

## CONTRACT FOR SUPPLIER SERVICES

### Section 1 - FORM OF CONTRACT

CONTRACT FOR : The Evidence Fund  
PURCHASE ORDER NUMBER : PROJ10150

#### 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 ("**FCDO**");

**AND:** DNA Economics Pty Ltd ("**Supplier**") whose principal place of business is situated at BLOCK B GROUND FLOOR- WATERKLOOF

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

#### WHEREAS:

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

**IT IS HEREBY AGREED** as follows:

#### 1. Documents

This Contract shall be comprised of the following documents:

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

#### 2. Contract Signature

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

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

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

The Services shall commence on 14 **February 2023** and the end date of the Initial Period shall be until 30 November 2026.

September 2020



Foreign, Commonwealth  
& Development Office



**4. Financial Limit**

Payments under this Contract shall not, in any circumstances, exceed £35,800,000 inclusive of local government tax, if applicable, exclusive of VAT.

**5. Programme Name**

The Programme Name to which this Contract relates is The Evidence Fund (EF).

**6. Time of the Essence**

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

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

Name: [REDACTED]

Position: Head of Commercial – Programme Delivery

Signature:

Date:


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

Name: [REDACTED]

Position: Director

Signature:

Date:



Foreign, Commonwealth and Development Office (FCDO)

**Standard Terms and Conditions – Service Contracts**

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## Preliminaries

### 1. DEFINITIONS AND INTERPRETATION

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

### 2. REPRESENTATIONS AND WARRANTIES

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

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

### **3. FINANCIAL LIMIT**

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

## **Term of Contract**

### **4. CONTRACT TERM**

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

## **Provision of Services**

### **5. OBLIGATIONS OF THE SUPPLIER**

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

## **Supplier Personnel and Supply Chain Matters**

### **6. SUPPLIER PERSONNEL**



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

**7. SUB-CONTRACTORS AND EXCLUSIVITY**

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

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

7.8 The Supplier shall:

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

**8. VISIBILITY OF SUBCONTRACT OPPORTUNITIES**

8.1 The Supplier shall:

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

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

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

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

**9. STAFF TRANSFER**

9.1 The Parties agree that:

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

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

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

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

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

## **10. DUTY OF CARE**

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

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

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

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

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

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

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

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

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

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

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

## **11. PROCUREMENT OF EQUIPMENT**

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

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

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

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

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

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

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

## **Contract Governance**

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

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

**15. OPEN BOOK ACCOUNTING AND AUDIT**

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

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

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

## 16. EXIT MANAGEMENT

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

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



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

## PAYMENT AND TAXATION

### 17. Charges

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

### 18. VAT

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

### 19. RETENTION AND SET OFF

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

### 20. SUPPLIER PROFIT

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

### 21. SATISFACTORY PERFORMANCE

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

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

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

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

## **24. TAX COMPLIANCE**

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

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

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

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

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

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

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

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

## **26. SECURITY REQUIREMENTS**

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

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

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

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

## **27. MALICIOUS SOFTWARE**

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

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

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

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

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

## **28. TRANSPARENCY**

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

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

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

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

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

28.6 The Supplier shall:

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

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

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

28.7.1 as required in the terms of reference;

28.7.2 annually;

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

28.7.4 as part of the project completion process.

## **29. CONFIDENTIALITY**

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

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

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

29.2 Clause 29.1 shall not apply to the extent that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30.7.2 in chronological order;

30.7.3 in a form that is capable of audit;

30.7.4 at its own expense.

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

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

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

### **32. FCDO DATA**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 34. PUBLICITY AND BRANDING

34.1 The Supplier shall not:

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

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

## Liabilities

### 35. LIMIT OF LIABILITY

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

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

### **36. INDEMNITY**

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

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

### **37. INSURANCE**

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

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

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

## **Control of Contract**

### **38. VARIATIONS**

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

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

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

38.2.2 a formal, technical and commercial justification.

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

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

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

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

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

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

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

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

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

39.2.3 FCDO receiving notification under both Clauses 39.3 and 39.4.

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

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

## Default and Termination

### 40. FCDO REMEDIES FOR DEFAULT

#### 40.1 Remedies

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

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

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

#### 40.2 Rectification Plan Process

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) becomes bankrupt; or



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

44.3.5 the Supplier is a company and:

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

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

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

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

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

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

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

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

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

45.3.2 reject the Variation.

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

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

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

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

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

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

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

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

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

## MISCELLANEOUS AND GOVERNING LAW

### 47. DISPUTE RESOLUTION PROCEDURE

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

### 48. PREVENTION OF FRAUD AND BRIBERY

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

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

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

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

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

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

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

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

## 50. SAFEGUARDING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

50.8 Failure by the Supplier to:

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

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

**51. DISCRIMINATION**

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

**52. LAW AND JURISDICTION**

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

**53. ENVIRONMENTAL REQUIREMENTS**

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

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

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

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

#### **55. WAIVER**

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

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

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

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

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

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

## 58. NOTICES

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

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

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

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

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

- 58.3.2 any notice in respect of:

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

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

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

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

## SCHEDULE 1: DEFINITIONS

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

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

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

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

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

**“Auditor”** means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

**“FCDO Background IPR”** means:

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

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

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

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

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

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

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

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

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

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

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

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

**“Euro Compliant”** means that:

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

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

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

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

**“Expiry Date”** means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**“Prohibited Act”** has the meaning;

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

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

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

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

(c) an offence:

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

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

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

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

**“Project Specific IPRs”** means:

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

but shall not include the Supplier Background IPR;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) from, to or at which:

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

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

(b) where:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**“Supplier Background IPRs”** means;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



## SCHEDULE 2: STAFF TRANSFER

### 1. DEFINITIONS

In this Schedule 2, the following definitions shall apply:

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

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

**2. INTERPRETATION**

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

**PART A****TRANSFERRING FCDO EMPLOYEES AT COMMENCEMENT OF SERVICES****1. RELEVANT TRANSFERS****1.1** FCDO and the Supplier agree that:

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

**1.2** FCDO shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring FCDO Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) FCDO; and (ii) the Supplier and/or any Notified Sub-Contractor (as appropriate).

**2. FCDO INDEMNITIES**

**2.1** Subject to Paragraph 2.2, FCDO shall indemnify the Supplier and any Notified Sub-Contractor against any Employee Liabilities arising from or as a result of:

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

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

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

### 3. SUPPLIER INDEMNITIES AND OBLIGATIONS

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

3.1.8 any claim made by or in respect of a Transferring FCDO Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring FCDO Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from FCDO's failure to comply with its obligations under regulation 13 of the Employment Regulations; and

3.1.9 a failure by the Supplier or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above.

3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of FCDO whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from FCDO's failure to comply with its obligations under the Employment Regulations.

3.3 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring FCDO Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between FCDO and the Supplier.

#### 4. INFORMATION

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

#### 5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.

5.2 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by FCDO relating to pensions in respect of any Transferring FCDO Employee as set down in:

5.2.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;

5.2.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;

5.2.3 HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or

5.2.4 the New Fair Deal.

5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Variation Procedure.

#### 6. PENSIONS

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

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

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

**2. FUTURE SERVICE BENEFITS**

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

**3. FUNDING**

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

**4. PROVISION OF INFORMATION**

The Supplier and FCDO respectively undertake to each other:

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

## 5. INDEMNITY

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

## 6. EMPLOYER OBLIGATION

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

## 7. SUBSEQUENT TRANSFERS

The Supplier shall:

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

## 8. BULK TRANSFER

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



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

**9.1** FCDO and the Supplier agree that:

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

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

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

**10. FORMER SUPPLIER INDEMNITIES**

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

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

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

(a) any collective agreement applicable to the Transferring Former Supplier Employees; and/or

(b) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;

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

(a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and

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

**10.1.4** a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;

**10.1.5** any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Sub-Contractor as appropriate may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and

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

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

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

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

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

## **11. SUPPLIER INDEMNITIES AND OBLIGATIONS**

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

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

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

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

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

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

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

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

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

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

**11.1.8** any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations; and

**11.1.9** a failure by the Supplier or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above.

**11.2** The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.

**11.3** The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

## **12. INFORMATION**

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

## **13. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**

**13.1** The Supplier shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by FCDO relating to pensions in respect of any Transferring Former Supplier Employee as set down in:

**13.1.1** the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;

**13.1.2** HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;

**13.1.3** HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or

**13.1.4** the New Fair Deal.

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

## **14. PROCUREMENT OBLIGATIONS**

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

## **15. PENSIONS**

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

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

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

**2. FUTURE SERVICE BENEFITS**

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

**3. FUNDING**

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

#### 4. PROVISION OF INFORMATION

The Supplier and FCDO respectively undertake to each other:

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

#### 5. INDEMNITY

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

#### 6. EMPLOYER OBLIGATION

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

#### 7. SUBSEQUENT TRANSFERS

The Supplier shall:

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

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

#### 8. BULK TRANSFER

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

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

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

**2. INDEMNITIES**

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

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

2.4 The indemnities in Paragraph 2.1:

2.4.1 shall not apply to:

- (a) any claim for:
  - (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
  - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or
- (b) any claim that the termination of employment was unfair because the Supplier and/or any Sub-Contractor neglected to follow a fair dismissal procedure; and

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

**3. PROCUREMENT OBLIGATIONS**

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



**PART D****EMPLOYMENT EXIT PROVISIONS****1. PRE-SERVICE TRANSFER OBLIGATIONS**

**1.1** The Supplier agrees that within twenty (20) Working Days of the earliest of:

- 1.1.1** receipt of a notification from FCDO of a Service Transfer or intended Service Transfer;
- 1.1.2** receipt of the giving of notice of early termination or any Partial Termination of this Contract;
- 1.1.3** the date which is twelve (12) months before the end of the Term; and
- 1.1.4** receipt of a written request of FCDO at any time (provided that FCDO shall only be entitled to make one such request in any six (6) month period),

it shall provide in a suitably anonymised format so as to comply with the DPA, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by FCDO.

**1.2** At least thirty (30) Working Days prior to the Service Transfer Date, the Supplier shall provide to FCDO or at the direction of FCDO to any Replacement Supplier and/or any Replacement Sub-Contractor:

- 1.2.1** the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
- 1.2.2** the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).

**1.3** FCDO shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-Contractor.

**1.4** The Supplier warrants, for the benefit of FCDO, any Replacement Supplier, and any Replacement Sub-Contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.

**1.5** From the date of the earliest event referred to in Paragraph 1.1, the Supplier agrees, that it shall not, and agrees to procure that each Sub-Contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of FCDO (not to be unreasonably withheld or delayed):

- 1.5.1** replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
- 1.5.2** make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);
- 1.5.3** increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- 1.5.4** introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
- 1.5.5** increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- 1.5.6** terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

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

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

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

## **2. EMPLOYMENT REGULATIONS EXIT PROVISIONS**

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

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

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

**2.6** If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-Contractor, FCDO shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-Contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.

**2.7** If after the fifteen (15) Working Day period specified in Paragraph 2.5.2 has elapsed:

**2.7.1** no such offer of employment has been made;

**2.7.2** such offer has been made but not accepted; or

**2.7.3** the situation has not otherwise been resolved

the Replacement Supplier and/or Replacement Sub-Contractor, as appropriate may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

**2.8** Subject to the Replacement Supplier and/or Replacement Sub-Contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

**2.9** The indemnity in Paragraph 2.8:

**2.9.1** shall not apply to:

**(a)** any claim for:

**(i)** discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

**(ii)** equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

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

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

**2.9.2** shall apply only where the notification referred to in Paragraph 2.5.1 is made by the Replacement Supplier and/or Replacement Sub-Contractor to the Supplier within six (6) months of the Service Transfer Date.

**2.10** If any such person as is described in Paragraph 2.5 is neither re-employed by the Supplier or any Sub-Contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-Contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee.

**2.11** The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Personnel List before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

**2.11.1** the Supplier and/or any Sub-Contractor; and

**2.11.2** the Replacement Supplier and/or the Replacement Sub-Contractor.

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

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

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

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

## SCHEDULE 3: INSURANCE REQUIREMENTS

### 1. OBLIGATION TO MAINTAIN INSURANCES

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

### 2. GENERAL OBLIGATIONS

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

### 3. FAILURE TO INSURE

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

### 4. EVIDENCE OF POLICIES

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

### 5. AGGREGATE LIMIT OF INDEMNITY

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



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

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

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

## 6. CANCELLATION

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

## 7. INSURANCE CLAIMS

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

7.2 Except where FCDO is the claimant party, the Supplier shall give FCDO notice within twenty (20) Working Days after any insurance claim in excess of £358,000.00 relating to or arising out of the provision of the Services or this Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by FCDO) full details of the incident giving rise to the claim.

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

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

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

1.1 The Supplier

**2.INTEREST**

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

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

2.1.2 loss of or damage to property;

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

**3.LIMIT OF INDEMNITY**

3.1 Not less than £10,000,000.00 in respect of any one occurrence, the number of occurrences being unlimited, but [£10,000,000.00 any one occurrence and in the aggregate per annum in respect of products and pollution liability.

**4.TERRITORIAL LIMITS**

4.1 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 £35,800.00 for each and every third party property damage claim (personal injury claims to be paid in full).

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

1.1 The Supplier

**2.INTEREST**

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

**3.LIMIT OF INDEMNITY**

3.1 Not less than £10,000,000.00 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 £35,800.00 each and every claim.

**PART C: UNITED KINGDOM COMPULSORY INSURANCES**

**1. GENERAL**

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

## **SCHEDULE 4: TENDER**

### **1. GENERAL**

**1.1** This Schedule 4 sets out a copy of the Supplier's Tender, including:

**1.1.1** Technical Proposal submitted – August 2021 (Annex 1)

**1.1.2** Commercial Proposal submitted – August 2021 (Annex 2)

**1.2** Subject to Clause 1.4, in addition to any other obligations on the Supplier under this Contract, the Supplier shall provide the Services in accordance with the Tender.

