



CONTRACT FOR SUPPLIER SERVICES

Section 1 - FORM OF CONTRACT

CONTRACT FOR : **Climate Smart Jobs (CSJ) Programme**

Contract Reference NUMBER: **#ecm_4804**

THIS CONTRACT is made

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

AND: Palladium International Ltd ("**Supplier**") whose principal place of business, or, where the Supplier is a company, whose registered office is situated at Turnberry House, London EC1Y 8ND

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

WHEREAS:

- A.** FCDO requires the Supplier to provide the Services to Ugandan households and businesses, in particular those households and businesses for which there is highest potential to support economic empowerment of women and refugees (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



Foreign, Commonwealth
& Development Office



2. Contract Signature

If the Form of Contract is not signed and dated on behalf of the Supplier within 15 Working Days of the date on which it was sent for the electronic signature, FCDO will be entitled, at its sole discretion, to declare this Contract void.

No payment will be made to the Supplier under this Contract until the Contract is signed by both Parties.

3. Commencement Date and End Date of Initial Period

The Services shall commence on 6 April 2023 and the end date of the Initial Period shall be 31 October 2026.

4. Financial Limit


Payments under this Contract during the Initial Period shall not exceed £15,500,000 (fifteen million and five hundred thousand pounds) (the "Financial Limit") inclusive of any government tax, if applicable. The maximum value of total extension(s) is up to £7,250,000 (seven million and two hundred fifty thousand pounds) inclusive of any government tax, if applicable.

5. Programme Name

The Programme Name to which this Contract relates is Climate Smart Jobs (CSJ) Programme.

6. Time of the Essence

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



Foreign, Commonwealth and Development Office (FCDO)

Standard Terms and Conditions – Service Contracts

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Preliminaries

1. DEFINITIONS AND INTERPRETATION

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

2. REPRESENTATIONS AND WARRANTIES

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

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

3. FINANCIAL LIMIT

- 3.1 The components which comprise the Financial Limit are set out in Section 5 (Schedule of Prices). No expenditure may be incurred in excess of the Financial Limit and no 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
 - (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 Sub-Contract opportunities arising from or in connection with the provision of the Goods and/or Services and/or Works above a minimum threshold of £25,000 that arise during the Term;
- 8.1.2 within 90 days of awarding a Sub-Contract to a Sub-Contractor, update the notice on Contracts Finder with details of the successful Sub-Contractor;
- 8.1.3 monitor the number, type and value of the Sub-Contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;
- 8.1.4 provide reports on the information at clause 8.1.3 to FCDO in the format and frequency as reasonably specified by FCDO; and
- 8.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.

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

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

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

9. STAFF TRANSFER

9.1 The Parties agree that:

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

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

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

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

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

10. DUTY OF CARE

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

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

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

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

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

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

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

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

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

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

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

11. PROCUREMENT OF EQUIPMENT

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

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

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

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

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

12. USE OF AND RESPONSIBILITY FOR EQUIPMENT

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

Contract Governance

13. MONITORING OF CONTRACT PERFORMANCE

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

15. OPEN BOOK ACCOUNTING AND AUDIT

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

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

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

16. EXIT MANAGEMENT

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

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

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

PAYMENT AND TAXATION

17. Charges

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

18. VAT

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

19. RETENTION AND SET OFF

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

20. SUPPLIER PROFIT

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

21. SATISFACTORY PERFORMANCE

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

22. PAYMENTS & INVOICING INSTRUCTIONS

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

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

24. TAX COMPLIANCE

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

Intellectual Property, Security and Information

25. INTELLECTUAL PROPERTY RIGHTS

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

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

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

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

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

26. SECURITY REQUIREMENTS

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

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

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

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

27. MALICIOUS SOFTWARE

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

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

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

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

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

28. TRANSPARENCY

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

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

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

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

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

28.6 The Supplier shall:

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

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

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

28.7.1 as required in the terms of reference;

28.7.2 annually;

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

28.7.4 as part of the project completion process.

29. CONFIDENTIALITY

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

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

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

29.2 Clause 29.1 shall not apply to the extent that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30. FREEDOM OF INFORMATION

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

30.7.2 in chronological order;

30.7.3 in a form that is capable of audit;

30.7.4 at its own expense.

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

31. OFFICIAL SECRETS ACT

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

32. FCDO DATA

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

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

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

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

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

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

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

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

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

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

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

33. PROTECTION OF PERSONAL DATA

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33.3 Where the Parties both Control Personal Data Independently

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

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

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

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

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

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

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

33.4 Where the Parties are both Controllers of Personal Data Jointly

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

34. PUBLICITY AND BRANDING

34.1 The Supplier shall not:

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

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

Liabilities

35. LIMIT OF LIABILITY

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

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

36. INDEMNITY

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

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

37. INSURANCE

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

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

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

Control of Contract

38. VARIATIONS

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

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

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

38.2.2 a formal, technical and commercial justification.

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

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

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

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

39. ASSIGNMENT AND NOVATION

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

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

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

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

39.2.3 FCDO receiving notification under both Clauses 39.3 and 39.4.

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

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

Default and Termination

40. FCDO REMEDIES FOR DEFAULT

40.1 Remedies

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

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

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

40.2 Rectification Plan Process

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

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

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

41. FINANCIAL DISTRESS

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

- 41.5 The Supplier shall make any reasonable amendments to the Financial Monitoring Plan as may be requested by FCDO and shall resubmit it for Approval. If Approved by FCDO, the Supplier shall promptly implement the Financial Monitoring Plan throughout the Term.
- 41.6 In addition to its obligations under the Financial Monitoring Plan, the Supplier shall promptly notify FCDO in writing if any of the following “Financial Distress Events” occurs in respect of the Supplier or a key Sub-Contractor:
- 41.6.1 there is a material deterioration of its financial standing;
 - 41.6.2 the appointment of an administrator or receiver;
 - 41.6.3 late filing of statutory accounts with Companies House;
 - 41.6.4 it issues a profits warning or other similar public announcement about a deterioration in its finances or prospects;
 - 41.6.5 it is being publicly investigated for improper financial accounting and reporting, fraud or any other financial impropriety;
 - 41.6.6 it commits a material breach of covenant to its lenders;
 - 41.6.7 a key Sub-Contractor not being paid any sums properly due under a specified invoice that is not subject to a genuine dispute;
 - 41.6.8 it is subject to any claims, litigation, investigations, actions or decisions in respect of financial indebtedness.
- 41.7 In the event of a Financial Distress Event occurring, then the Supplier shall and shall procure that any affected key Sub-Contractor shall, as soon as reasonably practicable review the effect of the Financial Distress Event on the continued performance of the Services under this Contract and provide a report to FCDO. Where FCDO reasonably believes that the Financial Distress Event is likely to adversely impact on the performance of the Services, the Supplier shall submit to FCDO for Approval a Financial Distress Service Continuity Plan as soon as is reasonably practicable and shall provide any further financial information as FCDO may reasonably require to assess financial standing and risks.
- 41.8 If FCDO acting reasonably considers that the Financial Distress Service Continuity Plan is insufficient to remedy the effects of the Financial Distress Event on the Service, then it may require the Supplier (and/or key Sub-Contractor) to redraft and resubmit an improved and updated plan or may require the issue to be escalated via the Dispute Resolution Procedure.
- 41.9 If FCDO Approves the Financial Distress Service Continuity Plan, then the Supplier shall execute and continue to review the plan (with submissions to FCDO for Approval where it is updated).
- 41.10 Where the Parties agree that the Financial Distress Event no longer adversely affects the delivery of the Services, the Supplier shall be relieved of its obligations in respect of the current Financial Distress Service Continuity Plan.
- 41.11 FCDO shall be entitled to terminate this Contract for material Default if:
- 41.11.1 The Supplier fails to notify FCDO of a Financial Distress Event in accordance with Clause 41.6;
 - 41.11.2 FCDO and the Supplier fail to agree a Financial Distress Service Continuity Plan or any updates to a plan within a reasonable timescale (taking into account the effects of the Financial Distress Event on the Services);
 - 41.11.3 The Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan or any updates to the plan.
- 42. FORCE MAJEURE**
- 42.1 Subject to the remainder of this Clause 42, a Party may claim relief under this Clause 42 from liability for failure to meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- 42.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 42.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 42 to the extent that consequences of the relevant Force Majeure Event:

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

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

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

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

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

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

43. TERMINATION WITHOUT DEFAULT OF THE SUPPLIER

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

44. TERMINATION WITH DEFAULT OF THE SUPPLIER

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

44.1.1 any representation or warranty given by the Supplier pursuant to Clause 2 (Representations and Warranties) is materially untrue or misleading, and the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of FCDO are acceptable;

44.1.2 FCDO expressly reserves the right to terminate this Contract for material Default;

44.1.3 the Supplier commits any material Default of the Contract which is not, in the reasonable opinion of FCDO, capable of remedy; and/or

44.1.4 the Supplier commits a Default, including a material Default, which in the opinion of FCDO is remediable but has not remedied such Default to the satisfaction of FCDO in accordance with the Rectification Plan Process.

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

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

44.3.1 the Supplier or any Supplier Personnel, either directly or through their servants or agents or Sub-Contractors breaches any of their obligations under this Contract; or

44.3.2 the Supplier, Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf has committed an offence under the Bribery Act 2010 or the Terrorism Act 2000 in breach of Clauses 48 or 49 of this Contract; or

44.3.3 FCDO has the right to terminate under Clause 38.3.2; or

44.3.4 the Supplier is an individual or a partnership and at any time:

- (a) becomes bankrupt; or

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

44.3.5 the Supplier is a company and:

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

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

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

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

45. PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION

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

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

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

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

45.3.2 reject the Variation.

46. CONSEQUENCES OF EXPIRY OR TERMINATION

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

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

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

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

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

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

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

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

MISCELLANEOUS AND GOVERNING LAW

47. DISPUTE RESOLUTION PROCEDURE

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

48. PREVENTION OF FRAUD AND BRIBERY

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

48.3.2 keep appropriate records of its compliance with its obligations under Clause 48.3.1 and make such records available to FCDO on request.

48.4 The Supplier shall immediately notify FCDO in writing if it becomes aware of any breach of Clause 48.1 and/or Clause 48.2, or has reason to believe that it has or any Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf have:

48.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

48.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

48.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.

48.5 The Supplier warrants and represents to FCDO that to the best of its knowledge, that neither the Supplier, Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf:

48.5.1 has given, offered or agreed to give or accepted, any gift or consideration of any kind as an inducement or reward for doing or for bearing to do or for having done or forborne to do any act in relation to the obtaining or execution of any contract or for showing or forbearing to show favour or disfavour to any person or entity in relation to any contract; or

48.5.2 has entered into any contract in connection with which commission has been paid or agreed to be paid by or to the Supplier or Supplier Personnel or on their behalf or to their knowledge unless, before such contract was made, particulars of any such commission and of the terms of any agreement for the payment of such commission were disclosed in writing to FCDO, whose written consent was subsequently given to such payment.

48.6 Neither the Supplier or the Supplier Personnel or any person acting on their behalf shall accept for their own benefit or pass on for the benefit of partner government, recipient or end user, any trade commission, discount, voucher scheme, re-sale or similar payment or benefit in connection with this Contract.

48.7 Where the Supplier or Supplier Personnel, or any person acting on their behalf, does any of the acts mentioned in Clause 48.5 or commits any offence under the Bribery Act 2010, with or without the knowledge of the Supplier, in relation to this Contract or any other contract with the Crown, FCDO shall be entitled:

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

48.7.2 to recover from the Supplier the amount or value of any such gift, consideration or commission;

48.7.3 to recover from the Supplier any other Losses sustained as a result of any breach of this Clause 48, whether or not the Contract is terminated.

48.8 FCDO, the Supplier and the Supplier Personnel shall immediately and without undue delay inform each other of any event that interferes or threatens to materially interfere with the successful delivery of the Services, whether financed in full or in part by FCDO, including credible suspicion of/or actual fraud, bribery, corruption or any other financial irregularity or impropriety.

FCDO has an expert fraud investigation unit, that should be contacted in the first instance at reportingconcerns@fcdo.gov.uk or +44 (0)1355 843747. All suspicions will be treated with the utmost confidentiality.

49. ANTI-TERRORISM REGULATIONS

49.1 In accordance to the Terrorism Act 2000 and all subsequent regulations pursuant to this Act, the Supplier will assure itself to the best of its knowledge that UK funding, including financial assets or economic resources is not made available, either directly or indirectly to, or for the benefit of persons, groups or entities listed in accordance with European Council Regulation EC/2580/2001 (as amended) and/or the Terrorism (United Nations Measures) Orders 2009 of the United Kingdom, or contravene the provisions of those and any subsequent applicable terrorism legislation.

49.2 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf, have at any time prior to the Commencement Date and/or during the term of this Contract appeared on the Home Office Proscribed Terrorist Organisations List.

49.3 The Supplier shall immediately notify FCDO in writing if it becomes aware of any breach of Clause 49.1 and/or Clause 49.2, or has reason to believe that it has or any Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf have:

49.3.1 been subject to an investigation or prosecution which relates to an alleged infringement of Clause 49.1 and/or Clause 49.2;

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

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

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

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

50. SAFEGUARDING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

50.8 Failure by the Supplier to:

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

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

51. DISCRIMINATION

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

52. LAW AND JURISDICTION

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

53. ENVIRONMENTAL REQUIREMENTS

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

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

54. CONFLICT OF INTEREST

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

55. WAIVER

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

56. ENTIRE AGREEMENT

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

57. THIRD PARTY RIGHTS

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

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

58. NOTICES

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

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

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

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

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

- 58.3.2 any notice in respect of:

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

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

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

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

SCHEDULE 1: DEFINITIONS

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

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

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

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

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

“Auditor” means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) from, to or at which:

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

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

(b) where:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Supplier Background IPRs” means;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SCHEDULE 2: STAFF TRANSFER

1. DEFINITIONS

In this Schedule 2, the following definitions shall apply:

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

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

2. INTERPRETATION

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

0.

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.

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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.

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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.

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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.

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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.

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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 £1000 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.

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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 £5,000,000 in respect of any one occurrence, the number of occurrences being unlimited, but £5,000,000 any one occurrence and in the aggregate per annum in respect of products and pollution liability.

4.TERRITORIAL LIMITS

4.1.1 Global

5.PERIOD OF INSURANCE

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

6.COVER FEATURES AND EXTENSIONS

6.1 Indemnity to principals clause.

7.PRINCIPAL EXCLUSIONS

7.1 War and related perils.

7.2 Nuclear and radioactive risks.

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

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

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

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

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

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

8. MAXIMUM DEDUCTIBLE THRESHOLD

8.1 Not to exceed £5,500 for each and every third party property damage claim (personal injury claims to be paid in full).

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

- 1.1 The Supplier

2.INTEREST

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

3.LIMIT OF INDEMNITY

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

4.TERRITORIAL LIMITS

- 4.1 Global

5.PERIOD OF INSURANCE

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

6.COVER FEATURES AND EXTENSIONS

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

7.PRINCIPAL EXCLUSIONS

- 7.1 War and related perils
7.2 Nuclear and radioactive risks

8.MAXIMUM DEDUCTIBLE THRESHOLD

- 8.1 Not to exceed £14,500 each and every claim.

PART C: UNITED KINGDOM COMPULSORY INSURANCES

9.GENERAL

- 9.1 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
King Charles Street
London SW1A 2AH

File Ref: [
Date: [

Contract Amendment No: [

CONTRACT FOR: [

CONTRACT NUMBER: [

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

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

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

Name: [

Position:

Signature:

Date: [

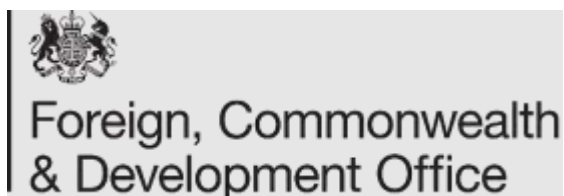
Signed by an authorised signatory for and on behalf of the Supplier

Name: [

Signature:

Date:

APPENDIX B



FCDO Supply Partner Code of Conduct

Principles

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

Overarching Principles for Supply Partners

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

FCDO Supply Partner responsibilities

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

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

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

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

Scope

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

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

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

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

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

3. Transparency and Delivery Chain Management

Key Performance Indicators KPI 3 a – f

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

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

Specific requirements for direct Supply Partners include:

- ✓ Provide assurance to FCDO that the policies and practices of their delivery chain Supply Partners and affiliates comply with the Code;
- ✓ Maintaining and sharing with FCDO up-to-date and accurate records of all downstream partners in receipt of FCDO funds and/or FCDO funded inventory or assets. This should map how funds flow from them to end beneficiaries and identify risks and potential risks along the delivery chain;
- ✓ Ensuring delivery chain partner employees are expressly notified of the FCDO 'reporting concerns' mail box³ found on FCDO's external website and of the circumstances in which this should be used;
- ✓ Publication of FCDO funding data in accordance with the International Aid Transparency Initiative (IATI)⁴
- ✓ Supply Partners shall adhere to HMG prompt payment policy and not use restrictive exclusivity agreements with sub-partners.

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

⁴ <http://www.aidtransparency.net/>

4. Environmental issues

Key Performance Indicators KPI 4 a – b

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

Commitment to environmental sustainability may be demonstrated by:

- ✓ Formal environmental safeguard policies in place;
- ✓ Publication of environmental performance reports on a regular basis
- ✓ Membership or signature of relevant environmental Codes, both directly and within the delivery chain such as conventions, standards or certification bodies (e.g. the Extractive Industries Transparency Initiative⁵).

