understanding of effective entry points for health interventions and pre-primary education; measurement of population information and could include understanding effective management of transitions for refugee populations between non-formal and formal state provision, (or settlements to host community services).
- d. Inclusion of children with disability. Nurturing care is especially important for children with developmental delay and disabilities. Key questions remain about how governments can ensure equitable ECD provision and inclusion of children with disabilities, as well as improve caregivers support for children with disabilities, and reduce potential associated stigma. Disaggregated data is needed to provide information on inequities and to enable effective population targeting, and more evidence is needed about circumstances in which children and their families are best reached through routine or targeted services.
- e. Data and measurement. We need to advance measurement of ECD outcomes for population monitoring, population screening, and program evaluation to aid comparability of ECD evidence across sectors and settings. We also need novel ways to measure the breadth of ECD components under the Nurturing Care Framework, for example measures of responsive caregiving and quality of early childhood education.

14. The research framework and country research plans should also set out how the Supplier will approach the challenges and opportunities created by the COVID-19 pandemic across relevant ECD sectors. The research framework should consider the potential for conducting rapid research that can help national policy makers build flexible, responsive and resilient services and policies to mitigate the

continuing effect of COVID-19 on the early years<sup>15</sup>. This may include, but is not limited to, defining a minimum package of ECD interventions and strategies to deliver this at scale in integrated ways to maximise child development outcomes; testing the effectiveness and scalability of innovations introduced during the emergency response to support home learning and parenting; evaluating innovative social protection schemes combining health, education, nutrition and responsive caregiving. Other issues may include: evaluating the impact of prolonged and intermittent school closures on equitable access to pre-school education and quality of learning for the early years; new models for integration of basic health literacy learning opportunities in community health and early years education; evaluation of innovative mass-media and technology enabled programmes for early learning and responsive caregiving. The Country Research Plans proposed by the supplier should anticipate and mitigate the risks related to COVID-19 for data collection and identify the potential and opportunities to begin rapid start-up of research on COVID-19 related issues during the inception phase.

15. **Geographic Range:** 5 indicative focal countries have been identified as potential implementation research sites for THRIVE – Tanzania, Sierra Leone, South Sudan, Lebanon and a Pacific island to be confirmed (see Annex C). In developing THRIVE, FCDO’s Education Research Team undertook a scoping study to identify countries where FCDO was conducting or planning ECD programming at scale, and where there was demand from FCDO country advisers for research as well as an enabling government policy context. During the inception phase, the supplier should work closely with the FCDO programme team to scope and confirm appropriate geographies and contexts for research projects.

16. FCDO reserves the right to include other countries not on the list above if the right opportunity arises during further scoping. Such changes, if relevant, will be discussed during inception phase.

17. If, for any reason (e.g. unforeseen delays) research cannot be aligned to FCDO country office or centrally funded programmes, the FCDO Senior Responsible Officer (SRO) will work with the RPC to adapt the programme to find a workable solution for conducting implementation research. This may entail attaching research to an alternative in-country programme or arranging for a change of country, where more promising opportunities exist.

18. We recognise that research costs will likely vary between each of these countries. FCDO recommends that up to £3m is reserved for work in each focus country and approximately £975k is reserved for work in the Pacific island, depending on the scale of research in each country. The RPC should ensure that an appropriate, high-quality and feasible research plan can be devised in each country, based on a solid scoping conducted in the inception phase, and fitting in the overall ceiling.

19. **Age Range (Research Focus):** As an ECD programme, our primary area of focus will be children aged 0-8. This programme understands early childhood development outcomes in line with the Nurturing Care Framework, as relating to children’s health and cognitive, motor, social and language skills in the prenatal-3 years, as well as literacy, numeracy, socio-emotional skills and school readiness, in the later early years (3-8). However, this programme includes a holistic look at the wider environment that the child is living in – including their parents, siblings and wider family, home and community environment, childcare and other relevant factors.

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<sup>15</sup> Yoshikawa et al, Effects of the Global Coronavirus Disease-2019 Pandemic on Early Childhood Development: Short- and Long-Term Risks and Mitigating Program and Policy Actions  
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7234941/>

20. **Multi-sectoral research:** We expect the winning RPC to take a holistic view to early childhood development, covering all aspects of the Nurturing Care Framework, including responsive caregiving and safety and security, not only health, nutrition and education, and the interplay between them. A summary of the Nurturing Care Framework is included in Figure 2.

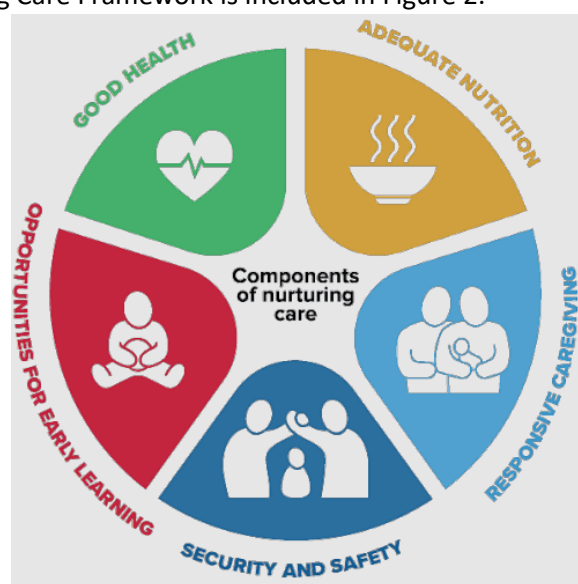


Figure 2: The Nurturing Care Framework <sup>16</sup>

21. Considerations will need to be given to the variety of measurement instruments for ECD outcomes, the alternative approaches for assessing these from caregivers' perspectives or objective assessments, and the ongoing work in the ECD global community on developing a joint monitoring framework for the NCF<sup>17</sup>. FCDO will expect the RPC to align impact and outcome monitoring approaches to relevant and emerging frameworks and endeavour to take a multi-sectoral approach to monitoring child development. For example, we see THRIVE as contributing to use and refinement of the Early Childhood Development Index, building capacity for implementation of the emerging NCF monitoring framework. We expect the RPC to contribute to relevant global technical working groups on ECD measurement, and that decisions on how to measure and track multi-sectoral ECD outcomes in a comparative way across country research programmes will be decided during the inception phase of the programme. Comparative approaches must be able to demonstrate that they are comparing performance using a normalised measure. For example, results should allow for comparison of child development milestones against standardised milestones within the relevant population.

#### Programme delivery model and Partnerships

22. Programme Delivery Model for RPC – Figure 3 presents one possible model for the delivery of this programme. We welcome alternatives. It is important that the RPC clearly states lines of responsibility and decision making in their programme delivery model and identifies clear chains of reporting across all strands of work. We also expect the RPC to chart composition and functioning of each country team. We recognise that variation in country teams' operation may be required to ensure contextual relevance. We would expect the local country research teams to be formed of an equal collaboration between research institutions from the Global North and from the Global South, ideally partnerships with institutions based in the same country or region as the THRIVE focus country.

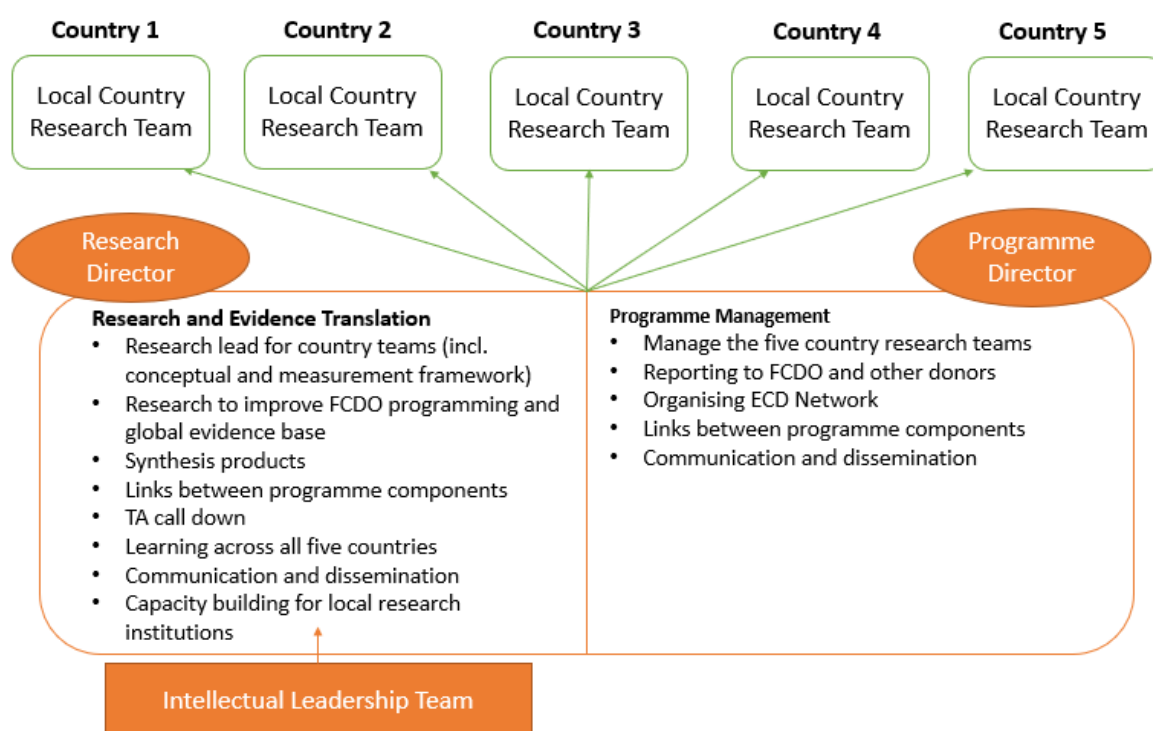
<sup>16</sup> WHO, UNICEF, World Bank, Nurturing Care for Early Childhood Development A framework for helping children survive and thrive to transform health and human potential, 2018, page 12.

<sup>17</sup> WHO, UNICEF, World Bank. Nurturing Care for early childhood development: a framework for helping children survive and thrive to transform health and human potential. Geneva, 2018.



We expect that country teams include relevant actors beyond the research community to embed the evidence translation function in programme delivery, to enable and strengthen cross-sectoral partnerships for ECD and facilitate a cross transfer of skills. For example, a local Programme Steering Committee may be considered, comprising government agencies, other ECD organisations and representatives of relevant working groups. Articulation of non-research actors' role in programme delivery should consider mechanisms to prevent conflict of interest and ensure research integrity (see paragraph 80).

Figure 2: One possible THRIVE delivery model



23. **Collaboration and Partnership** - There are already established organisations and networks in the ECD space globally and, at country level, there may already be technical working groups focusing on ECD. THRIVE will add to the current global work on ECD by leading on research on implementing ECD at scale – an area which has remained a critical research gap. We expect that the RPC will frequently engage with practitioners, international and regional ECD networks, multilaterals, foundations and other donor and government partners working in the ECD space. The ambition is for THRIVE to become and be recognised as a generator of rigorous and robust evidence for implementation at scale in ECD, and for other organisations to routinely use this evidence in their decision making, training and engagement with government, communities, parents and children. It is expected that at global level, and in countries where such organisations or networks operate, THRIVE will align and collaborate with these, rather than duplicate. Where such networks are embryonic, it is expected that THRIVE will use evidence to galvanise and facilitate cross-sectoral collaboration on ECD.

24. **Engaging with FCDO Advisers and World Bank Fellows in country.** The RPC should develop a strategy for engaging closely with FCDO country-based and regional Advisers (as necessary), MFAT country-based staff and relevant sector teams, and, where appropriate, World Bank Early Years Fellows during the inception phase. If a Country Steering Committee is proposed, we would expect these stakeholders to be part of it. In addition to the funding for this procurement, FCDO will also provide an Adviser in a Programme Funded Post who will act as an interlocuter between THRIVE, FCDO



country offices and FCDO ECD implementing partners. The Programme Funded Post (PFP) may be seconded into one of the RPC organisations, with line management and performance assessment conducted within the RPC.

25. **Donors:** The RPC should be proactive about seeking partnerships to extend the programme, and actively work to bring future donors on board with support from FCDO and MFAT. We are keen to attract financial partners with complementary investments. The current model allows for future expansion of the programme to add new countries or to extend the scope of the current country work.

## Roles

26. We anticipate that the RPC will be a consortium of different organisations<sup>18</sup>, including research institutions from each of the five focus countries or the relevant regions. We expect there to be **three key roles within the RPC**: (i) the Research Director, (ii) the Programme Director, and (iii) Country research team Principal Investigators (PIs). The RPC should include the main researchers that will be required to deliver this programme, but it will be possible for further recruitment to take place during the programme.

27. The **Research Director** role will be pivotal in the leadership of THRIVE, and they will be expected to jointly lead and direct the RPC with the Programme Director and the programme management team. The Research Director should be a well-established academic in ECD or related sector – e.g. education, nutrition, social protection or health, with a track record of academic experience, publications, networks and links to renowned, world-class academic institutions and thought leadership bodies. They should demonstrate experience of implementation science and systems thinking as well as evidence of promoting a multi-sectoral approach to ECD. We do not expect the Research Director to be a full-time role. Further details on this role are in Annex D.