APPENDIX A. CONTRACT AMENDMENT LETTER

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

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

File Ref: [  
Date: [

Contract Amendment No: [

CONTRACT FOR: [

CONTRACT NUMBER: [

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

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

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

Name: [

Position:

Signature:

Date: [

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

Name: [

Signature:

Date:

## APPENDIX B



## FCDO Supply Partner Code of Conduct

### **Principles**

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

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

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

### **FCDO Supply Partner responsibilities**

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

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

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

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

### **Scope**

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



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

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

### Key Performance Indicators KPI 1 a - c

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

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

#### **Specific requirements include:**

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

## **2. Ethical Behaviour**

### Key Performance Indicators KPI 2 a- f

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

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

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

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

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

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

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

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

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

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

### 3. Transparency and Delivery Chain Management

Key Performance Indicators KPI 3 a – f

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

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

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

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

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

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

#### 4. Environmental issues

Key Performance Indicators KPI 4 a – b

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

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

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

#### 5. Terrorism and Security

Key Performance Indicators KPI 5 a – d

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

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

#### **Specific requirements:**

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

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

Key Performance Indicators: KPI 6 a – d

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

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

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

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

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

**Specific requirements:**

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

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

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

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

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

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

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

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

Contract Checks and Compliance KPIs		KPI target	Specific Contractual link	Checking mechanism
i.	Declaration of acceptance of the FCDO Supply Partner Code of Conduct	Annual declaration submitted by contracted Supply Partner on behalf of delivery chain	Contract Terms and Conditions Clause 5.1 and Clause 7.7	Declaration of acceptance at the applicable level of compliance with each of the 6 sections received
	Declaration of sign up to the UN Global Compact	Annual declaration submitted by the direct Supply Partner	Standard Selection Questionnaire (SSQ)	Declaration of applicable sign up / application received
1.	<b><u>VfM and Governance standards</u></b>			
a)	Economic and governance policies in practice	Annual updated documentation provided (copy of Policies with detailed annual financial breakdown relating to contract)	Terms and Conditions Clauses 13, 14 & 15	Annual contract review/programme management  Audit checks Compliance checks
b)	VfM being maximised over the life of a contract <ol style="list-style-type: none"> <li>1. By confirmation of annual profit level fluctuations since tender submittal</li> <li>2. by timely identification and resolution of issues</li> <li>3. ensuring lessons learned are shared</li> </ol>	Updated documentation submitted once annually	Contract T&Cs Clauses 15 & 20  Terms of Reference  Terms of Reference	Compliance checks  Annual contract review/programme management Compliance checks  Annual contract review/programme management Compliance checks

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

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

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



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

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

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

**X denotes full compliance 1 required**

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

**Compliance Level 1**

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

**Compliance Level 2**

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

**Compliance Level 3**

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

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

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

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

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

**UN Global Compact – Human Rights**

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

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

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

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

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

<p><b>In the workplace</b></p> <ul style="list-style-type: none"><li>• by providing safe and healthy working conditions</li><li>• by guaranteeing freedom of association</li><li>• by ensuring non-discrimination in personnel practices</li><li>• by ensuring that they do not use directly or indirectly forced labour or child labour</li><li>• by providing access to basic health, education and housing for the workers and their families, if these are not provided elsewhere</li><li>• by having an affirmative action programme to hire victims of domestic violence</li><li>• by making reasonable accommodations for all employees' religious observance and practices</li></ul>
<p><b>In the community</b></p> <ul style="list-style-type: none"><li>• by preventing the forcible displacement of individuals, groups or communities</li><li>• by working to protect the economic livelihood of local communities</li><li>• by contributing to the public debate. Companies interact with all levels of government in the countries where they operate. They therefore have the right and responsibility to express their views on matters that affect their operations, employees, customers and the communities of which they are a part</li><li>• through differential pricing or small product packages create new markets that also enable the poor to gain access to goods and services that they otherwise could not afford</li><li>• by fostering opportunities for girls to be educated to empower them and also helps a company to have a broader and more skilled pool of workers in the future, and</li><li>• perhaps most importantly, a successful business which provides decent work, produces quality goods or services that improve lives, especially for the poor or other vulnerable groups, is an important contribution to sustainable development, including human rights</li><li>• If companies use security services to protect their operations, they must ensure that existing international guidelines and standards for the use of force are respected</li></ul>

**TERMS OF REFERENCE**  
**THE EVIDENCE FUND (Fund Manager)**  
**PROJ10150**

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## Evidence Fund (EF) Glossary

**Concept Notes:** Project Concept Notes submitted by FCDO to the Supplier. See Section F for further details.

**FCDO Component Leads:** A FCDO staff member from each of the FCDO Regional Research Hubs (South Asia, East Africa, MENA) and Evaluation Unit that leads on the overall management of the respective component.

**FCDO Evidence Fund Teams:** The respective FCDO Regional Research Hub/Evaluation Unit that will be the direct recipients of the services provided by the Supplier.

**FCDO Programme Management Group (PMG):** The central FCDO team responsible for providing day to day programme management of the Evidence Fund and managing the contract with the Supplier. See Section C.

**FCDO Project Lead:** An FCDO staff member (often a representative of the Regional Research Hubs or Evaluation Unit) that oversees a particular project.

**Evidence Fund Board (EFB)** will provide strategic oversight ensuring that the programme is in line with FCDO strategic priorities. See Section C.

**Senior Responsible Owner (SRO):** Person in FCDO who will have ultimate management responsibility and accountability.

**Project Terms of Reference (ToRs):** Terms of Reference developed by Supplier outlining how the Supplier will deliver the specific project and meet the requirements of the Concept Note. See Section F.

**Research Pool:** Pool of local and international research organisations, who can meet FCDOs' research and evidence needs.

**Supplier Director of Operations and Research:** A Supplier point of contact who will be responsible for and oversee all activities of the EF Management team bringing together the strategic vision with the operational implementation to ensure successful performance and delivery of outputs and results.

**Regional Research and Relationship Manager:** The Supplier's lead for the specific Regional Component. The Regional Research and Relationship Manager will act as the main interface between FCDO Component Leads and the Supplier.

**Local and Regional Institutions/Providers:** Given the importance of contextual knowledge and in-country expertise, the programme will seek to enhance engagement of institutions based in FCDO's target (ODA eligible) countries with the EF. These will be referred to as locally or regionally based institutions/providers, which shall be those with local leadership, an established and evidenced track record of undertaking and delivering relevant work in the focus countries, an extensive and currently active in-country network, and offering appropriate diversity of academic and professional expertise to ensure high quality outputs.

## Section A – Background

### Introduction

1. The nature of poverty and the global context for tackling it are changing. Global extreme poverty may rise in 2020 - for the first time in the last two decades - as the economic and social disruption caused by the Covid-19 pandemic compounds the existing problems of conflict and climate change.<sup>1</sup> By 2030, around 80% of extreme poor will live in fragile and conflict affected states (FCAS) with countries increasingly trapped in cycles of conflict, most of them in Africa. Rapid population growth in many of these countries will continue to stall progress on poverty, coupled with rising human capital investment needs, migratory pressures and weak job growth for growing youth populations. Additionally, climate change is emerging as a particular threat in South Asia and parts of Africa with large populations vulnerable to the impacts of sea level rise and extreme climate events and surviving with limited adaptation options.
2. The Foreign, Commonwealth and Development Office (FCDO) is a new Department of the Government of United Kingdom, formed in September 2020, following the merger of the Department for International Development (DFID) and the Foreign and Commonwealth Office (FCO). The mission of the Research and Evidence Directorate (RED) within FCDO is to develop and deliver new technologies and innovations that can help solve development challenges, test high potential interventions, and support the delivery of HMG objectives particularly in education, climate change, prosperity, global security and global influence. It delivers strong technical economic, science and analytical functions in support of strategic and operational decision-making and quality assurance. It currently has staff based in eight locations: London, East Kilbride, New Delhi, Kathmandu, Jakarta, Nairobi, Lagos and Pretoria. Its Regional Research Hubs provide country-specific and regionally relevant evidence and research in response to local and regional priorities including strengthening science, innovation and research systems.
3. There are many types of evidence that FCDO needs to provide and use to ensure that its programmes and policies are effective in achieving intended development impacts and that the maximum value is returned for every pound spent. To maximise the impact and return on investments, FCDO must put this evidence base to work – translating knowledge into state-of-the-art policies and supporting FCDO country programme teams and ODA-spending HMG partners to use evidence to add value to their programmes. The EF will support responses to a broad spectrum of evidence needs by generating operationally relevant research, analysis, evaluation and syntheses to inform policy and programming decisions. This will operate as a single coordinated, research and evidence platform to facilitate knowledge synthesis, translation and engagement with policymakers – beyond a more traditional evidence generation function. In the process, The EF brings together several programmes previously delivered across RED.

### What is needed?

4. FCDO is seeking to appoint a Supplier to oversee and manage the EF. The primary responsibility of the Supplier will be to manage procurement competitions for research and evaluation projects, conduct due diligence assessments on prospective sub-

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<sup>1</sup> <https://www.worldbank.org/en/topic/poverty/overview> (Accessed 12.12.20)

contracted Research Pool providers, where relevant, and manage research projects implemented by the sub-contracted research organizations.

5. The EF is made up of eight components, four or five of which will be delivered in partnership with the Supplier. In each of the four components delivered in partnership with the Supplier, FCDO will have some delegated responsibility for managing and shaping their respective EF components. The table below outlines the components and relevant FCDO teams.

*Table 1: Evidence Fund Components, Fund Manager's involvement*

Component	Delivered by	Fund Manager involved
Covid Collective (completed and closed)	Governance, Conflict and Humanitarian	No
East Africa	East Africa Research and Innovation Hub	Yes
Middle East and North Africa	UK Hub	Yes
South and South-East Asia	South Asia Research Hub; Global Science HQ	Yes
Southern Africa	Southern Africa Research and Innovation Hub	No
West Africa	West Africa Research and Innovation Hub	To be confirmed, dependent on budget
Evaluation	Evaluation Unit	Yes
Evidence Synthesis Products <sup>2</sup>	UK Hub	No

6. The Supplier will also have responsibility for a number of cross-cutting activities in relation to the programme, including knowledge management and dissemination, monitoring and learning, and establishing a technical assistance facility for additional administrative and programme management support to FCDO activities in East Africa, South Asia, and Middle East and North Africa (MENA).<sup>3</sup> A full list of Supplier activities, and roles and responsibilities are elaborated in Section C.

## **Section B - Recipients and beneficiaries**

7. The EF procures and manages research and evaluations that primarily benefit ODA eligible countries. Most research and evaluations paid for by the EF are country-specific, and all respond to requests for evidence to inform programme or policy decisions. Primarily serving research requests from HMG's Embassies and High Commissions in ODA eligible countries, and from HMG policy and strategy teams, the EF strengthens the evidence behind the UK's priority international development investments and development diplomacy.
8. The EF also invests modest amounts of non-ODA, to strengthen the evidence behind wider UK foreign policy. FCDO does not expect to involve the supplier in commissioning non-ODA research.

<sup>2</sup> The Evidence Synthesis for Policy component response to research requests from FCDO policymakers for rapid evidence assessments, systematic reviews and evidence maps that cover multiple regions, or the entire developing world.

<sup>3</sup> The programme will retain options to expand to meet emerging demand for research evidence and evaluation products. One potential source of additional demand may be in West and Southern Africa.

9. Research/evidence commissions could involve a partnership between stakeholders which may include a FCDO country programme team, policy division, the relevant sectoral research team in RED and one or more appropriate Heads of Profession within FCDO.
10. Research outputs will also constitute global/ regional public goods and will be available for use by stakeholders including partner governments, bilateral and multilateral donors and the wider academic and policy communities, except in specific cases where outputs are considered sensitive by FCDO or do not achieve a quality standard suited for external publication (and a considered decision is therefore taken to limit circulation).<sup>4</sup>