5. Terrorism and Security

Key Performance Indicators KPI 5 a – d

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

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

Specific requirements:

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

6. Safeguarding, Social Responsibility and Human Rights

Key Performance Indicators: KPI 6 a – d

Safeguarding, social responsibility and respect for human rights are central to FCDO's expectations of its Supply Partners. Supply Partners must ensure that robust procedures are adopted and maintained to eliminate the risk of poor human rights practices within complex delivery chain environments funded by FCDO. These practices include sexual exploitation, abuse and harassment; all forms of child abuse and inequality or discrimination on the basis of race, gender, age, religion, sexuality, culture or disability. Supply Partners must place an emphasis on the control of

⁵ <https://eiti.org/>

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

⁷ <http://digitalprinciples.org/>

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

Specific requirements:

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

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

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

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

Compliance KPIs and contractual checking mechanisms - FCDO Contracts

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

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

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

Contract Checks and Compliance KPIs		KPI target	Specific Contractual link	Checking mechanism
i.	Declaration of acceptance of the FCDO Supply Partner Code of Conduct	Annual declaration submitted by contracted Supply Partner on behalf of delivery chain	Contract Terms and Conditions Clause 5.1 and Clause 7.7	Declaration of acceptance at the applicable level of compliance with each of the 6 sections received
ii.	Declaration of sign up to the UN Global Compact	Annual declaration submitted by the direct Supply Partner	Standard Selection Questionnaire (SSQ)	Declaration of applicable sign up / application received
1.	<u>VfM and Governance standards</u>			
a)	Economic and governance policies in practice	Annual updated documentation provided (copy of Policies with detailed annual financial breakdown relating to contract)	Terms and Conditions Clauses 13, 14 & 15	Annual contract review/programme management Audit checks Compliance checks
b)	VfM being maximised over the life of a contract 1. By confirmation of annual profit level fluctuations since tender submittal 2. by timely identification and resolution of issues 3. ensuring lessons learned are shared	Updated documentation submitted once annually	Contract T&Cs Clauses 15 & 20 Terms of Reference Terms of Reference	Compliance checks Annual contract review/programme management Compliance checks Annual contract review/programme management Compliance checks
c)	<u>Tax Declaration (HMRC format)</u> • Tax the organisation paid on profits made in the last 3 years, and in which countries	Annually updated documentation submitted by contracted supplier and on behalf of delivery chain partners	Terms and Conditions Clauses 15, 23 & 24	Annual return

	<ul style="list-style-type: none"> Compliance with relevant country level tax regulations fully understood and met 		Terms of reference	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)	<p>1. Procedures setting out how, staff involved in FCDO funded business, can immediately report all suspicions or allegations of aid diversion, fraud, money laundering or counter terrorism finance to the Counter Fraud and Whistleblowing Unit (CFWU) at reportingconcerns@fcdo.gov.uk or on +44(0)1355 843747</p> <p>2. Employees working on FCDO Contracts fully aware of the FCDO external website reporting concerns mailbox</p>	<p>Continuous awareness maintained</p> <p>Procedure in place</p> <p>Continuous awareness maintained</p>	<p>Terms and Conditions Clauses 6, 48 & 54</p> <p>Terms and Conditions Clause 48</p>	<p>Annual return Compliance checks</p> <p>Annual return Compliance checks</p>
f)	<p>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</p> <p>Supply Partners and their subcontractors must provide proof of compliance with the HMG approval requirements under the business appointment rules</p>	Details submitted as applicable	<p>Terms and Conditions Clause 48</p> <p>HMG business appointment rules</p>	<p>Annual return Compliance checks</p> <p>Contract management</p>
3.	<u>Transparency and Delivery Chain Management</u>			
a)	IATI compliance for Supply Partner and their delivery chain Supply Partners	Updated documentation submitted once annually	Contract Terms and Conditions Clause 28	<p>Tender evaluation</p> <p>Periodic spot checks Compliance checks</p>

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
	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
	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
	All delivery chain partner employees working on FCDO Contracts fully aware of the FCDO reporting concerns mailbox	Updated documentation submitted once annually	Contract Terms & Conditions Clause 48	Periodic and annual return spot checks
	HMG prompt payment policy adhered to by all delivery chain partners	Updated documentation submitted once annually	Contract Terms & conditions 7	HMG spot checks Compliance checks Annual return
4.	<u>Environmental Issues</u>			
a)	1.Steps in place to identify environmental risks (e.g. by maintaining a risk register) Ensuring legislative requirements are being met	Updated documentation submitted once annually	Contract Terms & Conditions Clause 53 and ToRs	Contract management Periodic and annual return spot checks Compliance checks
b)	2. Formal context specific environmental safeguarding policies in place to ensure legislative requirements are being met			
	Published annual environmental performance reports	Updated documentation submitted once annually	Contracts ToRs	Periodic and annual return spot checks
5.	<u>Terrorism and Security</u>			
a)	Up to date status declaration regarding the reporting of terrorist offences or offences linked to terrorist activities or financing	Updated documentation submitted if and when changes identified since tender submittal	Standard Selection Questionnaire (SSQ)	Annual return Spot checks Compliance checks Annual contract review
b)	Certification at or above the level set out in the tender submittal	Updated documentation submitted if changes identified since tender submittal	Standard Selection Questionnaire (SSQ)	Annual return Compliance checks
c)	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
d)	Best practice global Principles for Digital Development in place	Updated documentation submitted if changes identified since tender submittal	Terms of reference (TORs)	Annual contract review Compliance checks

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

Contractual Annual Compliance Declaration

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

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

X denotes full compliance 1 required

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

Compliance Level 1

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

Compliance Level 2

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

Compliance Level 3

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

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

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

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

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

UN Global Compact – Human Rights

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

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

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

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

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

In the workplace

- by providing safe and healthy working conditions
- by guaranteeing freedom of association
- by ensuring non-discrimination in personnel practices
- by ensuring that they do not use directly or indirectly forced labour or child labour
- by providing access to basic health, education and housing for the workers and their families, if these are not provided elsewhere
- by having an affirmative action programme to hire victims of domestic violence
- by making reasonable accommodations for all employees' religious observance and practices

In the community

- by preventing the forcible displacement of individuals, groups or communities
- by working to protect the economic livelihood of local communities
- by contributing to the public debate. Companies interact with all levels of government in the countries where they operate. They therefore have the right and responsibility to express their views on matters that affect their operations, employees, customers and the communities of which they are a part
- through differential pricing or small product packages create new markets that also enable the poor to gain access to goods and services that they otherwise could not afford
- by fostering opportunities for girls to be educated to empower them and also helps a company to have a broader and more skilled pool of workers in the future, and
- perhaps most importantly, a successful business which provides decent work, produces quality goods or services that improve lives, especially for the poor or other vulnerable groups, is an important contribution to sustainable development, including human rights
- If companies use security services to protect their operations, they must ensure that existing international guidelines and standards for the use of force are respected



Foreign, Commonwealth
& Development Office



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Section 3: Terms of Reference: Climate Smart Jobs Component One

Component 1A – market systems development, and
Component 1B – a Uganda Climate Innovation Fund

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1. Introduction

1.1. Background

As part of the UK's International Climate Finance commitment, FCDO in Kampala will implement a *Climate Smart Jobs* (CSJ) programme, focusing on Northern Uganda. The subject of this contract, "CSJ Component One", is one component of the CSJ programme.

The Climate Smart Jobs programme, including CSJ Component One, will support large-scale job creation for Uganda's growing population. In recent years, insufficient economic growth has meant a rising proportion of the working age population are not working, and hourly earnings have been falling. This means providing jobs and improving incomes is a high priority for the British High Commission ("BHC") in Kampala.

The CSJ programme, including CSJ Component One, will target the agri-business sector, since the British High Commission believes that improving productivity and/or incomes in agriculture is the most promising prospect for delivering inclusive and equitable economic growth and job opportunities. Three-quarters of the Ugandan population derive their income from agriculture, and agrobusinesses contribute 60% of total output in the Ugandan manufacturing sector.

At Impact level, the British High Commission's vision is that the Climate Smart Jobs programme, including CSJ Component One, will seek out innovative, technology-based solutions to issues for agriculture in Northern Uganda and scale them in the most efficient ways possible. Higher agricultural productivity, commercialization of farming and improved net trade in agro-processing products will then accelerate the process of economic transformation in Uganda. It will release young men and women for wages employment into towns, stimulating demand for non-agricultural products and inducing off-farm wages jobs in services. Uganda would be set on a green growth trajectory where businesses, jobs and Gross domestic product (GDP) are no longer held back by unsustainable land management practices, slow-onset change and extreme climatic events.

The CSJ programme, including CSJ Component One, will be funded by the UK's International Climate Fund. A key priority for the CSJ programme, including CSJ Component One, will be to help Ugandans adapt to and mitigate the impact of climate change, and jobs created must be resilient to changing climatic conditions. The Ugandan population's dependence on agriculture, combined with changing climate patterns and unsustainable land management, contributes to Uganda's position as the 12th most vulnerable to climate change globally. The Ugandan agriculture sector's exposure to pests, diseases, rains, floods and drought spells is projected to increase in incidence and severity under climate change¹, and thus without adaptation climate change will make economic transformation for Uganda near impossible.

Uganda's prospects for economic growth and poverty reduction are also closely dependent on sustainable management of its natural capital base. Environmental degradation is a significant problem, leading to a loss of 27% up to agricultural GDP². The CSJ programme will thus promote sustainable land management practices alongside targeting climate adaption and improved incomes, though this is not the core focus of CSJ Component One.

The Climate Smart Jobs programme, including CSJ Component One, will build on the UK-funded *Northern Uganda - Transforming the Economy through Climate Smart Agriculture (NU-TEC)* programme. The NU-TEC programme:

¹ CIAT, BFS/USAID (2017) 'Climate-Smart Agriculture in Uganda. CSA Country Profiles for Africa Series', <https://cgspace.cgiar.org/handle/10568/89440>

² World Bank (2021) 'From Crisis to Green Resilient Growth: Investing in Sustainable Land Management and Climate Smart Agriculture', <https://documents1.worldbank.org/curated/en/265371623083730798/pdf/Uganda-Economic-Update-17th-Edition-From-Crisis-to-Green-Resilient-Growth-Investing-in-Sustainable-Land-Management-and-Climate-Smart-Agriculture.pdf>

- directly financed ~£19 million (UGX 88 billion) of investment into Ugandan agri-businesses, and unlocked a further ~£103 million (UGX 484 billion) of investment by Ugandan companies
- supported Ugandan agri-businesses to generate an additional ~£115 million (UGX 541 billion) of sales
- enabled ~170,00 households in Northern Uganda to increase their income by at least 15%, benefitting around 900,000 individuals
- enabled ~2.2 million individuals to better adapt to the effects of climate change through diversified income sources and enhanced access to climate information, markets, inputs or finance

1.2. Summary of Objectives

The overall Climate Smart Jobs programme will:

- **Grow climate smart agribusinesses to create jobs.** This involves providing loans and technical support directly to businesses to enable them to expand into large commercial operations able to access mainstream finance, be more resilient to climate change and increase incomes to households.
- **Support climate smart land management and services.** This involves protecting fragile biodiversity that surround agribusinesses and building landscape resilience to climate shocks.
- **Remove barriers that stop businesses getting deals done.** This is a technical assistance facility to tackle the specific barriers that make trade and investment more challenging.

CSJ Component One comprises of two components which are intended to contribute to the objective of growing climate smart agribusinesses to create jobs. Of the two components:

- **Component 1A** will be a **market systems development** intervention which will aim to build resilience to climate change for at least 130,000 Ugandan households through climate smart agriculture. In the Inception Phase (“Inception Phase”) the supplier will design an intervention strategy by i) assessing impacts of climate change in Northern Uganda for smallholder farmers, ii) analysing the main issues which cause underperformance in the markets in which smallholders produce and sell agricultural products in Northern Uganda and the implications for climate resilience, iii) design and recommend new market system innovations (products, services, production methods or business models) which could address these issues and iv) set out the interventions which will be undertaken to encourage businesses to adopt the desired market system innovations. In the Implementation Phase, the supplier will implement this strategy.
- **Component 1B** will run a challenge fund called the “**Uganda Climate Innovation Fund**” which will aim to facilitate transformational change in Uganda’s ability to adapt to and mitigate climate change and promote sustainable land management, with at least five innovations likely to enable transformational change in the agricultural sector due to intervention. In the first half of the Inception Phase, the supplier will undertake the preparatory activities necessary to launch the fund, including drafting a call for proposals, developing a strategy to encourage entries, and agreeing a methodology to assess which ideas are most likely to lead to transformational change. In the second half of the Inception Phase, the supplier will launch the fund, run a call for funding, assess the bids, and make recommendations on which to support. In the Implementation Phase the supplier will support successful bidders to test their idea through a proof of concept through grants and technical assistance, and support bidders which successfully test their ideas to develop plans to implement them on a

large scale without further support from the innovation fund. The supplier may also run further funding rounds.

For Component 1A, at a minimum, 50% of direct beneficiaries must be women, and in addition 50% of direct beneficiaries must be refugees or people living in districts hosting significant numbers of refugees or neighbouring districts in Northern Uganda. This is because in Uganda, women comprise 55% of the economically active population, and contribute more than 75% of total farm labour. As such, agribusiness must deliver jobs for men and women if Uganda is to meet the challenge of the 1 million people entering the workforce annually by 2040. Furthermore, as of 31 March 2022 Uganda was host to 1,582,076 refugees, and durable solutions are needed to support refugees and host communities³. These targets also ensure Component One is in line with the UK Government's Strategy for International Development, key approaches of which include unlocking the future potential of women and girls, driving a more effective international response to humanitarian crises, and taking forward the UK's work on climate change and nature⁴.

CSJ Component One may support climate smart land management and services and may remove barriers that stop businesses getting deals done in so far as this supports the core objective of growing climate smart jobs.

The other components of the Climate Smart Jobs programme, which are not covered by this contract, are as follows:

- Component 2: Financial Services to small and medium-sized enterprises (SMEs). The implementing partner for Component 2 is Aceli Africa.
- Component 4: Climate smart land management and services. The selected implementing partner for Component 4 is Mercy Corps, though no agreement or contract had been signed as of 30 May 2022.
- Component 5: Technical Assistance for Trade & Investment. The selected implementing partner for Component 5 is British International Investment, though no agreement or contract had been signed as of 30 May 2022.

The supplier must collaborate with the implementing partners for other components of CSJ. Furthermore, while there will be no Component 3, the supplier must maintain a collaborative partnership with AgDevCo.

The overall Theory of Change for the Climate Smart Jobs programme, including Component One, is included in Annex 1.

2. Scope

The geographic focus of the Climate Smart Jobs programme, including CSJ Component One, is the Northern Region of Uganda and the refugee-hosting district of Kiryandongo ("Northern Uganda"). Activities undertaken must thus incentivise results to be achieved for households in Northern Uganda where possible. This geographic focus is not exclusive, however, so the supplier may take advantage of some opportunities to achieve results in other parts of Uganda when opportunities in Northern Uganda are weak. The sectoral focus will be the agriculture sector, and related supporting industries or value chains.

³ Office of the Prime Minister, UNHCR, Government of Uganda (2022)

<https://ugandarefugees.org/en/country/uga>

⁴ FCDO (2022), 'The UK Government's International Development Strategy'

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1075328/uk-governments-strategy-international-development.pdf

3. Roles & Responsibilities of the supplier

3.1. General requirements and ways of working

Throughout the contract, the supplier must deliver inputs with the intention that these inputs will lead to intended outputs, outcomes and impacts. The logical relationships between inputs (activities and interventions), outputs, outcomes and impacts must be established in a Theory of Change, and progress towards delivery of inputs and achievement of intended outputs, outcomes and impacts must be tracked in an overall logical framework (“Log-frame”).

As an important way of working across the Climate Smart Jobs programme, including CSJ Component One, the supplier must adopt practices which promote effective learning, showing flexibility, thinking creatively, innovating, trying and testing, failing fast, and scaling up interventions which show the most promise. To encourage this, the supplier must develop an overall workplan which includes distinct sets of related activities and interventions (hereafter, “work packages”), with each work package having a distinct intended contribution or pathway towards achieving the overall targets for outputs, outcomes and impacts of CSJ Component One (see section 10 for examples of what work packages could be).

The supplier must maintain an overall workplan detailing inputs to be delivered under each work package, in addition to a log-frame monitoring overall progress towards targets on outputs, outcomes and impacts for Component One. Sitting beneath these over-arching documents, the supplier must also monitor and provide FCDO with monthly progress updates, including progress on what the supplier has agreed to deliver for each work package in terms of inputs, outputs, and outcomes (hereafter, “deliverables”).

As set out in section 4, progress towards some deliverables will be linked to an element of payment. This subset of deliverables are the “Delivery KPIs”. Annex 2 sets out Delivery KPIs for this Inception Phase, and gives example Delivery KPIs for the Implementation Phase. Delivery KPIs will need to be agreed and updated by the supplier and FCDO every quarter during the Implementation Phase. Meeting the Delivery KPIs does not represent the totality of FCDO’s expectations of CSJ Component One. As set out in section 10, progress towards deliverables and associated learning for each work package will be considered when the Climate Smart Jobs Board makes six-monthly decisions on which work packages to begin, stop, or continue at lesser, greater or constant scale. This is a key part of the CSJ programme’s practices for scaling up successes and scaling down or phasing out failures, including for CSJ Component One.

Another core principle governing the CSJ programme including CSJ Component One will be the importance of collaboration between different components of the CSJ programme. All suppliers, including for CSJ Component One, must work together to achieve the objectives of the Climate Smart Jobs programme.

3.2. Inception Phase requirements

The first six (6) months of CSJ Component One will represent an “Inception Phase” during which the supplier will identify potential areas of intervention and deliver and complete intervention plans. Delivery KPIs for the Inception Phase are set out in Annex 2.