28. It should be noted that while we refer to the ‘Research Director’ as one individual, it may be preferable for there to be two Research Directors who represent different sectors in ECD (e.g. education and health). If this is the case, the supplier will include clear roles and responsibilities for each of the joint Research Directors, including ways of working collaboratively to lead the programme. For the purposes of the TOR, the Research Director will continue to be referred to in the singular.

29. The **Programme Director** will be responsible for ensuring efficient and effective programme management and coordination across the RPC, and with the broader THRIVE programme. Further details are in Annex C.

30. We anticipate that all the country research teams will be led or co-led by a PI/ Co-PI from a Southern Institution. The **Country Research Team PIs** will be responsible for co-designing and implementing a high-quality research programme, and for acting as “super-communicators”<sup>19</sup> in their respective country to support evidence translation and policy uptake. Their specific role is outlined in Annex C.

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There is flexibility in the design of the delivery model. We ask suppliers to propose creative ways of working that will ensure efficient and effective delivery against programme objectives. We would not expect that it will be possible to deliver this programme through a single-organisation model (i.e. where one organisation performs all the roles indicated in the ToRs). Rather, we anticipate that an organisation will be the ‘lead’ for the programme and sub-contracting individuals or other organisations to deliver roles specified in the ToR .

<sup>19</sup> The Impact Initiative for International Development Research, ESRC, UKAID.

<https://www.theimpactinitiative.net/>

## Requirements

31. This section of the TOR sets out the requirements for the RPC. The supplier will set out how they will approach each of these activities, including their proposed priorities, individual leads (where appropriate), and ways of working.

**Activity 1: Set the intellectual and strategic direction for the THRIVE programme, and conduct five in-country, rigorous implementation research projects, including setting the conceptual framework and measurement framework for the work**

32. ***Intellectual and Strategic Direction:*** The Research Director will be responsible for setting the intellectual and strategic direction for the programme, and quality assurance of research outputs, advised by an Intellectual Leadership Team. It is anticipated that the Intellectual Leadership Team will comprise of approximately 3-5 leading academics from a variety of sectors and disciplines including, but not limited to, education, health, nutrition, social protection, psychology, governance, implementation research and systems research. Most members of the Intellectual Leadership Team should be experienced in undertaking research in low- and middle-income countries. The Intellectual Leadership Team will ensure technical excellence in the research, including advising on the direction, methodology, tools and measurement in THRIVE. The RPC will be responsible for identifying the membership of the Intellectual Leadership Team and convening meetings as required, approximately twice a year. The supplier will indicate potential membership of the Intellectual Leadership Team.

33. The Research Director will be responsible for setting an underpinning conceptual framework for the research across each of the five countries, ensuring that the research adds value in each context and is coherent as a portfolio. It is also expected that the Research Director will set a measurement framework to ensure that research across the portfolio is generating comparable results across a range of different ECD metrics.

34. ***Conducting five in-country, rigorous implementation research projects:*** The RPC will need to include organisations who will undertake the research in country. The supplier will identify the Principal Investigator (PI), Co-PIs and core research team, where they have established research and delivery partnerships, and/or their approach to identifying these, and to planning and delivering the research. The budget for this activity as well as activities 3-7 is up to £3m.

35. ***Research Questions:*** The specific research questions for each country research team will be co-designed during the Inception Phase with FCDO (both ERT and relevant FCDO country office) and a local research Steering Committee comprising of implementing suppliers of FCDO's and MFAT's ECD programming (including any existing evaluators of the ECD programme), multilateral agencies, government officials and key local stakeholders. It is expected that the country research work will be influenced by key research gaps identified in consultation with government, FCDO and MFAT advisers and other stakeholders, and grounded in formative research and political economy analysis. The supplier will provide an initial indication of the ECD landscape and ECD research gaps that they could address through THRIVE, and to express how they will address each of the five cross-cutting themes outlined in paragraph 13.

36. We expect that the research undertaken in each country will vary substantially, but that sufficient steps will be taken at the outset of the research programme to ensure that comparisons can be made across programmes, using measurement tools and frameworks that have substantial

international consensus and validity, and a conceptual framework facilitating synthesis into a coherent body of work. While the RPC will lead this research, FCDO must approve the conceptual framework and research plans for the country research teams.

37. **Research Design and Methods:** We expect that a substantial element of the four FCDO country research programmes will focus on implementation research around the ECD intervention<sup>20</sup>. This can include randomised controlled trials and quasi-experimental impact evaluations, with nested mixed methods and theory-driven process evaluations and cost-effectiveness studies; longitudinal studies; participatory research; ethnographic research; political economy analysis, and comparative case study analyses. Where necessary, rigorous quantitative and/or qualitative formative research or realist syntheses can be proposed in the early programme phases to improve the quality of implementation research studies and to refine develop theory of changes. However, in such cases, the need for this preliminary research should be clearly articulated, as we would expect proposals to demonstrate that they build on existing evidence, clear and specific research gaps and that investment in formative research adds value to programme implementation in a timely fashion. We welcome designs that consider scale and scalability at their core, with a clear definition of scale-up ambitions and potential, and evaluation plans that allow for analyses of mechanisms of change and comparison of effects at different stages of scale-up. Research methods should be tailored to ensure they are appropriate for the research question and the country context. Methodological innovation, variation and flexibility (e.g. adaptation of methods to fit challenging and changing contexts) is encouraged where it will enable the delivery of high quality, relevant research.

38. This research programme is designed to be interdisciplinary, and we encourage proposals that explicitly bring together academics from different disciplines to take a holistic view of ECD in line with the Nurturing Care Framework. Given the thematic focus on girls' education, we expect the programme to be embedded in solid gender-analysis, and we encourage proposals that take a life-cycle approach, linking interventions in the 0-3 period with interventions for the 3-5 and 5-8 age group. It is anticipated that studies chosen will respond to demand from national/regional government and/or key stakeholders operating in this area, thus we expect proposals to outline the extent of consultation already undertaken and the plans and scope for more in-depth consultation in country.

39. Outputs of the research should be of sufficiently high quality to publish in peer reviewed journals. Building Evidence in Education (BE2) global guidelines on impact evaluations<sup>21</sup>, qualitative methods<sup>22</sup> and cost capture<sup>23</sup> are expected to be used. Taken together, the research outputs of THRIVE should seek to build a coherent body of evidence on what works to deliver improved ECD outcomes cost-effectively at scale and effective multi-sectoral delivery platforms for effective and equitable implementation of the Nurturing Care Framework.

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<sup>20</sup> Research in the Pacific island does not need to explicitly relate to MFAT-funded interventions, but should align with the priorities initiative/s identified by the relevant Government. The same principle may apply to the other four countries, should there be changes or substantial delay in approvals of FCDO ECD programmes in country.

<sup>21</sup> This document, titled "Generating Evidence in Education Impact Evaluations" is an Additional Document, which forms part of the Invitation to Tender Pack. It is available for download via the FCDO Supplier Portal.

<sup>22</sup> This document, titled "Guidance Note on Qualitative Research: Considerations for Best Practice" is an Additional Document, which forms part of the Invitation to Tender Pack. It is available for download via the FCDO Supplier Portal.

<sup>23</sup> This document, titled "Cost Measurement Guidance Note" is an Additional Document, which forms part of the Invitation to Tender Pack. It is available for download via the FCDO Supplier Portal.

FCDO requires the Supplier/consortia to include and/or sub-contract research organisations and/or partners that are based and/or registered in the Global South (i.e. outside of OECD countries).

40. **Supply Chain:** given the importance of contextual knowledge and in-country expertise, we expect that the RPC will include and/or sub-contract national or regional research institution and/or partners that are based or registered in each of the five countries or operating in such countries with a base outside an OECD country. Consortia with a strong and credible capacity building plan for local researchers will be preferred. The RPC can continue to engage and contract with new individuals and organisations during the lifetime of the programme, but FCDO expects to be notified and for the RPC to conduct sufficient due diligence on new organisations.

**Activity 2: Manage five in-country, rigorous, implementation research programmes, aligning with FCDO's and MFAT's country programming across sectors.**

41. This programme will work in five countries (four FCDO priority countries and one Pacific island country). In the Pacific island, this research will focus on the implementation of other at scale ECD reforms funded by MFAT. It is anticipated that there will be a significant programme management burden in terms of ensuring alignment and collaboration between the THRIVE research teams, and programme implementing partners. The budget for the research in the four FCDO countries is approximately £3m in each country. The budget for the research in the Pacific island is £975k<sup>24</sup>.

42. The RPC will need to have sufficient capacity to monitor and manage each of the five in-country research programmes. This will include ensuring that workplans are delivered to time and any delays or disruptions are dealt with efficiently, managing the risks in the programme, managing programme finances and reporting to FCDO. It is important that sufficient programme management capacity is included in the programme to ensure smooth delivery, and it is anticipated that THRIVE's model (aligning research with existing FCDO funded programmes and priorities) might generate a greater number of management issues – although the Programme Funded Post position has been included to deal with some of these. The supplier will set out how they plan to meet these challenges, and how the organogram of the RPC will be set up to ensure efficient ways of working.

43. FCDO is open to different models of programme management in THRIVE. However, given the complexity of aligning research to existing programmes, we would encourage RPCs to demonstrate how they can provide agile, adaptive and flexible ways of working.

44. Given the ongoing global crisis resulting from the COVID-19 pandemic, the Supplier will endeavour to mobilise research teams rapidly to begin conducting research that is relevant to the COVID-19 recovery planning in the inception phase, if relevant.

**Activity 3: Create and commission synthesis products**

45. **Synthesis products:** We expect the RPC to produce a series of synthesis products which draw together research findings and lessons learned across each of the five country programmes (as well as the MRC research calls and wider literature). This work should also build on the wider evidence

<sup>24</sup> The difference in budget reflects the substantially smaller size of the Pacific island in relation to other participating countries

base and ensure that it is relevant for policy makers. The supplier will be creative and innovative in their approach to this, particularly in terms of the type of synthesis products which could be created, to target diverse audiences through a variety of media e.g. articles in leading peer-reviewed journals, methods papers, working papers, policy briefs, synthesis products, social media and video content/podcasts, and online learning platforms.

46. To maximise ease of dissemination and uptake, all outputs must be written in a ‘plain English’ style that can be readily understood by development generalists. Where relevant, research should be translated to local languages that are pertinent to the uptake of the research by the target audience.

47. While we expect this activity to be conducted mostly during the later years of the programme, the mechanisms to draw down a synthesis function should be in place by the end of month 3 of the inception phase, so as to make this service available for local teams and partner Governments and inform policies aiming to mitigate the negative impacts of COVID-19 on ECD.

**Activity 4: Manage the ‘Evidence Translation’ call down Technical Assistance (TA) facility, including quality assurance**

48. This facility will respond to government demand and requests for policy briefs, evidence summaries and more long-term advice on key policy and programming decisions about the implementation of multi-sectoral ECD at scale. It may also include provision of operational support to FCDO Advisers and implementing partners in the focal countries to tailor their programming and enhance scale-up opportunities.

49. We anticipate that this will be a modest call down TA facility, restricted to the five THRIVE countries. We expect the TA function to become operational by the end of month 3 of the inception phase, so as to contribute to the COVID-19 response on ECD, if needed by partner governments.

50. We invite innovative suggestions for how this facility can provide evidence-based, demand-led support for national and regional governments in ECD. A contextual analysis and discussions with government, FCDO or MFAT advisers and other stakeholders through the relevant Steering Committee will help identify areas for TA during the inception and implementation of the programme. We expect that the model in working closely with ECD implementers and stakeholders in country will ensure ongoing relevance and timely utilisation of research findings, which may enhance policy translation. The supplier will outline their approach to management of the call down TA function to balance responsiveness with the need for prioritisation, coordination and transparency of TA allocation, across countries and over time.

51. The RPC can choose to contract out some elements of the TA work if appropriate. However, if the TA is to be completed by an individual or organisation external to the RPC, then the RPC will remain responsible for timely delivery, quality assurance and appropriate due diligence of external partners or consultants.

52. Final design of this component will depend on close engagement with FCDO THRIVE’s central programme management team, FCDO country offices and local Steering Committees.

**Activity 5: Develop links with other programme components**

53. **Links with other programme components:** The RPC will need to collaborate to ensure that its work is building on the opportunities created by the FCDO/MRC research calls and World Bank Early Years Fellows. Coordination between these components and, where possible, other similar initiatives will be critical to ensure that THRIVE can deliver optimum impact. The Programme Funded Post may be able to provide some support for this collaboration, and it is anticipated that the THRIVE programme will hold one quarterly review meeting for all components each financial quarter (see Reporting Section). Synergies across the components will be facilitated by FCDO Education Research Team during the programme inception phase, depending on the projects supported by the FCDO/MRC research call and the geographical focus of Early Years Fellows.