## **Section C - EF management and governance structure**

### **EF stakeholders**

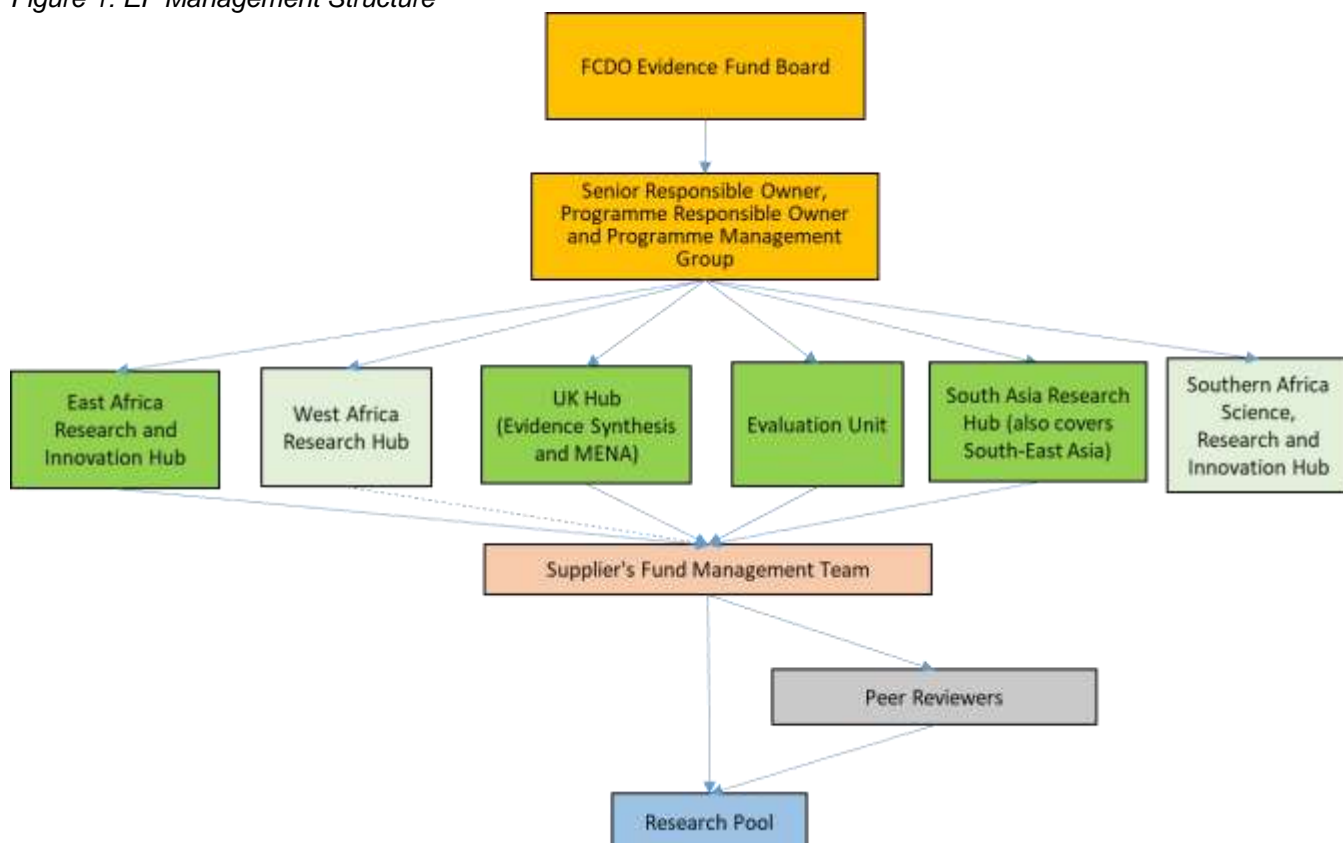
11. The successful delivery of the EF will require the Supplier to establish effective partnerships with several FCDO stakeholders and end-users of the research and evaluation evidence produced by the programme. These include the EF Senior Responsible Owner (SRO), Programme Responsible Owner (PRO), Programme Management Group (PMG)<sup>5</sup>, Evidence Fund Board (EF Board), Component Leads and Project Leads.
12. The EF Board provides strategic direction, thought leadership and challenge functions. It typically meets 2-3 times per year and is comprised of the Head and Deputy Head of FCDO's Global Science Department, the EF SRO and one more board member from FCDO's Research and Evidence Directorate.
13. The FCDO management of the EF is led by a Senior Responsible Owner (SRO). The SRO and his FCDO Programme Management Group (PMG) manage the contract with the Supplier, approving most programme-wide (as opposed to project or component-specific) deliverables, as well as invoices. Each component has an FCDO Component Lead, supported by research specialists and programme staff, who will approve research and evaluation project deliverables within their respective component.
14. FCDO Component Leads have delegated management of budgets approved by the EF Board. Component Leads establish local management arrangements with the Supplier to meet their demand for research, evidence and evaluation and to manage their annual budgets. The Supplier will provide a Regional Research and Relationship Manager for each regional component, and an Evaluation Manager for the Thematic Evaluation component, who will be the primary interface between FCDO Component Leads and the Supplier.

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<sup>4</sup> Final products will be published and be publicly available in compliance with FCDO's [Open Access Policy](#) unless decided otherwise, as stated above.

<sup>5</sup> The PMG is made up of the EF SRO, a technical adviser (as needed), a Programme Responsible Owner (PRO), a programme officer and a monitoring and evaluation adviser. The PMG will work closely with the FCDO Component Leads (for the four components, plus the two FCDO-managed components; see below) to receive input on workplans/projects, support delivery of the programme and to manage performance of the programme.

Figure 1: EF Management Structure



## Section D - Impact, outcomes and outputs

15. The expected **impact** of the programme is evidence-informed policies, programmes and practices which contribute to positive development outcomes and poverty reduction.
16. The expected overall **outcome** of the programme will be accessible high-quality research, evaluation and evidence products targeting policy, country-specific and regional priorities available for use by FCDO and the international development sector.
17. The expected **outputs** from the programme are:
  - Production of high-quality, policy, country and regionally relevant evidence products demanded by FCDO country programme teams in the priority regions
  - High-quality, evaluation products which address key priorities
  - Peer reviewed research products, such as academic papers
  - Well planned and executed research uptake strategies of individual research projects that ensure that this new evidence contributes to policies and programmes in the region and globally
18. FCDO has developed a Theory of Change<sup>6</sup> outlining how the Evidence Fund outputs are intended to achieve the expected outcomes and make progress toward achieving the programme's expected Impact. The Theory of Change also details assumptions made and the evidence available to support these assumptions. Please note that the

<sup>6</sup> Available upon request.

Theory of Change includes component outputs that form part of the broader EF programme that will be led by FCDO.

## Section E - Scope

19. The Supplier will support FCDO by delivering a coordinated demand-driven platform that directly addresses two core needs:
  - 19.1. Context-specific research for countries/ regions within the programme remit to enable FCDO country and policy teams focus to answer their specific, priority research questions not covered by the existing global/ regional evidence base. The Supplier will be fully responsive, through the Regional Research Hubs, to FCDO needs and will enhance the local evidence base for HMG and the wider development community, where relevant. The Supplier will be flexible to respond to strategically relevant, high impact, high quality evidence requests from countries outside the current focus of the three Regional Research Hubs, as and when required.
  - 19.2. Thematic evaluations that draw together analysis of effectiveness and learning from FCDO funded programmes on what works to address high priority development challenges across different contexts. This will help to bridge the current gap in knowledge, arising out of FCDO's decentralised approach to evaluation where evaluation evidence generated by individual programmes may not necessarily be shared across FCDO, missing opportunities to capitalise upon learning.
20. The scope of Services required can be categorised into two interconnected workstreams. In the first workstream, FCDO requires the Supplier to deliver "portfolio management" services which facilitate access to high quality research and evidence markets leading to effective commissioning of required products, and to manage their effective delivery, while providing ancillary services in support of this objective such as peer review expertise and quality assurance. In the second workstream, FCDO requires the Supplier to deliver high-quality research, evidence and evaluation products via Research Pool providers.<sup>7</sup>

### Portfolio management

21. The Core Team "portfolio management" Services delivered by the Supplier will include the commissioning of primary and secondary research and evidence products; and knowledge translation of policy messages and recommendations from these products so that FCDO Project Leads/Teams can feed these back to the relevant set of beneficiaries.
22. The main objective of the Supplier in respect of "portfolio management" services will be to procure and manage research projects, which have been identified, scoped<sup>8</sup> and

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<sup>7</sup> See Section G – "Required Capacity and Expertise and Access to Supply Markets"

<sup>8</sup> FCDO will conduct some initial scoping however the Supplier will be routinely responsible for fully scoping projects, developing FCDO's initial work to identify. See Section F – "Mechanisms of Demand" for more details.

approved by FCDO. FCDO Project Leads will retain intellectual leadership of all products commissioned.

23. Table 2 sets out expected respective roles and responsibilities of the Supplier and FCDO Team. The Supplier will deploy a range of procurement mechanisms, ranging from open competitive calls for proposals to single sourcing (in exceptional cases). The Supplier will be required to flexibly implement procurement processes, tailoring each process to the needs of each discrete Project commissioned. While the procurement processes must be adaptable, The EF will follow a determined pathway when raising demand for products, as detailed at Section F - "Mechanisms of Demand."
24. The Supplier will operate a flexible mechanism that is able to respond efficiently to rapid commissioning demand for evidence and analysis from country programme teams or policy teams, which will be channelled through the relevant Regional Research Hub or Evaluation Unit. Rapid commissioning demand may include high quality analyses of regional data and/or rapid evidence reviews on a specific themes/issue to feed into a strategic or programmatic need (such as Business Planning, Business Cases, Ministerial Submissions, and crisis response such as for Covid-19). In such instances where rapid commissioning is required, the Supplier will deliver products using transparent - but not necessarily competitive – procurement processes.
25. FCDO may instruct the Supplier (in exceptional cases) to single source requirements where best fit organisations are known to exist and are able to deliver a specific requirement, or where rapid / time-sensitive commissioning and delivery of products is required. Route to market decisions will be discussed between FCDO Project and Component Leads, and the Supplier will leverage the collective market intelligence of these parties in identifying most appropriate modalities. Where single source is instructed, the Supplier will be required to deliver due diligence services, as appropriate, and to conduct negotiations to maximise the value of single source agreements in Technical and Commercial terms.
26. The Supplier will be required to develop procurement documentation and maintain capability in reviewing commercial bids, conducting due diligence, and undertaking contractual negotiations. The Supplier will use a dynamic, flexible Research Pool (comprising local, regional and international organisations) to deliver high-quality research, evidence and evaluation products that can meet FCDO demand for timely delivery of evidence. The Research Pool is likely to get expanded continuously over the duration of the programme, as newer organisations begin to participate in competitive procurement processes and potentially start delivering research.
27. The Supplier will be responsible for ongoing management of the portfolio of work commissioned via The EF and will deploy best practice contract management and output monitoring of work commissioned, as described in [FCDO's Programme Operating Framework mandatory rules](#). The Supplier will use reasonable endeavours to ensure products are delivered on time and to the required standards of quality. The Supplier will also utilise effective management systems to enable timely reporting across the whole portfolio. The Supplier will deploy performance management practices with the Research Pool to ensure that they meet performance requirements, remedy below expectation performance where necessary and communicate with FCDO promptly if any problems arise. The Supplier will also be responsible for enhancing value for money across the portfolio of work, by leveraging its central position and



commercial expertise to work collaboratively with Research Provider Pool providers to maximise the value of every pound spent.

#### Peer review

28. The Supplier will establish and maintain a dynamic pool of external peer reviewers with global, regional and local expertise (as needed) – with the reviewers possessing domain expertise and contextual understanding in the areas of focus for each component. They will be required to provide technical inputs and quality assurance at the stages of sourcing and delivery of relevant programme outputs.
29. The Supplier will develop a peer review process that meets industry standards and is relevant to the types of outputs to be produced under the programme. The peer review process will cover assessment of appropriateness of methodologies selected and the standard of methodological rigour applied, quality of quantitative and qualitative analysis, policy relevance and consideration of cross cutting issues such as gender and disability (and parameters for disaggregation of results, where needed) such as gender and disability, as appropriate). The Supplier will ensure that the peer review process is conducted in a name-blinded manner and ensure that conflict of interests is taken into consideration. The Supplier will develop a clear assessment framework to be used by peer reviewers, and FCDO approval will be needed before adopting this framework.
30. The Supplier will issue calls for peer review experts at specific points throughout the programme outlining potential research themes and domain expertise that will be required. FCDO may also propose peer review experts from its own network of contacts. The Supplier will identify suitable candidates, who will be requested to submit CVs. Upon receiving the CVs, the Supplier shall prepare a shortlist of suitable candidates and share these with the FCDO Component Leads for approval.<sup>9</sup>
31. Where there are not enough appropriate peer review experts in the pool, or there are gaps in relations to certain areas of expertise, both the Supplier and the Project Lead will proactively search for suitable peer reviewers.
32. The Supplier will draw flexibly upon the peer review pool (only) when there is demand for such services, to provide quality assurance to the research projects from the point of scoping through to the final report. Outputs considered likely to require peer review include the research, evidence and evaluation products commissioned and occasional Project Terms of Reference, in instances where FCDO identifies limited internal capacity to review those Project ToRs. Furthermore, the Supplier will provide access to the peer review service for occasional projects outside the EF programme (e.g., peer review of synthesis products commissioned by FCDO EF teams). The Supplier will not itself conduct or have any responsibility for quality reviews or assurance in respect of research projects.
33. Depending on the technical complexity of the research product, the Supplier may draw on an individual expert or a group of experts. Peer reviewer involvement in the quality

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<sup>9</sup> Requirements should include, for example, an advanced degree from a recognized university on relevant topic, publications in recognized journals / accepted by international or research organisations, policy papers or other policy related outputs, relevant research experience, experience in policy influencing, appropriate contextual knowledge.



assurance process - the stage, the tentative composition of the review panel(s) and the expertise being provided - will be proposed by the Supplier along with a shortlist of suitable candidates to fulfil identified peer review requirements, which will require approval by the relevant Component Lead. For each individual project, the Supplier will discuss and agree peer review requirements with the Component Lead at the time of developing Project TORs.

34. At the submission of completed outputs for FCDO review, the Supplier will provide Quality Assurance reports, which will include full documentation detailing the peer review process conducted, review findings and author responses.
35. Once peer reviewed, evaluation products will additionally undergo final review by FCDO's EQUALS service. EQUALS (the Evaluation Quality Assurance and Learning Service) is an evaluation quality assurance function, the use of which ensures consistency across all FCDO's key evaluation products.
36. A non-disclosure agreement will be required to be formalised with peer reviewers prior to their undertaking reviews. The Supplier will be responsible for developing appropriate formats for this purpose.
37. The Supplier will annually review the effectiveness of the peer review process and will ensure that the programme's monitoring arrangements include indicators for quality assuring the peer review process. In collaboration with the FCDO PMG, the Supplier will take an adaptive approach to this peer review process and strengthen the peer review process throughout the implementation of the programme.