Delivering these outputs will require review of documentation, discussion with the FCDO CSJ programme team, and meetings with key stakeholders. The supplier must meet monthly with FCDO throughout the Inception Phase to discuss and review progress and preparation of the report before its final submission.

At the end of the Inception Phase, there will be a review point to allow assessment of CSJ Component One. Progress from the Inception Phase will be subject to satisfactory performance of the supplier, particularly in the delivery of deliverables. The first meeting of the

Climate Smart Job Board will decide which work packages will be taken forward (see section 10) or whether CSJ Component One should be terminated through using Termination with or without Supplier Default clause.

3.3. Implementation Phase requirements

Subject to authorisation from the Climate Smart Jobs Board, during the Implementation Phase the supplier will deliver the deliverables set out in the overall workplan and log-frame, building on the guidance set out in ToR sections 5 and 6 and Delivery KPI examples as set out in Annex 2. Deliverables will also include but will not be limited to the following:

- a) delivery of agreed work packages, including inputs such as disbursement of support to selected businesses or drafting a report.
- b) high quality six-monthly progress reports presenting progress on deliverables for each work package. The reports must include how money has been spent, what inputs have been delivered, progress towards Delivery KPIs and other deliverables, other achievements, issues arising, proposed adaptations and other standard aspects including risk, finances, issues arising with regarding progress on deliverables, changes in context, and lessons learned. The supplier will propose the structure of these reports for approval by FCDO, with timings which support FCDO's annual review process. The first report will be due six months into the Implementation Phase. Details will be finalised and agreed between the Parties during the Inception Phase. The timing of reports must allow for review and sign-off to align with FCDO internal requirements
- c) proposals, including options, for work packages to be taken forward for the Climate Smart Jobs Board every six months, as set out in section 10. Work package proposals must include associated deliverables, including Delivery KPIs.
- d) updated management tools and budgets as needed and in response to Climate Smart Jobs Board decision;
- e) six-monthly updates of key management documents, to be submitted to FCDO five Working Days before the last Working Day of each sixth month unless otherwise agreed with FCDO, including:
 - i. Theory of Change – giving an overview of how all work packages, individually and collectively, will bring about change
 - ii. Results Framework – building on the Theory of Change, giving further details on the objectives and causal logic of the intervention, and organising the components into a series of “if-then” relationships”
 - iii. Log-frame – building on the results framework, summarising overall progress across all CSJ Component One's work packages, including those discontinued, ensuring inclusion of relevant indicators for verifying progress and assessing critical assumptions
 - iv. Value for Money (VfM) strategy/assessment (against indicators for “Five Es” of Economy, Efficiency, Effectiveness, Equity and Cost-effectiveness);
 - v. Stakeholder engagement and Communications strategy; including identification of key stakeholders and audiences, stakeholder map, engagement and communication principles, distribution channels and communication tactics, protocols and processes for communications, incorporation of FCDO branding guidelines, and proposed communications activities for each work package
 - vi. Monitoring and Learning Strategy. This strategy must include ensuring that all funded work packages have defined inputs, success criteria at output level, and criteria to show expected contribution to overall CSJ outcomes and impact,

including data requirements and future collection plans. It must also include plans to ensure performance and delivery of work packages is monitored and analysed, individually and collectively, against their actual and/or potential delivery of outcomes. This must include at least analysis of expected causal routes, potential to implement at scale, and potential to generate transformative change as according to the UK's ICF KPI 15⁵. It must also include a strategy to ensure effective learning is undertaken. This means potential changes and adaptation required resulting from assessments is documented, considered and appropriate action taken and recorded.

- vii. Collaboration map which sets out, for each work package, areas where there is an overlap of expertise or activities between CSJ Component 1A, Component 1B, and other components of CSJ.
 - viii. Risk and mitigation framework. This must include risk register and management matrix, fiduciary risk management approach including fraud risk assessment, delivery chain risk maps (outline of partners in CSJ Component One with information about financial flows), safeguarding approach (including of vulnerable beneficiary groups), and monitoring and reporting mechanisms.
 - ix. Spend against annual costed workplan
 - x. Where not possible on a quarterly basis, progress against Delivery KPIs at outcome and impact level
- f) quarterly updates of key management documents, to be submitted to FCDO five Working Days before the last Working Day of each third month unless otherwise agreed with FCDO, including:
- i. Written progress updates on Contract Management KPIs and Delivery KPIs, at input level and, as often as possible to be agreed with FCDO, outcome and impact level.
 - ii. Asset register; and
 - iii. any other management documents necessary for successful delivery of CSJ Component One to be defined by FCDO;
- g) monthly progress update to FCDO delivered at the British High Commission during or in advance of a monthly progress update meeting, including:
- i. Verbal progress update against deliverables for each work package (including any comms and learning);
 - ii. Written financial spend and forecast; and
 - iii. Written updated risk register and management matrix
- h) close collaboration with other CSJ programme components 2, 4 and 5 as well as with AgDevCo. The supplier must ensure that in areas of overlapping expertise, as identified in the collaboration map, evidence is being gathered and shared pro-actively and that in areas of overlapping activities possible synergies are being proactively identified and implemented.
- i) organisation of requested field visits of up to one week duration for FCDO staff to meet beneficiaries and other stakeholders to understand and monitor work packages, to take place up to twice every quarter. In addition, the supplier must organise any field

⁵ Climate Change Compass (2018), 'Extent to which ICF intervention is likely to lead to Transformational Change', https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/813600/KPI-15-extent-ICF-intervention-lead-transformational-change.pdf

visits required for VIPs (e.g.: UK ministers or senior civil servants), according to bespoke requirements to be communicated by FCDO if any such visits are required.

The supplier shall ensure that procurement of goods and equipment shall be undertaken in accordance with best practice principles of openness, fairness and transparency and achieve VfM. All items procured shall be on the basis that the ownership of Equipment shall vest in FCDO and shall be so marked. All large procurements must be completed in the first nine months of the UK fiscal year (April to end of December) to avoid risks to FCDO compliance with budget targets. The procurement shall 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.

FCDO has a duty to show UK taxpayers where their money is being spent, its impact, and the results achieved. All announcements and information given to the media by the supplier must therefore be pre-agreed with FCDO media and communications team; there must be 'no surprises'. The supplier is required to work with FCDO communications team to 'launch' new projects, agreeing timescales, tactics (press notices, events, etc.), and messages. The supplier is required to give appropriate recognition to the provision of funding including grants by FCDO in any other press notices or other contact with the media, provide FCDO with a range of photographs and video to publicise the project. "FCDO", "UK aid", or variants of, must not be used by suppliers in any publicity without prior consent, and FCDO has the right to veto any media or communications activity proposed by the supplier. Full guidance on Branding is available at [UK aid - standards for using the logo - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/uk-aid-standards-for-using-the-logo)⁶

3.4. Exit Phase requirements

At least six months before the end of CSJ Component One, the supplier will update the Exit Plan submitted to FCDO, as set out in clause 16.5 of the standard terms and conditions. The Exit Phase will take place, following completion of the Implementation Phase, during the last six months of the contract.

Notwithstanding clause 16.7 of the standard terms and conditions, the Exit Plan will detail how the supplier will close the contract and will include:

- a) deliverables for all active work packages which, so far as possible, ensure that CSJ Component One has the best possible chance of achieving a sustainable and transformative impact. Sustainability must encompass independence and commercial viability of supported entities, and transformative impact must encompass the potential for replication.
- b) handover of relevant technical and intellectual property to FCDO;
- c) confirm final reporting on CSJ Component One performance, achievements and learning to be provided during Exit Phase as required by FCDO;
- d) a disposal plan for all assets procured throughout the lifetime of CSJ Component One in accordance with FCDO procedures on asset management and disposal;
- e) the supplier's plans to ensure a smooth transfer of responsibilities from the supplier to any persons or organisation taking over such responsibilities after the agreement ends;
- f) the supplier's plan to deliver to FCDO (if requested or as otherwise directed by FCDO) prior to the contract end date (or termination of the contract), any finished work or unfinished materials which relate to the contract;

⁶ <https://www.gov.uk/government/publications/uk-aid-standards-for-using-the-logo>

- g) the supplier's plans to provide FCDO before the contract ends a summary of the status and next steps in relation to any on-going projects or other material and unfinished activities being conducted by the supplier; and
- h) return and or destruction by the supplier of all confidential information to FCDO before the agreement end date.

3.5. Financial Management requirements

The overarching principles are that financial management and reporting will be governed by the contract. These include:

- agreeing annual budgets with FCDO, linked to agreed work packages to be taken forward with authorisation from the Climate Smart Jobs Board for the following six months; and indicative workplan to taken forward based on the indicative (non-binding) steer from the Climate Smart Jobs Boar (see section 10).
- demonstrating that proposed activities are likely to deliver value for money through an annual value-for-money assessment, based on the strategy, including monitoring the "Five Es". This must be in time for the annual review.
- checking, verifying and authorising all claims, ensuring funds are claimed in accordance with agreed budgets;
- within each financial year, profile spend to hit 90% within the calendar year (start of April to end December), unless by explicit approval from the SRO
- submission of forecast expenditure, with a target of less than 5% spend variance each month, and 10% for each six-monthly period following each meeting of the Climate Smart Jobs Board
- producing monthly, quarterly and annual financial returns (in FCDO's financial year period). The reporting format to be agreed during the Inception Phase;
- effective due diligence of all delivery partners, internal monitoring and reviews, financial management, risk management, logistics/operations, administration, procurement, including developing technical specifications, developing agreements and processing payment;
- ensuring that the risk of fraud is minimised, that fraud risks are carefully managed and any suspected fraud is reported to FCDO immediately.
- ensuring that assets are only used for the purpose of the CSJ programme.

4. Payment by Results ("PbR")

4.1. KPIs and Payment Structure

This contract will utilise Key Performance Indicators (KPIs) methodology, where "**Key Performance Indicators**" are defined as 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. "Delivery KPIs" will link delivery against specified deliverables including International Climate Finance KPIs. Contract management performance will be measured against "Contract Management KPIs", while the supplier must also follow all contractual obligations related to the Code of Conduct. This will encourage focus on the most important deliverables and accountability for performance by the supplier. Delivery KPIs may be at input, output or outcome level, as agreed between FCDO and the supplier as relevant at each stage of CSJ Component One.

In the Inception, Implementation and Exit Phases, an element of payment will be linked to the successful achievement of KPIs. The maximum value at risk will be equal to 30% of the

aggregated value of all fees charged for all staff contracted by the supplier and Sub-Contractors during the KPI assessment period.

The fees element of the invoices will be paid as follows:

Inception Phase:

- payment of 70% of fees made linked to use of resources for delivering agreed inputs within work packages deliverables; and
- the remaining 30% of fees for that period linked to Delivery KPIs

Implementation and Exit Phases:

- payment of 70% of fees linked to use of resources for delivering agreed inputs within the within work packages deliverables;
- 20% of fees for that period linked to Delivery KPIs
- 10% of fees for that period linked to Contract Management KPIs.

Delivery KPIs will relate to the progress demonstrated on delivery of agreed inputs and, beginning 18 months after the contract begins, outcomes. Contract Management KPIs relate to programme management and the quality of delivery of the contract in three selected areas: 1) Innovation, Learning and Adaptation, 2) Collaboration, and 3) General Performance.

Delivery KPIs relating to inputs and Contract Management KPIs will be assessed and paid quarterly. Delivery KPIs relating to outcomes or impacts will be assessed and paid quarterly if possible, or six-monthly if FCDO decides that this is necessary due to less common efficient measurement of outcome and impact indicators. FCDO will assess the appropriate percentage of retained fees to be paid at meetings held by the Climate Smart Jobs Board Climate Smart Growth Sub-group (See section 7 on Governance).

Payment for KPIs be based on the following procedures:

- Each KPI will be assessed on a spectrum between complete pass (100%) or complete fail (0%) for that quarter or six-month period as appropriate. The criteria for assessment will differ depending on the KPI, as set out in Annex 2:
 - Progress on KPIs which set out a quantitative target will be assessed as the percentage progress towards full achievement of the target. Progress will be assessed from zero (0%) to the target (100%) unless FCDO proposes otherwise.
 - Progress on KPIs which set out a qualitative target, for example an individual deliverable, will be assessed as the percentage of the individual requirements of the KPI which FCDO accepts have been met to an adequate standard. Unless FCDO gives more specific guidance to the supplier on what constitutes an “adequate standard” for a specific KPI or KPI requirement, it will be taken to mean that the requirement has been met in a way which fulfils the purpose of the requirement. The purpose of the requirement may be stated explicitly by FCDO, or implied by the nature of the requirement as interpreted by FCDO.
- The supplier will be paid per KPI.
- Retained fees relating to Contract Management KPIs cannot be carried over in case of an incomplete pass (delivery assessed at less than 100% for the quarter or six-month period).
- Unless otherwise stated in the agreed Delivery KPIs, retained fees relating to Delivery KPIs which set out a quantitative target cannot be carried over in case of an incomplete pass unless by exception agreed with FCDO in advance (achievement at less than 100% of target on the deadline for achievement). A quantitative target could be, for example, an increase in the sales of supported businesses of £X, or Y number of beneficiaries benefitting from enhanced climate resilience. For these targets:

- achievement of results at 70% of the KPI target or below on the deadline will result in no retained fees being paid for this KPI,
- achievement of results at 100% of the KPI target or above on the deadline will result in all retained fees being paid for this KPI,
- achievement of results between 70% and 100% of the KPI target on the deadline will result in payment of retained fees for this KPI in proportion to achievement within this range. For example, for achievement of 85% of the KPI target on the deadline, half of retained fees would be paid as this is halfway within the 70%-100% range.
- Unless otherwise stated in the agreed Delivery KPIs, retained fees relating to Delivery KPIs which set out a discreet deliverable can be carried over in case of late delivery of an adequate deliverable. A discreet input could be, for example, submission of a report or set of proposals to FCDO, or organisation of a field visit. In case of late delivery of an adequate deliverable, 5% of retained fees will be deducted for each Working Day the deliverable is late without FCDO fault (that is, subtracting for any delays caused by FCDO taking in excess of five Working Days to respond with comments on whether a deliverable is acceptable in the form submitted). Working Days are weekdays excluding Ugandan national holidays. Unless otherwise stated, all specifications for the Delivery KPI must be met or else no retained fees will be paid.
- Delivery KPIs may be re-negotiated if there are changes in factors beyond the supplier's control which affect the delivery of Delivery KPIs. These changes could include changes in resources available for CSJ Component One or changes in priorities from FCDO, or in external factors which significantly impact the supplier's ability to deliver. If there are such changes, adjustments to Delivery KPIs may be agreed and recorded at the monthly progress update meeting between FCDO and the supplier prior to due date.
- KPIs may be subject to change dependent upon any updates or improvements to FCDO's Supplier Relationship Management process.

In each monthly invoice the supplier will mark 30% of staff fees that are retained by FCDO and "put at risk".

For KPIs to be assessed quarterly, In the first two months of each quarter, the supplier will not invoice FCDO for the 30% of fees at risk to the supplier for these KPIs. At the end of the third month of each quarter, the supplier will submit to FCDO an excel spreadsheet showing progress against each relevant Delivery KPI for the whole quarter, and FCDO will provide the supplier with its assessment of the supplier's performance against Contract Management KPIs for the quarter. FCDO will then assess the appropriate percentage of retained fees to be paid for Contract Management KPIs and relevant Delivery KPIs for the quarter and will communicate this to the supplier who will then invoice FCDO for these fees.

For KPIs to be assessed six-monthly, in the first five months of each six-month period the supplier will not invoice FCDO for the 30% of fees at risk to the supplier for these Delivery KPIs. At the end of the sixth month of each six-month period, the supplier will submit to FCDO an excel spreadsheet showing progress against each Delivery KPI for the whole six-month period. FCDO will then assess appropriate percentage of retained fees to be paid for these Delivery KPIs for the six-month period and will communicate this to the supplier who will then invoice FCDO for these fees.

Meeting the Delivery KPIs does not represent the totality of FCDO's expectations of CSJ Component One. The supplier will be expected to deliver against other requirements including obligations set out in the contract, and all deliverables set out for each work package. The Supplier Relationship Management (SRM) Scorecard and delivery against indicators in line

with the log-frame will be assessed at Annual Reviews and will result in annual scoring for the CSJ programme and CSJ Component One.

4.2. Delivery KPIs during Inception Phase

The Delivery KPIs for the Inception Phase are set out in Annex 2

4.3. Contract Management KPIs during Implementation and Exit Phases

The KPIs for contract management during the Implementation and Exit Phases will be as set out in Annex 2. They comprise three equally weighted KPIs for:

- i. Innovation, Learning and Adaption
- ii. Collaboration
- iii. General Performance

4.4. Delivery KPIs during Implementation and Exit Phases

The supplier will be responsible for proposing Delivery KPIs linked to Inputs and Outcomes or Impacts, aligned with Component 1A and 1B log-frame and authorised work packages. Delivery KPIs for the Implementation and Exit Phases must be discussed, finalised and agreed with FCDO prior to the end of the Inception Phase. At the end of the Inception Phase, and quarterly intervals (or at an alternative frequency if jointly agreed), Delivery KPIs will be submitted to the SRO for approval.

The supplier must ensure that each work package has at least one Delivery KPI linked to inputs associated with it each quarter. As in the examples in Annex 2, the supplier must ensure that Delivery KPIs include clear success criteria to allow for an objective assessment. The supplier must ensure that Delivery KPIs have defined indicators of achievement and clear acceptance criteria to allow their measurement. The assessment criteria must be suitable for measuring either partial achievement or pass/fail, as approved by FCDO. Delivery KPIs linked to Outcomes or Impacts must be agreed no later than two weeks after the start of the quarter being assessed.