**Activity 6: Work in partnership with relevant in-country ECD Network groups and link with the broader global ECD research and implementation agenda**

54. **Contribution and catalyst in ECD Network Groups:** At country level, the RPC and THRIVE teams will be required to work closely with and add value to ECD networks and/or technical working groups working on ECD. A possible model for in-country working is outlined in section 21. We welcome alternative proposals. The main priority for in-country positioning is that THRIVE aligns with and adds value to existing structures and mechanisms for multi-sectoral ECD coordination. At the minimum, this includes ensuring that an in-country THRIVE Steering Committee (or similar body, aligned with existing structures) shapes and co-designs the research programme, and is actively engaged at key milestones during research implementation to aid programme adaptation, refining and translation of learning into practice. Depending on contexts and opportunities, THRIVE can also play a catalytic role to foster multi-disciplinary and multi-sectoral collaboration where such a need exists.

55. **Synergy and strategic positioning at global level:** At the global level, we expect the RPC and its Intellectual Leadership Team to link in and add value to the [Early Childhood Development Action Network \(ECDAN\)](#) and other relevant global and regional ECD networks and technical working groups, particularly those working on ECD in emergency settings and on monitoring and evaluation. The RPC will be responsible for ensuring that the programme is well aligned with the broader global ECD research and implementation agenda. We expect the RPC to outline proposals for such global positioning of the THRIVE programme. During the inception phase, FCDO and the RPC will agree on the positioning of THRIVE in the ECD global network, and mechanisms for regular engagement. For example, FCDO will convene an external THRIVE Advisory Board, comprising of 8-12 leading members of ECDAN or other relevant global ECD networks, ECD practitioners and Foundations specialising in ECD. The external Advisory Board would advise at key milestones (inception, finalisation of designs, interim results, final results) on the collaboration of the RPC with broader ECD networks to ensure efficiencies and no duplication; the external perception of the RPC and external messaging for maximum policy impact; and strategies to reach certain stakeholders. The Advisory Board would also provide a dissemination channel for the RPC, acting as an advocacy group for THRIVE and using the research in their own work. They could be engaged by the RPC in annual events, and/or reached through quarterly updates and an active online presence. The RPC will also ensure solid links are established with relevant research groups involved in ECD research funded by UK Research and Innovation and other UK funders, and other relevant ERT research programmes, including EdTech, RISE and the new Education Research in Conflict and Protracted Crises (ERICC) programme and What Works Hub for Global Education.

**Activity 7: Manage the communication and dissemination for research outputs arising from the programme.**

56. The RPC will be responsible for communicating the impact and outputs of the THRIVE programme, and disseminating outputs across the global research community and to ECD policy makers, within each of the five countries, and, as appropriate, in other national and international forums. The RPC will be responsible for developing a research communication, dissemination and uptake strategy, focusing on:

- a. Ongoing stakeholder engagement – both in focal countries and the wider ECD community globally.
- b. Targeted communication in appropriate formats to a variety of audiences, including key decision-makers at national and international level.
- c. Monitoring and evaluation of research uptake, at national and international level.

57. It is expected that THRIVE will have an online presence and take steps to engage a wider cross-sectoral community of practice in ECD. It is also expected that THRIVE will link into FCDO's wider evidence synthesis and dissemination platforms in education, such as the What Works Hub for Global Education, so as to give ECD evidence greater reach into its constituent sectors. Mechanisms for doing so will be discussed during the inception phase, which may include technical and financial contributions into other relevant platforms, to be covered within the overall THRIVE programme allocation. The supplier will present their understanding of synergies with existing knowledge translation platforms and plans for communication and dissemination within the RPC, at the regional/national level and globally.

## Timeframe

58. **Start Date:** The expected start date of this programme is January 2022.

59. **End Date:** The contract ends in September 2026 with a possible three-year extension (to September 2029), subject to extension of the business case.

60. **Phases:** The programme will consist of three phases: 1) Inception Phase (5 months); 2) Implementation Phase (3 years and 10 months); 3) Closure Phase (6 months).

61. **Inception Period:** The inception period will cover 5 months from the start of the contract. Successful completion of the inception phase and continuation of the programme will require the supplier to achieve all deliverables listed in the table below, subject to agreement with FCDO.

62. **Implementation period:** The implementation period will cover 3 years and 10 months. Countries can begin implementation at different stages. The early phase of implementation will need to involve baseline data collection, the analysis of which should be available within the first year of implementation.

63. **Closure phase:** the closure period will cover 6 months, to enable completion of programme activities and wind down of country operations, including final reporting, final publication and dissemination of outputs from the programme, and other programme management activities in line with SMART guidance.

64. **Break Points:** the programme will include three break points – one at the end of inception phase, another after two years of the implementation phase (following the 2024 Annual Review) and a third in December 2025. FCDO require Treasury approval to proceed beyond this final break point

which will be sought at least 3 months prior to the break point. The inception and mid-term report will be reviewed by FCDO (including its internal Programme Steering Group). The external Advisory Board and each in-country Programme Steering Group will have opportunities to comment on the inception report to ensure appropriate global and in-country positioning of the research. Implementation in each of the countries will only continue if it is deemed to meet expectations.

65. **Contract Requirements:** At the annual review point, the SRO and Programme Director will agree a set of deliverables for the following year. These will be noted in the THRIVE Contract Management Plan and may be updated throughout the year following a written request from the RPC to FCDO.

66. **Scale-up/ Extensions:** FCDO may scale-up or extend the programme's budget up to £10m and timeframe (up to 3 years) in any of the following circumstances:

- Where the programme has demonstrated to have a strong impact, and has the potential to yield wider results;
- It may be extended to additional countries, especially if additional donors enter the programme;
- Expansion of the scope of work.

67. **Scale Down:** FCDO reserves the right to scale down or discontinue this programme at any point in line with the Terms and Conditions. Scaling down is at FCDO's discretion and may occur for various reasons, including but not limited to a change in the security and/or political circumstances of the countries, political economy reasons, prioritisation decisions or shortage of funds. A 'political economy reason' is a change in the situation of the security, government stability, corruption or delays in key, necessary government engagement in any of the five focus countries – such that they affect the effective delivery of research and it is not possible to make a reasonable adjustment to the programme in an appropriate timeframe.

## Budget and Payments

68. **Total budget:** The total budget for this procurement is £15.725m. This includes the pooled funding between FCDO and MFAT. FCDO will also provide a Programme Funded Post as part of the programme, to be seconded into the RPC, but the budget for their salary and travel will not be taken from this budget but be covered by FCDO. It is anticipated that the RPC will make use of a PFP given the high level of collaboration needed with FCDO country offices and FCDO systems within this programme. There is flexibility in how the £15.725m is allocated between workstreams. It is anticipated that the bulk of this funding will be spent on in-country research. *In line with restricted UK ODA commitments the total available budget for FY 2021/22 is £500K and £2m for the financial year 2022/23.*

69. It may be possible for country research teams to use up to 15% of their budgets for operational costs related to making interventions easier and more appropriate to research, or for modest adaptation based on evidence-based recommendations during the implementation research process. All requests for operational funding must be approved individually by the FCDO SRO, regardless of value. Any initial plans for operational spending (or the approach that the RPC anticipates taking towards operational spending) should be set out clearly and discussed and agreed as part of the Inception phase once the RPC is procured.



70. **Payments:** Payments will be scheduled on a quarterly basis, in line with FCDO's financial year (April to March). Payments of fees will be linked to deliverables in the inception phase, and expenses will be paid on actuals. Payments will be made based on FCDO's satisfaction with agreed deliverables. Deliverables will be reviewed by the SRO with support from the FCDO THRIVE Steering Committee. The agreed deliverables for the inception phases are set out below (paragraph 71). -Payments in the Implementation phase will be on an input basis, quarterly in arrears. Yearly milestones for programme outputs and outcomes in implementation phase will be agreed in a programme logframe. This will form the basis of a contract amendment at the end of inception.

### Outputs and Deliverables

71. **List of deliverables for the 5-month inception phase:** We expect the following deliverables from the 5-month inception phase. The supplier will set out how they anticipate organising and completing this work during the inception phase.

Task	Deliverable by month 3	Deliverable by end of inception (month 5)
<b>Programme Management</b> (to be delivered and approved by FCDO)	<ul style="list-style-type: none"> <li>• An implementation plan and strategy for THRIVE for the duration of the programme, with sufficient room for adaptation but with detailed consideration of how THRIVE would achieve the intended outcomes and impacts</li> <li>• Risk matrix and mitigation strategy, to be reported against regularly</li> <li>• Ways of working document – including designing and agreeing the management processes and systems for effective delivery</li> <li>• Planning for the role of the FCDO secondee (Programme Funded Post) and including them in management chains etc.</li> <li>• Communication, stakeholder engagement and dissemination workplan</li> <li>• An operational evidence curation, synthesis and translation service for ECD, and mechanisms in place to draw down TA for ECD capacity building</li> </ul>	<ul style="list-style-type: none"> <li>• A logframe (co-designed with FCDO)</li> <li>• Annual budgets, with demonstrated cost efficiency and including a process for annual independent audits within the programme impacts</li> <li>• Monitoring and reporting strategy (co-designed with FCDO)</li> <li>• Inception phase report, including lessons learned</li> </ul>
<b>Research Leadership</b> (to be delivered and approved by FCDO)	<ul style="list-style-type: none"> <li>• A preliminary conceptual framework for THRIVE</li> <li>• Final list of Intellectual Leadership Team members</li> <li>• List of members of external Advisory Board, outline of positioning within global ECD Network (co-designed with FCDO)</li> </ul>	<ul style="list-style-type: none"> <li>• A finalised conceptual framework for THRIVE</li> <li>• A scoping report outlining proposed research themes in each country, incorporation of cross-cutting themes, and synthesis analysis, and how these will be operationalised in the country research programme</li> <li>• Methodological guidance for the country research teams, including</li> </ul>

		<p>proposed robust quantitative and qualitative research methods which observe impact and cost-effectiveness, as well as guidance on implementation science</p> <ul style="list-style-type: none"> <li>• Gender analysis</li> <li>• Guidance on how to undertake cost-capture for differing interventions, if applicable</li> <li>• Initial list of working paper series to emerge from this programme</li> <li>• Kick off meeting held (virtually) involving ILT and external Advisory Board (FCDO and MFAT included). Clear plans made for future engagement of ECD global stakeholders in THRIVE</li> </ul>
<p><b>Country Research Teams</b> (to be delivered and approved by FCDO in the first 5 months of the programme)</p>		<ul style="list-style-type: none"> <li>• Clear and agreed workplan of research for each of the determined country research teams, including: <ul style="list-style-type: none"> <li>○ Country team identification &amp; mobilisation</li> <li>○ In-country ECD stakeholder and gender analysis relevant to the THRIVE research programme</li> <li>○ Evidence of mobilisation and engagement of country-level Steering Committee</li> <li>○ Research questions and methodologies, with evidence of support from Steering Committee</li> <li>○ Implementation workplan</li> <li>○ Country engagement strategy – including plans on how to work with relevant ECD stakeholders and networks; key policy engagement opportunities during the implementation phase; and key research dissemination approach. This should also detail specific expected outputs to aid knowledge translation</li> <li>○ Ways of working document between the country research team and , ECD implementing partner or independent evaluator, if applicable and FCDO Country Office.</li> <li>○ Budget</li> </ul> </li> </ul>

72. We anticipate that THRIVE will be an adaptable programme which will respond to varying in-country demand for ECD research. The list of deliverables for the implementation phase will be agreed at the end of inception – enabling the programme to have maximum flexibility and scope for co-design with local stakeholders.

73. Indicatively, a list of the anticipated implementation deliverables are as follows:

- **Working papers** which are submitted to (and accepted by) high-quality journals. These include working papers which focus explicitly on implementation at scale, as well as others which focus on particular elements of ECD following research deep-dives and those which synthesise findings.
- **Synthesis papers/policy notes** which summarise key findings and/or lessons learned from various parts of the programme.
- **Impact stories** which describe and summarise the impact that this research has had on a variety of areas – including on government policy or decision making, the implementation of the programme itself, and wider impacts on beneficiaries (including robust reach measures), or international/national research discussions.
- **Quarterly reports on research programme process.**

### Monitoring and Reporting

74. **Reporting:** FCDO's SRO will ensure that the programme is regularly monitored through quarterly reporting and annual reviews. Quarterly reports will include a summary of work to date against agreed milestones (including value for money), with an annual report which includes a review of progress against the logframe and a formal review of the risk register. The SRO will meet with representatives from the RPC (including the lead supplier) each quarter, providing a formal opportunity every three months for the programme to course-correct to ensure that it continues to deliver against objectives. Precise reporting modalities can be discussed and agreed between FCDO and the RPC during the inception phase.

75. At the end of the programme, FCDO will complete a project closure report which will assess the programme's achievements and impact against agreed outputs and outcomes.

76. **Quarterly Invoices:** Every quarter, the lead supplier is expected to provide an invoice with a breakdown of deliverables. FCDO expects the RPC to use open book accounting in accordance with FCDO's latest Terms and Conditions.