#### Research communication and uptake in the regions

38. The Research Pool delivering research projects will be required to develop robust communication and uptake strategies under the leadership of / with support from the Supplier. Planning for dissemination and uptake will be built into the Project design from the inception stage of the individual projects, rather than be considered an end-of-Project activity. Initial Supplier-designed uptake plans will be detailed in Project ToRs and will be further developed by the Research Pool providers in their bids. The Supplier will work in partnership with the Research Pool to refine the uptake plan after the Project contract has been awarded.
39. The Supplier will provide a dedicated Regional Research and Relationship Manager role for each region. The Regional Research and Relationship Manager will, amongst a suite of responsibilities<sup>10</sup>, offer strategic advice and support to complement Research Pool providers' dissemination and uptake strategies – and will maximise the impact of evidence investments throughout the project cycle. The Supplier will closely engage with FCDO Project and Component Leads to understand requirements from the perspective of users of the evidence. The Research Pool provider will be required to produce policy uptake reports for each evidence product generated – to be used by FCDO to monitor uptake results as well as to draw case studies about the EF contribution to better policies and programmes.

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<sup>10</sup> See later section on Roles and Responsibilities of the Regional Research and Relationship Managers.

### Thematic evaluation

40. For the thematic evaluation component of the EF, the Supplier will, as part of the provision of the single streamlined platform, commission strategic level evaluations and fill evidence gaps relating to emerging trends and global development challenges. Topics selected for thematic evaluation are likely to be either:
  - 40.1. Multi-sectoral approaches and delivery mechanisms, working across a range of intervention types and locations; or
  - 40.2. High potential or mixed/low evidence interventions identified in FCDO's analysis of impact and cost-effectiveness evidence in sectors, implemented in different locations
41. The Supplier, via the Research Pool, will provide rigorous independent portfolio level evaluation of FCDO and other HMG ODA funded programming on thematic topics selected by FCDO, bringing together evidence from different programming contexts and sectors of interventions. Thematic evaluations will use rigorous and innovative research methods to generate evidence on impact, cost-effectiveness and learning on 'what works/ does not work' to inform portfolio level decisions, improve programme design and implementation of ODA funded interventions within FCDO and across HMG and to contribute to the global evidence base. In specific cases, where there is clear strategic benefit, the scope of the evaluation may include programming through multilateral partnerships and/or funded by other donors.
42. These thematic evaluations will be designed and implemented in a manner that is flexible and responsive to emerging issues that influence FCDO priorities during the life cycle of the evaluation. The outputs should be produced in a timely manner to support FCDO's evidence requirements and influencing opportunities.
43. The Supplier will build upon evidence already generated on selected themes and will fulfil the following core functions (via the Research Pool):
  - 43.1. Synthesis of previous evaluations and analysis of monitoring data from FCDO programmes previously implemented to evaluate available evidence on impact and cost-effectiveness in relation to a selected theme.
  - 43.2. Evaluability assessments to understand the extent to which interventions related to a selected theme or topic can be evaluated in a reliable and credible fashion.
  - 43.3. Evaluation studies based on FCDO programming involving a selection of interventions and contexts to provide new evidence and learning on impact, cost-effectiveness and 'what works/ does not work' for FCDO programmes and the wider international development sector.
  - 43.4. Non-technical communications material, including briefing papers, factsheets and presentations/slide decks, to translate the technical evaluation products into accessible formats for a wider audience within FCDO and the international development community.
  - 43.5. The focus will be upon producing evaluation products that are recognised as high return public goods, which can be used by FCDO for strategic decision making,

providing evidence on high potential interventions and ways of working that can be scaled up.

44. The Supplier will provide an Evaluation Manager to commission and manage delivery of thematic evaluation products, ensuring effective co-ordination and collaborative working between FCDO and other stakeholders and to provide support and advice on uptake of the evaluation evidence generated.<sup>11</sup>

#### Cross-cutting portfolio activities

45. The Supplier will also share responsibility for a number of cross-cutting activities, including cross-cutting regional studies, monitoring and learning, research dissemination and uptake and technical assistance.

#### Cross-cutting regional studies

46. Regional research evidence helps FCDO to understand issues that impact on more than one country sharing common social, economic and environmental concerns. Typical issues that are regional in nature have a cross-border dimension, for example: migration; climate resilience; economic development and growth transmission; and trade and investment constrained by poor connectivity and infrastructure. The Supplier will, harnessing its central position of oversight across regional and broader EF portfolios, identify and propose to Component Leads studies to tackle regional priorities which are relevant to the local contexts of several teams. The Supplier will also respond to similar demands that may be identified by FCDO. The Supplier may be required to commission studies responding to regional priorities, as identified above, through the Research Pool.

#### 47. Monitoring

The Supplier will be responsible for monitoring the progress of individual research Projects (e.g., ensuring they are being conducted ethically and according to plan and keeping to agreed timescales and budget) and providing regular reports to the relevant Component Leads. Formats for reporting to FCDO Component Leads will be finalised during the Inception Phase.

#### Cross-programme learning and Communications

48. The Supplier will take a bird's-eye view of the programme to ensure effective cross-programme learning and effective communications of the programme outputs to a range of audiences.
49. To support this objective, the Supplier will establish a dedicated cross-programme learning function, drawing lessons from across the portfolio and feeding these back to FCDO. This cross-programme learning function will cover components where the Fund Manager is involved in commissioning, and components where it is not.<sup>12</sup>

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<sup>11</sup> See later section for Roles and Responsibilities of the Evaluation Manager.

<sup>12</sup> See Table 1 and Annex B for details of which components the Fund Manager is involved in.

50. The objective of the cross-programme learning function will be to draw out lessons from the EF research and evaluation products, both for FCDO and external audiences. Illustrative examples of lessons include, but are not be limited to:

- **Content or thematic learning** (e.g., trends in urbanisation, considerations for tackling air pollution, challenges in addressing VAWG)
- **Delivery/operational or process-related** (e.g., understanding Value-for-Money, benchmarking professional rates, successes in research uptake and communications, enhancing local/regional supply market engaging, new technology/smarter working, adaptive programming in fragile contexts)
- **Approaches to data collection** (e.g., low-cost monitoring of local interventions, using big data)

51. The cross-programme learning function should support learning both at the programme team level and the wider organisational level, facilitating interaction across programme components, wherever possible.

52. The Supplier will design a clear cross-programme learning strategy during the Inception Phase which will outline the Supplier's plans to engage in a range of activities including, but not limited to:

52.1. **Producing and sharing thematic learning papers** that will be timely and accessible and will synthesise learning across themes agreed between FCDO's PMG and the Supplier. The papers will be aimed at three types of users: (a) to FCDO EF stakeholders to inform decision-making about adaptations needed to the EF programme; (b) internal audiences in relation to the development of strategies for evidence-based policy making within FCDO, and (c) external audiences in the international development sector. Learning papers will be signed-off by a relevant FCDO Component Lead (see Section C for governance structure). In addition, the Supplier will share key insights and good practices with downstream partners to support learning.

52.2. **Convening and facilitating learning forums** (approximately 4 per year) targeting FCDO staff from all the components of the EF and the Supplier's staff as needed, organised as interactive sessions to share and discuss key takeaways from the projects, possibilities of programme adaptation, and relevant cross-cutting issues. The goal therein will be to promote a culture of learning and sharing, which will contribute to more effective and well-informed decisions, which are based on evidence and experience. These fora may include attendance, input, and talks by external experts. They may also be co-led by FCDO staff. The Supplier should suitably prioritise themes/ content for these sessions based on consultations with FCDO.

52.3. **Organising larger learning events periodically**, to enhance knowledge sharing and extend networks/connections between policymakers, practitioners, and academics from different disciplines, organised around particular themes or emerging priorities that are cross-cutting in nature, and showcasing successes from projects commissioned by different teams of the EF Events will blend in-person and online engagement.

53. In addition to supporting cross-programme learning, the Supplier will use effective communication methods to promote the EF more broadly to internal FCDO and external audiences – with the objective of ensuring the EF has visibility and profile. To support

this communications objective, the Supplier will use a range of methods (such as utilising social media and direct engagement with relevant stakeholders) to disseminate EF research and evaluations, showcase case studies and where appropriate, secure media coverage of the programme.

#### Additional technical assistance

54. The Supplier may also be requested to provide technical assistance on an ad-hoc basis to FCDO's RED teams, at the request of the PMG. Thus, the Supplier will ensure that they maintain flexible capacity that can be drawn down to respond to activities on a requirement basis for the FCDO EF Team, as well as RED colleagues more widely.
55. This technical assistance support could include:
  - Administrative and facilitation support to meetings in the regions linked to research programmes
  - Due diligence checks for RED research partners based in the regions
  - Support to Annual Reviews and Project Completion Reports for RED programmes in East Africa, MENA, and South Asia
  - Access to the local peer review panels on an exceptional basis

### **Section F - Mechanisms of Demand for Research, Evidence and Evaluation Products**

56. The research and evaluation outputs procured by the EF will be demand-responsive in nature. The thematic and geographical focus of individual Projects will evolve and change. The demand for these products will come from across FCDO country programme teams, regional advisers and policy teams, who themselves are expected to channel research priorities from a wider group of stakeholders in the regions. The demand will be stimulated, managed and monitored by the FCDO EF teams (the Regional Research Hubs and Evaluation Unit). Demand will be managed through clear prioritisation, built from assessments of HMG priority, potential to influence decision-making, the feasibility of conducting the research and its additionality (what it adds,

compared with existing research.)

57. The FCDO EF teams will use a variety of approaches to establish evidence needs and define research questions, approaches and audiences. These activities will be used to identify priorities and commission relevant evidence and evaluation products via the Supplier. FCDO country programme teams will play a leading role in problem identification and the design, and development of the proposed approach to the research in collaboration with FCDO's Regional Research Hubs and the Evaluation

Figure 2: Evidence Fund priorities in South Asia, East Africa and MENA

### **South Asia**

*Countries: India, Nepal, Bangladesh, Pakistan, Afghanistan and Myanmar*

*Emerging Priorities: Social and economic development, climate change, governance, conflict and security, health and disability, science and innovation*

### **East Africa**

*Countries: Kenya, Tanzania, Ethiopia, Uganda, Rwanda, Somalia, Sudan and South Sudan*

*Emerging Priorities: Peace, security and governance, building resilience and response to crises (particularly in protracted humanitarian crises), prosperity and inclusive growth; and, tackling vulnerability climate change*

### **Middle East and North Africa**

*Countries: Yemen, Lebanon, Jordan, OPTs, Syria, Turkey, Iraq, North Africa Joint Unit (which includes Egypt, Libya, Tunisia, Algeria, Morocco, Mauritania and the territory of Western Sahara) and the Gulf (which is referred to collectively at FCDO).*

*Emerging Priorities: Climate resilience, humanitarian systems, inclusive growth, strengthening governance, health, education, stability and conflict, and, science, technology and innovation.*

### **Thematic Evaluations**

*These are centrally managed evaluations designed to make better use of evidence from HMG ODA-funded programmes and to fill evidence gaps relating to emerging trends and global level development challenges.*

*Strategic thematic priorities: Climate change and biodiversity, COVID-19 and global health security, girls' education, science, research, technology and data for development, open societies and conflict resolution, humanitarian preparedness and response, trade and economic development*

Unit. Engagement with FCDO's country programme teams will help to ensure that the research and proposed impact match local needs and sensitivities.

58. Country responsive research typically will be based on requests originating from one or more country programme teams. We currently anticipate that 30-40 projects will be commissioned annually, following the first financial year where the commissioning volume will be lower. Geographical and thematic priorities will evolve and change and

so the programme will need to be adaptable to respond. Indicative examples of current and emerging regional priorities are outlined in Figure 2, above.<sup>13</sup>

59. FCDO's Component Leads will act as the main brokers between the FCDO Evidence Teams and the Supplier. The FCDO Component Lead will work closely with their respective Supplier Regional Research and Relationship Manager/Evaluation Manager to commission the evidence and evaluation products. The FCDO Component Leads will also manage the internal FCDO quality assurance of their respective deliverables throughout the entire process and organise final sign-off of products to ensure they meet quality standards.
60. FCDO Component Leads and the Supplier Regional Relationship Managers/Evaluation Manager will work together to determine research needs and define research questions. The Component Lead will consult with internal FCDO stakeholders to seek input on research priorities periodically.
61. Throughout the year, the FCDO Project Leads and Component Leads will scope and design individual research projects. They will work with the FCDO country programme teams and policy teams to further refine research needs; define research questions to address gaps; recommend approaches to address research questions; and work with country programme teams and policy teams to develop specific project Concept Notes.
62. Concept Notes will be guided by a template agreed during the Inception Phase and will outline the basic requirements for products for commission. Concept Notes will vary according to the scope, needs and timeline of the project, but will include aspects such as: key knowledge gaps; scope of the research; outputs expected; quality assurance mechanisms/peer review requirements; and overall budget, timeframe and suggested route to market.
63. Concept Notes will be approved by the respective FCDO Research Hub or Evaluation Component Leads.
64. Once the Concept Note is approved internally in FCDO, the Component Lead will share this with the Supplier and introduce the Project Lead to the Supplier. The Supplier will subsequently develop Project Terms of References (Project ToRs), guided by a standard template agreed at Inception, and based on the Concept Note shared, save that the Supplier will have the opportunity, before it accepts any such commission, to assess the proposed subject matter to ensure it would not contravene any regulations, professional standards, or policies to which the Supplier is subject, and to agree with the FCDO appropriate changes where necessary (and the Supplier will have the same right prior to finalisation of any research output).
65. Some elements to be considered in the Supplier's preparation of Project ToRs will require discussion with Project and Component Leads; for example, in determining the most suitable route to market for a given project. The Supplier will consider relevant

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<sup>13</sup> Countries within the remit of the newly formed Hubs in West Africa and South Africa may additionally be covered.

factors such as the type of outputs commissioned in the Project, urgency of the requirement and the capacity of Research Pool.

66. When determining appropriate route to market, Early Market Engagement (EME) may be planned by the Supplier, where relevant – in consultation with the Project and Component Leads. EME is known to be an effective method of stimulating engagement around upcoming opportunities and the Supplier is expected to propose - harnessing its expertise and knowledge accumulated through formation of Research Provider Pool - effective approaches to EME for specific Project. EME, however, need not be exclusively linked to specific Projects, and the Supplier is expected to utilise similar engagement approaches more broadly to enhance the diversity of the Research Pool for the programme.
67. Indicative expectations of timelines for delivery for a range of example products is detailed below in Table 2. The Supplier will take these into account while determining the route to market.