For the first 12 months of the contract, the Delivery KPIs will be based only on inputs. For the rest of the contract, the Delivery KPIs will also include Outcome or Impact targets, for example those set out in Annex 2 of this ToR. On a six-monthly basis, starting after 12 months from the contract start date, the supplier must propose at least two Delivery KPIs for Component 1A linked to Outcomes or Impacts that are aligned with Climate Smart Jobs' log-frame, and at least one Delivery KPI linked to Outcomes or Impact for Component 1B. Once agreed with FCDO (no later than 5 months before they are due) those Delivery KPIs linked to Outcomes or Impacts will be assessed by the supplier. Assessment will be quarterly where possible and six-monthly where necessary, such that the first assessment takes place 15 or 18 months after the contract begins.

The Delivery KPIs for the Implementation and Exit Phases set out in Annex 2 of this ToR are examples only. Every quarter during the Implementation and Exit Phases, the supplier must develop Delivery KPIs which enable FCDO to measure the performance of the Services provided by the supplier under the Contract, in line with the Work Packages authorised by the Climate Smart Jobs Board. These may or may not be similar to those set out in Annex 2.

4.5. Transparency KPIs

The Transparency Key Performance Indicators ("T-KPIs") are a set of quantifiable measures that the Parties will use to assess whether the Contract delivers its objectives. In line with the cross-government transparency agenda, the three T-KPIs set out in Annex 2 will be published quarterly. An additional "Social Value KPI" (SV-KPI) may be added to the Transparency Report during the Contract term.

5. Component 1A – Market Systems Development

5.1. Component 1A Context

Detailed context is provided in the abridged Business case. All non-sensitive studies and reports undertaken under NU-TEC are available on Google Drive⁷. Contracts, annual reviews and log-frames are provided at Devtracker⁸.

Agriculture in Northern Uganda has significant scope for modernisation to improve incomes and resilience to climate shocks, as well as avoiding environmental degradation. As examples, a few key barriers to improved incomes and climate resilience are that:

- many smallholder farmers often lack basic farming skills and the ability to manage their farm as a business rather than a source of subsistence;
- smallholder farmers often lack affordable access to key inputs such as high-yielding seeds, pesticides and fertiliser which can dramatically increase productivity and often lack an understanding of the benefits of using inputs, or how to do so;
- agricultural markets are informal which means limited mutually beneficial trade of services between businesses and farmers;
- access to finance is limited as agribusiness often offers a low-value high-risk investment prospect compared to other investment opportunities for banks;
- the availability and affordability of weather and agricultural insurance is limited, meaning farmers cannot insure themselves against many of the impacts of climate change;
- there is a lack of access to irrigation equipment meaning agriculture is largely rain-fed. This means few farmers can grow outside of Uganda's two rainy seasons, leading to significant price volatility throughout the year;
- Northern Uganda is remote from non-African international markets, even though there are opportunities to sell more agricultural produce to other regions of Uganda and export to the DRC and South Sudan.

A recent report by the World Bank sets out many steps, which are needed to encourage uptake of Sustainable Land Management and Climate Smart Agriculture practices in Uganda⁹.

Component 1A will tackle these barriers through a market systems development approach due to the sustainability of impacts achieved using this approach, and their transformative potential. For example, the supplier must not simply deliver technical assistance to farmers. This would not deliver the scale of impact we require, and nor would this be sustainable. Rather, the supplier must provide support as a 'market facilitator', working with key players in the market system to catalyse the adoption and delivery of a range of commercially viable and innovative business models providing services to farmers. These services would then continue after CSJ Component One ends, and may be replicated by other businesses which do not receive FCDO support.

⁷ https://drive.google.com/drive/folders/1WpeRguGwLLpm_mX4J83oNWcxa4itoWDm?usp=sharing

⁸ <https://devtracker.fcdo.gov.uk/projects/GB-1-204012/documents>

⁹ World Bank (2021) 'From Crisis to Green Resilient Growth: Investing in Sustainable Land Management and Climate Smart Agriculture', p. xiii
<https://documents1.worldbank.org/curated/en/265371623083730798/pdf/Uganda-Economic-Update-17th-Edition-From-Crisis-to-Green-Resilient-Growth-Investing-in-Sustainable-Land-Management-and-Climate-Smart-Agriculture.pdf>

5.2. Component 1A Recipients and beneficiaries

The ultimate beneficiaries of Component 1A are households, mostly of smallholder farmers in Northern Uganda, who will be able to achieve higher and more sustainable incomes because of CSJ Component One.

Component 1A will engage organisations, and their employees and immediate suppliers and out-growers, as direct beneficiaries as a route to reach the ultimate beneficiaries. These will mostly or entirely be in the private sector, and could include businesses, farms, and/or smallholder-led organisations such as cooperatives.

5.3. Component 1A Objectives

The objective of Component 1A is to increase incomes by 15% for at least 130,000 Ugandan households. A 15% increase in income must be against an agreed baseline.

At a minimum, 50% of direct beneficiaries from CSJ Component One must be women, and in addition 50% of direct beneficiaries must be refugees or people living in districts hosting significant numbers of refugees or neighbouring districts in Northern Uganda¹⁰.

The Delivery KPI(s) for outcome/impact-level results targets for the Implementation and Exit Phases will partly depend on this methodology developed by the supplier and agreed with FCDO. Unless otherwise agreed between the supplier and FCDO, Delivery KPIs for this component must be developed to reflect the following level of ambition:

Component 1A primary outcome KPI	Year 1	Year 2	Year 3	Year 4	Total
Number of Ugandan households who have experienced an increase in income of 15% or more due to support	15,000	30,000	40,000	45,000	130,000

5.4. Component 1A Approach

This component will employ a market systems development approach to improve access to, and functioning of, market systems that benefit the poor and thus increase climate resilience. The interventions must be designed to incentivise and facilitate the Ugandan private sector to adopt market system innovations (new products, services, production methods or business models) which bring about improved functioning of the markets in which smallholders produce and sell agricultural products in Northern Uganda.

CSJ Component One must deliver results through risk-sharing with the private sector, developing strategies which are both profitable and ultimately beneficial for building climate resilience. This will ensure interventions are demand-led and will lead to lasting changes to market systems.

¹⁰ UNHCR (2020) 'Uganda Refugee Hosting districts in Uganda'

<https://data2.unhcr.org/en/documents/details/78295>. Districts hosting significant numbers of refugees in Northern Uganda are: Adjumani, Koboko, Lamwo, Madi-Okollo, Obongi, Terego and Yumbe. Kiryandongo is also included in this definition, even though is part of the Western region of Uganda. Neighbouring districts in northern Uganda are: Maracha, Arua, Zombo, Nebbi, Pakwach, Nwoya, Oyam, Apac, Moyo, Amuru, Gulu, Pader and Kitgum

5.5. Component 1A Strategy development in Inception Phase

The interventions which will be deployed in the Implementation Phase will be designed in the Inception Phase. The agreed strategy will be set out in a Strategy report to be submitted to FCDO during the Inception Phase.

In the first section of the Strategy report, the supplier must set out the baseline expected impacts of climate change in Northern Uganda and implications for smallholder farmers. It must also include a model of factors contributing to climate resilience for smallholder farmers, in line with the UK government's methodology for International Climate Funding for building climate resilience¹¹. It must draw upon:

- stakeholder engagement with key development partners, including at least the World Bank, GGGI, and UNDP;
- learnings from literature review on climate impacts in Uganda.

In the second section, the supplier must set out their understanding of the main issues, which cause underperformance in the markets in which smallholders produce and sell agricultural products in Northern Uganda (the principal market) and the implications of these issues for future smallholder climate resilience. To do this, the report must analyse the issues, which cause underperformance in key supporting markets that significantly impact the principal market, including at minimum the markets for key inputs (at least seeds, fertiliser, and irrigation equipment), extension services, micro-finance, weather and agricultural insurance, post-harvest handling and aggregation. The report must also deploy a “reality check approach” to develop an understanding of the social context, how it impacts the principal market, and the experiences operating in these markets of women, refugees and farmers in refugee-hosting areas¹². It must draw upon as a minimum:

- learnings from NU-TEC¹³;
- stakeholder engagement of causes of underperformance, and any other relevant primary research;
- stakeholder engagement with key development partners, including at least DANIDA, FAO, USAID, the EU, Trademark East Africa, the International Growth Centre, and World Food Programme;
- learnings from literature review on agricultural markets and climate impacts in Uganda; and
- political economy analysis of the causes of any issues;

The third section of the strategy report must set out a list of market system innovations, which could possibly be introduced to tackle the issues that cause underperformance in the principal markets and thus weaken climate resilience. These innovations could include new products,

¹¹ Climate Change Compass (2019), ‘Number of people whose resilience has been improved as a result of ICF KPI 4 Methodology Note’. Available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/835527/KPI-4-number-people-resilience-improved1.pdf

¹² RCA Community of Practice <http://www.reality-check-approach.com/what-is-rca.html>

¹³ See NU-TEC studies provided at:

https://drive.google.com/drive/folders/1WpeRguGwLLpm_mX4J83oNWcxa4itoWDm?usp=sharing

Relevant studies include:

- Market Systems Assessment Reports (Land Preparation, Soybean & Sunflower, Seed Market, Aggregation & Storage)
- Reality Check Approach – Baseline Study for NUTEC MD
- Market Research on Tractor Hire and Commercial Farming in Northern Uganda
- Market Systems Assessment on Cassava in Northern Uganda
- Study of Fertiliser Markets in Uganda
- Seed Quality Study
- Market Research on Tractor Hire and Commercial Farming in Northern Uganda

services, production methods or business models adopted by market players which either directly or indirectly lead to an improvement in access to, and functioning of, the principal market. All market systems innovations must be capable of enabling transformative change, according to the UK's ICF KPI 15¹⁴. It must include an assessment of which innovations are most likely to be realistic and effective, which interventions are most likely to be inclusive for women, refugees and farmers in refugee-hosting areas, and a recommendation as to which innovations should be introduced. The analysis must include:

- learnings from NU-TEC¹⁵;
- learnings from literature review on market system innovations trialled in Northern Uganda and other relevant contexts;
- a stock-take on the successes and limitations of market system innovations introduced under NU-TEC – principally the “village agent model” and the “quality declared seed” model;
- assessment of the need and value-for-money of further interventions to support adoption of the market system innovations introduced under NU-TEC. The supplier must not repeat any of the work already undertaken under NU-TEC, and must not entirely focus on further interventions to support these pre-existing interventions; and
- stakeholder engagement of the viability of alternative market system interventions.

The final section of the Strategy report must set out the interventions, which will be undertaken to encourage businesses to adopt the desired market system innovations to bring about the desired impacts in principal agricultural markets. These interventions must be drawn from the following:

- Technical assistance - which may be necessary to support businesses while introducing, testing and scaling market system innovations including climate adaptation and mitigation where they offer profitable returns;
 - this could be any advice or assistance/ which allows the businesses to grow, create jobs and manage climate change risks while improving the market system;
- Grants – of up to £50,000 per company (without FCDO approval) may be needed to increase the incentive or ability of firms to trial the market systems innovation:
 - Grants must be at the very least equally matched by contributions from the beneficiary so as not to distort the beneficiary's behaviour or lead to a “donor mindset” focused on extracting money from the supplier rather than improving the functioning of their core business; and

¹⁴ Climate Change Compass (2018), 'Extent to which ICF intervention is likely to lead to Transformational Change',

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/813600/KPI-15-extent-ICF-intervention-lead-transformational-change.pdf

¹⁵ See NU-TEC studies provided at:

https://drive.google.com/drive/folders/1WpeRguGwLLpm_mX4J83oNWcxa4itoWDm?usp=sharing

Relevant studies include:

- The Village Agent Model: A Case Study on NU-TEC MD Intervention
- Gender Inclusiveness in Popularisation of the Village Agent Model
- Gender Inclusiveness in Promoting QDS for Smallholder Farmers
- Gender Assessments of NU-TEC MD Interventions in Apiculture for Smallholder Farmers
- Availability of Sunflower Seeds to Smallholder Farmers in Northern Uganda: Exploring policy options for Government and Private Sector
- Soybean Trials under Smallholder and Large-Scale Farming Systems
- Business Case for Women as Village Agents

- Grants must also always be a stepping stone on the way to an outcome where grants are no longer needed to achieve the intended outcome¹⁶.
- Research and Demonstration, which enables smallholders or businesses to improve productivity, manage their farms as businesses, manage risks of climate change, or develop new products or services; and
- Advocacy - where an intervention has proven successful, the supplier might reach out to new businesses to encourage them to adopt the model by highlighting successes achieved to date.

5.6. Component 1A Other Deliverables in Inception Phase

In the Inception Phase the supplier must deliver the Delivery KPIs set out in Annex 2. These include all the most important actions necessary to launch CSJ Component One with the required programme management documents, and required documents and recommendations for the Climate Smart Jobs Board (as set out in ToR section 10)

5.7. Component 1A Deliverables in Implementation Phase

The Implementation Phase deliverables, including Delivery KPIs, will follow the strategy developed by the supplier and agreed with FCDO in the Inception Phase, as well as decisions by the Climate Smart Jobs Board. Delivery KPIs at input level must be developed, such as those set out in Annex 2, for example the following:

- if intervening in the seed supporting market, a relevant KPI could be “number of demonstration farms for newly introduced climate resistant crops”;
- if intervening in the extension supporting market, a relevant KPI could be “number of smallholder farmers receiving technical support”;
- if intervening in the weather insurance supporting market, a relevant KPI could be “number of smallholder farmers subsidised to purchase weather insurance and value of premiums”.

The supplier must continually adapt their strategy depending on lessons learned and following decisions from the Climate Smart Jobs Board.

The supplier must co-develop practical and realistic plans which enable the ideas and innovations tested by the Uganda Climate Innovation Fund to be implemented on a large scale. This may include supporting innovating individuals or businesses to put these plans into practice using resources from Component 1A.

The Delivery KPI(s) for outcome/impact-level results targets for the Implementation Phase will partly depend on this methodology developed by the supplier and agreed with FCDO. Unless otherwise agreed between the supplier and FCDO, Delivery KPIs for this component must be developed to reflect the following level of ambition:

Implementation Phase Delivery KPIs - Outcomes	Year 1	Year 2	Year 3	Year 4	Total
ICF KPI-1 - Number of people supported to better adapt to the effects of climate change as a result of ICF (<i>either directly or indirectly supported with increased access to</i>	100,000	235,000	280,000	335,000	950,000

¹⁶ Relevant outcomes here could be a world in which a business is able to afford to pay all its staff through revenue without a contribution from the supplier, or in which smallholder farmers are able to afford to pay the entire cost of inputs such as seeds or solar irrigation

<i>climate information, markets, improved / climate resilient inputs, sources of financing, and diversified livelihoods and income sources)</i>					
Value of actual investments made in businesses supported through project interventions (figures in £million GBP)	2.5	17.5	25	30	75
Increase in sales of supported businesses attributed to project interventions (figures in £million GBP)	2.5	17.5	25	30	75

During the Inception Phase, unless stated by FCDO, the supplier must also set targets and monitor performance against ICF-KPI 4 - Number of people whose resilience has been improved as a result of ICF¹⁷, and ICF KPI 12 - Volume of private finance mobilised for climate change purposes (£)¹⁸. ICF KPIs must be assessed against the approved UK ICF methodologies. Furthermore, in each quarterly progress update, the past and expected future performance of each work package must be assessed against the extent to which the work package activities are likely to lead to Transformational Change according to the UK's ICF KPI 15¹⁹.

At a minimum, 50% of direct beneficiaries from Component 1A must be women, and in addition 50% of direct beneficiaries must be refugees or people living in districts hosting significant numbers of refugees or neighbouring districts in Northern Uganda. Therefore, all input KPIs must be monitored for impacts on women and for impacts on refugees and refugee-hosting communities. This is to ensure that the component meets its targets for these groups. FCDO may agree that some Outcome or Impact Delivery KPIs will not be tracked for impacts on these groups and exempted from these requirements where it is not judged to be practical or advantageous.

In addition, to align with an ambitious women's economic empowerment approach, the following must be considered for Component 1A where possible within the Results Framework and log-frame:

- gender disaggregated data on all indicators;
- indicators within the Women's Empowerment in Agriculture Index;
- indicators that go beyond standard economic metrics (wages, incomes, jobs) to include more subjective and behavioural indicators (examples include levels of aspiration, decision-making, control and ownership, time-use); and
- firm level data including size of women-owned enterprises (vs men-owned), levels of investment exposure and access to specific interventions and government support.

¹⁷ Climate Change Compass (2019), 'Number of people whose resilience has been improved as a result of ICF KPI 4 Methodology Note'. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/835527/KPI-4-number-people-resilience-improved1.pdf

¹⁸ Climate Change Compass (2018), 'Volume of private finance mobilised for climate change purposes' https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/813597/KPI-12-volume-private-finance-mobilised.pdf

¹⁹ Climate Change Compass (2018), 'Extent to which ICF intervention is likely to lead to Transformational Change', available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/813600/KPI-15-extent-ICF-intervention-lead-transformational-change.pdf

6. Component 1B – Uganda Climate Innovation Fund

6.1. Component 1B Context

Lack of adaption to climate change and unsustainable land management means that Uganda is ranked as the world's 12th most climate vulnerable country. Based on current technologies and business models, Uganda's natural capital base will continue to depreciate, permanently hindering its long-term development prospects. As such, there is a need for innovation and technology-based solutions to drive transformative changes to increase sustainability and climate resilience of the Ugandan agriculture sector.