77. **Logframe:** During the inception phase, the RPC is expected to produce a logframe, in consultation with FCDO. FCDO will have final sign-off. The RPC will report against the agreed logframe ahead of each annual review period. The logframe can be updated during the programme in discussion with, and with the agreement of, the FCDO SRO. The logframe should be supplemented by a monitoring note which justifies the logframe design and elaborates on data collection sources and methods. We ask suppliers to provide a list of proposed targets which could be incorporated into a logframe at a later date.

78. **KPIs:** Key Performance Indicators (KPIs) will be finalised in the Inception Phase by agreement between FCDO and the Supplier/consortium, building on those outlined below:

- Examples of co-production of research with relevant in country and global ECD networks

- Robust and rigorous multi-sectoral research on effectiveness and quality, including published research papers in leading journals for relevant disciplines with high impact factors.
- Examples of delivering ECD programme improvement in the five focal countries that are attributable to the THRIVE research programme.
- Examples of policy impact and beneficiary reach and impact in developing countries as a result of the THRIVE research and policy recommendations.
- Peer reviewed synthesis and evidence papers that bring the findings of the five THRIVE research country teams together in the context of the wider evidence base.
- Policy papers highlighting ECD policy, strategy and implementable programme options for developing countries to pursue.
- Compliance with expectations on research ethics and safeguarding (see below point 97-99).
- Feedback from focal countries and from participants at international conference

79. **Value for Money (VfM) indicators:** VfM indicators will be amended and agreed in conversation with the lead supplier. The current indicators are set out in Figure 4.

Figure 4: Table of VfM Indicators

Economy	<ul style="list-style-type: none"> <li>• Partner administration and management charges as % total programme budget</li> <li>• Overheads/indirect costs of research institutions as proportion of their total programme allocations, disaggregated by international and in-country research institutions</li> <li>• Mean salary/rate per researcher day (including employee benefits/employer taxes and contributions)</li> <li>• Mean person day cost for events (workshop/conference/annual meetings etc.), benchmarked against similar programmes</li> <li>• Additional funding leveraged, as % of FCDO funding</li> </ul>
Efficiency	<ul style="list-style-type: none"> <li>• Unit costs per research output and per peer-reviewed journal article, benchmarked against similar programmes</li> <li>• % of scheduled outputs delivered on time</li> </ul>
Effectiveness	<ul style="list-style-type: none"> <li>• % of outputs that have international co-authorship</li> <li>• Peer reviewed publications available, no. downloads (disaggregated for international/target countries), citation metrics</li> <li>• Evidence of policy influencing e.g. interviews with in-country stakeholders, and number of beneficiaries reached through positive changes to policy and/or implementation as a result of THRIVE research</li> <li>• Data collection/research plans/working papers which explicitly focus on cost effectiveness</li> </ul>
Equity	<ul style="list-style-type: none"> <li>• Women authored or co-authored papers</li> <li>• % papers with lead authors from LMIC institutions</li> <li>• Data collection/research plans/working papers which explicitly focus on marginalisation</li> </ul>

## Governance and Evaluation

80. **Governance:** The lead supplier of the RPC will be expected to regularly monitor the progress of the research programme and will be responsible for flagging any delays and for escalating risks in the programme to FCDO. The programme will be monitored against a logframe. The lead supplier of the RPC will be responsible for managing their downstream partners effectively, and this will be expressly monitored and assessed during the annual reviews of the programme.

81. The RPC will be managed by the Education Research Team within FCDO. The FCDO SRO and PRO for the programme will be the key decision makers on the programme. The FCDO programme-funded post holder will sit in one of the RPC organisations for at least 50% of their time, providing a valuable resource, particularly for building relationships with FCDO country office advisers and linking with the wider ECD programme. Consideration of where this FCDO staff member seconded to this programme will sit within the team structure will be agreed during the inception phase. For matters relating to contracting or finances, FCDO procurement or commercial staff will be the main points of contact.

82. The RPC will be accountable to FCDO's SRO, who will receive cross-sectoral advice on the programme via an internal FCDO Programme Steering Group with a membership including advisers from different sectors within FCDO. The Programme Steering Group will have a monitoring, review and advisory function, designed to provide cross-sectoral support to the SRO for decision making. The RPC will not be responsible for the Programme Steering Group, although may, on occasion, be invited to come and present to members.

83. The RPC and FCDO will hold quarterly review meetings each financial quarter to discuss the programme's progress, future direction, issues and challenges, and emerging risks. Leads from other programme components (including the MRC and World Bank) and other THRIVE funders (including MFAT) will be invited to join these meetings each quarter. An in-depth annual review will be completed each year. This will be the main accountability function within the programme.

84. For the RPC, the Intellectual Leadership Team will provide the intellectual steer and sense check, while the external Advisory Board, linked in and drawn from existing global ECD networks, will facilitate global collaboration and partnership, and advise on the external perception of work, including how well THRIVE is collaborating with the global ECD networks and research endeavour. At country level, the THRIVE programme will be accountable to the local THRIVE Steering Committee, or equivalent, which will be linked in and part of existing ECD networks, where these exist, and will comprise of FCDO Country Advisers, local and national government stakeholders, WB Fellows, where they are active, and other invited multilateral stakeholders, such as UNICEF and WHO. The RPC should seek their approval and agreement about the scope of the in-country research. We expect regular reporting and relationship management at country level to be conducted by the RPC, according to modalities defined in the inception phase.

85. **Independent Evaluation:** An independent process evaluation of THRIVE will be commissioned and managed by FCDO, focusing on the programme as a whole, the relevance and added value of each component (as well as the linkages between all of them), the model for research delivery and evidence translation and uptake. The RPC will have the following responsibilities with respect to the evaluation supplier, namely:

- Engage constructively throughout the evaluation process, devoting sufficient time to interviews, group discussions and online exchanges.
- Make available to the evaluation supplier documentation, including process data and evidence of reported outputs and outcomes, as agreed during the evaluation inception phase.

- Make available contact information for key informants.
- Review draft evaluation reports to check for accuracy and clarity. FCDO will have responsibility for quality assurance and sign off of all evaluation outputs.
- Discuss findings and recommendations with the evaluators, FCDO and MFAT.

86. **Conflict of Interest** – We do not consider a conflict of interest between organisations leading or working on the procured evaluations of relevant FCDO bilateral ECD funded programmes, and those applying to THRIVE. There may be a conflict of interest between those delivering the FCDO bilateral ECD funded programmes and THRIVE if the research lead is also involved in programme implementation. If applicable, the supplier will clearly set out how they will address this conflict of interest to ensure the integrity and independence of the research. We do not consider that there will be a conflict of interest between academics involved in the RPC, and those bidding for the FCDO/MRC research calls as the research calls will be peer reviewed through an entirely independent process.

## Risk

87. **Risk matrix:** During the inception phase, the RPC is expected to produce a risk matrix, of which final sign off will be with FCDO. FCDO guidance on the structure of the risk matrix will be shared. The supplier will indicate their assessment of the major risks to this programme and how they would mitigate them, including how they would work flexibly to mitigate the risk of political changes or instability disrupting research, and how they would mitigate the risk that the FCDO/MFAT in-country programmes are delayed.

88. **Fraud and Corruption:** FCDO has a zero-tolerance approach to corruption. The Programme Director will have full responsibility for monitoring and mitigating the risk of fraud and corruption in the delivery of country research.

89. **Delivery Chain Mapping:** FCDO will require the RPC to map out a delivery chain map as part of their ongoing monitoring of the programme. This delivery chain should include all levels of organisations contracted to or by the RPC, from grassroots delivery up to the lead supplier. Suppliers will be required to submit returns providing these details, as a minimum on an annual basis.

90. **Asset Registers:** During the inception and delivery of the programme, the RPC will need to record the details of any purchased assets with a value of over £500 or equivalent in local currency. An asset is described as any equipment purchased with programme funds which has a useful life of more than one year. Attractive assets (such as mobile phones, laptops, satellite phones) should be grouped as they might individually have a value of less than £500. An 'attractive asset' is equipment which is mobile and attractive to a potential perpetrator. Assets should be recorded and managed in accordance with FCDO's operational rules.

91. **Transparency:** FCDO has transformed its approach to transparency, reshaping our own working practices and pressing others around the world to do the same. FCDO requires suppliers receiving and managing funds to comply with regulations and 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 to FCDO. Further IATI information is available from <http://www.aidtransparency.net/>.

92. **Safeguarding:** The Supplier will need to put in place procedures to abide by FCDO Due Diligence requirements, including the enhanced due diligence policies launched in October 2018. The policy<sup>25</sup> contains six areas that must be covered (safeguarding, whistleblowing, human resources, risk management, the code of conduct, governance and accountability) and the lead Supplier will be responsible for ensuring that appropriate safeguarding standards are cascaded down the delivery chain. FCDO would expect to see evidence the standards have been shared and that partners are clear about expectations by the mid-point of the Inception Phase at the latest.

### Digital and Intellectual Property

93. The RPC should consider the use of digital elements to maximise value for money while ensuring the programme remains inclusive and fully accessible. Any proposed digital elements will require approval in line with FCDO's [Smart Rules](#). The RPC should not propose unnecessary bespoke systems or tools to implement but instead make use of existing and freely available systems and tools in all aspects of the programme where possible.

94. The RPC must apply transparency standards in line with the UKAid Transparency Guarantee. The Research Director (with the programme management team) must ensure that all partnerships are also IATI compliant.

95. All outputs from the research will be global public goods. The research outputs and primary data will be made publicly available in accordance with FCDO's Open Access Policy (<https://www.gov.uk/government/publications/FCDO-research-open-and-enhanced-access-policy>).

### UK Aid Branding

96. Partners selected to receive funds will be required to use the UK aid logo on materials, except in exceptional circumstances which would prevent this (e.g. security concerns). Software (e.g. apps and online tools) used for the collection of data, and fieldwork (e.g. online surveys) will also be required to use the UK aid logo unless there is a mitigating issue. Full guidance can be found here: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/771876/UK-aid-branding-guidance-May-2018a.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/771876/UK-aid-branding-guidance-May-2018a.pdf)

### Ethical Principles

97. It is a requirement that all partners FCDO commission and fund comply with the Ethics Principles. Partners will be required to include consideration of ethical issues and a statement that they will comply with the ethics principles. FCDO expects the Supplier and downstream partners to obtain relevant research ethics approvals from their institution, as well as national (local) ethical review boards in the THRIVE focus countries.

### Do No Harm

98. The nature of the THRIVE programme means that researchers will come into contact with young children and engage with vulnerable families and communities. All organisations within the RPC (including all sub-contractors) that work with or come into contact with children should have safeguarding policies and procedures to ensure that every child and young adult, regardless of their age, gender, religion or ethnicity, can be protected from harm. FCDO requires assurances regarding

<sup>25</sup>Guidance: FCDO Enhanced Due Diligence: Safeguarding for external partners  
<https://www.gov.uk/government/publications/FCDO-enhanced-due-diligence-safeguarding-for-external-partners>

protection from violence, exploitation and abuse through involvement, directly or indirectly, with FCDO suppliers and programmes. This includes sexual exploitation and abuse but should also be understood as all forms of physical or emotional violence or abuse and financial exploitation. The lead supplier should set out their safeguarding policies and processes to expressly prohibit sexual exploitation and abuse, including their plans to ensure that any incidents are reported and dealt with appropriately.

99. The Supplier must demonstrate a sound understanding of the ethics in working in this area and applying these principles throughout the lifetime of the programme to avoid doing harm to beneficiaries. In particular, the design of interventions including research and programme evaluations should recognise and mitigate the risk of negative consequences for women, children and other vulnerable groups. The supplier will be required to include a statement that they have duty of care to informants, other programme stakeholders and their own staff, and that they will comply with the ethics principles in all programme activities. Their adherence to this duty of care, including reporting and addressing incidences, should be included in both regular and annual reporting to FCDO.

100. A commitment to the ethical design and delivery of evaluations including the duty of care to informants, other programme stakeholders and their own staff must be demonstrated.

101. FCDO does not envisage the necessity to conduct any environmental impact assessment for the implementation of THRIVE. However, it is important to adhere to principles of “Do No Harm” to the environment. This should be considered explicitly in the risk register. Flights should be kept to a minimum and all travel should take place in economy class.

### Duty of Care (DoC)

102. Suppliers are required to carry out a risk assessment (of foreseeable risks) and are required to provide evidence that they have the capability to take on and effectively manage their DoC Responsibilities throughout the life of the agreement. FCDO DoC risk assessments for each country are included in the Invitation to Tender pack.

103. The Supplier is responsible for the safety and well-being of their Personnel (as defined in FCDO’s agreement with the Supplier, Section 2 of the Contract) and Third Parties affected by their activities under this contract, including appropriate security arrangements. They will also be responsible for the provision of suitable security arrangements for their domestic and business property.

104. FCDO will share available information with the Supplier on risk assessments, security status and developments in-country where appropriate.

105. The Supplier is responsible for ensuring appropriate safety and security briefings for all their Personnel working under this contract and ensuring that their Personnel register and receive briefing as outlined above. Travel advice is also available on the FCO website and the Supplier must ensure they (and their Personnel) are up to date with the latest positions.