*Table 2: Indicative timelines*

<b>Type of Product</b>	<b>Expected Timelines for Procurement (from Supplier receiving Concept Note to Project start)</b>	<b>Indicative Timelines for Delivery</b>
Rapid Reviews on Emerging priorities	3 days	3 weeks
Country Specific Studies	3-4 weeks	6-12 months
Regional / multi-country studies	3-4 weeks	12-24 months
Rapid Evidence Assessments	1 month	4-6 months
Evidence Maps	1 month	3-4 months
Systematic Reviews	1 month	6-12 months
Evaluability Studies	1 month	1-3 months
Evaluation Synthesis	1 month	2-4 months
Formative and Summative Evaluation Studies	1 month	12-18 months

68. Project ToRs will address all the aspects of the Concept Note and will develop them further. This will include (as a minimum):
- Proposed study title
  - Details on the research context
  - Key knowledge gaps
  - Scope of the research
  - Project management arrangements



- Study outputs expected (with key performance indicators, where relevant and milestones)
  - Theory of change, where relevant
  - Ethical considerations
  - Cross-cutting considerations such as gender, people with disabilities
  - Quality assurance mechanisms, including peer review
  - Overall budget and timeframe (including commercial aspects such as the proposed route to market, key delivery dates including date for the issue of notice, submission deadlines for proposals, funding decision notifications)
  - Value for money considerations
  - Plans for uptake and dissemination
  - Duty of care approach
  - Risk matrices for countries where the research will take place
  - Schedule of payments between Supplier and Research Pool provider
69. Project specific Key Performance Indicators, where relevant, will be agreed between FCDO and the Supplier as part of the Project ToR approval process. Once received from the Supplier, the Project Lead will manage internal FCDO review of the Project ToRs with support from the established project technical steering panel. Project ToRs will require approval by the Project Lead and Component Lead.
70. Following approval of Project ToRs, the Supplier will be responsible for implementing the route to market.

Where limited/ open competition is selected as the route to market, the Supplier will produce tender documentation and will select appropriate methods of advertising the opportunity via means most relevant to the target market and most likely to foster interest. Bidding organisations will be required to submit Technical and Commercial Proposals. The Supplier will review Commercial Proposals and will ensure that suitable (and proportionate) Due Diligence is performed, where needed, to ensure organisations bidding are suitable to partners with FCDO and can comply with FCDO expectations. Technical Proposals will be assessed by an FCDO panel convened by the Project Lead. The Supplier will convene a moderation meeting for each limited/ open competition process, at which Technical and Commercial Proposal reviews will be reconciled and a winning Proposal selected. Project Lead and Component Lead approval of the winning bidder will be required. Following an award decision, the Supplier will prepare a suitable agreement for the provision of the Project ToR services which will require Component Lead approval before execution.

71. Following this approval, the Supplier will contract the project services and will then deploy ongoing contract management, quality assurance, peer review and output monitoring of work commissioned across the project, as detailed throughout these Terms of Reference.
72. Project deliverables will be monitored by the Supplier which will actively engage with the relevant Research Pool provider to ensure on time delivery; where needed, the Supplier will also review and monitor field operations. FCDO Project Leads will review the quality of submitted deliverables and Project and Component Lead approval of each deliverable will be required before those deliverables can be submitted for release of committed payments.

FCDO acknowledges and agrees that, notwithstanding anything to the contrary in this Contract:

- the Supplier will need the opportunity to run its standard onboarding checks before it can agree to contract with a particular entity or individual, and will further require the right to terminate any such contract where performance may breach a legal or regulatory requirement;
- the Supplier has a right to review any research output
- there may be territories from which the Supplier will not be able to deliver services, or maintain an on-the-ground presence, and shall not be required to do so (and may remove any such existing presence without liability) provided it promptly notifies the FCDO of the relevant restriction.

73. The table below captures the indicative process flow of the programme showing the relationship amongst the key stakeholders in carrying out the project activities.

Table 3: Stages of delivery in EF components involving Fund Manager

Stage of Delivery	FCDO Customer <sup>14</sup>	FCDO EF Teams	FCDO Component Leads	Supplier	Peer Review	Research Pool providers
Scoping of Component Research priorities		✓	✓	✓		
Identify evidence gaps and needs and refine research questions to address gaps	✓	✓	✓			
Recommend approaches to address research questions		✓	✓			
Develop Concept Note to be submitted to Supplier by Component Lead	✓	✓	✓			
Develop a Project Terms of References (Project ToRs), including submitting a list of proposed peer reviewers and the peer review process for the project, determining timeframe, milestones and technical specification, as well as commercial aspects				✓		
Internal FCDO review of the Project ToRs to approve ToR.	✓	✓	✓			
Implement the route to market and if applicable approach suitable organisations within its Research Provider Pool.				✓		
Submit Technical and Commercial Proposals.						✓
Review and score Commercial Proposals, performing Due Diligence assessments.				✓		
FCDO review of Technical Proposals	✓	✓	✓			
Convene a Moderation meeting to select winning Proposals.	✓	✓	✓	✓		
Approve winning bidder.		✓	✓			
Prepare a suitable agreement for the provision of the Project ToR services, with Component lead approval			✓	✓		
Contract the project services				✓		
Implement the contract and conduct research in line with ToR and contract						✓
Contract management, and output monitoring of work.				✓		
Ongoing due diligence of Research Provider Pool providers				✓		✓
For larger projects FCDO engagement with the relevant Research Pool provider regularly and review field operations.		✓	✓			✓
Peer review deliverables before submission to FCDO					✓	
Review submitted deliverables	✓	✓	✓			
Approve deliverable before it can be invoiced			✓			✓
Disseminate findings and monitor impact	✓	✓		✓		✓
Use findings in programming and policy making	✓		✓			
Report and account for funds			✓	✓		
Consolidation of activity and financial reports				✓		
Review and evaluate individual project	✓	✓	✓			

<sup>14</sup> FCDO country or policy team who request research or evaluation through the Evidence Fund.

## **Section G - Required Capacity and Expertise and Access to Supply Markets**

### Access to Supply Markets/Research Provider Pool

74. The programme's success depends on the supply of high-quality research proposals leading to robust and actionable research outputs. To achieve this, the Supplier will use a dynamic Research Pool, comprised of local and international research organisations, who can meet FCDO's research and evidence needs. The Supplier and its Research Pool will be required to demonstrate a deep understanding and knowledge of country and regional contexts, and a wide range of thematic expertise. The Research Pool should, in general, have adequate capacity multi-methods research, communication and uptake, and project / financial management. Specific requirements should be laid down in project-specific TORs.
75. FCDO requires that the Research Pool have a strong regional presence in relevant countries in East Africa, South Asia, and the Middle East and North Africa<sup>15</sup>. FCDO perceives that use of local expertise and equitable partnerships between local and global research providers can significantly enhance the quality of research outputs and facilitate stronger uptake.
76. At the strategic level, the Supplier will conduct regular assessments of the market, developing strategies to address potential barriers to participation.
77. At the project level, the Supplier will ensure that the bidding process contributes to enhanced diversity of supply, for example by providing capacity building of local organisations through inclusive, constructive feedback to unsuccessful bidders, and developing bespoke guidance documents on research uptake for local and regional organisations.
78. FCDO will monitor portfolio supply diversity on a per component basis and the Supplier will provide FCDO with the information required for this. FCDO and the Supplier will develop and agree indicators (and possibly targets) for measuring and tracking supply diversity (the mix of local and international organizations delivering research) at the inception stage.
79. Through the Annual reporting process, FCDO will require the Supplier to outline the number and proportion of bids that were received from local organisations based in each region and what proportion of these were selected. The Supplier will be required, through the Annual Review reporting process, to demonstrate how it is strengthening the capacity of local based organisations in order that local organisations are increasingly utilised.
80. The Supplier will design, deliver and operate effective and proportionate due diligence processes to ensure Research Pool organisations are selected with appropriate care and that those organisations adhere to FCDO Supply Partner Code of Conduct, Duty of Care, Safeguarding and Ethics requirements.

### **Required capacity and expertise**

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<sup>15</sup> Should a decision be taken to expand the programmes and introduce new regional hubs within its remit, the Supplier will ensure a strong regional presence is established in those new regions.

81. FCDO requires the Supplier to maintain Core Team expertise to enable the programme to operate with maximum effectiveness and efficiency. The Supplier will ensure that their resourcing offer includes and commits a dedicated Core Team, and that the team demonstrates technical expertise and knowledge required to successfully deliver the programme. The Supplier must also maintain strong regional presence.
82. The Supplier will, building on FCDO's initial assessment provided in this Section G – "Required Capacity and Expertise and Access to Supply Markets," assess and deliver the level of personnel inputs required to meet the EF's expertise requirements, including all regional, evaluation and management demand.
83. The Supplier will deliver a single streamlined platform with Core Team expertise that, as a minimum, meets the requirements outlined below:

Director of Operations and Research (Team Leader)

84. The **Director of Operations and Research** will be responsible for and oversee all activities of the EF management team bringing together the strategic vision with the operational implementation to ensure successful performance and delivery of outputs and results. They will bring significant expertise to guide the senior management team in their responsibilities to help maximise impact and value. Key skills and experience include:
  - International portfolio and supplier management experience at a senior level, particularly in relation to strategic leadership and delivering donor development funds
  - Expertise in operationalising a portfolio vision across a number of sub-suppliers, delivery components and countries
  - Expertise in the management and delivery of research, evidence and evaluation including ensuring effective quality assurance and peer review
  - Strong track record of managing delivery of suppliers through commercial mechanisms/frameworks.
  - Strong track record of managing risk, and adaptive and flexible approaches to delivery in complex portfolios.
  - Expertise in cross-sector working, bringing together political, economic and development issues.
  - Experience of managing project portfolios in one or more regions covered by the EF

Financial and Contracts Management Staff

85. The **Financial and Contract Management staff** will manage all day-to-day finance and contracts, lead all aspects of the Portfolio Management including financial planning, fiduciary risk management, disbursement, the design of financial monitoring and reporting. The postholder/postholders is/are also responsible for the 'contracting' stage of the EF process, managing the contract management system, protocols and payments with the Research Pool providers. Financial and Contract Management staff will work closely with the Regional Research and Relationship Managers and the Evaluation Manager and will be responsible for preparing all financial reporting and for realising efficiencies and cost savings. Key skills and experience include:
  - Strong track record of financial management at portfolio level and compliance with financial rules to ensure accountability of funds.

- Robust financial management at implementation level, ensuring value for money, implementing strategies to effectively address spending challenges, working with multiple suppliers.
- Applying robust anti-corruption and fraud policies, child protection, modern slavery and safeguarding policies
- Expertise, experience of designing and applying due diligence processes to potential partners
- Commercial expertise to follow due process in sourcing and procuring the right expertise in response to programme requirements within tight timelines
- Proven experience of developing and managing commercial approaches to contracting sub-suppliers; meeting standards for due process to appoint suppliers and manage commercial delivery

#### Regional Research and Relationship Managers

86. The **Regional Research and Relationship Managers** (one for each region, based in the respective regions) will lead and manage an effective, responsive Research Pool, comprised of local and international research organisations, who can meet FCDO's research and evidence needs. Alongside the Financial and Contracts Manager, the postholders will provide day to day management of projects with Research Pool providers. They will perform periodic monitoring of progress against the key performance indicators and programme milestones and advise the Team Leader on progress and delays in progress. The Regional Research and Relationship Managers will provide a focal point for the respective regional Components and will be the main interface with FCDO Component Leads and other counterparts. They will also be the main point of contact for information requests from research organisations and other interested stakeholders. Key skills and experience include:

- Regional programme management experience, particularly in relation to research programmes
- Understanding of different research methodologies, including qualitative and quantitative approaches
- Experience of relationship management and external engagement working with international donors in relation to research programme delivery
- Strong understanding of regional supply markets for research and evidence and skills to enable access to those markets to fulfil research needs
- Skills to support component level management of budget with Component Leads
- Strong understanding of research and evidence use and uptake in policy and programme design and delivery
- Project management skills

#### Evaluation Manager

87. The **Evaluation Manager** will provide day to day management of the Evaluation contracts with Research Pool organisations. They will perform the periodic monitoring of progress against the key performance indicators and programme milestones and advise the Team Leader on progress and delays in progress. They will be the main point of contact for information requests from evaluation organisations and other interested stakeholders. Key skills and experience include:

- Experience of planning and management, procurement/commissioning and delivery of high-quality portfolio level evaluations

- Experience of maintaining effective co-ordination through collaborative working and communication with diverse, multi-disciplinary stakeholders.
- Knowledge of user-focused evaluation and experience of designing and implementing evaluation uptake strategies.
- Understanding of quantitative and qualitative evaluation methods, including economic analysis
- Understanding of issues around undertaking evaluation in fragile and insecure contexts and a sound understanding of ethics in relation to evaluation.

#### Monitoring, Evaluation, and Learning Specialist

88. The **MEL Specialist** will be responsible for collecting data for reporting against logframe indicators, alongside FCDO Project/ Component Leads. Key skills and experience include:

- Strong track record of delivering effective and adaptive monitoring, evaluation and learning approaches; measuring, monitoring, and reporting on results and value for money for research and evaluation activities
- Experience of designing a monitoring, evaluation and learning system for a complex programme
- Experience of monitoring indicators and results across a complex portfolio of projects and activities
- Experience of undertaking synthesis of cross programme learning
- Experience of working with international donors in relation to evaluation of programme delivery
- Understanding of quantitative and qualitative evaluation methods, including economic analysis
- Understanding of issues around undertaking evaluation in fragile and insecure context and a sound understanding of ethics in relation to evaluation.