The private sector on its own will not address or provide the answers Uganda needs to promote climate resilience, mitigation and sustainable land management. This is due to high costs of capital, high risks of early-stage innovation, the substantial public benefits of innovation which cannot be monetised by private firms, and the significant organisational hurdles to creating a coalition of actors capable of testing the practical workability of novel ideas for adaption and mitigation strategies. Financing from the Government of Uganda to fund innovation is also limited, and therefore there is a need for external support to test new ideas for increasing agricultural sustainability. This component will aim to gather ideas for innovations that are at pre-proof-of-concept stage, where the costs of starting up and refining ideas are normally high and economies of scale are normally insignificant.

The Uganda Climate Innovation Fund draws inspiration from two FCDO funded programmes: Frontier Technologies²⁰ and Malawi Innovation Challenge Fund²¹. Learning from these programmes informed the approach to this component and belief that an innovation prize approach is likely to work best when embedded into a wider programme based in a country context, aligned to FCDO priorities, and facilitated by agility and adaptive management as it will be under Climate Smart Jobs. Following discussions in the Inception Phase, the supplier will be expected to consider lessons learned from the FCDO teams or implementing partners who ran these components.

6.2. Component 1B Recipients and beneficiaries

The ultimate beneficiaries of Component 1B are the households of smallholder farmers, who will be able to achieve higher and more sustainable incomes because of Component 1B. The Uganda Climate Innovation Fund will have no restrictions on who can submit ideas and innovations for consideration, and the supplier will work with whichever individuals or organisations submit the most promising ideas or innovations.

6.3. Component 1B Objectives

The objective of Component 1B is to facilitate transformational change in Uganda's ability to adapt to and mitigate climate change and promote sustainable land management, with at least five innovations likely to enable transformational change in the agricultural sector due to Component 1B intervention.

The Delivery KPI(s) for outcome/impact-level results targets for the Implementation and Exit Phases will partly depend on this methodology developed by the supplier and agreed with FCDO. Unless otherwise agreed with FCDO, Delivery KPIs for this component must be developed to reflect the following level of ambition:

Component 1B Delivery KPI – primary outcome	Year 1	Year 2	Year 3	Year 4	Total
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²⁰ <https://devtracker.fcdo.gov.uk/projects/GB-1-201879/summary>

²¹ <https://devtracker.fcdo.gov.uk/projects/GB-1-203824/documents>

Number of innovations likely to enable transformational change ²² in Uganda's ability to adapt to and mitigate climate change and promote sustainable land management in the agriculture sector	0	0	2	3	5
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6.4. Component 1B Approach and Strategy

The Uganda Climate Innovation Fund will drive innovation in Uganda's efforts to adapt to and mitigate climate change and promote sustainable land management in the agriculture sector²³.

To do this, the Uganda Climate Innovation Fund will run funding rounds in which the fund is advertised, ideas and innovations for genuinely new ideas to tackle these challenges in agriculture are received, and FCDO and the supplier then jointly decide which projects to support through the Climate Smart Jobs Board. The supplier will then provide technical assistance and/or grants of around £50,000 to £200,000 (max £250,000 unless by exception approved by the Climate Smart Jobs Board) per project to test the potential and real-world feasibility of the ideas and innovations.

Any individuals, businesses and organisations ("pioneers") may submit ideas and innovations to the Uganda Climate Innovation fund. As examples, this innovation could be in the form of developing a good or service that is new or significantly improved, an improved production or delivery method, a new marketing method, or a new organisational method in business practices²⁴. The pioneer may propose to be supported themselves to undertake the proof of concept, or they may wish to test the idea/innovation through collaboration with the supplier and an additional implementing partner. Pioneers and implementing partners may be supported through grants, technical support, and/or research. The total maximum financial value of support (*grants, supplier TA, contribution to supplier overheads*) for any individual idea or innovation without further explicit FCDO approval is £270,000, including the value of technical support. Pioneers which are successful in their bid for support from FCDO will be offered support for at least 12 months.

The call for applications to the Uganda Climate Innovation Fund will be launched upon successful completion of a strategy report and acceptance of launch materials during the Inception Phase. By the end of the Inception Phase, the supplier must have gathered and assessed proposed ideas and innovations and made recommendations on which to support the Climate Smart Jobs Board.

The interventions which will be deployed will thus be designed in the first part of the Inception Phase. The agreed strategy will be set out in a Strategy report to be submitted to FCDO during the Inception Phase. This must answer at least the following questions:

- i. How should the Uganda Climate Innovation Fund attract ideas and innovations from the widest possible range of contributors? What should the communications strategy to publicise the Fund?
- ii. What are the lessons learned from similar funds which have been operated in contexts similar to Uganda? What are the implications for this component?

²² Transformational change must be generated in line with the UK government's methodology for International Climate Funding²².

²³ UK ICF Methodologies should be used to consider cases where it is debatable whether an innovation could improve Uganda's ability to adapt to and mitigate climate change and promote sustainable land management in agriculture. These are available at: <http://climatechangecompass.org/monitoring-work-stream/>

²⁴ Following the [OECD definition](https://www.oecd.org/site/innovationstrategy/defininginnovation.htm) of Innovation <https://www.oecd.org/site/innovationstrategy/defininginnovation.htm>

- iii. What kinds of support would the Uganda Climate Innovation Fund need to offer different kinds of pioneers to pilot their ideas? What does this mean for the resourcing strategy for this component? What might the role of additional implementing partners be, and how could they be identified for the widest possible range of possible partners?
- iv. How should the Climate Smart Jobs Board assess the transformative potential of different ideas and innovations, and the likely practicality of undertaking a successful pilot? This must be in line with the UK government's methodology for International Climate Funding²⁵.
- v. How could the supplier best promote the uptake of ideas and innovations which have been successfully piloted and shown to have transformative potential?
- vi. How should the supplier monitor the pilots to ensure that progress is being made towards Component 1B objectives?

6.5 Component 1B Deliverables in Inception Phase

Delivery KPIs for the Inception Phase are set out in Annex 2 on KPIs. For Component 1B, the key deliverables for the first three months of the Inception Phase are to produce a strategy and all required documentation and plans such that, once approved by FCDO, the Uganda Climate Innovation Fund can be launched three months into the Inception Phase. To support this, the supplier must develop and launch a website providing information about the Uganda Climate Innovation Fund.

The key deliverable by the end of the Inception Phase is a set of proposals to the Climate Smart Jobs Board about which ideas or innovations the supplier should support in the Implementation Phase. In order to deliver this, the supplier will need to deploy the required documents and plans, close the first round of Funding, meet with potential pioneers to understand their ideas and capacities in more depth if required, submit recommendations and documentation to FCDO, and agree a set of options and recommendations to submit to the Climate Smart Jobs Board.

6.6 Component 1B Deliverables in Implementation and Exit Phases

In the Implementation Phase, the supplier will begin to support pioneers of winning ideas to undertake proofs of concepts, using grants, technical assistance, and research. It might be necessary to find implementing partners for pioneers with limited capacity. For example, if an individual with no capacity of their own submits an idea to pilot a new agricultural technology in Uganda, eg: a university professor or an NGO worker, it might be necessary to find an agricultural business willing to partner with the supplier and that individual to test the idea.

Every six months the supplier will submit options for work packages to the Climate Smart Jobs Board. Each pilot which is begun will be guaranteed 12 months of support, but after that its continuation will be subject to approval of the CSJ Board. At the CSJ Board six months after the Implementation Phase begins, the supplier should make a recommendation as to whether a second funding round should be launched in time to gather entries and make recommendations to the next CSJ Board (six months after the Implementation Phase begins). Upon agreement of the Board, the supplier must deliver the second round, and possible further rounds a year after that.

A key objective for this component is learning about what might deliver transformational change, so the supplier must develop Delivery KPIs for the Implementation Phase focused on

²⁵ Climate Change Compass (2019), 'Extent to which ICF intervention is likely to lead to Transformational Change'. Available at: <http://climatechangecompass.org/wp-content/uploads/2018/06/KPI-15-updated-Dec-2018-Extent-to-which-ICF-intervention-is-likely-to-lead-to-Transformational-Change.pdf>

successfully testing whether the piloted ideas and innovations could ultimately bring about transformation change. Based on available funding, FCDO believe that around 10 ideas could be tested during Component 1B, but this is subject to discussion and agreement with the supplier as well as decisions from the Climate Smart Jobs Board. A key factor in driving transformational change is likely to be that the ideas could one day be implemented on a large scale without further support from the innovation fund, or indeed any other donor assistance. Commercial viability is thus likely to be equally as important as technical viability.

Where a pilot suggests transformational potential, the supplier should work with the pioneer, implementing partners, and any other relevant parties to develop a route to scale. This must include identifying potential business and financing partners (including through other components of the Climate Smart Jobs programme, including Component 1A) as well as key political, legal, social, economic, or other barriers to large-scale implementation, as well as proposed solutions. These plans will be another important Delivery KPI for inputs in the Implementation Phase.

Throughout CSJ Component One, the supplier must update the website at least once per quarter, and work with suppliers and implementing partners from other components of Climate Smart Jobs so that the website serves as an effective platform for sharing information and reports, as well as publicising funding opportunities and success stories for every component of the CSJ programme including CSJ Component One.

The Delivery KPI(s) for outcome/impact-level results targets for the Implementation and Exit Phases will partly depend on this methodology developed by the supplier and agreed with FCDO. Unless otherwise agreed with FCDO, Delivery KPIs for this component must be developed to reflect the following level of ambition:

Implementation Phase Delivery KPIs - Outcomes	Year 1	Year 2	Year 3	Year 4	Total
Total value of investment in businesses adopting proven ideas and innovations (figures in £million GBP)	0	0	2	8	10

7. Governance Structures and decision-making

The CSJ programme, including CSJ Component One, will be governed by a Climate Smart Jobs Board, which will meet at least once every 6 months. The objectives of the Board will be to give direction to and ensure effective oversight, ensure synergies, avoid duplication, maximise the likelihood of achieving objectives and manage both risks and opportunities for all CSJ components including CSJ Component One. The Board will be chaired by FCDO and will comprise FCDO staff. The supplier's Team Leader will attend meetings of the Board, or parts of meetings, as requested by FCDO.

The Climate Smart Jobs Board will be supported by a "Climate Smart Jobs Board Support Group on Challenge and Innovation". This purpose of this group will be to advise the Board. It will do this by providing rigorously challenge on past performance and future work package plans, as well as suggesting innovative ideas to be considered by FCDO and the supplier. To enable the effective functioning of the CSJ Board, the supplier must respond to queries and suggestions from the Support Group on Challenge and Innovation within three Working Days.

A Climate Smart Jobs Sub-group, chaired by the PRO, will also exist to run quarterly CSJ Component One programme management meetings with the supplier. The purpose of the meetings is to monitor progress on the deliverables for each work package, risks, mitigation measures, financial performance, compliance and issues that require escalation to the SRO.

8. Roles & Responsibilities of FCDO

FCDO will manage supplier's performance through regular monitoring and reporting mechanisms and review of the Key Performance Indicators (developed at the outset of the contract). The key FCDO personnel responsible for management of the various aspects of the contract will be:

- FCDO Kampala Head of Mission – holds overall accountability for the CSJ programme, including CSJ Component One
- FCDO Development Director – leads the FCDO team working on the Climate Smart Jobs programme, including CSJ Component One.
- FCDO Senior Responsible Owner (SRO) - is accountable for the CSJ programme meeting its objectives and delivering the required Outcomes, including CSJ Component One.
- FCDO Lead Technical Advisor – responsible for leading engaging with the supplier on technical / strategic aspects of their work, and promoting coherence and collaboration across the Climate Smart Jobs programme, including CSJ Component One.
- FCDO Programme Responsible Owner (PRO) - is accountable for driving, on a day-to-day basis, the delivery of Outcomes within agreed time, cost, and quality constraints. The role is focused on programme management.
- FCDO Programme Manager – is responsible for driving, on a day-to-day basis, the delivery of outcomes within agreed time, cost, and quality constraints bringing in the PRO as needed.
- FCDO Evaluation/Results Adviser, Climate and Economic Advisors – are responsible for technical engagement on the CSJ programme, including CSJ Component One. They will consult with the suppliers frequently and in-depth on technical and/or strategic issues relating to the project.

9. Monitoring and review

CSJ Component One will contain both internal and independent monitoring and review mechanisms. Internal monitoring and review consist of activities conducted by the supplier and FCDO staff involved in the direct implementation of CSJ Component One. In addition, independent monitoring and review may be conducted by an external supplier for the duration of CSJ Component One, including at minimum the annual reviews. This is to provide an independent voice and challenge mechanism to change, drop or modify interventions & activities.

FCDO will formally monitor performance of Component One through spot checks and annual reviews. The FCDO CSJ programme team will undertake regular field visits to monitor the quality of implementation and synergies between components of CSJ and any other FCDO programmes as suggested by FCDO.

CSJ Component One KPIs, results framework and log-frame will be the primary management tools for reviewing performance. FCDO will enable and allow suppliers to use other tools to take forward a flexible and learning management approach. The supplier will be required to disaggregate data at a minimum by geography (district level), age, gender and disability as part of compliance to FCDO's commitment to leaving no one behind. CSJ Component One results framework and log-frame and other agreed KPIs will be finalised during the Inception Phase and updated quarterly throughout CSJ Component One. Methodologies for tracking progress against indicators will be clearly defined, drawing on emerging best practice in FCDO and elsewhere.

In line with normal FCDO Project Cycle Management Requirements, the Climate Smart Jobs Components will be subject to an Annual Review to assess progress to date and make recommendations going forward. These will be timed to conclude at least one month before the annual review point in the contract and will include the assessment of progress towards the annual targets. A Project Completion Report (PCR) will be commissioned at the end of the CSJ programme.

Both Components 1A and 1B will have monitoring & learning function within it that is managed by the supplier. This is to ensure that learning is at the heart of each component and the supplier can quickly and flexibly respond, change direction, and scale up what is working and stop what is not. Learning must not be something which is done to CSJ Component One but a driving force, shaping day to day operations.

10. Timing, Budget, Work Planning and Utilisation of Contract Value

The contract will run until the end of March 2026. It may however be extended by up to two (2) years, or stopped at or shortly following annual break points. The contract will be composed of three phases:

- Inception Phase – lasting six months from when the contract is signed.
- Implementation Phase – the period between the end of the Inception Phase and the beginning of the Exit Phase
- Exit Phase – beginning six months before the end of CSJ Component One

The budget for this contract up to March 2026 will be £15.5 million. The maximum value of the contract, including the optional two-year extension, will be £23.25 million. The budget for the initial period to March 2026 will be divided between the two components as follows:

- £13.5 million for Component 1A
- £2 million for Component 1B

Based on decisions of FCDO, the value and length of the contract may be changed according to the contract variation procedure. Please refer to point 4 in section 10 for further details of and process for any contract extensions and or increase of the agreed value.

FCDO will manage this contract with a significant focus on diverting greater funding towards interventions which experience proves are most likely to achieve the best results, as well as on closing interventions which are neither achieving value-for-money results nor showing promise of achieving value for money results. These decisions will be made by a Climate Smart Jobs Board. These decisions will be based on the results achieved in the Results Framework, feedback from internal and independent monitoring and review, as well as any further submissions which must be made to the Board as set out in this ToR. The following practices will be used in the CSJ programme, including CSJ Component One, for **scaling up successes and scaling down or phasing out failures**:

1. At the end of the Inception Phase, progression to the Implementation Phase will be dependent on effective delivery of Inception Phase Delivery KPIs, satisfactory performance of the supplier, and FCDO's agreement to work packages and related deliverables.
2. The contract includes **annual break points** beginning at the end of the Inception Phase, and then annually throughout the Implementation Phase until the end of CSJ Component One. At the annual break points, continuation of the contract will be dependent on satisfactory delivery of outputs and contract performance. Performance will be assessed through a formal review undertaken by FCDO. This will be based on

supplier's performance against KPIs, progress towards achieving deliverables, and any relevant Supplier Relationship Management performance.

Without prejudice to the above, when considering options to continue CSJ Component One at each break point, and in authorising work packages at each Climate Smart Jobs Board, FCDO may consider (among other things):

- whether CSJ Component One has been demonstrated to have strong impact and has the potential to yield transformative results;
- whether there is perceived value in significant expansion / contraction of the scope of work;
- whether CSJ Component One is demonstrating value-for-money, according to the "Five Es"
- performance by the supplier in line with the terms and conditions of the contract;
- changed ODA priorities; and
- external context changes.

Should a decision to not to continue with the Programme be taken a relevant process will be followed (Termination With Default of the Supplier or Termination Without Default of the Supplier).

3. FCDO will use a quarterly CSJ Component One programme management meeting to ensure the supplier is monitoring progress against agreed deliverables, capture learning on what is and is not working, and feeding this back into implementation. At each quarterly CSJ Component One programme management meeting the supplier will present a quarterly report and plan, clearly indicating what has worked and what has been achieved, as well as what has not worked, and what is planned for the next quarter. FCDO will review the quality of delivery with a strong emphasis not simply on progress against plans but also on how CSJ Component One is learning and improving (see also section 9 on Monitoring & review).
4. **Every six months, the supplier will "bid" for authorisation by the Climate Smart Jobs Board to undertake work packages for the following six months. The supplier must present a variety of options for how Components 1A and 1B could use resources to introduce, continue, scale down or scale up distinct work packages.** Under Component 1A these work packages could include, for example, activities to intervene in a particular supporting market, to pilot implementation of a new business model, to develop a particular value chain, or to test or scale up a business model which may or may not have already been tested under NU-TEC or under the Climate Smart Jobs programme. Under Component 1B, the work packages will be each of the individual innovations being piloted. This process will enable the Climate Smart Jobs Board to steer CSJ Component One effectively, although the supplier will retain significant autonomy over how best to make progress on deliverables. All work packages will need to be authorised every six months by Climate Smart Jobs Board to continue, other than individual innovations chosen for piloting under Component 1B which will initially be guaranteed at least one year of support (grants and technical assistance). Each work package may continue up until the end of CSJ Component One if agreed by the Climate Smart Jobs Board every six months.