106. The Supplier is responsible for ensuring that appropriate arrangements, processes and procedures are in place for their Personnel, considering the environment they will be working in and the level of risk involved in delivery of the Contract (such as working in dangerous, fragile and hostile environments, etc.). The Supplier must ensure their Personnel receive the required level of training.

#### General Data Protection Regulations (GDPR)

107. Please refer to the details of the GDPR relationship status and personal data (where applicable) for this project as detailed in App A and the standard clause 33 in section 2 of the contract.

## List of Acronyms

**BA** – The British Academy

**DoC** – Duty of Care

**ECD** – Early Childhood Development

**ECDAN** – The Early Childhood Development Action Network

**ECDI** – Early Childhood Development Indicators

**ECE** – Early Childhood Education

**ELP** – Early Learning Partnership

**ERT** – Education Research Team

**ESRC** – Economic and Social Research Council

**FCAS** – Fragile and Conflict Affected States

**FCDO** – Foreign, Commonwealth and Development Office

**GCRF** – Global Challenges Research Fund

**ILT** – Intellectual Leadership Team

**KPI** – Key Performance Indicator

**MFAT** – New Zealand Ministry of Foreign Affairs and Trade

**MICS** – Multiple Indicator Cluster Survey

**MRC** – Medical Research Council

**NCF** – Nurturing Care Framework

**PFP** – Programme Funded Post

**PI** – Principal Investigator

**RPC** – Research Programme Consortium

**SDG** – Sustainable Development Goals

**SRO** – Senior Responsible Officer

**TA** – Technical Assistance

**UKRI** – UK Research and Innovation

**VfM** – Value for Money

**WB** – The World Bank

**WHO** – World Health Organisation

## Glossary of Terms

**Adaptive Programming:** Recognises that with some of the challenges we are trying to address in development, we may know the outcomes we want to achieve but we may not know the solution to achieve the outcomes at scale. Adaptive programming recognises uncertainty and adopts a deliberately experimental approach, testing possible solutions, with rapid feedback loops to identify where progress can be made, and flexibility to adjust our strategy accordingly.

**At Scale** – Implementation at scale is the result of a deliberate efforts to increase impact of innovations successfully tested in pilot or experimental projects, so as to widen their reach while retaining their quality, and to foster policy and programme development on a lasting basis<sup>26</sup>. It refers to reaching a significant proportion of the target population, either regionally or nationally, and ensuring quality, sustainability, linkages with the wider system, and ownership<sup>27</sup>. For FCDO, ‘reaching a significant proportion of the target population’ includes consideration of how an intervention reaches the most vulnerable, including the poorest, displaced and conflict-affected populations and those with disabilities.

**Community of Practice** – A group of people who share a concern or a passion and interact with each other regularly to share experiences and lessons learned in order to improve practice. In this case, the community of practice would include researchers and practitioners who have a passion to improve early childhood development globally.

**Decision Makers** – Those with the power or influence to impact on the direction of ECD policies, programmes or norms. This covers the entirety of the system from country governments and ministries, to local communities and ECD-related organisations (whether in the public or private sphere).

**Early Childhood** – The period of life between conception and age 8.

**Early Childhood Development (ECD)** – This is an outcome of the nurturing care required by a child for healthy growth and development, encompassing health and nutrition, security and safety, responsive caregiving and early learning. Interventions to promote ECD need to come from a range of sectors and can be provided by parents, families, communities or professional caregivers.

**Early Childhood Education (ECE)** – Formal and informal education focussed activities and interventions designed to prepare a child for the literacy, numeracy and psychosocial skills they will need to succeed in school. A related term is Early Childhood Care and Education (ECCE) which, for the purposes of this document, we see as the same as ECE but which explicitly stresses the holistic care that should be part of any good quality ECE programme.

**Implementation Research** – Implementation research can consider any aspect of implementation, including the feasibility of introducing an evidence-based intervention into a new or existing delivery system and optimal delivery platforms, factors affecting implementation, the processes of implementation, and the results of implementation, and how to promote large scale use and sustainability. The intent is to understand what, why, and how interventions work in “real world” settings and to test approaches to improve them and increase their scale. Implementation research is context-sensitive, aiming to understand how context and mechanisms of change interact to generate observed outcomes. Implementation research is inherently interdisciplinary, and often uses mixed-

<sup>26</sup> ExpandNet, WHO. *Practical Guidance for Scaling Up Health Service Innovations*, Geneva:2009, World Health Organisation.

<sup>27</sup> Britto, P., Singh, M., Dua, T., Kaur, R. and Yousafzai, A. (2018) What implementation evidence matters: Scaling up nurturing interventions that promote early childhood development, *Annals of the New York Academy of Sciences*

methods<sup>28</sup>. For ECD, it is critical that we build the evidence base on the most effective and efficient duration, dosage and frequency of engagement with ECD interventions, and build understanding of feasible delivery platforms for scale, and how, for whom and under what circumstances interventions may work<sup>29</sup>.

**Interdisciplinary** – A type of research that draws from two or more disciplines in order to gain a more developed and integrated perspective. For example, economics, psychology, neuroscience, political science, implementation science and anthropology could all be relevant for ECD research.

**Interventions** – Action taken to improve the development of young children (aged between conception and 8). This could include policies, programmes or service delivery.

**Marginalised** – A form of acute and persistent disadvantage rooted in underlying social inequalities. Depending on context, this could include individual characteristics related to poverty, gender, location and disability, as well as those internally or internationally displaced and/or living in refugee settings.

**Multi-sectoral** – A type of research which cuts across sectors in terms of thematic focus, measurement and findings. ECD research includes a focus on several sectors, including education, health (including nutrition), social protection and water, sanitation and hygiene (WASH). A true integrated ‘multi-sectoral’ approach would consider how the operational platform, service delivery providers and intervention content is delivered in a ‘joined up’ way, and aims to not differentiate by sector to the end beneficiary.

**Operational Costs** – Funding to implement (not research) a programme. For example, funding to make alterations to existing communications materials, or funding for consultants to assist in adapting training packages.

**Technical Assistance (TA)** – Direct support to national or regional government in the form of evidence-based guidance, capacity building or short-term deliverables (e.g. ongoing advice and support for the development of a new intervention).

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<sup>28</sup> Peters D. et al. Implementation Research – what it is and how to do it. BMJ, 2013: 247  
<https://www.bmj.com/content/347/bmj.f6753>

<sup>29</sup> See reference 2

## Annexes

### Annex A: Background

108. **The Challenge: Quality early childhood development is the foundation for human capital and poverty alleviation<sup>30</sup>.** The most important years for a child's optimal growth and successful development are from conception through to the transition to school. This is the period during which the brain grows fastest and is at its most malleable: simultaneously most responsive to positive stimuli and at its most vulnerable to negative experiences. Evidence from low- and middle-income countries (LMICs) suggests that the prenatal period and the first 24 months after birth are also the most sensitive times for the risk of stunting, which negatively affects cognition, executive function, and school attainment<sup>31</sup>.

109. **Deficits in child developmental milestones caused by poverty become established very early and are observable within the first year of life.** Deficits in communication, gross motor skills and personal/social development in infants as young as three months old have been observed in Senegal, India, and Peru<sup>32</sup>. This means the early years are the best time to invest to promote positive individual and societal benefits – but also present the greatest risks to under investment. Remediation of early deficits in child developmental milestones<sup>33</sup>. For example, while it may be possible (if challenging) to change a caregiver's attitude and behaviour towards their child to promote early bonding and stimulation, it is very difficult to reverse the effects of the negative relationship that they've had to date, which also compounds with other community and societal circumstances contributing to children's marginalisation.

110. **Evidence demonstrates that getting ECD right brings clear benefits – both to the individual and society.** Research shows that young children need proactive health interventions (e.g. vaccinations), adequate nutrition, safety and security, responsive caregiving with stimulation and opportunities for early learning<sup>33</sup> to allow them to thrive, and to give them the greatest chance of being adequately prepared for learning once they start school. This, in turn, enables them to become socially responsible, healthy, economically productive and engaged citizens. ECD can be a powerful equaliser,<sup>34</sup> with some interventions showing the greatest effects on cognitive development for the most disadvantaged children<sup>35</sup>, with estimated returns of up to \$17 for every \$1 invested in ECD for marginalised groups<sup>36</sup>.

111. **The COVID-19 pandemic adds to challenge of the already limited coverage, quality and equity of ECD interventions delivery.** Research indicates COVID-19 will have severe impacts on ECD<sup>37</sup>. Impacts in early childhood are particularly concerning due to the impact on brain development. Key drivers include:

<sup>30</sup> 'The Human Capital Project', World Bank Group (2018)

<sup>31</sup> 'The Human Capital Project', World Bank Group (2018) – citing Sudfeld et al (2015) and Hamandani et al (2014)

<sup>32</sup> Lia C. H. Fernald, Patricia Kariger, Melissa Hidrobo, and Paul J. Gertler. Socioeconomic gradients in child development in very young children: Evidence from India, Indonesia, Peru, and Senegal. PNAS, 2012 109 (Supplement 2) 17273-17280

<sup>33</sup> WHO, UNICEF, World Bank. Nurturing Care for early childhood development: a framework for helping children survive and thrive to transform health and human potential. Geneva, 2018.

<sup>34</sup> WHO (2007) Early child development: a powerful equalizer

<sup>35</sup> World Bank (2016) Early Learning Partnership

<sup>36</sup> Consultative Group on Early Childhood Care and Development (2013)

<sup>37</sup> Yoshikawa, H. Effects of the Global Coronavirus Disease-2019 Pandemic on Early Childhood Development: Short- and Long-Term Risks and Mitigating Program and Policy Actions, J Pediatr. 2020 Aug; 223: 188–193

- Disruption of health services including essential maternal and new-born health services as resources are diverted and women cannot travel to clinics or stay away from fear<sup>38</sup>. Even a 10% reduction in use of SRHR services is projected to lead to 168,000 new-born deaths and nearly 3 million additional new-borns experiencing major complications without care over 12 months, potentially affecting cognitive development in later years<sup>39</sup>. WHO reports service disruptions in the majority of countries<sup>40</sup>, and 85% of countries surveyed by WHO / UNICEF reported lower vaccination in May than Jan / Feb 2020<sup>41</sup>.
- Lack of access to safe, nutritious diets due to disrupted food systems, increasing poverty, and overloading of social protection systems<sup>42</sup>. Latest estimates indicate that without timely action there will be an additional 6.7 million children with wasting in the first 12 months, with more than 10,000 additional deaths per month<sup>43</sup>.
- Shocks to education including widespread school closures, impacting early childhood education and foundational learning in early primary<sup>44</sup>. These impacts are likely to be most acute for marginalised children, and this 'learning deficit' could be sustained throughout their time at school, meaning that they never catch up. Young children are also likely to be excluded from newly introduced distance learning platforms, as younger children who have less self-study capability, require play-based interventions for optimal learning, and have lower attention spans; rely more strongly on caregivers to support early learning<sup>45</sup>. Such exclusion may result in gender inequities if young girls' learning is deprioritised within sibling groups in low-tech households.
- Rise in household poverty, with the number of children living in household poverty projected to soar by more than 117 million<sup>46</sup>. Heightened socio-economic pressure depletes caregivers' resources to provide responsive caregiving, and may exacerbate the risk of children falling victim of violence, including sexual exploitation and abuse and violent discipline<sup>47</sup>. The impact on caregivers' mental health<sup>48</sup> and children's mental health can be severe<sup>49</sup>, particularly in contexts where community mental health services are scarce.

These multiple impacts highlight the need to explicitly consider and prioritise the early years with integration of ECD interventions in the long-term response to the pandemic across relevant sectors, promote gender-responsive and ECD-focused social protection scheme, and family friendly policies enabling caregiver engagement.