#### Communications Professional

89. The **Communications Professional** will lead and manage communication activities undertaken during the year as planned to include communicating cross programme synthesis and learning reports. They will develop a communications strategy to deliver against the key performance indicators, programme milestones, and advise the Team Leader on progress. They will also be responsible for preparation of communication content and dissemination of communications through various communication platforms. Key skills and experience include:

- Strong track record of managing knowledge products, knowledge translation, monitoring progress with communication
- Expertise in communications in relation to research, policy or programming, including a solid understanding of the research-policy interface
- Proven ability to translate research findings into impactful policy products to facilitate research uptake
- Experience in a range of communication methods (including workshops, social media, direct engagement and media work) in relation to research, policy or programming

## **Section H - Inception Phase**

90. The Supplier will first deliver a set of activities that together comprise a 6-month Inception Phase. During this phase, the Supplier will:
- 90.1. Mobilise and induct staff required to perform the services, informed by FCDO feedback on available budget and which positions are FCDO priorities, alongside the Supplier's bid.
  - 90.2. Work in collaboration with the PMG, with inputs from the SRO, to assess the Theory of Change and to agree any changes identified that may enhance the mechanisms of change and programme effectiveness.
  - 90.3. Building on the Supplier's bid, finalise a clear plan for delivering the outputs and contributing to expected outcomes and impacts.
  - 90.4. Building on the bid, agree with FCDO's Measurement Lead (currently Harry Achillini, in the UK Hub team) the Supplier's roles around Monitoring and Learning. As the Evidence Fund now has a well-established log frame and monitoring processes, this is likely to involve improving use of existing tools, rather than establishing new processes. It will also involve clarifying key learning questions for the year ahead.
  - 90.5. Establish and maintain effective relationships with relevant FCDO teams (through Component Leads), working with them to understand and identify priority areas for further evidence generation.
  - 90.6. Other activities will include the following:
    - Develop and agree Communications and Cross-programme learning strategies.
    - Agree and apply roles, responsibilities and management arrangements
    - Implement and operationalise administration systems
    - Develop and implement guidelines and manuals, including approach to safeguarding
    - Deliver some commissioning of new research projects
    - Agree templates for Concept Note and Project Terms of Reference with Regional Research Hubs and Evaluation Unit
    - Agree targets and methods to assess Key Performance indicators, including an indicator (to be added) on diversity (inclusion of Research Pool providers from the countries where research is carried out.)
    - Agree formats for Supplier quarterly reporting, including expenditure report
    - Agree how Regional Research and Relationship Managers and the Evaluation Manager will report to respective FCDO Component Leads
    - Develop and agree a quality assessment framework to ensure common understanding of 'high quality' for different types of output (see Section K)
    - Agree protocols for managing Conflicts of Interest

## **Section I - Implementation Phase**

91. The Implementation Phase will commence contingent upon satisfactory performance and acceptance by FCDO of the Inception Phase deliverables.



92. During the Implementation Phase, the Supplier will:

- Review and refine the Theory of Change regularly based on the monitoring data and evaluative evidence gathered.
- Implement all aspects of the programme as outlined in this ToR and agreed at Inception.

## **Section J - Contract Management Requirements**

93. The Supplier will deploy robust financial management to ensure all spend is fully accounted for, that projects commissioned are completed within their budget allocation and agreed end date per activity. The Supplier will work closely with the FCDO programme team to ensure accurate forecasting and accountability.
94. The Supplier will put in place procedures to abide by FCDO Due Diligence requirements, including the enhanced due diligence policies launched in October 2018. The [policy](#)<sup>16</sup> contains six areas that must be covered (safeguarding, whistleblowing, human resources, risk management, the code of conduct, governance and accountability) and the Supplier will be responsible for ensuring that appropriate Due Diligence and safeguarding standards are cascaded down to the Research Pool. FCDO expects to see evidence that the standards have been shared with Research Pool providers at the time of contracting. Furthermore, the Supplier will be required to undergo a financial and fraud risk assessment which will be monitored on a regular basis to ensure funds are used for their intended purposes.
95. A key output of the programme will be for the Supplier Core Team to deliver access to diverse, engaged supply markets. If the Supplier Core Team were to bid for products it is tendering for the EF, aside from the immediate Conflict of Interest around potentially evaluating its own submissions, it would likely harm market trust in the Supplier's ability to run fair procurement processes. As a result, the Supplier organisation (involved in delivery of Core Team services) will be prohibited from bidding for products commissioned.
96. Similar Conflict of Interest concerns would additionally apply at the personnel level, where the Regional Research and Relationship Managers and Evaluation Managers would lose credibility with the regional and local markets that FCDO expects them to build links with, if they involve themselves in the preparation of research and evaluation bids in any way. They will, therefore, not be allowed to associate themselves with preparation of any bid document for research or evaluation directly or indirectly.
97. The Supplier will produce and operate robust protocols and procedures for identifying and mitigating any potential conflicts of interest, particularly in terms of the tendering of calls for proposals, contracting out elements of the research or operational assistance, or with the peer review process. These protocols will be agreed with FCDO during the Inception Phase.

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<sup>16</sup> Guidance: FCDO Enhanced Due Diligence: Safeguarding for external partners

<https://www.gov.uk/government/publications/dfid-enhanced-due-diligence-safeguarding-for-external-partners>

98. In addition to the provisions of the previous paragraph, the Supplier will also devise a clear method for addressing any potential or perceived conflicts of interests that might arise if the Supplier or its Research Pool providers commission or deliver research or technical assistance that could influence a programme or future programme design. The Supplier will, as a minimum, deliver Summary Reports at the closure of each project that involves information that could influence a future programme design. These reports will summarise all information obtained with implications for future programme design, to ensure a level playing field in any future competition is preserved.
99. The Supplier will provide a clear risk register and assessment setting out how risks will be identified, diagnosed, managed, mitigated and escalated. The Supplier will also be required to undergo an annual audit and will share their annual audited statement with FCDO.
100. It is crucial that activities conducted are fully in line with FCDO's stated values and adhere to established international standards in research ethics. To ensure that the collection and use of all data is conducted in a manner that adheres to appropriate ethical standards, please view and adhere to [FCDO Ethical Guidance for Research, Monitoring and Evaluation](#).

## **Section K - Assessing the Quality of Outputs**

101. FCDO expects the Supplier to deliver outputs that have been through the agreed quality assurance process commensurate with the ambition of the programme and that will ensure the programme Impact and Outcome are achieved. FCDO will regularly assess the quality of outputs and policy uptake plans produced by the Supplier and its Research Pool. The Supplier will not be responsible for quality but will be responsible for establishing and maintaining a peer review process which the FCDO agrees will provide it with the necessary level of assurance.
102. At the submission of completed outputs for FCDO review, the Supplier will provide Quality Assurance reports, which will include full documentation detailing the peer review process, review findings and any author responses. This will be required for both peer review services conducted by the peer review pool and for any peer review utilised by the Research Pool where they are responsible for delivery of a commissioned product, to give FCDO sight of the full review chain.
103. Throughout these Terms of Reference, we refer to 'high quality' research outputs. In general, high-quality research uses appropriate methodologies to answer the research questions and adheres to principles of transparency, accountability, and ethics. This includes considering both internal and external validity. During the Inception Phase FCDO and the Supplier will, building on the dimensions of quality outlined at Annex B, develop a common understanding of what constitutes "high quality" outputs, which will then be further tailored to each Project commissioned to ensure suitability of the framework for assessment.
104. The EF will utilise Peer Review as a common approach to assessing quality. The Supplier will ensure that Peer Review processes are adapted to meet the requirements for assessing quality of each discrete output. Annex B presents a sample of the types of research we expect to commission through this Fund, a brief definition of the product, and short examples of the dimensions of quality that could be utilised for assessing quality for each type of product. The quality appraisal framework to be used to monitor

the quality of specific products will be proposed by the Supplier in the Project ToR and agreed with FCDO, although FCDO may also identify quality appraisal frameworks in Concept Notes.

## **Section L - Key Performance Indicators (KPIs)**

105. KPIs will be used to monitor the performance of the Supplier. FCDO and the Supplier will agree targets and methods of assessment against each indicator during the Inception Phase. The Programme level KPIs may change during the life of the programme, e.g., based on lessons learned and evolving priorities. Initial programme level KPIs are:

- Average daily fee rate per researcher contracted via the Evidence Fund
- Fund manager direct costs (as % of funds contracted through the fund manager)
- Qualitative examples of savings achieved, through the Research Pool
- Customer satisfaction (score, from 1-10) with the quality and usefulness of Evidence Fund research
- Qualitative feedback from customers on the quality and usefulness of Evidence Fund research
- Time taken (days) from receiving research request to research commencing
- % of programme-funded research outputs that result in at least one documented case of embedded, transparent or instrumental use
- Number of research products commissioned that focus on the poorest or most marginalised groups
- Accurate and timely submission of forecasting and invoices.
- Timely, accurate six-monthly reporting on data requirements outlined at Annex A.
- Change in local and regional Research Provider Pool providers' confidence in their understanding of Evidence Fund bidding requirements.

106. Project level KPIs will be set at Project level as part of the Project ToR process.

## **Section M - Exit and closure requirements**

107. Further to Section 2, Standard Terms and Conditions, Clause 16.1.7, the Exit Information shall include cumulative, disaggregated data which addresses all requirements as set out in Annex C.

## **Section N - Timeframe and Budget**

108. The initial duration of the programme will be 34 months with an initial budget of £35,800,000 inclusive of any local government taxes, but exclusive of VAT.

109. FCDO anticipates that the Suppliers total proposed budget allocation for delivery of the programme; Core Team services (including Programme Activities, Capital Expenditure, Programme Staff Cost for Fees and for Travel, Accommodation and Subsistence, Monitoring and Evaluation Costs, NPAC, Profit and any local government taxes, but excluding VAT), including all additional technical assistance/flexible capacity, does not exceed 12% (£4,296,000.00) of the initial budget.

110. FCDO will retain options to enhance the programme budget, if felt necessary, by up to £36,200,000 and extend the programme by an additional three years. FCDO has identified multiple sources of potential additional demand for EF products, including the possible demand from West and Southern Africa, potential additional demand to be

raised from non-Hub serviced geographies and for new demand to be raised in response to emerging FCDO priorities. Resultantly, it is unlikely that any additional demand will present linearly, and FCDO will retain options to amend the EF contract as may be required as and when this demand emerges.

111. Given the demand-driven nature of the programme, there is also a possibility the budget allocation for research commissioning may not be depleted over the initial 34-month programme duration. In this instance FCDO may elect to implement an extension to the programme duration with no additional funding.
112. This budget is inclusive of any local government taxes and expenses, and exclusive of VAT. It will be the responsibility of the Supplier to consider how VAT is applied to all aspects of delivery and if VAT is not applicable to some research activity and could be exempt or reclaimable. Upon implementation the Supplier will continue to manage the budget and invoice FCDO with the correct VAT charges. As with all FCDO budgets, FCDO is not able to provide VAT advice.
113. The programme will begin with a 6-month Inception Phase, followed by an Implementation Phase that is expected to last 28 months, but is dependent on the timing of the contract being awarded. Progression to the Implementation Phase will be contingent upon the Supplier's delivery of required Inception deliverables that meet expected standards in respect of quality and completeness.

## **Section O - Performance Management and Reporting**

114. FCDO will evaluate the performance of the Supplier throughout the life of the programme at quarterly intervals, informed by project and programme level Key Performance Indicators (KPIs), and through the standard FCDO Annual Review process. The Supplier will be required to prepare and deliver to FCDO reports to support monitoring and performance management.
115. The Supplier's quarterly report will include:
  - 115.1. A brief narrative on progress in delivering the services, and key activities planned in the next quarter.
  - 115.2. Performance against the Programme KPIs outlined in Section L.
  - 115.3. Expenditure report (format to be agreed with FCDO during inception)
  - 115.4. Project KPIs (milestones) completed in the previous quarter.
  - 115.5. Latest forecasts of a) cumulative spend for the Financial Year; b) forecasted spend in the next quarters of the remainder of the current financial year. Where possible, accompanied by a narrative and linked to project KPIs to be assessed in the upcoming quarter.
  - 115.6. Costs committed to, covering both the Core Team services and costs of commissioned products. Costs committed will be those expected to be necessarily incurred in the proper performance of this Contract and which the Supplier cannot reasonably avoid or recover using reasonable endeavours.
  - 115.7. Updated risk matrix
116. FCDO will provide written feedback on these reports, which will be followed by a meeting of FCDO and the Supplier's Core Team to discuss key issues raised to plan for the next quarter.

117. FCDO conducts Annual Reviews of all programmes to assess progress against the objectives contained in the Log frame, ensure that the programme is on track, and consider if any adjustments should be made. The Supplier will produce Annual Reports that set out key information on the programme and its performance against objectives in each year, which will then inform the Annual Review.<sup>17</sup> This reporting will draw on information from across the research portfolio and Research Pool on performance against Output and Outcome indicators.<sup>18</sup>
118. The Supplier will provide documentation towards annual external audit and subsequent reporting of results to FCDO. Audit will cover both financial and management materials, and the Supplier will be required to prepare and submit a management response to FCDO for follow-up. The audience for this report is the PMG and RED Senior Management, should any issues arise.
119. The Supplier will provide an End of Contract report, which contributes to FCDO Project Completion Report, drawing on information from across the portfolio and Research Pool. The Supplier will engage FCDO one year in advance of the programme End Date to ascertain End of Contract report objectives and requirements.
120. During the Inception Phase, the Supplier will maintain fortnightly contact with FCDO to discuss any pertinent issues as they arise. As the programme progresses this will be reduced to less regular contact (meetings with SRO and PRO likely to be quarterly around the submission of quarterly reports, and on an as-needed basis). The Supplier may also be required to attend and present at EF Board meetings.
121. The Supplier will be required to deliver effective financial management and will need to demonstrate Value for Money at all stages of the programme. This will include demonstrating that administrative costs can be minimised and that programme activities are designed to maximise cost effectiveness. The Supplier, in acting as commissioner and manager of a portfolio of discrete Research projects, will deploy relevant expertise to enhance value for money across the portfolio. The Supplier will report on value-for-money measures integrated into the programme quarterly and this will be assessed during FCDO Annual Reviews.
122. The Supplier will also establish a database of case studies about the programme's contribution to better policies and programmes – based on the uptake reports produced for each Project.