The budget is for core costs such as office costs and salaries for the core project team (see section 11 on Human Resources of the supplier) as well as non-core costs based on an initial assumption about the activities which will be undertaken by the supplier during CSJ Component One. For each work package option, the submissions must include clear statements on 1) progress achieved towards deliverables (inputs, outputs and contributions to outcomes), including Delivery KPIs, 2) an explanation of factors which have contributed to or limited results, 3) expected deliverables for the work

package option in the next 18 months if continued, including by the next Climate Smart Jobs Board, as well as 4) resource requirements for continuation of the work package, including supplier personnel and FCDO financial resources. The Climate Smart Jobs Board will choose to authorise work packages (or not), and thus allocate resources, based on results achieved to date and promise shown for achieving CSJ Component One's objectives, value for money, as well as any other factors which FCDO may consider relevant²⁶.

The supplier must also submit to the Board the outlines of work package options, which could be delivered from six months to twelve months after the Board. This will enable the Board to give an indicative (non-binding) steer as to the work packages it would most likely wish to authorise in the future.

Following each Climate Smart Jobs Board, reflecting the authorisation decisions (0-6 months) and indicative steers (6-12 months) given by the Board, within one week the supplier must provide FCDO with a workplan. This must set out the deliverables (inputs, outputs and outcomes) expected from all authorised work packages for the following six months, with accompanying budgets, as well as a draft version of deliverables for work packages expected to be carried out from 6-12 months following the Board. Once submitted, FCDO will review the supplier's proposed deliverables to determine whether what the supplier proposes is appropriate and provides sufficient "stretch". FCDO reserves the right to recommend alternative progress markers that are seen to be more significant in delivering on deliverables and which provides sufficient "stretch".

Where the Climate Smart Jobs Board discontinues funding for individual work packages, the supplier must propose to FCDO how activities under these packages will be stopped as soon as is practically possible without undermining results achieved to date. These proposals must be agreed with FCDO.

11. Human Resources of the supplier

The core project team will be composed as follows:

- **Overall Team Leader**- extensive experience in successfully delivering programmes of similar complexity in similar contexts and nature, and have delivered good results, strongly preferred in the market systems development work. The Team Leader will have a proven track record of providing strategic direction, building leadership and consensus. Proven record of delivering on VfM and proven track record of understanding and interacting with market systems and adaptive learning.
- **Two Deputy Team Leaders** – good experience in leading delivery of complex programme and delivery of results and a good understanding of programme risk management, finance, value for money, monitoring, engagement, and learning. Provides support to the team leader on delivery of Component 1A.
- **Uganda Climate Innovation Fund Team Leader**– provides strategic direction to the team delivering Component 1B and is the leading contact for FCDO day to day queries on the fund. Good experience of managing innovation development using 'Lean Startup' and 'Agile' (or similar approaches) and leading teams to deliver innovation work with a range of partners.

²⁶ The Component One budget and duration could be increased or decreased, driven by factors such as ODA priorities, impact, performance, and the external context.

- **Lead Programme Manager** - support the Overall Team Leader in ensuring the supplier complies with all the requirements set out in this ToR and that there is an effective flow of information between FCDO and the supplier.
- **Technical Leads** - positions covering four areas: (i) Market Systems, ii) Climate and Environment, iii) Evaluation, Results and Learning, and iv) Gender. These will have extensive experience in their lead areas, proven record of expertise as demonstrated by academic qualifications and successful delivery of programmes in their speciality area.

The bidders may include additional core team members that may not be among those specified above. The core project team must be contractually fixed and any change in core team requires FCDO approval. Technical leads, the Lead Programme Manager and Uganda Climate Innovation Fund team leader should be based in Uganda if possible, while all other members of the core team stated above must be based in Uganda.

12. Duty of Care to suppliers

The supplier will be responsible for making their own travel arrangements for fulfilling the requirements of the assignment. Duty of Care is a legal obligation and under FCDO's policy on Duty of Care, the lead supplier is responsible for the Duty of Care of all supplier personnel (including employees, Sub-Contractors and agents) including making the appropriate security arrangements to protect their safety and wellbeing. The supplier must comply with the general responsibilities and duties under relevant health and safety law including appropriate risk assessments, adequate information, instruction, training and supervision, and appropriate emergency procedures. These responsibilities must be applied in the context of the specific requirements of the contract.

FCDO will support by sharing available information with the supplier on security status and developments in-country as appropriate. A copy of the BHC Kampala Duty of Care overall Project Summary Risk Assessment Matrix – March 2022 is attached as Annex 3. Travel advice from the UK government is also available on our website (<https://www.gov.uk/foreign-travel-advice/uganda>).

The supplier must conform to FCDO information security policy at all times.

13. Safeguarding

FCDO requires assurances regarding protection from violence, exploitation and abuse through involvement, directly or indirectly, with FCDO suppliers and programmes. This includes sexual exploitation and abuse but must also be understood as all forms of physical or emotional violence or abuse and financial exploitation.

Building on information provided in bids, FCDO will require an in-depth safeguard risk assessment with priority focus on child protection in general and child labour in particular as there is high risk of child labour within the agricultural sector. The successful bidder is expected to submit the risk matrix during the Inception Phase with a mitigation strategy developed and monitored throughout implementation. Relevant skill set, and capacity is required within the supplier and consortium teams to undertake, implement, and monitor the safeguards risk assessment and mitigation strategies.

14. Disability

The supplier bids must demonstrate that all the interventions are inclusive with clear strategy to identify and support people with disabilities. Building on the bids, the Inception Phase will finalise the strategy.

15. Transparency

The supplier agrees, by choosing to place a bid, to release data on how FCDO funds are 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 approach, and to ensure they have the appropriate tools to enable routine financial reporting, publishing of accurate data and providing evidence of this to FCDO . Further information is available from the International Aid Transparency Initiative (IATI): www.aidtransparency.net.

16. Gender Equality Statement

FCDO requires assurances from the supplier that all interventions will be compliant with the International Development (Gender Equality) Act (2014). If Uganda is to meet the challenge of 1 million people entering the workforce annually by 2040 then agribusiness must deliver jobs for men and women. Component 1A will focus on delivering jobs for women, even if that means it delivers slightly fewer jobs overall.

Annex 1 - Theory of Change for Climate Smart Jobs programme

Theory of Change

Problem	Uganda's recent economic performance has been insufficient to create the jobs necessary for one of the world's fastest growing labour forces. The economy faces the headwinds of climate change which has driven reversals in poverty reduction. Agriculture provides income for three-quarters of households, including the poorest, and is key to Uganda's exports, investment and driving demand in other sectors of the economy. It is largely rain-fed and its lack of adaptation places Uganda as the 12 th most climate vulnerable country. Productivity in agriculture is held back by numerous barriers, including climate risks and unsustainable land management, informal agricultural markets and SHFs, particularly women, are unable to take advantage of the burgeoning external demand.				
Barriers	Agribusinesses need support in structuring otherwise informal agricultural markets	Financial institutions have low incentives to provide private sector credit to agricultural businesses	Lack of long-term financing options with investors considering Ugandan agribusinesses too small, too risky or too early stage.	Climate change and unsustainable land management has reduced the natural resource base of the economy.	Weak business environment, public institutions and shallow base of investors lead to trade and investment underperformance
	Climate adaption and mitigation measures don't get promoted or financed even if they would increase profits				
	75% of women work in agriculture but are less able to access finance, adapt to climate change or make decisions about their agribusiness				
Inputs	Grants and technical assistance are provided to selected agribusinesses to introduce, test and scale market system innovations and climate smart agriculture.	A market incentive facility which provides financial institutions with the necessary incentives (e.g. first-loss, origination / climate smart bonus) to provide credit to SMEs.	Long-term investment into pioneering firms, including those practicing cutting edge climate smart agriculture, considered too risky or immature for commercial providers with additional business incubation function.	Grants and technical assistance to incentivise sustainable land management around agribusinesses.	Technical assistance facility to strengthen Uganda's investment ecosystem and provide draw-down support to remove key barriers to trade & investment.
	Pilot sustainable land management solutions which could be commercialised.				
	Cross-cutting HMG expertise on delivery and influencing				
Outputs	Agribusinesses develop and implement business plans that enable them to test and scale market system innovations (including climate smart) amongst SHFs	Increased volume of loans disbursed among SME agribusinesses in Uganda including climate smart investments	Increased volume of long-term, large-scale investments (including climate smart) into Ugandan agribusinesses	Landscapes restored or preserved. New commercially viable land management solutions proven ready for commercial adoption.	Greater demand for growth capital; improved business services; attraction of new capital providers; and high quality technical assistance to relieve trade & investment constraints.
	Number of people supported to cope with the effects of climate change (ICF KPI 1); Mobilized private finance (ICF KPI 12); Hectares of land that have received sustainable land management practices (ICF KPI 17)				
Outcomes	1. Increased number of men, and women, supported with increased access to markets, diversified livelihoods, income sources, financing, improved inputs and climate information 2. Increase in sales of supported businesses attributed to project interventions 3. Value of investments in businesses supported through project interventions			Outcome 6: Ecosystem value protected (GBP)	Increase in growth-enhancing investments in Uganda and an improved enabling environment for exporters.
	Number of men and women whose climate resilience has been improved (ICF KPI 4)				
Impact	Higher agricultural productivity, commercialization of farming and improved net trade in agroprocessing products will accelerate the process of economic transformation in Uganda, releasing young men and women for wages employment into towns, stimulating demand for non-agricultural products and inducing off-farm wages jobs in services. Uganda is set on a green growth trajectory and GDP, businesses and jobs are no longer held back by unsustainable land management practices, slow-onset change and extreme climatic events.				

Annex 2 – Key Performance Indicators

As set out in Section 4.1, the contract will utilise Key Performance Indicators (KPIs), defined as a set of quantifiable measures that FCDO will use to measure the Supplier's performance of the Services required under the Contract.

This annex sets out:

- Delivery KPIs which will be used during the Inception Phase
- Contract Management KPIs which will be used during the Implementation Phase
- Examples of Delivery KPIs for the Implementation and Exit Phases. At the end of the Inception Phase, and at quarterly intervals (or at an alternative frequency if agreed between the supplier and FCDO), Delivery KPIs for the Implementation Phase must be submitted to the FCDO SRO for approval. The supplier must ensure that each work package has at least one Delivery KPI associated with it each quarter.
- Transparency KPIs which will be used throughout CSJ Component One, and published quarterly

A2.1 - Delivery KPIs - Component 1A – Inception Phase

During the Inception Phase, payment of 30% of fees for Component 1A is linked to the following KPIs.

KPI	Measure of achievement	Acceptance criteria (Including date)	PbR methodology	% of fees for 1A linked to KPI	Critical KPI Y/N	Threshold for critical KPI failure if applicable
Assessed at the end of Month 3 after contract signing						
1A INC – KPI-1	<p>Core Team mobilised and programme management structures for both Component 1A and 1B set up in line with baseline needs. This includes the following requirements:</p> <ul style="list-style-type: none"> i. All of core team hired and started employment ii. All required office(s) rented and equipped; all required transport equipment acquired and operational iii. Organogram and delivery chain map completed, submitted to and approved by FCDO iv. Agreements with consortium partners (where applicable) finalised and submitted to FCDO v. Agreement and documentation of roles and responsibilities of supplier and consortium partners, along with details of ways of working, submitted to and approved by FCDO vi. Appropriate reporting processes submitted to and approved by FCDO 	<p>Requested documentation and evidence must be submitted to FCDO 5 Working Days before the last Working Day of Month 3. FCDO must accept that documents and evidence submitted meet the measurement criteria to an adequate standard.</p>	<p>Each of the six requirements is worth an equal 16.66% of the retained fees for this KPI</p> <p>In case of late delivery of an adequate deliverable for any or all of these requirements, 5% of retained fees for that measurement will be deducted for each Working Day the deliverable is late without FCDO fault</p>	12%	N	NA
1A INC – KPI-2	<p>Strategy for both Component 1A developed and presented to FCDO for undertaking the research necessary to complete the strategy report due in the Inception Phase. The strategy must include:</p>	<p>Requested documentation and evidence must be submitted to FCDO 5 Working Days</p>	<p>Each of the three requirements is worth an equal 33% of the</p>	12%	N	NA

	<ul style="list-style-type: none"> i. Topics to be covered with associated research questions ii. Resourcing strategy, including names for personnel, and budget for each piece of research iii. GANT chart for delivery of all research and completion of summary of conclusions 	before the last Working Day of Month 3. FCDO must accept that documents and evidence submitted meet the measurement criteria to an adequate standard.	<p>retained fees for this KPI.</p> <p>In case of late delivery of an adequate deliverable for any or all of these instances, 5% of retained fees for that measurement will be deducted for each Working Day the deliverable is late without FCDO fault</p>			
1A INC – KPI-3	<p>Develop risk and mitigation framework, including risk register, for both Component 1A and 1B. This must include:</p> <ul style="list-style-type: none"> i. Fiduciary risk management approach ii. Delivery chain risk maps iii. Safeguarding approach (including of vulnerable beneficiary groups), iv. Proposed monitoring and reporting mechanisms. <p>This must be submitted to and approved by FCDO</p>	Requested documentation and evidence must be submitted to FCDO 5 Working Days before the last Working Day of Month 3. FCDO must accept that documents and evidence submitted meet the measurement criteria to an adequate standard.	<p>Each of the four requirements is worth an equal 25% of the retained fees for this KPI.</p> <p>In case of late delivery of an adequate deliverable for any or all of these instances, 5% of retained fees for that measurement will be deducted for each Working Day the deliverable is late without FCDO fault</p>	6%	N	NA
Assessed at the end of Month 6 after contract signing						
1A INC – KPI-4	<p>Strategy report for Component 1A as set out in ToR section 5.5 is submitted and approved by FCDO. Requirements are to include sections as follows by FCDO:</p> <ul style="list-style-type: none"> i. baseline expected impacts of climate change in northern Uganda and implications for smallholder farmers 	Requested documentation and evidence must be submitted to FCDO 5 Working Days before the last Working Day of Month 6. FCDO	<p>Each of the four requirements is worth an equal 25% of the retained fees for this KPI.</p> <p>In case of late delivery of an adequate</p>	9%	Y	An adequate strategy report meeting all requirements is not submitted to and approved

	<ul style="list-style-type: none"> ii. main issues, which cause underperformance in the markets in which smallholders produce and sell agricultural products in northern Uganda (the principal market) and the implications of these issues for future smallholder climate resilience iii. transformative market system innovations, which could possibly be introduced to tackle the issues that cause underperformance in the principal markets and thus weaken climate resilience iv. interventions which will be undertaken to encourage businesses to adopt the desired market system innovations 	must accept that documents and evidence submitted meet the measurement criteria to an adequate standard.	deliverable for any or all of these requirements, 5% of retained fees for that measurement will be deducted for each Working Day the deliverable is late without FCDO fault			by FCDO within 20 Working Days after the end of the quarter
1A INC – KPI-5	<p>Entire teams for the supplier and consortium partners for both Component 1A and 1B mobilised and programme management structures set up in line with baseline needs. This includes the following requirements:</p> <ul style="list-style-type: none"> i. All positions filled, employees have begun employment or have signed a contract to begin at a relevant date ii. Updated organogram and delivery chain map completed iii. Agreements with consortium partners (where applicable) implemented iv. All requirements from “KPI 1A INC – 1” 	Requested documentation and evidence must be submitted to FCDO 5 Working Days before the last Working Day of Month 6. FCDO must accept that documents and evidence submitted meet the measurement criteria to an adequate standard.	<p>Each of the four requirements is worth an equal 25% of the retained fees for this KPI.</p> <p>In case of late delivery of an adequate deliverable for any or all of these requirements, 5% of retained fees for that measurement will be deducted for each Working Day the deliverable is late without FCDO fault</p>	3%	N	NA
1A INC – KPI-6	Options for work package options for Component 1A submitted to and approved by FCDO, as per requirements set out in section 10 of this ToR. This must include deliverables under each proposed work package (including Delivery KPIs)	Requested documentation and evidence must be submitted to FCDO 5 Working Days before the last Working Day of	Retained fees cannot be carried over in case of late delivery	9%	Y	Adequate options for work packages meeting all requirements are not

		Month 6. FCDO must accept that documents and evidence submitted meet the measurement criteria to an adequate standard.				submitted to and approved by FCDO within 20 Working Days after the end of the quarter
1A INC - KPI-7	<p>Submission and approval of all necessary management documents for both Component 1A and 1B as set out in ToR section 3.3, to include:</p> <ul style="list-style-type: none"> i. Theory of change ii. Results framework iii. Logical framework (log-frame) iv. VFM strategy v. Annual budget vi. Monitoring and Learning Strategy vii. Collaboration map viii. Risk and mitigation framework including risk register ix. Stakeholder engagement and Communications strategy x. Asset register xi. Agreed ways of working with FCDO and other partners, including confirmed format and content for all standard reporting during Implementation, including quarterly and annual progress reports. 	Requested documentation and evidence must be submitted to FCDO 5 Working Days before the last Working Day of Month 6. FCDO must accept that documents and evidence submitted meet the measurement criteria to an adequate standard.	<p>Each of the 11 requirements is worth an equal 9.09% of the retained fees for this KPI.</p> <p>In case of late delivery of an adequate deliverable for any or all of these requirements, 85% of retained fees for that measurement will be deducted for each Working Day the deliverable is late without FCDO fault</p>	9%	Y	If any of the requirements are not submitted to and approved by FCDO within 20 Working Days after the end of the quarter

A2.2 - Delivery KPIs - Component 1B – Inception Phase

During the Inception Phase, payment of 30% of fees for Component 1B is linked to the following KPIs.