<sup>38</sup> <https://data.unicef.org/resources/rapid-situation-tracking-covid-19-socioeconomic-impacts-data-viz/>

<sup>39</sup> <https://www.guttmacher.org/journals/ipsrh/2020/04/estimates-potential-impact-covid-19-pandemic-sexual-and-reproductive-health>

<sup>40</sup> <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---22-june-2020>

<sup>41</sup> [https://www.who.int/immunization/monitoring\\_surveillance/immunization-and-covid-19/en/](https://www.who.int/immunization/monitoring_surveillance/immunization-and-covid-19/en/)

<sup>42</sup> <http://pubdocs.worldbank.org/en/461601591649316722/Projected-poverty-impacts-of-COVID-19.pdf>

<sup>43</sup> [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)31647-0/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)31647-0/fulltext)

<sup>44</sup> <https://openknowledge.worldbank.org/bitstream/handle/10986/33696/148198.pdf?sequence=4&isAllowed=y>

<sup>45</sup> [https://www.cgdev.org/blog/lets-not-leave-youngest-children-behind?utm\\_source=200630&utm\\_medium=cgd\\_email&utm\\_campaign=cgd\\_weekly](https://www.cgdev.org/blog/lets-not-leave-youngest-children-behind?utm_source=200630&utm_medium=cgd_email&utm_campaign=cgd_weekly)

<sup>46</sup> <https://reliefweb.int/report/world/children-monetary-poor-households-and-covid-19-technical-note>

<sup>47</sup> <https://www.wvi.org/publications/report/coronavirus-health-crisis/covid-19-aftershocks-perfect-storm>

<sup>48</sup> <https://arnc.net/publication/summary-of-survey-findings.-perspectives-on-the-impact-of-covid-19-on-young-children-and-eecd-in-the-asia-pacific-region>

<sup>49</sup> [https://www.thelancet.com/journals/lanchi/article/PIIS2352-4642\(20\)30097-3/fulltext](https://www.thelancet.com/journals/lanchi/article/PIIS2352-4642(20)30097-3/fulltext)

112. ***The Evidence Gap:*** The most recent research literature and expert consultation has shown an evidence gap in how to provide quality ECD, which “leaves governments knowing the need, while not knowing how to implement it.”<sup>50</sup> The vast majority of ECD research has focused on small, short-term pilots which demonstrate the usefulness of ECD interventions, without providing evidence on how to bring this to scale. There is evidence from single interventions, but little analysis on how systems can be built to enable and sustain multi-sectoral and holistic ECD programme implementation cost-effectively. Countries are looking for evidence-based solutions to help make hard choices about the balance and prioritisation of critical components and infrastructure required to deliver quality ECD outcomes at scale in different contexts, including FCAS. There is a risk that, without rigorous and robust research, investments in ECD are not being made in the most efficient and effective way and, without further evidence, governments and donors may remain hesitant to invest further in ECD.

113. ***Sustainable Development Goals (SDGs):*** The international community is increasingly recognising the importance of ECD and the sheer scope of the challenge – and is taking action. This has been prompted by the inclusion of ECD into the Sustainable Development Goals: 2.2 to eliminate stunting; 3.2 to eliminate preventable child deaths; and 4.2 to ensure that all girls and boys have access to quality early childhood development, care and pre-primary education. Interventions which target parental behaviour can also help address levels of violence against children in the home, responding directly to SDG 16.2. In addition to the SDGs, the WHO’s Nurturing Care Framework sets out a holistic vision for improved ECD which ensures children receive comprehensive care in relation to good health, adequate nutrition, opportunities for early learning, security and safety and responsive caregiving<sup>51</sup>.

114. ***FCDO’s Role:*** FCDO has long supported the health and nutrition of mothers and young children through a range of programmes across FCDO priority countries, as well as WASH and social protection. In education programming, there is increasing focus on the role of pre-school programmes and children’s school-readiness. More recently, FCDO received a policy mandate to invest in research on ECD through FCDO’s 2018 education policy ‘Get Children Learning’ which identifies ECD as a key area of focus<sup>52</sup>. THRIVE aligns closely with FCDO’s commitment to focus on the most marginalised children and disability inclusion<sup>53</sup>, as vulnerable groups such as marginalised girls, children with disabilities and in refugee and conflict affected settings can benefit disproportionately from quality ECD interventions.<sup>54</sup>

115. ***FCDO’s Response:*** FCDO’s Education Research Team (ERT) has been investing in robust and rigorous, multi-sectoral research in ECD for the past two years through our contributions to the World Bank’s Early Learning Partnership (ELP)<sup>55</sup> and our funding for the British Academy’s (BA) Early Childhood Development research grants<sup>56</sup>. FCDO’s funding to both these programmes will come to an end by December 2021.

<sup>50</sup> Annals of the New York Academy of Sciences, 2018, building on Lancet 2016 series *Advancing Early Childhood Development: from Science to Scale*

<sup>51</sup> WHO, UNICEF, World Bank. Nurturing Care for early childhood development: a framework for helping children survive and thrive to transform health and human potential. Geneva, 2018.

<sup>52</sup> FCDO’s Education Policy (2018) – Get Children Learning

<sup>53</sup> <https://www.gov.uk/government/collections/global-disability-summit-commitments>

<sup>54</sup> <https://www.brookings.edu/articles/early-childhood-development-the-promise-the-problem-and-the-path-forward/>

<sup>55</sup> For more information on the World Bank Early Learning Partnership see:

<https://devtracker.FCDO.gov.uk/projects/GB-1-205103>

<sup>56</sup> For more information on the British Academy Early Childhood Development programme, see:

<https://devtracker.FCDO.gov.uk/projects/GB-1-204653>

116. **THRIVE will respond to demand by generating rigorous evidence on implementing quality ECD interventions at scale.** It will enhance FCDO bilateral ECD programmes in four countries, and one MFAT funded ECD programme in the Pacific, through research to drive real-time improvements, promote scale-up and maximise value for money (VfM) of ECD programmes.

117. **This programme will be co-funded by New Zealand's Ministry of Foreign Affairs and Trade (MFAT).** MFAT has increased their attention and funding for ECD over recent years, in response to greater interest from partners, and increased prioritisation on children and young people, inclusive development and effective partnerships. Their funding has enabled the programme to extend to the Pacific Region, with funding for in-depth research in a Pacific island.

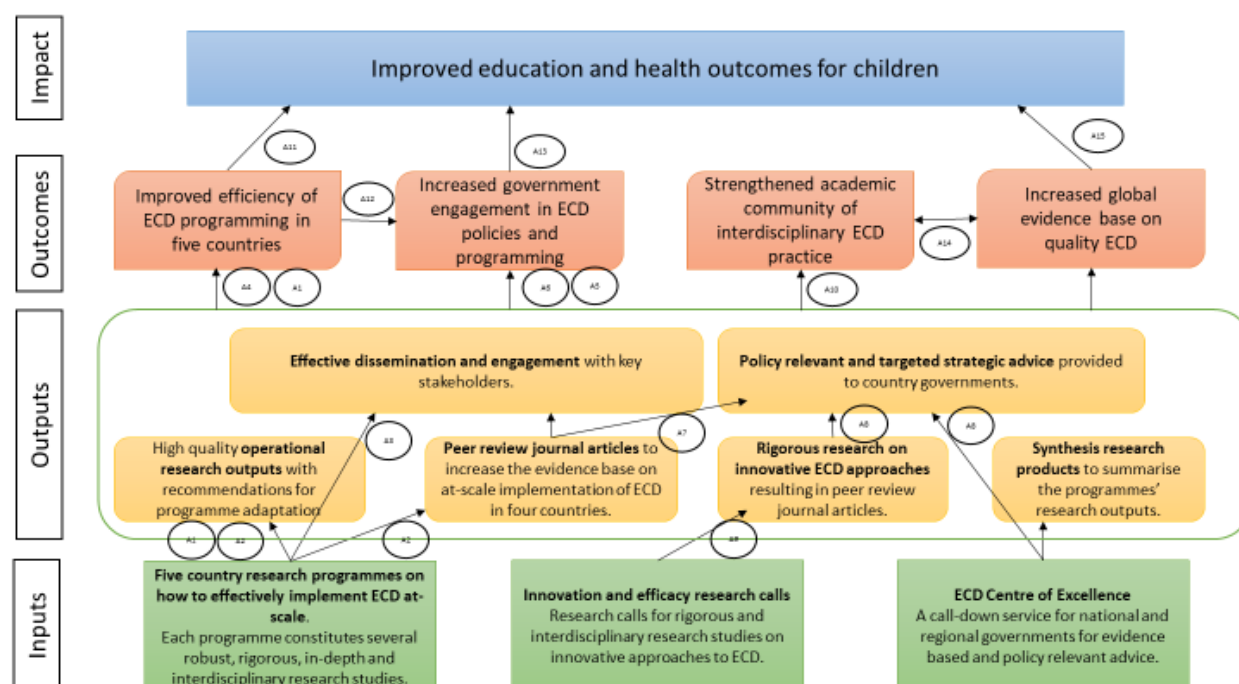
118. The programmes additional components, which are outside the scope of this procurement are outlined below in paragraph 109, and full detail is provided in the Background (Annex A) and Business Case (Annex B). A diagram of the THRIVE programme is provided in Figure 1, the activities of the supplier are highlighted in orange The RPC will be expected to work closely with FCDO ERT to ensure synergies and links with the other components.

119. In addition to the RPC, there will be three smaller components to the THRIVE programme:

- **Innovation and Efficacy Research Calls led by the Medical Research Council (MRC).** This element is jointly funded by FCDO and MRC and will provide up to £8m in research grants (between 8 and 20 grants) to focus on critical areas where the ECD evidence base remains weak – this component of the programme is currently live. We expect the RPC to liaise with award holders conducting research under the MRC component of the programme, particularly to find opportunities for synergies on evidence dissemination and translation.
- **World Bank (WB) Fellows in four Focal FCDO Countries.** WB Fellows are local graduates who have proven experience of working in ECD or a related field. They will be based in either the Ministry of Education or the local World Bank office. FCDO is funding four WB Fellows to act as national champions for ECD, and facilitate connections between FCDO, the World Bank, government and research partners to ensure relevance and uptake of research. We would expect the RPC to engage the WB Fellows as key stakeholders, using them to understand the ECD context in country, as well as feeding policy relevant research findings to them to support uptake.
- **Evaluation.** The Education Research Team will explore options for an external evaluation of THRIVE to assess the model of delivery of the RPC and other programme components, the evidence translation function and systems strengthening approach, the research process and research impact in one or two countries, as well as the internal and external synergies and cumulative contribution of the programme as a whole. If an evaluation is conducted, the RPC will be expected to collaborate with the external evaluation team as required. The evaluation is yet to be confirmed and therefore an evaluation team is not yet procured.



## Annex B: Theory of Change



## Assumptions

A1	Country programmes are willing to collaborate with action researchers and enable the programme to facilitate the research.	A9	Research calls result in studies which investigate innovative approaches to delivering ECD.
A2	There is sufficient in-country FCDO ECD programming (across different sectors), or alternative programmes, to enable at-scale research.	A10	Through working in collaboration with researchers outside their sector, academics become more open to interdisciplinary working.
A3	Researchers are able to engage with policy makers from the start to ensure that they are engaged in the research and that, where possible, research reflects policy relevant themes.	A11	Current FCDO ECD programmes are designed to deliver education and/or health outcomes, or can be adapted to deliver these.
A4	Research produces clear recommendations for FCDO programmes, and there is sufficient time, resources, flexibility and willingness to act on these.	A12	FCDO's in-country ECD programming has engagement from government, and is built into their planning.
A5	Researchers have sufficient links to government to enable research uptake. World Bank Early Years Fellows will help strengthen this relationship in four countries.	A13	Increased interest and knowledge of ECD translates into more effective policy decisions.
A6	The government is willing to engage with research, and there is sufficient political will to make evidence-based decisions on ECD policy and funding.	A14	Community of interdisciplinary practice leads to more researchers working in ECD, and an expansion of the global evidence base in this area.
A7	Research outputs from the programme are delivered in time to feed into the knowledge hub.	A15	An increased global evidence base can lead to change through non-governmental channels, e.g. multi-lateral donors or NGOs adopting evidence based approaches.
A8	There is government demand for a call-down service for TA support on ECD through the knowledge hub.		

## Annex C: RPC Roles and Responsibilities

The below highlights key responsibilities for the roles within the RPC.

### Research Director

The **Research Director** will be responsible for:

- a. Intellectual direction.
- b. Selection and convening of a supporting Intellectual Leadership Team.
- c. Representation and leadership for THRIVE in global ECD networks
- d. Design of conceptual framework for the research across five countries.
- e. Methodological guidance for the country research teams, including proposed robust quantitative and qualitative research methods, and advice on tools and measurement for ECD research.
- f. Design of a research, dissemination and uptake strategy for the full programme, with milestones
- g. Synthesis of findings across research teams to yield academic outputs (e.g. journal articles), policy and topic briefs, and other policy-relevant dissemination materials.
- h. Global engagement with the policy community, including the World Health Organisation (WHO), Global Partnership for Education (GPE), World Bank and UNICEF, on the implications of the evidence generated by the RPC.
- i. Ensure quality assurance across all the research outputs on the programme
- j. Oversee any capacity building work between different organisations within the RPC. This could include a wide variety of activities including training, mentoring, and co-authorship.
- k. Overall oversight of the quality of the country research, including how the teams plan to integrate their work efficiently with the existing evaluations (where relevant) and other donor funded research in the country. It is important that THRIVE research does not duplicate or hinder ongoing research or evaluation efforts in country.

### Programme Director

The **Programme Director** will be responsible for:

- a. Ensuring efficient and effective management of five world-class country research teams. This will include ongoing financial and risk management, as well as reporting to FCDO and other donors.
- b. Working closely with the Country Research Team PIs, identify strategic positioning for the THRIVE research in the programme and policy context, and establish strong in-country networks and a strategy to engage with national and regional governments, FCDO country offices, multilateral organisations participating in ECD (e.g. WHO, UNICEF and the World Bank), and the wider ECD sector.
- c. Building a multi-sectoral and interdisciplinary community of practice in ECD, connecting practitioners and academics working across different sectors and disciplines. This includes convening the ECD Network at strategic points during the programme.
- d. Actively identifying and recording examples of impact and lessons learned from across the programme, sharing these with others to improve efficiency.
- e. Designing, organising and running external communications on THRIVE's objectives, approach and findings, and providing effective opportunities for dissemination of research outputs.