## **Section P - Finance and payments**

123. Payment will be made monthly in arrears. Payment terms are tailored for each element of programme delivery.

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<sup>17</sup> Information on the Annual Review process and types of information that will need to be included in the annual report can be found in the How to Note linked here: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/67344/H-TN-Reviewing-Scoring-Projects.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/67344/H-TN-Reviewing-Scoring-Projects.pdf)

<sup>18</sup> The Supplier will also make its staff available to participate in the Annual Review itself, e.g., through interviews with the Review Team.

124. The indicative budget available per financial year for the initial 34 months is as follows:

*Table 4: Indicative budget, by year*

Financial Year	Indicative budget for Fund Manager and Research Pool
22/23	£150,000
23/24	£3,000,000
24/25	£12,800,000
25/26	£19,850,000
Total	£35,800,000

125. For each discrete research project commissioned via the EF, payments to downstream Research Pool providers will be made by the Supplier and reimbursed by FCDO monthly in arrears. Payments made by the Supplier to the provider will be linked to satisfactory delivery of outputs as per agreed payment schedules – after sign-off from FCDO.

126. The Supplier will be responsible for managing Research Pool providers to ensure on-time delivery at agreed prices.

### **Section Q - Scale Up/Down**

127. FCDO may scale up or extend the programme's budget and time where the programme has been demonstrated to have a strong impact and has the potential to yield better results.

128. The EF will retain flexibility to increase the number of Components, to introduce new Regional or Thematic Research Hubs and to expand to meet FCDO demand for research, evidence, and evaluation products from FCDO country programme teams not currently serviced by Regional Hubs.

129. FCDO reserves the right to scale down or discontinue this programme at any point in line with the Terms and Conditions. Scaling down is at FCDO's discretion, and may occur for a number of reasons, including but not limited to a change in the security and/or political circumstances of the country; political economy reasons; or shortage of funds. A political economy reason is a change in the situation of the security, government stability, corruption, or delays in key, necessary government engagement in the specific areas in question which are such that they affect the effective delivery in the specific areas (rather than generally) in a way that it is not possible to make a reasonable adjustment to the programme in an appropriate timeframe.

### **Section R – Review Points**

130. There will be will a Contractual Review Point at the end of the Inception Phase (following 6 months of programme delivery) at which pursuant to Section 2 “Standard Terms and Conditions”, clause 13, performance of the contract will be reviewed.

131. There will be two further Contractual Review Points: one at the mid-point of the contract, July 2024, and a further one at October 2025, aligned to the Annual Review process in that year. Continuation of the contract beyond the Review Points will be based on agreement of deliverables, satisfactory Supplier and contract performance, the impact

of the programme and continuing need. The Supplier will provide FCDO with information required a minimum of 2 months in advance of the Review Points, to enable timely decision-making. A decision on progression of the contract beyond the specified Review Points will be made no later than 30 days prior to the Review Points, to enable sufficient time for execution of the contract Exit Plan in the event of a decision to terminate the contract.

## **Section S - Duty of care**

132. The Supplier is responsible for the safety and well-being of their personnel and third parties affected by their activities under this contract, including appropriate security arrangements for their domestic and business property.

133. FCDO will share available information with the Supplier on security status and developments in-country where appropriate. Travel advice is available on the FCDO website, and the Supplier must ensure they (and their personnel) are up to date with the latest position. Country-level risk matrices developed by FCDO may be provided to the Supplier at the time of commissioning research or at the Inception Phase.

134. The Supplier is responsible for ensuring that appropriate arrangements, processes and procedures are in place for their personnel, considering the environment they will be working in, and the level of risk involved in delivery of the contract (such as working in dangerous, fragile and hostile environments etc.).

135. This procurement may require the Supplier to operate in fragile and conflict-affected areas where the security situation is uncertain and subject to change. The Supplier should be comfortable in working in such environments and should be capable of deploying to areas within the East Africa, Middle East and North Africa and South Asia regions to deliver the contract.

## **Section T - Safeguarding**

136. The Supplier will take a robust approach to safeguarding. During the Inception Phase the Supplier will be required to conduct a thorough analysis of the safeguarding risks of operating in different countries. The Supplier will outline how this analysis will be conducted, alongside the overall approach to safeguarding including reporting and whistleblowing procedures.

137. The Suppliers will utilise robust safeguarding policies and procedures and will ensure that Research Pool providers follow the same or equivalent processes, to ensure that every person, regardless of their age, gender, religion or ethnicity, can be protected from harm, violence, exploitation, and abuse. This includes sexual exploitation and abuse but should also be understood as all forms of physical or emotional violence or abuse and financial exploitation.

## **Section U - Delivery chain mapping**

138. Delivery chain mapping is a process that identifies and captures, usually in visual form, the name of all supply partners involved in delivering a specific good, service or charge, ideally down to the end beneficiary. The Supplier will need to provide a clear delivery chain map.

139. The map must clearly set out all names, as well as the management and visibility of FCDO monies through the delivery chain. The map must demonstrate robust and transparent systems for selecting partners and processes for eliminating the risk of fraud, bribery, money laundering and terrorist financing in the supply chain. The map must also outline how the Supplier will monitor and manage the activities of implementing partners and how the Supplier will respond to poor performance and/or the potential misuse of funds.
140. The map will be updated annually as a minimum. However, the Supplier will be required to provide updates as new workstreams start.
141. FCDO is expected to report to central government on the levels of contracted work being allocated to SMEs and other sub-contracted organisations. It is now a requirement to provide details regarding the levels of direct and indirect departmental SME spend with major suppliers to the cross-government SME Small Business Policy team working on this initiative. FCDO is also interested in gathering details of the organisations working within the delivery chains of directly contracted partners. As part of the contractual compliance checking process, Suppliers will be required to submit returns providing these details, as a minimum on an annual basis.

## **Section V - Transparency**

142. FCDO requires suppliers receiving and managing funds to release open data on how this money is spent, in a common, standard, re-usable format and to require this level of information from immediate sub-contractors, sub-agencies and partners.
143. It is a contractual requirement for all Suppliers to ensure they have the appropriate tools to enable routine financial reporting, publishing of accurate data and providing evidence of this FCDO – further IATI information is available from <http://www.aidtransparency.net>

## **Section W - Disability Considerations**

144. For FCDO, disability-inclusive development means that people with disabilities are systematically and consistently included in and benefit from international development. Suppliers and the Research Pool providers should outline their approach to disability inclusion and how people with disabilities will be consulted and engaged throughout the project.

## **Section X - Social value considerations**

145. The Cabinet Office have proposed new measures to ensure that money spent by Government on buying goods and services benefits society more widely as well as delivering value for money. The Social Value Act requires contracting authorities to consider how the services being procured might improve the economic, social, and environmental well-being of the relevant area. In the FCDO context, social value is delivered to overseas beneficiaries through the programmes we deliver and in the sustainable legacy that we aim to leave behind. As overseas development aid is also in the UK national interest, benefit ultimately also flows back to the UK.
146. Social Value outcomes are already embedded and evaluated within the programmes that FCDO deliver, however application of the Public Services (Social Value) Act 2013 will be extended to ensure that all government departments explicitly evaluate social value when commissioning services. More details can be accessed at:



<https://www.gov.uk/government/publications/procurement-policy-note-0620-taking-account-of-social-value-in-the-award-of-central-government-contracts>

**Section Y - General Data Protection Regulations Requirements:**

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

**Annex A – Management Information reporting requirements.**

The Supplier will provide Management Information to FCDO on its Research Provider Pool, including but not limited to:

<b>At Management Information Reporting</b>	<b>Project Commissioning</b>	<b>Ongoing Projects</b>	<b>Closed Projects</b>	<b>Completed Products</b>
Number/percentage of proposals/bids submitted by Local and Regional Institutions/Providers as lead or co-lead				
Number/percentage of proposals/bids submitted by Local and Regional Institutions/Providers as a consortium or downstream partner				
Number/percentage of winning proposals/bids with by Local and Regional Institutions/Providers as lead or co-lead				
Number/percentage of winning proposals/bids with by Local and Regional Institutions/Providers as a consortium or downstream partner				
Number/percentage of research projects or products led by Local and Regional Institutions/Providers;				
Number/percentage of research projects or products implementing gender analysis or focusing on women/girls;				
Number/percentage of research projects or products with specific capacity building objective(s)/output(s);				
Number of evaluation studies that include details of beneficiary engagement approach.				
Number/percentage of research products or outputs which comply with FCDO's open access policy;				

FCDO may request additional information, e.g., to perform additional checks around the conduct of a procurement. The Supplier is expected to keep accurate records of all procurements and provide the following Management Information to FCDO on its Research Provider Pool, within five working days, upon request:

Disaggregated by Component, all identified potential Research Provider Pool participants, including any assessment made of their technical capacities
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Disaggregated by project, details of all communication with potential Research Provider Pool participants and the content and subjects of discussion.
Disaggregated by project, component, or by thematic area, details of active Research Provider Pool participants who have submitted proposals for Projects commissioned and details of those proposals (including bid compliance, supply partners and cost), and the Supplier's assessment thereof (including Due Diligence, Technical and Commercial proposal scoring and assessment summary.)
Disaggregated by project, component, or by thematic area, details of active Research Provider Pool participants who have been successful in selection to deliver Projects commissioned, (supply partners, cost and comparative advantages) details of their winning proposals, and the Supplier's assessment thereof.
Disaggregated by Project, details of proposed Fee Rates, expenses and other relevant project costs from all procurement and commissioning activities, with those accepted in winning proposals clearly identifiable.

**Annex B - Dimensions of Quality**

	<b>Brief definition</b>	<b>General dimensions of quality</b>
Quantitative primary studies	Studies which gather numerical data to investigate patterns, impacts, and phenomena, using tools such as surveys. This includes a broad range of methodologies, which will have specific considerations or indicators of quality.	Overall study design, sample selection, data collection, analysis methods, and ethical considerations.
Qualitative primary studies	Studies which use words or text (rather than numerical measurement and quantification) to investigate topics in depth, using tools such as interviews.	Overall study design, participant recruitment strategy, data collection and analysis methods, and ethical considerations.
Systematic reviews	These are a specific type of literature review that uses systematic, and transparent, methods to collect secondary data, critically appraise research studies, and synthesise findings qualitatively or quantitatively.	Search strategy, inclusion criteria, use of methods to avoid bias, quality appraisal, analysis methods, and ethical considerations.
Rapid evidence assessments	These offer a robust synthesis of evidence using systematic principals, but in less time than a systematic review. Although they are not exhaustive (as would be expected of a systematic review), they are comprehensive in the approach to literature searching and provide a balanced assessment and analysis of the evidence base.	Search strategy, inclusion criteria, use of methods to avoid bias, quality appraisal, data extraction, analysis methods, and ethical considerations. (Similar to systematic review tool, though there could be less expectation of meeting some of these criteria)
Evidence maps	These offer a useful overview of the scale, range, and nature of evidence available on a topic. These tend to address broader questions than evidence syntheses and follow the same rigorous processes for search and screening, but typically do not rigorously assess quality or synthesise findings.	Search strategy, inclusion criteria, data extraction, analysis methods, and ethical considerations.