KPI	Measure of achievement	Acceptance criteria (Including date)	PbR methodology	% of fees for 1B linked to KPI	Critical KPI Y/N	Threshold for critical KPI failure if applicable
Assessed at the end of Month 3 after contract signing						
1B INC – KPI-1	<p>Strategy report for Component 1B as set out in ToR section 6 is submitted to and approved by FCDO, adequately answering all five listed questions:</p> <ul style="list-style-type: none"> i. How should the Uganda Climate Innovation Fund attract ideas and innovations from the widest possible range of contributors? What should the communications strategy to publicise the Fund? ii. What are the lessons learned from similar funds, which have been operated in contexts similar to Uganda? What are the implications for this component? iii. What kinds of support would the Uganda Climate Innovation Fund need to offer different kinds of pioneers to pilot their ideas? What does this mean for the resourcing strategy for this component? What might the role of additional implementing partners be, and how could they be identified for the widest possible range of possible partners? iv. How should the Climate Smart Jobs Board assess the transformative potential of different ideas and innovations, and the likely practicality of undertaking a successful pilot? v. How could the supplier best promote the uptake of ideas and innovations which have been successfully piloted and shown to have transformative potential? 	Requested documentation and evidence must be submitted to FCDO 5 Working Days before the last Working Day of each of each quarter. FCDO must accept that documents and evidence submitted meet the measurement criteria to an adequate standard.	<p>Each of the 6 requirements is worth an equal 20% of the retained fees for this KPI.</p> <p>In case of late delivery of an adequate deliverable for any or all requirements, 5% of retained fees for that measurement will be deducted for each Working Day the deliverable is late without FCDO fault</p>	16.6%	N	NA

	vi. How should the supplier monitor the pilots to ensure that progress is being made towards CSJ Component One objectives?					
1B INC – KPI-2	<p>Documentation for Component 1B required to launch the Uganda Climate Innovation Fund is submitted to and approved by FCDO, including:</p> <ul style="list-style-type: none"> i. Draft ToRs and required materials for pioneers bidding for support under the Uganda Climate Innovation Fund, including support available, criteria for selection, process for making application, and template to fill in to submit concept notes in response to the call for proposals setting out their idea or innovation (max 5 pages), ii. Finalised communications plans and products to launch the Uganda Climate Innovation Fund, including a website and list of stakeholders to target as potential pioneers 	Requested documentation and evidence must be submitted to FCDO 5 Working Days before the last Working Day of each of each quarter. FCDO must accept that documents and evidence submitted meet the measurement criteria to an adequate standard.	<p>Each of the two requirements is worth an equal 50% of the retained fees for this KPI.</p> <p>In case of late delivery of an adequate deliverable for any or all requirements, 5% of retained fees for that measurement will be deducted for each Working Day the deliverable is late without FCDO fault</p>	15%	N	NA
Assessed at the end of Month 6 after contract signing						
1B INC – KPI-3	Options for work packages for Component 1B (different ideas or innovations to be piloted) with accompanying recommendations submitted to and approved by FCDO, as per requirements set out in section 6 and section 10 of this ToR. This must include deliverables under each proposed work package (including Delivery KPIs).	Requested documentation and evidence must be submitted to FCDO 5 Working Days before the last Working Day of each of each quarter. FCDO must accept that documents and evidence submitted meet the measurement criteria to an adequate standard.	Retained fees cannot be carried over in case of late delivery	30%	Y	Adequate options for work packages meeting all requirements are not submitted to and approved by FCDO within 20 Working Days after the end of the quarter

A2.3 - Contract Management KPIs

During the Implementation Phase, payment of 10% of fees is linked to the following Contract Management KPIs. Each of the three Contract Management KPIs is worth an equal 3.33% of fees.

KPI	Measure of achievement	Acceptance criteria (Including date)	PbR methodology	Critical KPI Y/N	Threshold for critical KPI failure if applicable
CM KPI 1 – Innovation, learning and Adaption	<p>Every quarter, the supplier must show, through provision of necessary documentation (workplan, results frameworks, a record of learning and adaption, and any requested data) that:</p> <ul style="list-style-type: none"> i. All funded work packages have defined inputs, success criteria at output level, and criteria to show expected contribution to overall CSJ outcomes and impact. This must include data requirements and future data collection plans. This must be recorded in a workplan and results framework submitted to FCDO. ii. Planned data collection has been undertaken and data processed. This means all data required under (i) for the previous quarter has been collected as planned, analysed, with updates made to the workplan and results framework to reflect this data. If FCDO requests access to raw data, this must be provided within two Working Days of the monthly progress update meeting. iii. Past and expected future performance is assessed in a progress update. This means performance and delivery of work packages have been analysed, individually and collectively, against their actual and/or potential delivery of outcomes. This must include at least analysis of 1) expected causal routes, 2) potential to implement at scale, and 3) potential to generate transformative change as according to the UK's ICF KPI 15¹. iv. Effective learning is undertaken. This means potential changes and adaptation required resulting from assessment under (iii) have 	<p>Requested documentation and evidence must be submitted to FCDO 5 Working Days before the last Working Day of each of each quarter. FCDO must accept that documents and evidence submitted meet the measurement criteria to an adequate standard</p>	<p>Each of the four requirements is worth 25% of the retained fees for this KPI</p> <p>In case of late delivery of an adequate deliverable for requirement i.,ii or iv, 5% of retained fees for that measurement will be deducted for each Working Day the deliverable is late without FCDO fault.</p> <p>Retained fees cannot be</p>	<ul style="list-style-type: none"> i. Y ii. N iii. N iv. N 	<p>An adequate workplan and results framework is not submitted to FCDO within 20 Working Days after the end of the quarter</p>

¹ Climate Change Compass (2018), 'Extent to which ICF intervention is likely to lead to Transformational Change',

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/813600/KPI-15-extent-ICF-intervention-lead-transformational-change.pdf

	been documented, considered and appropriate action taken and recorded.		carried over in case of late delivery of deliverable iv		
CM KPI 2 – Collaboration	<p>Every quarter, the supplier must provide evidence to show that:</p> <ul style="list-style-type: none"> i. Overlaps with other CSJ components are understood. This means the supplier must provide a document which sets out, for each work package, areas where there is an overlap of expertise or activities between CSJ Component 1A, Component 1B, and other components of CSJ. ii. In areas of overlapping expertise, evidence is being gathered pro-actively. This means the supplier must demonstrate to FCDO that, in the last quarter, they have ensured they have access to the latest research and evidence from other components of the CSJ programme and that the implications of this evidence are being considered for delivery of this component. The latest evidence should also be gathered from other important partners as set out by the supplier (eg: FAO, USAID, NARO), iii. In areas of overlapping expertise, evidence is being shared pro-actively. This means the supplier must demonstrate to FCDO that, in the last quarter, they have pro-actively shared evidence and learning with other components of CSJ and other important partners (eg: FAO, USAID, NARO). For other components of CSJ, the supplier must not only share the evidence, but also make suggestions of its possible significance, and make time for follow-up discussions and respond to questions within five Working Days if requested. iv. In areas of overlapping activities, possible synergies are being proactively identified and implemented. This means the supplier must demonstrate to FCDO that, in the last quarter, possible synergies have been pro-actively considered and, where identified, implemented. Examples could include collaboration which lowers costs for example by avoiding duplication, or which improves outcomes for example by sharing contacts or providing complementary services to beneficiaries. 	<p>Requested documentation and evidence must be submitted to FCDO 5 Working Days before the last Working Day of each of each quarter. FCDO must accept that documents and evidence submitted meet the measurement criteria to an adequate standard</p> <p>FCDO will verify the evidence with the implementing partners for other components of CSJ</p> <p>For requirement i), a written document is required. For requirements ii to</p>	<p>Each of the four requirements is worth 25% of the retained fees for this KPI</p> <p>In case of late delivery of an adequate deliverable for any or all of these instances, 5% of retained fees for that measurement will be deducted for each Working Day the deliverable is late without FCDO fault.</p>	N	NA

		iv, evidence can be provided either through a written document or a verbal summary.			
CM KPI 3 – General Performance	<p>FCDO will complete three questions from the FCDO supplier performance scorecard survey and one additional question:</p> <ul style="list-style-type: none"> i. Financial management – in the last three months, the supplier has submitted accurate and timely financial forecasts and invoices <ul style="list-style-type: none"> a. Consistently fails to be accurate and timely (0%) b. Generally accurate and timely, but below what is expected for at least one target (50%) c. Consistently timely and accurate (100%) ii. Quality – in the last three months, the supplier has completed deliverables to what quality? <ul style="list-style-type: none"> a. Consistently below the expected standard (0%) b. Generally, to the required standard, but below what is expected at least once (50%) c. Consistently to at least the required standard (100%) iii. Value & Innovation – in the last three months, has the supply partner demonstrated that they are providing value (through efficiency and effectiveness) and innovation (by presenting new ideas or solutions to existing problems) in their delivery? <ul style="list-style-type: none"> a. Consistently failed to demonstrate value and innovation (0%) b. Generally demonstrated value and innovation in some areas, but has missed opportunities (50%) c. Consistently demonstrates value and innovation (100%) iv. Risk Management – in the last three months, has the supplier identified and managed risks, including fraud? 	The supplier must meet the stated measurement criteria, as judged by FCDO on the last Working Day of each quarter.	<p>Each of the four requirements is judged at either 0%, 50% or 100% achievement.</p> <p>Each of the four requirements is worth 25% of the retained fees for this KPI</p>	N	NA

	<div>a. Consistently failed to identify and manage risks and fraud (0%)</div> <div>b. Manages and identifies most risks and fraud cases with some management issues identified (50%)</div> <div>c. Identifies and manages risks with no issues identified (100%)</div>				
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A2.4 - Delivery KPIs - Components 1A and 1B – Implementation and Exit Phases

During the Implementation and Exit Phases, payment of 20% of fees for Component 1A is linked to delivery KPIs. These must be developed and approved by FCDO and should be linked to either inputs or outcomes / impacts. The following KPIs are given as examples, though the Delivery KPIs used may in fact be different to those below.

KPI	Measure of achievement	Acceptance criteria (Including date)	PbR methodology	% of fees linked to KPI	Critical KPI Y/N	Threshold for critical KPI failure if applicable
Examples of quantitative Delivery KPI for inputs						
1A – Q1 – D-KPI-1	In the last quarter, 10 new businesses provided with the technical support and grants needed to introduce market system innovations	Delivery by the end of Q1 of the Implementation Phase. Results submitted to FCDO as part of quarterly progress update 5 Working Days before the last Working Day of each of each quarter.	Full payment for 100% or greater achievement of target at specified date; Partial payment for achievement between 70-100% Retained fees cannot be carried over in case of late delivery.	Up to 20% of fees for 1A	N	NA
1B – Q8 – D-KPI-1	In the last quarter, 4 pioneers (including new and pre-existing pioneers) supported with sufficient grants or TA to test ideas and innovations in Uganda, and on track to generate sufficient learning to enable confident conclusions about whether the idea/innovation could lead to transformational change by target date.	Delivery by the end of Q8 of the Implementation Phase. Results submitted to FCDO as part of quarterly progress update 5 Working Days before the last Working Day of each of each quarter.	Full payment for 100% or greater achievement of target at specified date; Partial payment for achievement between 70-100% Retained fees cannot be carried over in case of late delivery.	Up to 20% of fees for 1B	Y	2 pioneers supported with grants or TA to test ideas and innovations in Uganda
Examples of discreet Delivery KPI for inputs						
1A – Q1 – D-KPI-2	In the last quarter, research plans executed, including submission to and approval by FCDO of X studies undertaken to deepen knowledge of eg: an issue causing	Requested documentation and evidence must be submitted to FCDO 5 Working Days before the	Each of the X studies is worth an equal 100/X% of	Up to 20% of	N	NA

	underperformance in principal, or a possible market system innovation which could tackle these issues. Each piece of research must convincingly answer the research questions given, and be delivered on time and on budget.	last Working Day of each of each quarter. FCDO must accept that documents and evidence submitted meet the measurement criteria to an adequate standard	the retained fees for this KPI. In case of late delivery of an adequate deliverable for any or all requirements, 5% of retained fees for that measurement will be deducted for each Working Day the deliverable is late without FCDO fault	fees for 1A		
1B – Q12 – D-KPI-1	<p>In the last quarter, for each pilot which has successfully proven that the idea/innovation could lead to transformational change, develop practical and realistic plans which enable the ideas and innovations to be implemented on a large scale without further support from the innovation fund. This must include:</p> <ul style="list-style-type: none"> I. identifying potential business and financing partners (including through other components of the Climate Smart Jobs programme) II. Key political, legal, social, economic, or other barriers to large-scale implementation, as well as proposed solutions. III. A summary of this plan must be submitted to and approved by FCDO 	Requested documentation and evidence must be submitted to FCDO 5 Working Days before the last Working Day of each of each quarter. FCDO must accept that documents and evidence submitted meet the measurement criteria to an adequate standard.	<p>Plans for each of the X pilots must meet both requirements and are worth an equal 100/X% of the retained fees for this KPI.</p> <p>In case of late delivery of an adequate plan for any successful pilot, 5% of retained fees for that plan will be deducted for each Working Day the deliverable is late without FCDO fault</p>	Up to 20% of fees for 1B	N	NA
Examples of quantitative Delivery KPI for Outcomes or Impacts						
1A and 1B – Q12 – D-KPI-1	In the last two quarters, £15 million of investment in businesses adopting promoted market system innovations or piloted ideas and innovations (figures in £million GBP)	<p>Delivery by the end of Q12 of the Implementation Phase.</p> <p>Results submitted to FCDO as part of quarterly progress update 5</p>	Full payment for 100% or greater achievement of target at specified date; Partial payment for achievement between 70-100%	Up to 20% of fees for 1A and 1B	N	NA

		Working Days before the last Working Day of each of each quarter.	Retained fees cannot be carried over in case of late delivery			
1A – Q14 – D-KPI-1	In the last two quarters, 20,000 Ugandan households whose resilience has been improved and an increase in income of 15% because of Component 1A	Delivery by the end of Q14 of the Implementation Phase. Results submitted to FCDO as part of quarterly progress update 5 Working Days before the last Working Day of each of each quarter.	Full payment for 100% or greater achievement of target at specified date; Partial payment for achievement between 70-100% Retained fees cannot be carried over in case of late delivery	Up to 20% of fees for 1A	N	NA
1B – Q14 – D-KPI-1	In the last two quarters, 3 further ideas assessed as likely to enable transformational change ² in Uganda's ability to adapt to and mitigate climate change and promote sustainable land management in agriculture	Delivery by the end of Q14 of the Implementation Phase. Results submitted to FCDO as part of quarterly progress update 5 Working Days before the last Working Day of each of each quarter.	Full payment for 100% or greater achievement of target at specified date; Partial payment for achievement between 70-100% Retained fees cannot be carried over in case of late delivery	Up to 20% of fees for 1B	N	NA

² Transformational change must be generated in line with the UK government's methodology for International Climate Funding².

A2.5 - Transparency KPIs

T-KPI	Measure of achievement	Acceptance criteria	PbR methodology	% of fees linked to KPI	Critical KPI Y/N	Threshold for critical KPI failure if applicable
T-KPI-1 – Contract Management	<p>The percentage of fees at risk paid in the last quarter for the three Contract Management KPIs: CM KPI-1 (Innovation, Learning and Adaption), CM KPI-2 (Collaboration), and CM KPI-3 (General Performance).</p> <p>This T-KPI will not be measured during the Inception Phase</p>	Acceptance criteria varies for each of the three Contract Management KPIs.	<p>100% of the delivery target for the Quarter (Q) will be rated 'Good';</p> <p>76 - 99% the delivery target for the Q will be rated 'Approaching Target';</p> <p>51-75% the delivery target for the Q will be rated 'Requires Improvement'; and</p> <p>50% of less than agreed for the Q will be rated - 'Inadequate'</p>	N/A - 0	N	NA
T-KPI-2 - Delivery KPIs for inputs	<p>The percentage of fees at risk paid in the last quarter for all Delivery KPIs which relate to delivery of Inputs.</p> <p>For the Inception Phase this will comprise all Delivery KPIs.</p> <p>For the Implementation Phase this will comprise of only some of the Delivery KPIs. See 'examples of quantitative Delivery KPI for inputs' and 'examples of discreet Delivery KPI for inputs'.</p>	Acceptance criteria likely to vary for each of the Delivery KPIs.	<p>100% of the delivery target for the Quarter (Q) will be rated 'Good';</p> <p>76 - 99% the delivery target for the Q will be rated 'Approaching Target';</p> <p>51-75% the delivery target for the Q will be rated 'Requires Improvement'; and</p> <p>50% of less than agreed for the Q will be rated - 'Inadequate'</p>	N/A - 0	N	NA
T-KPI-3 - Delivery KPIs for outcomes and impacts	<p>The percentage of fees at risk paid in the last quarter for all Delivery KPIs which relate to deliver of Outcomes or Impacts.</p> <p>For the Implementation Phase this will comprise of only some of the Delivery KPIs. See 'Examples of quantitative Delivery KPI for Outcomes or Impacts'</p>	Acceptance criteria likely to vary for each of the Delivery KPIs.	<p>100% of the delivery target for the Quarter (Q) will be rated 'Good';</p> <p>76 - 99% the delivery target for the Q will be rated 'Approaching Target';</p> <p>51-75% the delivery target for the Q will be rated 'Requires Improvement'; and</p>	N/A - 0	N	NA

	This T-KPI will not be measured during the Inception Phase.		50% of less than agreed for the Q will be rated - 'Inadequate'			
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Section 5

SCHEDULE OF PRICES

1. Payments & Invoicing Instructions

Notwithstanding clause 22.3 of Section 2 (Standard Terms and Conditions), the invoices should be submitted for review to the Project Officer and once approved, electronically quarterly in arrears to the Accounts Payable Section, FCDO Financial Management Group e-invoicing@FCDO.gov.uk.