- f. Knowledge sharing through a wide variety of traditional and innovative means, for example storytelling, events, blogs, targeting and facilitating communication across and between various key stakeholder groups.
- g. Develop and present annual work plans for TA support to all countries, demonstrating synergies with other capacity building and with other policy translation activities.
- h. Creating useful and creative virtual platforms for the community to come together, communicate and disseminate evidence globally, in an accessible manner, and to participate in related platforms supported by other organisations, where doing so would further the goals and objectives of THRIVE.

#### Country Programme Principal Investigators

The **Country Programme PIs** will be responsible for:

- a. Co-designing a programme of research which will focus on implementation research focusing on ECD, alongside national/ regional government, FCDO/MFAT advisers, implementing partners (of FCDO funded country programmes), and other key stakeholders. There may be cross-cutting elements of research that will need to be incorporated within each country research team programme.
- b. Implementing a high-quality research programme to agreed timeframes, ensuring high flexibility and responsiveness to alter elements of the programme if required, for example adapting study designs to respond to implementation challenges, while retaining scientific rigour.
- c. Represent THRIVE in local ECD networks, including, if appropriate, facilitating a local Steering Committee for the THRIVE research, to maintain ongoing policy dialogue and harness synergies for research development, implementation and translation.
- d. Attending key THRIVE meetings and events, including presenting on early work to other country research team PIs and regularly sharing lessons learned.
- e. Recruiting the rest of the country research team, ensuring substantial engagement from the in-country team with local ECD networks and relevant technical working groups, and identifying opportunities to develop the capacity of younger members of the team.
- f. Actively identifying and reporting beneficiary perspectives, examples of programme impact and lessons learned from the country research, sharing these with the Programme Director and other country teams to improve efficiency.
- g. Ensuring that progress reporting requests are dealt with in a robust and prompt way.
- h. Reporting the findings and impacts of ECD research in a clear and concise manner with the overall aim of ensuring uptake of the research outputs as widely as possible, as well as sharing findings and lessons learned with the rest of the country teams.

## Annex E: Country Duty of Care Risk Assessments

**Country: Sierra Leone****Date of Assessment: June 2020****FCDO Overall Project/Intervention - Summary Risk Assessment Matrix:**

As part of its Duty of Care Policy, FCDO SL has assessed Sierra Leone's thematic risks in order to allow Suppliers to take reasonable steps to mitigate those risks for the duration of the contract. Below is the key for attributing overall scoring.

<b>1</b> Very Low risk	<b>2</b> Low risk	<b>3</b> Med risk	<b>4</b> High risk	<b>5</b> Very High risk
<b>Low</b>		<b>Medium</b>	<b>High Risk</b>	

A matrix showing the latest risk scores for Sierra Leone is set out below. These continue to remain valid at the time of these ToRs being developed:

<b>Theme</b>	<b>FCDO risk score - Freetown</b>	<b>FCDO Risk score – National</b>
FCO Travel Advice	2	2
Host nation travel advice	N/A	N/A
Transportation	4	4
Security	2	2
Civil unrest	2	2
Violence / crime	3	3
Espionage	1	1
Terrorism	2	2
War	1	1
Hurricane	1	1
Earthquake	1	1
Flood	3	3
Medical services	3	4

Sierra Leone has been assessed as '3', which is medium risk. Travellers and Suppliers should consult FCO travel advice for the latest identification of medium risk areas.

The Supplier will be responsible for the provision of suitable security arrangements for their domestic and business property in-country; for ensuring appropriate on-going safety and security briefings for all of their Personnel working under this Contract. Up to date travel advice is available from the Foreign and Commonwealth Office (FCO) website for Sierra Leone:

<https://www.gov.uk/foreign-travel-advice/sierra-leone>

The standard of medical care in Sierra Leone is generally poor. Outside of Freetown, the standard of care is extremely poor and Suppliers should ensure they have adequate mitigation for staff falling ill when travelling nationally.

When travelling outside the Freetown Peninsula, the Supplier should consider travelling in daylight hours and in a party of two cars in case of breakdown.

The standard of public transport is poor in Sierra Leone. Vehicles including buses, taxis and motorcycles are normally in poor working order and it is not advisable to use them. There are one or two phone-based applications where cars can be ordered for local and national travel.

The SP should be comfortable working in all such environments described above and must be capable of deploying to any areas required within the country in order to deliver on the terms of reference for the Contract.

### **Country: South Sudan**

#### **Date of Assessment: September 2020**

As part of its Duty of Care Policy, the FCDO team in Juba has assessed the country and project risks in order to allow Suppliers to take reasonable steps to mitigate those risks for the duration of the contract. Below is the key for attributing overall scoring.

<b>1</b> Very Low risk	<b>2</b> Low risk	<b>3</b> Med risk	<b>4</b> High risk	<b>5</b> Very High risk
<b>Low</b>		<b>Medium</b>	<b>High Risk</b>	

A matrix showing the latest risk scores for South Sudan as at September 2020 is set out below. These continue to remain valid at the time of these ToR being developed:

<b>Theme</b>	<b>FCDO Risk score – South Sudan, Juba</b>	<b>FCDO Risk score – South Sudan, National</b>
FCO Travel Advice	4	4
Host nation travel advice	Not Available	Not available
Transportation	4	5
Security	3	3
Civil unrest	2	3*
Violence / crime	4	5*
Espionage	1	1
Terrorism	2	2
War	2	4*
Hurricane	1	1
Earthquake	2	2
Flood (rainy season)	2	5
Medical services	4	5
Nature of Project/ Intervention	2	2

South Sudan has been assessed as '4', which is high risk. Travellers and Suppliers should consult FCO travel advice for the latest identification of high-risk areas.

The Supplier will be responsible for the provision of suitable security arrangements for their domestic and business property in-country; for ensuring appropriate on-going safety and security briefings for all of their Personnel working under this Contract. Up to date travel advice is available from the Foreign, Commonwealth and Development Office website for South Sudan:

<https://www.gov.uk/foreign-travel-advice/south-sudan>

Travel to many zones in South Sudan is subject to daily travel clearance from the UN office in advance. FCDO also will share where available, information with the traveller on the security status and developments in-country where appropriate. The Supplier must ensure that they have received the required level of training on safety in the field prior to deployment to South Sudan. The country also sits in a seismically active zone and is considered vulnerable to minor tremors from earthquakes. These are unpredictable and can potentially result in devastation due to the fact that most buildings have been poorly constructed. There are several websites focusing on earthquakes to which the consultant can refer to, including:

<http://geology.about.com/library/bl/maps/blworldindex.htm>

The Supplier should be comfortable working in all such environments described above and must be capable of deploying to any areas required within the country in order to deliver on the terms of reference for the Contract.

## Country: Tanzania

**Date of Assessment: June 2020**

Theme	FCDO risk score
FCO Travel Advice	4 <sup>57</sup>
Host nation travel advice	N/A
Transportation	4 <sup>58</sup>
Security	3 <sup>59</sup>
Civil unrest	3 <sup>60</sup>
Violence / crime	3 <sup>61</sup>
Espionage	1
Terrorism	3 <sup>62</sup>
War	1
Hurricane	1
Earthquake	1

<sup>57</sup> COVID-19 Exceptional Travel Advisory note which advises against but essential travels.

<sup>58</sup> In the last few years there have been several ferry disasters in which hundreds of people have died. If you believe a ferry is overloaded or not seaworthy, do not get on. Long distance buses are often involved in accidents which can be fatal.

<sup>59</sup> Security could shift to 4 during the election period.

<sup>60</sup> Civil unrest could shift to 4 during the election period in October 2020. There is a threat of piracy in the Gulf of Aden and Indian Ocean.

<sup>61</sup> Although most visits to Tanzania are trouble-free, violent and armed crime is increasing. Take sensible precautions to protect yourself and your belongings.

<sup>62</sup> Terrorists are likely to try to carry out attacks in Tanzania.

Flood	3 <sup>63</sup>
Medical services	3
COVID-19	4 <sup>64</sup>

<b>1</b> <b>Very Low Risk</b>	<b>2</b> <b>Low Risk</b>	<b>3</b> <b>Med Risk</b>	<b>4</b> <b>High Risk</b>	<b>5</b> <b>Very High Risk</b>
<b>Low</b>		<b>Medium</b>	<b>High Risk</b>	

Last updated: 05 June 2020.

<sup>63</sup> During the rainy seasons, end of March till May and October to middle of December, exceptionally heavy rainfall and strong winds can occur.

<sup>64</sup> No regular information on COVID-19 situation in the country.

**Country: Pacific Island Countries**

**Date of Assessment: September 2020**

**MFAT Overall Project/Intervention - Summary Risk Assessment Matrix:**

As part of its Duty of Care Policy, MFAT has assessed Pacific Island Countries' thematic risks in order to allow Suppliers to take reasonable steps to mitigate those risks for the duration of the contract. Below is the key for attributing overall scoring.

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

A matrix showing the latest risk scores for Pacific Island Countries is set out below. These continue to remain valid at the time of these ToRs being developed:

Theme	MFAT risk score – Main Centres	MFAT Risk score – National
Host nation travel advice	N/A	N/A
Transportation	3	4
Security	2	2
Civil unrest	2	2
Violence / crime	2	2
Espionage	1	1
Terrorism	1	1
War	1	1
Severe Weather Events	4	4
Natural Disasters	3	3
Medical services	3	4

Pacific Island Countries has been assessed as '3', which is medium risk. Travellers and Suppliers should consult FCDO and/or MFAT travel advice for the latest identification of medium risk areas.

The Supplier will be responsible for the provision of suitable security arrangements for their domestic and business property in-country; for ensuring appropriate on-going safety and security briefings for all of their Personnel working under this Contract. Up to date travel advice is available from the Safe Travel website for Pacific Island Countries:

<https://www.safetravel.govt.nz/pacific>

The standard of medical care in Pacific Islands Countries is generally poor and medical facilities may be limited. Outside of capital cities, the standard of care is extremely poor and there may be limited capacity to respond to emergency situations. Suppliers should ensure they have adequate mitigation for staff falling ill when travelling nationally.



Maritime safety is a concern in some Pacific countries, including overcrowding, insufficient safety equipment and safety regulations not being adhered to. Suppliers and their Personnel should only use providers with appropriate safety equipment or bring their own lifejacket.

The Pacific region is at high risk of natural disasters and severe weather events, including seismic events, volcanic eruption, tropical storms and tsunamis. Suppliers and their personnel are advised to monitor the situation and follow any instructions issued by local authorities in the event of.

The SP should be comfortable working in all such environments described above and must be capable of deploying to any areas required within the country in order to deliver on the terms of reference for the Contract.

**Country: Lebanon**

**Date of Assessment: 30 September 2020 (based on latest FCDO Travel Advice)**

**FCDO Overall Project/Intervention - Summary Risk Assessment Matrix:**

As part of its Duty of Care Policy, FCDO DHT Lebanon has assessed Lebanon's thematic risks in order to allow Suppliers to take reasonable steps to mitigate those risks for the duration of the contract. Below is the key for attributing overall scoring.

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

A matrix showing the latest risk scores for Lebanon is set out below. These continue to remain valid at the time of these ToRs being developed:

Theme	FCDO Risk score
Host nation travel advice	N/A
Transportation	2
Security	3
Civil unrest	4
Violence / crime	3
Espionage	3
Terrorism	4
War	3
Hurricane	1
Earthquake	2
Flood	1
Medical services	3
Covid-19	4

**The Foreign, Commonwealth & Development Office currently advises British nationals against all but essential international travel.** Lebanon has been assessed as medium- high risk for a number of risk factors. Travellers and Suppliers should consult FCDO travel advice for the latest identification of risk areas.

The Supplier will also be responsible for the provision of suitable security arrangements for their domestic and business property in-country; for ensuring appropriate on-going safety and security briefings for all of their Personnel working under this Contract. Up to date travel advice is available from the Foreign and Commonwealth Office (FCO) website for Lebanon:

<https://www.gov.uk/foreign-travel-advice/lebanon>

**Below is a non-comprehensive summary of key themes. Please refer to the travel advice for up to date info and consider it the UK's sole guidance document.**

### **Security Situation**

The security situation in Lebanon can deteriorate quickly. As well as ongoing protests, Lebanese issues or regional and international developments can have an impact on the local security situation This includes a conflict with Israel, which could spark with little warning with a rapid escalation in violence. Events in Syria and Iraq may also impact Lebanon. You are therefore advised to monitor the regional situation whilst in Lebanon.

You should avoid large crowds and political gatherings. Weapons are common in Lebanon and groups, including Hizballah, retain arms that are beyond state control. Violence can therefore quickly escalate.

### **Terrorism**

Terrorists are very likely to try to carry out attacks in Lebanon. Islamist extremist groups will seek to target the Lebanese state, security services, and civilians, and have the intent to target foreigners inside Lebanon. Politically motivated terrorist attacks also remain likely.