2. Payments By Results (PbR)

2.1. Inception Phase

Notwithstanding clauses 2.3 - 2.4 of this Section 5 (Schedule of Prices), the Inception Phase shall commence on 1 May 2023. May 2023 shall be Month 1 for the purposes of contract management and the dates for the payment by results mechanism, Key Performance Indicators (KPIs) assessment and payment schedule shall be aligned accordingly.

2.2. Payments By Results (PbR) Methodology

Payments By Results (PbR) Methodology as set out in Section 3 (Terms of Reference).

2.3. Payment Schedule

Payments will be made in accordance with Tab 4.0 (Payment Profiling) of Annex 1 (Commercial Cost Pro Forma) of this Section 5 (Schedule of Prices) or as otherwise agreed between the Parties.

Annex 1
Commercial Cost Pro Forma

Annex 2 Eligible Cost Guidance for Commercial Contracts

Foreign, Commonwealth and Development Office (FCDO)

Programme Expenditure: Eligible Cost Guidance for Commercial Contracts

Programme Expenditure: Eligible Cost Guidance for
Commercial Contracts September 2020 Version 1.0

1. Background to guidance

John Manzoni, the former Chief Executive of the Civil Service, has made it clear that eligible expenditure terms must be employed in all government commercial agreements, to deliver the Government's stated policy that taxpayers' money is used as intended¹. In order to **increase transparency, clarity and consistency** this directive has been extended to include all directly procured contracts.

¹This is an extract from [Managing Public Money](#)

This guidance document provides details of both eligible expenditure and items of expenditure that are expressly ineligible and should be referred to when submitting the standard budget template supporting your commercial procurement bid. The guidance and budget template will help organisations calculate the full cost of a particular project or service, including an appropriate share of all relevant support services and other overheads.

2. Principles of eligibility

The contract amount is to be used solely for costs included in the budget for the delivery of the outputs and outcomes in the log frame or agreed results model framework. These costs must:

- Be actually incurred by the recipient
- Be incurred within the period set out
- Be indicated within the cost budget
- Be incurred in connection with and necessary for implementation
- Be identifiable, verifiable and recorded in the recipient's accounts in accordance with applicable accounting standards and with the beneficiary's usual cost accounting practices
- Be compliant with applicable national law on taxes, labour and any all other relevant national law
- Be reasonable, justifiable and compliant with the principles of sound financial management

Expenditure cost categories containing specific eligible and ineligible definitions are defined within this guidance and the budget should be completed in line with the guidance. A prescribed model to appropriately allocate costs not directly attributable to the project (NPAC) is included.

1. 2.1 Foreign exchange

All costs within the budget must be in GBP. Beneficiaries operating in another currency must convert to GBP at the spot FX rate and the source and value of any exchange rates used should be referenced in the budget.

3. Ineligible costs (applicable to all budget categories)

The following expenditure items are explicitly ineligible across all expenditure cost categories unless permitting them is a specific requirement of the contract (this list is not exhaustive and does not override activities which are deemed eligible and explicitly agreed as part of the contract):

- Lobbying UK government, i.e. activities which aim to influence or attempt to influence Parliament, UK government or political activity, or UK legislative or regulatory action
- Activities which directly enable one part of government to challenge another on topics unrelated to the agreed purpose of the contract
- To petition UK Government for additional funding;
- Activities which may lead to civil unrest
- Activities which discriminate against any group on the basis of age, gender reassignment, disability, race, colour, ethnicity, sex and sexual orientation, pregnancy and maternity, religion or belief
- Interest payments or service charge payments for finance leases
- Gifts
- Statutory fines, criminal fines or penalties
- Payments for works or activities that are fully funded by other sources whether in cash or in kind, for example if premises are provided free of charge, FCDO will not contribute to a notional rent
- Activities in breach of EU legislation on State Aid
- Bad debts to related parties
- Payments for unfair dismissal or other compensation
- Replacement or refund of any funds lost to fraud, corruption, bribery, theft, terrorist financing or other misuse of funds
- The cost of any fines or charges applied by local Governments or by any local public authority
- Fundraising (with the exception of any agreed allocated costs not attributable to the project (NPAC))
- Foreign exchange as a standalone budget line
- Contingency or risk premium
- Depreciation (with the exception of any agreed allocated NPAC costs)
- Debt repayment
- Costs associated with preparing bid or commercial proposal prior to a formal agreement being executed
- Costs incurred prior to a formal agreement being executed
- Unless directly attributable to the programme, advocacy and campaigning, marketing and communications, policy, retainer fees, capital expenditure, land, bank charges and insurance (unless, by exception, explicitly agreed in writing in advance)²

Additional exclusions relating to specific expenditure cost categories are detailed in this guidance and are mandated in addition to the above general ineligible costs. DFID Smart Rules provide further details on how aid funds can and cannot be spent. In case of any doubt, the partner or potential supplier should consult FCDO in advance. DFID Smart Rules are available online at <https://www.gov.uk/government/publications/DFID-smart-rules-better-programme-delivery>.

4. Expenditure cost categories

In an organisation there are two types of costs that are incurred as a result of running a project or service: Direct Programme Costs and Non-Attributable Costs.

Direct Programme Costs are subdivided further into two types of Direct Costs:

(a) Direct project costs: These are all the costs that are clearly and directly *incurred because of the project*. Typically, they include the salaries of project staff, their travel and subsistence, project

materials, and all other costs easily identifiable as part of the project.

(b) Directly attributable project costs: These are all the costs that are clearly and directly *attributable to the project*. Typically, they include country office resources specifically allocated to the project.

Non-Attributable Costs comprise those overhead costs that are not attributable to a project (**NPAC**). These costs (also known as Indirect costs) are incurred by an organisation *in order to support the projects* that it runs

Expenditure in the budget should be classified as either a Direct Programme Cost or NPAC and should follow this guidance with regards to general eligible and ineligible criteria and eligible and ineligible criteria specific to the cost categories listed.

5. Direct programme costs

Direct programme costs are activities and costs directly incurred in the delivery and implementation of the programme and are directly linked to specific project outcomes and results. This generally includes frontline delivery costs and programme management and support costs.

² There are limited circumstances where it is appropriate to include insurance costs, for example to meet legal obligations or where doing so provides value for money (this is an extract from [Managing Public Money](#))

5.1 Frontline programme delivery costs

Frontline delivery expenditure includes commodities for beneficiaries or participants, transport of commodities (excluding vehicles which are capital expenditure and driver salaries which are included under travel costs, but including freight and logistics), storage of commodities, training and associated costs for beneficiaries or participants, disbursements to beneficiaries or participants, and any other frontline delivery costs associated with the delivery of programme outputs. This excludes staff costs, travel accommodation and subsistence, and capital expenditure which should be detailed separately.

5.2 Capital expenditure items

Capital expenditure includes specialist equipment, office furniture and equipment, standard and off-road motor vehicles and any other project related equipment. Any aspect of capital expenditure included must be fully justified as contributing to the sustainable outcome of the project. The cost should be recorded in the year in which the purchase is planned; do not spread the cost of a new purchase over the lifetime of the project. Depreciation is not an allowable expense.

Where existing vehicles and capital items can be used to deliver a FCDO programme, we accept a running and maintenance cost for the use of these to be included in the budget. Ownership of new vehicle and capital items bought using FCDO funds is retained by FCDO throughout the lifetime of the project. The future use of the item is discussed and agreed on project completion.

There is a requirement for a programme asset register to be maintained for all assets purchased at a value of £500 or more.

5.3 Staff costs (including payroll taxes and benefits)

All individuals working under an employment contract, a direct contract (consultant), a sub-contractor or an individual seconded and assigned to the programme should be included on **tab 2.3 – Programme Staff - Pay**. Each salaried and non-salaried staff member should be assigned a job family from the mandatory criteria and the daily fee rate should be individually listed:

- Programme leadership
- Programme management
- Technical advisor
- Programme support and administration

Staff performing roles connected with fund management or monitoring and evaluation will be identified as such under Staff Costs, using technical expertise drop-down analysis options.

The job families are split between international, national and regional staff and potential suppliers must include other mandatory information in supporting tabs. Full details of mandatory information are included in tender guidance. The daily fee rate is deemed to cover the cost of salary remuneration and benefits including superannuation (pension) and payroll taxes. If the cost is that of a sub-contractor, the daily fee rate will be the total invoiced cost chargeable to the project. A line item stating total staff costs will not be accepted.

2. FCDO will only reimburse productive days.

Drivers' salaries should be included in the travel, subsistence and accommodation tab (tab 2.4) of the budget template.

3. Management fees

The costs incurred by the Lead Organisation of managing both the recruitment and project work of external consultants and delivery partner programme staff where these are significant – i.e. they result in specific additional direct programme costs that are in excess of normal organisational establishment cost levels – should be included on tab 2.1 – Programme Activities FPD, with full supporting analysis provided in the Notes box.

4. Other staff-related costs

List elsewhere on the template (normally on *tab 2.1 – Programme Activities FPD*), all other staff costs including, but not limited to:

- clothing, and vaccinations,
- non-salary remuneration and benefits, such as allowances (COLA, hardship, relocation/shipping, rental subsidy)
- staff costs that may be incurred by the potential supplier in relation to programme staff, **including:** training, conferences and workshops related to staff learning and development, conference and retreat costs, technical and professional development including hire of venues are eligible costs.

We will not cover any repatriation or termination costs.

You should include details where time is being donated to programmes at no charge (in-kind contributions).

5.4 Travel, subsistence and accommodation

For all travel undertaken in relation to business (including that related to monitoring, evaluation and learning activities), including air, rail, car hire and purchase and other travel costs, hotel and accommodation costs, subsistence, travel management fees, travel documentation costs (e.g. passport/visa costs). The budget should list trips, title of traveller (where known), dates and value and other mandatory inclusions as detailed in the travel, subsistence and accommodation tab.

In line with FCDO's policy, all journeys by rail or air will be budgeted by a class of travel that is no more than "standard economy" unless higher travel classes are representative of improved value for money or are required to adhere to specific legislation, for example the Equality Act 2010. Your FCDO representative will confirm if this is appropriate and no travel should be booked in a class higher than "standard economy" without express written permission. First class travel will not be permitted under any circumstances.

Alcohol and tobacco are not allowable subsistence items.

Travel and living expenses will be paid at a rate consistent with the HMRC's schedule of rates³.

5.5 Monitoring, Evaluation and Learning costs

Within the budget there will likely be a provision for baseline and on-going data collection and an end of project review. There is no specific ceiling for internal monitoring and evaluation costs, however an assessment will be made as to whether the costs indicated are appropriate for the proposed programme. The budget notes should explain what is covered - for example visits by the UK office of the organisation, -and costs should clearly link to the internal monitoring and evaluation plan as set out in the narrative proposal.

All staffing and travel costs in relation to monitoring, evaluation and learning activities should be included on tabs 2.3 and 2.4 respectively. All other (non-pay/non-travel) costs should be included on the separate Monitoring, Evaluation and Learning tab 2.5.

5.6 Fund management costs

If applicable, all fund management service costs including management fees, challenge fund, loan fund, PMU, and any other costs associated specifically with the management of the fund should be included on tab 2.1 (Programme Activities – FLD) – with the exception of staff and travel-related Fund Management costs which should be included on tabs 2.3 and 2.4 respectively. Details of the calculation model should be included in the budget notes.

³ <https://www.gov.uk/government/publications/scale-rate-expenses-payments-employee-travelling-outside-the-uk> -

6. Non-project attributable costs (NPAC) – refer to Annex 1 for methodologies for sharing NPAC

NPAC are overhead costs that relate to the overall operations, management and identity of the delivery partner rather than to programme services. These costs are necessary for programmes to function although cannot be clearly linked to specific project outcomes and results (i.e. business expenses not including or related to direct labour, direct materials or third-party expenses that are charged directly to projects). Typically, they include overall management and employee costs, administration and support, equipment, space and premises costs, and activities that relate to the whole organisation and

partly support your project, but also support your other projects. NPAC are often also called indirect, core, central or support costs. If you require clarity as to whether an NPAC cost is eligible then please contact your FCDO representative. The inclusions detailed are not exhaustive.

Since different projects make different demands on the organisation it is important to note that NPAC are not necessarily proportional to the direct costs of a project. A straight percentage allocation to the budget is not based on an understanding of your organisation's overheads and is therefore not acceptable.

You are required to calculate the total annual NPAC of your organisation in line with the following budget cost categories (the budget adheres to the principles behind The Chartered Institute of Public Finance and Accounting (CIPFA) guidance *Best value accounting: code of practice, CIPFA, 2000* and has previously been recommended best practice by HM Treasury):

- Premises and office costs
- Central function costs (Board of Directors' costs and support functions costs)
- Governance and strategic development costs

Whilst we have endeavoured to make this structure intuitive and fit across different organisations with different financial structures, we recognise that an organisation's cost categories may not naturally map exactly to the cost categories identified. The overarching principal of the calculation however is to allow for the organisation's NPAC to be appropriately apportioned to the project we are funding and you should therefore align your NPAC with these cost categories.

Your NPAC costs should also, as best possible, align with your organisation's financial statements (audited accounts if applicable). Financial statements must be provided when submitting your budget and will be reviewed by the relevant FCDO staff member. If your organisation's reporting format does not adhere to this requirement you must raise this with the relevant FCDO staff member who will determine an appropriate alternative. Annual NPAC should form the basis of your total NPAC for the expected life of the programme.

6.1 Premises and office costs

This category relates to all costs associated with the organisation's premises and office including rent and imputed rent, mortgage costs, depreciation, management of facilities, building insurance, rates, maintenance and cleaning, groundworks and gardening, utilities, catering, vending services and residential accommodation.

6.2 Central function costs

This category relates to all costs associated with the organisation's Board of Directors including basic salary, maternity and sick pay, other paid leave (sabbatical, vacation, home leave, and paid holidays) overtime, allowances, payroll taxes, pensions, travel and subsistence and telephone.

It also relates to all salary and on-costs associated with the organisation's central functions including but not limited to human resources, finance, information technology, secretarial, internal audit, policy and research and evidence departments, marketing, office management and any other central support functions, travel and subsistence, bank charges and recruitment costs. Governance and strategic development costs

This category relates to external expert and professional services expertise brought in when in-house skills are not available, including payments for services contracted to provide strategic or governance direction, financial, management, procurement, legal, audit, human resources or technical advice. This includes any other internal governance and strategic development cost that is not a central function cost or premises and office cost.

7. Payment basis and cost verification

FCDO and HMG operate on a policy of operational need. Payments are made in arrears according to FCDO policy rules unless in exceptional circumstances and where otherwise agreed. We expect our partners to follow the same principles downstream.

An assessment of the eligibility of the costs included within your commercial bid will be conducted prior to the award of any contract or agreement. ANNEX 1: Sharing NPAC

This section explains how to share your NPAC among programmes on a fair and reasonable basis. This means:

- Each programme's share of the NPAC is appropriate given the nature and extent of its activities (i.e. a programme does not receive a share of overheads that it does not incur).
- There is a rational basis for the method used to share NPAC that can be justified and supported.
- The allocation of NPAC to the programme is only an estimate. It does not have to be too detailed or time consuming. Just make sure the allocation method is fair and reasonable based on the information you have.

The addition of a fee or rate calculated as a standard percentage of programme costs is not considered a fair and reasonable basis of sharing NPAC. This is because this method is not based on understanding of that your NPAC are. Common ways of sharing NPAC are:

Number of staff (FTE): If the number of direct programme staff fairly reflects the relative sizes of your programmes this method may be appropriate. All staff should be shown in terms of full time equivalent (FTE) – i.e. a person who works half the usual weekly hours would be expressed as a 0.5 staff member. If there are many volunteers working on programmes it may be appropriate to include volunteer time in the calculations.

Premises usage: Where premises costs are substantial, it may be appropriate to share costs based on the length of time each programme uses the premises or the floor area occupied by each programme.

Direct programme expenditure: This method is only appropriate if the NPAC are small compared to the total direct programme costs and the direct programme costs in each programme are of a similar type. For example, if one programme is staffed entirely by volunteers and another by paid staff, if this method is used the apportionment to the volunteer led programme may be too low.

Number of beneficiaries: The number of service users or beneficiaries may be an appropriate

basis for sharing NPAC if each beneficiary incurs a similar level of costs or if you will receive funding based on the number of beneficiaries.

Staff time-based methods: If you have one or more managers who each manage several programmes, and the management costs are substantial, it may be appropriate to share these costs based on manager's time spent on each programme. Programmes sometimes require more management time in the start-up and close-down phases, so this can be an effective way of allowing for this.

Sharing NPAC in different ways: Sharing different type of NPAC in different ways is often unnecessary and may not improve the accuracy of your estimates. However, there are times when using more than one basis is appropriate. If some programmes do not incur one category of NPAC then it may be necessary to use a different basis for sharing the different NPAC.

After calculating your programme's share of the NPAC you should consider if the results appear reasonable. Consider:

- Do the results appear reasonable from your knowledge of the programme?
- Are the programme's NPAC costs compared to the programme's direct costs fair and how does this compare to other programmes?
- Is the programme's share of the organisation's entire NPAC fair and how does this compare to other programme's shares?

If you intend raising income for your programme from other sources, we expect those sources to cover their fair share of the programme's NPAC. The department will only fund its share of the programme's overheads. We would not expect to fund a greater share of your NPAC than the share of your direct programme costs you are asking us to fund.