Lebanese security authorities are at a high state of alert and are conducting security operations across Lebanon. You should be vigilant at all times and follow the advice of the Lebanese authorities. Avoid large crowds, demonstrations, political gatherings and the use of shared public transport.

### **Kidnap**

There's a threat of kidnapping in Lebanon. The Lebanese authorities have warned that foreigners, including westerners could be targeted by kidnappers and other militant groups. Criminal kidnappings have occurred in the Beqaa Valley, the Syrian border regions and Beirut, but could take place anywhere in Lebanon.

Terrorist kidnappings are also possible and Daesh and other terrorist groups view those engaged in humanitarian aid work or journalism as legitimate targets.

### **Crime**

The risk to tourists from petty or violent crime remains moderate - however crime has increased due to the declining economic situation. This includes bag snatching, including by criminals on motorbikes, vehicle crime and theft of mobile telephones.

There has been an increase in reported incidents of sexual harassment/assault in public areas, including whilst walking in Beirut.

### **Local travel**

The government may restrict movements, including at short notice, to control the spread of coronavirus. Ongoing protests and roadblocks may mean that travel is restricted at short notice. Roads, including the Beirut airport road, are subject to closure without notice. Driving standards are poor and the accident rate is high. Traffic lights are not always observed. Land mines are present in Lebanon and are not always clearly marked. Use only well-travelled tracks and do not stray from their edges. Avoid remote abandoned properties. The standard of public transport is poor.

### **The FCDO advise against all travel to:**

- Palestinian refugee camps
- within 5km of the border with Syria
- the Hermel Area, including the towns of Aarsal, Ras Baalbek, Qaa, Laboué and Nahlé

### **The FCDO advise against all but essential travel to:**

- southern suburbs of Beirut defined as: south of the sports stadium and the Adnan Al Hakim road which heads west from the stadium to the Beirut-Saida (Sidon) road - down to the airport. Including the neighbourhoods of Bir Hassan, Ghobeiry, Chuya, Haret Hraik, Burj Al Brajne, Mraije, Er Rouais and Laylake. But excluding the main airport highway, the Beirut-Saida road and west of there to the coast, and the area between the airport highway and the coast south of Abbas El Mousawi Road, including the Golf Club of Lebanon
- all other areas of Akkar district between 5km from the Syrian border and the Aabdeh, Halba and Qoubaiyat highway
- the city of Tripoli
- the town of Brital, and the area around it up to 5km from the Syrian border, and south of Nahlé town, but excluding Baalbek town
- the towns of Rachaiya, Hasbaiya, and Khiam in the Beqaa Valley, and the area between these towns up to 5 km from the Syrian border
- within 500m of the Ain el Hilweh Palestinian refugee camp in Saida

- south of the Litani River except the main Naqoura-Tyre-Saida-Beirut highway and areas to the west of it.

### **Healthcare**

The standard of medical care in Lebanon is generally good and can be expensive. Most hospitals are well equipped though the economic crisis in the country, and the destruction caused from the August 4 Beirut Blast may affect the standard of care. The majority of medical staff speak French and English. Medical supplies may become increasingly scarce.

### **Natural Disasters**

Lebanon is in an earthquake zone, but there have been no damaging tremors in recent years.

### **Covid-19**

Lebanon is experiencing widespread community transmission of Covid-19. This is putting pressure on ICU and normal hospital beds for Covid-19 patients. Laws to control the spread of coronavirus may change at short notice. Implementation and enforcement is variable. Check the latest information on risk from COVID-19 for Lebanon on the [TravelHealthPro website](#).

The SP should be comfortable working in all such environments described above and must be capable of deploying to any areas required within the country in order to deliver on the terms of reference for the Contract.

**Appendix A: of Contract Section 3 (Terms of Reference)**  
**Schedule of Processing, Personal Data and Data Subjects**

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

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

Description	Details
Identity of the Controller and Processor for each Category of Data Subject	<p>The Parties acknowledge that for the purposes of the Data Protection Legislation, the following status will apply to personal data under this contract</p> <p>The Parties acknowledge that Clause <b>33.2</b> and <b>33.4</b> (Section 2 of the contract) shall not apply for the purposes of the Data Protection Legislation as the <b>Parties are independent Controllers</b> in accordance with Clause 33.3 in respect necessary for the administration and/or fulfilment of this contract.</p>

## Section 4

### SPECIAL CONDITIONS

#### 1. Party Contacts

##### FCDO

1.1 The Contract Officer is: [Redacted]

Foreign, Commonwealth and Development Office

Email: [Redacted]

Telephone: [Redacted]

1.2 The Project Officer is: [Redacted]

Email: [Redacted]

Telephone: [Redacted]

##### Supplier

1.3 The Contract Officer is:  
[Redacted]

Oxford Policy Management

Email: [Redacted]

Telephone: [Redacted]

1.4 The Project Officer is:  
[Redacted]

Email: [Redacted]

Telephone: [Redacted]

#### 2. Expiry Date

2.1 End date of Extension Period:

31<sup>st</sup> December 2029

2.2 Minimum written notice to Supplier in respect of extension:

6 months

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

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

Part B General and Technical proposal - OPM Proposal dated October 14th 2021

Part C Proforma Cost Templates – OPM Proposal dated November 16<sup>th</sup> 2021

Any clarifications requested by FCDO and responses to these

#### 4. Key Personnel

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

Job Family	Role	Name
Programme Leadership	Consortium Programme Director	[Redacted]
Programme Leadership	Deputy Programme Director	[Redacted]
Programme Leadership	Research Director	[Redacted]
Programme Leadership	Deputy Research Director	[Redacted]
Programme Leadership	Deputy Research Director	[Redacted]
Programme Leadership	Co-Principal Investigator Sierra Leone; ILT	[Redacted]
Programme Leadership	Co-Principal Investigator Sierra Leone	[Redacted]
Programme Leadership	Co-Principal Investigator South Sudan	[Redacted]
Programme Leadership	Co-Principal Investigator South Sudan	[Redacted]
Programme Leadership	Co-Principal Investigator Tanzania; ILT	[Redacted]
Programme Leadership	Co-Principal Investigator Tanzania	[Redacted]
Programme Leadership	Co-Principal Investigator Lebanon; ILT	[Redacted]
Programme Leadership	Co-Principal Investigator Lebanon	[Redacted]
Programme Leadership	Principal Investigator Kiribati	[Redacted]
Technical Advisor	Lead Stakeholder Engagement; ILT	[Redacted]
Technical Advisor	Intellectual Leadership Team (ILT)	[Redacted]

#### 5. Sub-Contractors

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

*Oxford Policy Management Ltd*  
*Institute for Fiscal Studies (IFS)*  
*Yale University*  
*Boston College*  
*Centre for Experimental Research on Fairness, Inequality and Rationality (FAIR)*  
*Sightsavers International*  
*College of Medicine and Allied Health Sciences, University of Sierra Leone (COMAHS)*  
*Ifakara Health Institute*  
*South Sudan Center for Strategic and Policy Studies (CSPS)*  
*Arab Resource Collective*  
*Telethon Kids Institute*

#### 6. Limitation of Liability

The Supplier's limit of liability shall be as provided for in Clause 35.2 of Section 2 (Standard Terms and Conditions).

#### 7. Termination Notice

The period of written notice under Clause 43 (Termination Without Default of the Supplier) in Section 2 (Standard Terms and Conditions) shall be as follows:

30 days

#### 8. Reports

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

## **9. Medical Insurance**

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

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

## **10. Commercially Sensitive Information**

All of the documents listed at section 3 of this document.

## **11. Intellectual Property Rights**

**Clause 25 of Section 2 shall be deleted and replaced by the following provisions**

11.1 Save as expressly granted elsewhere under this Contract:

11.1.1 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;
- (b) the Third Party IPR; and
- (c) Project Specific IPRs.

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

11.2 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 of Section 2, 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).

11.3 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.

11.4 Any Project Specific IPRs created under this Contract shall be owned by the Supplier. FCDO grants the Supplier a licence to use any FCDO Background IPR for the purpose of fulfilling its obligations under this Contract during its Term. The Supplier grants to FCDO a perpetual, irrevocable, non-exclusive, assignable, royalty-free licence to use, sub-license and/or commercially exploit any Project Specific IPRs.

11.5 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.

11.6 The Supplier shall promptly notify FCDO if it reasonably believes that it will be unable to grant or procure the grant of the licences set out in Clause 15.5 above and the Supplier shall provide full details of the adverse effects this may have on FCDO's use of the Project Specific IPRs



- 11.7 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.
- 11.8 If an IPR claim is made or anticipated, the Supplier must at its own expense and FCDO's sole option, either:
- 11.8.1 procure for FCDO the rights in Clause 15.5 without infringing the IPR of any Third Party; or
- 11.8.2 replace or modify the relevant item with non-infringing substitutes with no detriment to functionality of performance of the Services

**16. FCDO ethical guidance for research, evaluation and monitoring guidance**

- 16.1 The Supplier shall adhere to the ethical principles and standards specified in "FCDO ethical guidance for research, evaluation and monitoring guidance" when undertaking research and any other forms of data collection and analysis on FCDO funded projects.
- 16.2 For research studies, the Supplier shall align with these principles and standards and shall provide assurance of this (as detailed in the tender) to the FCDO Programme Manager by submission of evidence of approval of relevant protocols, prior to research commencing, by the researchers' Institutional Review Board (IRB)/Research Ethics Committee (REC) and the relevant regulatory authority in the country where the research is to be completed.
- 16.3 For evaluations, monitoring and other activities (where research protocols are not required to be submitted for approval by the IRB or REC) the Supplier shall be responsible for ensuring ethical issues are given prompt consideration throughout the project cycle of research, monitoring and evaluation activities.
- 16.4 The Supplier must inform the Senior Responsible Officer and Contract Manager at FCDO immediately, in writing, of any issues arising that may be in breach of FCDO's ethical standards and principles and shall fully investigate and document all or all potential cases of a breach. Failure by the Supplier to report any breach(es) to FCDO may be a material default to the Contract and may entitle FCDO to terminate the Contract'.

**17. Formal Review points**

The contract will include two formal review points, the first at the end of the inception phase, and another after two years of the implementation phase (following the 2023 Annual Review).

**18. Section 2 – Standard Terms and Conditions**

**28. Transparency**

Insert:

- 28.8 The Parties acknowledge that:
- a) the Transparency Reports;
- b) the Publishable Performance Information
- (together the "Transparency Information") are not Confidential Information except for any information which is exempt from disclosure in accordance with the provisions of Clause 30 (Freedom of Information) of Section 2 (Standard Terms and Conditions).
- 28.9 Notwithstanding any other provision of this Agreement, the Supplier hereby gives its consent for the Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 28.10 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Schedule 5.
- 28.11 If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best

served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.

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

Section 2 – Standard Terms and Conditions  
Schedule 1: Definitions

Insert:

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

“Transparency Information” has the meaning given in Clause 28.8;

“Transparency Reports” has the meaning given in Schedule 5 (Transparency Reports) at paragraph 1.1;

Section 2 – Standard Terms and Conditions  
Schedule 5: Transparency Reports

Insert:

- 1.1 Within eight (8) months of the Commencement Date the Supplier shall provide to the Authority for its approval (such approval not to be unreasonably withheld or delayed) draft reports in accordance with Annex 1 (once approved, the “Transparency Reports”).
- 1.2 If the Authority rejects any draft Transparency Report, the Supplier shall submit a revised version of the relevant report for further approval by the Authority within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Authority. If the Parties fail to agree on a draft Transparency Report the Authority shall determine what should be included.
- 1.3 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Authority at the frequency referred to in Annex 1.
- 1.4 Any disagreement in connection with the preparation and/or approval of Transparency Reports, other than under paragraph 1.2 above in relation to the contents of a Transparency Report, shall be treated as a Dispute.
- 1.5 The requirements for Transparency Reports are in addition to any other reporting requirements in this Agreement.
- 1.6 The Supplier may be required to submit the Publishable Performance Information electronically via the Buyer’s IT system

Annex 1: Transparency Reports

TITLE	CONTENT		FORMAT	FREQUENCY
(Performance)	Performance against Key Performance Indicators (KPIs)		Reporting Format (e.g. PDF)	Quarterly
	Annual Review		Reporting Format (e.g. PDF)	Annually
(Charges)	contract prices and any incentivisation		Reporting Format (e.g. PDF)	Quarterly

	mechanisms in the contract			
(Major sub-contractors)	Governance arrangements for supply chains		Reporting Format (e.g. PDF)	Quarterly
(Technical)	Resource Plans		Reporting Format (e.g. PDF)	Quarterly
	Service Improvement Plans		Reporting Format (e.g. PDF)	Quarterly
(Performance management)	Plans for management of underperformance		Reporting Format (e.g. PDF)	Quarterly

19. Section 2 Clause 8 – VISIBILITY OF SUBCONTRACT OPPORTUNITIES shall not apply to this contract as the spend will be less than £5million per annum.

**Section 5**  
**SCHEDULE OF PRICES**

[Redacted]