## Appendix A: of Contract Section 3 (Terms of Reference)

### Schedule of Processing, Personal Data and Data Subjects

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

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

Description	Details
<b>Identity of the Controller and Processor for each Category of Data Subject</b>	<p>The Parties acknowledge that for the purposes of the Data Protection Legislation, the following status will apply to personal data under this contract:</p> <p>1) <b>The Supplier will be the Controller and both the Supplier and the Research Pool the Processors</b> in accordance with Clause 33 (Section 2 of the Contract) of the following Personal Data:</p> <ul style="list-style-type: none"> <li>• Research Provider Pools &amp; Bidder Registration Information (Name, Physical and Postal Address, area of operation/research, registration status and nature of registration etc.)</li> <li>• Personal Data included within Concept Notes and Project Terms of Reference (ToRs)</li> <li>• Personal Data included within Project tender documentation, such as contact details</li> <li>• Personal Data submitted in Research Provider Pool proposals for EF Projects and all supporting files</li> <li>• Personal Data included in EF Project proposal evaluation information (financial evaluation scores, technical evaluation scores, rejection letters, letters of award, appeal letters)</li> <li>• Personal Data collected for due diligence assessments</li> <li>• Personal Data included in Project contracts and agreements</li> <li>• Personal Data included within operational and other manuals, such as contact details</li> <li>• Peer reviewer, researcher and technical adviser CVs and other Personal Data collected to assess individuals' capacities to deliver EF products and services, where detailed in Section 3 Terms of Reference.</li> <li>• Personal Data of individuals who are surveyed, interviewed, consulted or otherwise engaged for the purpose of gaining understanding of their identity, knowledge, views/opinions and experiences in the performance of the Contract</li> <li>• Personal Data of those who have delivered, or have contributed to the delivery of Evidence Fund commissioned products</li> <li>• Personal Data included within Performance Management and progress reports</li> <li>• Personal Data included in financial reports</li> <li>• FCDO staff Personal Data</li> </ul> <p>2) For the avoidance of doubt the Supplier shall provide <b>anonymised data</b> sets for the purposes of reporting on this project and so FCDO shall not be a Processor in any respect as it does not constitute Personal Data.</p>
<b>Subject matter of the processing</b>	<p>The collection and processing of Personal Data shall be limited to purposes set out in Section 3 - Terms of Reference. Those permitted purposes may be summarised as those that support the delivery of "portfolio management" services, which facilitate access to</p>

	<p>high quality research and evidence markets, design and implement effective commissioning processes for required products and manage their effective delivery, while providing ancillary services such as peer review and quality assurance and delivering cross-programme learning and communication functions. The permitted purposes will also include those that support the delivery of the research, evidence and evaluation Projects and products commissioned.</p> <p>In respect of the Personal Data of FCDO Staff, processing shall be for purposes necessary for the administration and/or fulfilment of this Contract.</p>
<b>Duration of the processing</b>	<p>The Supplier and by extension, the Research Pool, may process the Personal Data from the Commencement Date to the Expiry Date, which subject to extension options, will have a maximum duration of 6 years. For the avoidance of doubt, the duration of the processing will be coterminous with the Contract. All Projects commissioned will also be coterminous with the Contract.</p>
<b>Nature and purposes of the processing</b>	<p>The Supplier may process Personal Data under this contract only as relevant to the delivery of the following activities:</p> <ul style="list-style-type: none"> <li>• Developing, maintaining and providing access to a broad, diverse Research Pool</li> <li>• Conducting due diligence assessments of potential Research Provider Pool participants</li> <li>• Identifying mitigating and monitoring conflicts of interest</li> <li>• The scoping and procuring of FCDO-commissioned research, evidence and evaluation products and managing their delivery.</li> <li>• Identifying and delivering and measuring cross-programme learning across commissioned portfolios</li> <li>• Developing, implementing and maintaining a monitoring framework</li> <li>• Developing and delivering robust communication and uptake strategies, including learning events and measuring learning</li> <li>• Quality Assuring commissioned products</li> <li>• Establishing a pool of external peer reviewers and tasking them with peer review of commissioned products</li> <li>• Synthesis of EF commissioned evaluations and analysis of monitoring data from FCDO (formerly DFID) programmes previously implemented</li> <li>• Organising and conducting workshops</li> <li>• Delivering demand driven Technical Assistance support as requested by FCDO</li> <li>• Producing reports in compliance with requirements outlined in the Terms of Reference.</li> </ul> <p>The Supplier shall not include Personal Data in any outputs that are developed during research uptake and dissemination activities, except for attributed quotes and identification of interviewees by name where interviewees have given their written - or otherwise recorded - consent to be named.</p>
<b>Type of Personal Data [and Special Categories of Personal Data]</b>	<p>The following categories of special data may be collected in the delivery of the Services, where relevant to the activity and managed in compliance with the Contract terms and applicable law:</p> <p>personal data revealing racial or ethnic origin;  personal data revealing political opinions;  personal data revealing religious or philosophical beliefs;  personal data revealing trade union membership.  personal data from vulnerable populations, including but not limited to gender-based violence survivors, political activists living in fear, or individuals in witness protection etc;  genetic data;  biometric data (where used for identification purposes);  data concerning health;  data concerning a person's sex life; and</p>

	<p>data concerning a person's sexual orientation.</p> <p>data concerning a person's criminal offences.</p>
<p><b>Plan for return and destruction of the data once processing complete.</b></p>	<p>The Supplier is responsible for destroying all Personal Data at or before the maximum duration. The Supplier may retain anonymised data sets beyond this period, as it does not constitute Personal Data. The Supplier is also responsible for the destruction of Personal Data relating to individuals who withdraw their consent.</p> <p>All 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 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 purposes or as otherwise required by this Agreement), and taking all further actions as may be necessary or desirable to ensure its compliance with Data Protection Law and its privacy policy.</p> <p><b>(UNLESS requirement under EU or European member state law to preserve that type of data)</b></p>

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

**1. Party Contacts**

**FCDO**

1.1 The Contract Officer is:

[REDACTED]

Foreign, Commonwealth and Development Office

Email: [REDACTED]

Telephone: [REDACTED]

1.2 The Project Officer is:

[REDACTED]

Email: [REDACTED]

Telephone: [REDACTED]

**Supplier**

1.3 The Contract Officer is: [REDACTED]

Email: [REDACTED]

Telephone: [REDACTED]

1.4 The Project Officer is: [REDACTED]

Email: [REDACTED]

Telephone: [REDACTED]

**2. Expiry Date**

2.1 End date of Extension Period:

30 November 2028

2.2 Minimum written notice to Supplier in respect of extension:

30 days

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

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

Technical Proposal dated September 2021

Commercial Proposal dated 29 September 2022



4. Key Personnel

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

NAME	ROLE/TITLE	APPLICABLE JOB FAMILY (as per Commercial Proforma/Cost Guidance)
	Director of Operations and Research	Programme Leadership
	Finance Lead	Programme Leadership
	Regional Research and Relationship Manager (S Asia)	Programme Manager
	Regional Research and Relationship Manager (E Africa)	Programme Leadership
	Regional Research and Relationship Manager (MENA)	Programme Leadership
	Evaluation Manager	Technical Advisor

5. Sub-Contractors

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

Integrity Global Ltd  
Research and evaluation providers, as may be required to perform the services specified in this contract, in line with the provisions elsewhere in this contract.

6. Limitation of Liability

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

£10,000,000

7. Termination Notice

The period of written notice under Clause 43 (Termination Without Default of the Supplier) in Section 2 (Standard Terms and Conditions) shall be as follows:

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)).

8. Reports

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

9. Medical Insurance

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

It is not the responsibility of the local FCDO office, British Embassy or High Commission to meet the cost of the Supplier's medical care nor to arrange for evacuation in a medical emergency, although they will provide assistance

if they can. On arrival, the Supplier should report to the FCDO local office, British Embassy or High Commission with details of medical insurance arrangements in case of a medical emergency.

**10. Retention of Rights**

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

N/A

**11. Commercially Sensitive Information**

Will be handled in accordance with paragraphs 28, 29, 31, 32 and 54 of Section 2 (Standard Terms and Conditions of Contract) and Section 3 (Terms of Reference).

- PwC and Integrity Technical Response, inclusive of all annexes
- PwC and Integrity Commercial Response, inclusive of all annexes
- PwC and relevant sub-contractors' policies and documents shared with FCDO as part of any Due Diligence Assessment.

**12. Monitoring of Contract Performance**

The obligations in Clause 13 of Section 2 (Standard Terms and Conditions) shall not apply and monitoring of contract performance shall be carried out in accordance with the obligations set out in Volume 3 (Terms of Reference).

**13. Management Charges and Information**

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

- 13.1.1 the total contract revenue received directly on a specific contract;
  - 13.1.2 the total value of sub-contracted revenues under the contract (including revenues for non-SMEs/non-VCSEs); and
  - 13.1.3 the total value of sub-contracted revenues to SMEs and VCSEs.
- 13.2 The SME Management Information Reports shall be provided in the correct format as required by the MI Reporting Template and any guidance issued by FCDO from time to time. The Supplier shall use the initial MI Reporting Template which is set out in the Annex to this Section 4 and which may be changed from time to time (including the data required and/or format) by FCDO by issuing a replacement version. FCDO shall give at least thirty (30) days' notice in writing of any such change and shall specify the date from which it must be used.
- 13.3 The Supplier further agrees and acknowledges that it may not make any amendment to the current MI Reporting Template without the prior written approval of the Contracting Authority.

**14. Intellectual Property Rights**

**Clause 25 of Section 2 shall be deleted and replaced by the following provisions**

- 14.1 Save as expressly granted elsewhere under this Contract:
- 14.1.1 FCDO shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:
    - (a) the Supplier Background IPR;
    - (b) the Third Party IPR; and
    - (c) Project Specific IPRs.

- 14.1.2 The Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of FCDO or its licensors, including the:
- (a) FCDO Background IPR;
  - (b) FCDO Data; and
  - (d) Programme Name and any rights and interests in it at all times.
- 14.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 25.1 of Section 2, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).
- 14.3 Neither party shall have any right to use any of the other Party’s names, logos or trademarks on any of its products or services without the other Party’s prior written consent.
- 14.4 Any Project Specific IPRs created under this Contract shall be owned by the Supplier. FCDO grants the Supplier a licence to use any FCDO Background IPR for the purpose of fulfilling its obligations under this Contract during its Term. The Supplier grants to FCDO a perpetual, irrevocable, non-exclusive, assignable, royalty-free licence to use, sub-license and/or commercially exploit any Project Specific IPRs.
- 14.5 The Supplier hereby grants to FCDO and shall procure that any relevant third-party licensor shall grant to FCDO a perpetual, irrevocable, non-exclusive, assignable, royalty-free licence to use, sub-license and/or commercially exploit any Supplier Background IPRs or Third Party IPRs that are embedded in or which are an integral part of the Project Specific IPR Items.
- 14.6 The Supplier shall promptly notify FCDO if it reasonably believes that it will be unable to grant or procure the grant of the licences set out in Clause 15.5 above and the Supplier shall provide full details of the adverse effects this may have on FCDO’s use of the Project Specific IPRs
- 14.7 The Supplier shall, during and after the Term, on written demand indemnify FCDO against all Losses incurred by, awarded against, or agreed to be paid by FCDO (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR claim.
- 14.8 If an IPR claim is made or anticipated, the Supplier must at its own expense and FCDO’s sole option, either:
- 14.8.1 procure for FCDO the rights in Clause 15.5 without infringing the IPR of any Third Party; or
  - 14.8.2 replace or modify the relevant item with non-infringing substitutes with no detriment to functionality of performance of the Services
- 15. FCDO ethical guidance for research, evaluation and monitoring guidance**
- 15.1 The Supplier shall adhere to the ethical principles and standards specified in “FCDO ethical guidance for research, evaluation and monitoring guidance” when undertaking research and any other forms of data collection and analysis on FCDO funded projects.
- 15.2 For research studies, the Supplier shall align with these principles and standards and shall provide assurance of this (as detailed in the tender) to the FCDO Programme Manager by submission of evidence of approval of relevant protocols, prior to research commencing, by the researchers’ Institutional Review Board (IRB)/Research Ethics Committee (REC) and the relevant regulatory authority in the country where the research is to be completed.
- 15.3 For evaluations, monitoring and other activities (where research protocols are not required to be submitted for approval by the IRB or REC) the Supplier shall be responsible for ensuring ethical issues are given prompt consideration throughout the project cycle of research, monitoring and evaluation activities.
- 15.4 The Supplier must inform the Senior Responsible Officer and Contract Manager at FCDO immediately, in writing, of any issues arising that may be in breach of FCDO’s ethical standards and principles and shall fully investigate and document all or all potential cases of a breach. Failure by the Supplier to report any breach(es) to FCDO may be a material default to the Contract and may entitle FCDO to terminate the Contract’.

**16. Transparency Information**

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

16.1 The Parties acknowledge that:

a) the Transparency Reports;

b) the Publishable Performance Information

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

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

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

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

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

**17. Extension Options**

FCDO reserves the right to extend the contract by up to an additional 36 months over and above the original 34-month duration.

**18. Break Points**

18.1 FCDO will monitor programme performance through quarterly results reporting in addition to formal annual performance reviews.

18.2 FCDO will conduct a review of the Supplier's performance and the operation of the Contract during the following periods:

(a) The end of the 6 months Inception Phase. Transition to the implementation phase will be approved by FCDO;

(b) July 2024 at the midway point of the Contract; (each a "Review Period");

The Supplier shall cooperate fully with any review.

Without prejudice to the generality of FCDO’s rights pursuant to clause 43 of Section 2 , FCDO shall consider whether to exercise its right, to terminate this Contract pursuant to clause 43 of Section 2 (and, if appropriate, clause 44 of Section 2), following each Review Period with termination to take effect from each of the following dates:

(a) In respect of the review carried out pursuant to clause 18.2(a), the date stated in the relevant Termination Notice ("the Inception Break Date");

(b) In respect of the review carried out pursuant to clause 18.2(b), the date started in the relevant Termination Notice ("the Mid-Term Break Date");

18.4 If FCDO exercises its right to terminate the Contract with effect from the Inception Break Date or the Mid -Term Break Date, clause 46.1.3 of Section 2 will apply but by providing notice of the potential Review Period and break dates, FCDO expects any costs incurred pursuant to clause 46.1.3 of Section 2 to be minimised.

18.5 After Clause 16.6 of Section 2, a new Clause 16.6A shall be added as follows:

"16.6A The Supplier will keep the Exit Plan up to date and re-submit it to FCDO on:

16.6A.1 1st June 2025.

**19. Definitions**

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

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

**20. Transparency Reports**

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

Schedule 5: Transparency Reports

1.1 Within three (3) months of the Effective Date the Supplier shall provide to the Authority for its approval (such approval not to be unreasonably withheld or delayed) draft reports in accordance with Annex 1 (once approved, the “Transparency Reports”).

1.2 If the Authority rejects any draft Transparency Report, the Supplier shall submit a revised version of the relevant report for further approval by the Authority within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Authority. If the Parties fail to agree on a draft Transparency Report the Authority shall determine what should be included.

1.3 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Authority at the frequency referred to in Annex 1.

1.4 Any disagreement in connection with the preparation and/or approval of Transparency Reports, other than under paragraph 1.2 above in relation to the contents of a Transparency Report, shall be treated as a Dispute.

1.5 The requirements for Transparency Reports are in addition to any other reporting requirements in this Agreement.

1.6 The Supplier may be required to submit the Publishable Performance Information electronically via the Buyer’s IT system

Annex 1: Transparency Reports

TITLE	CONTENT	FORMAT	FREQUENCY
Performance	Performance against Programme Key Performance Indicators (KPIs)	PDF	Quarterly
	Performance against Project KPIs/Milestones completed	PDF	Quarterly
	Annual Report	PDF	Annually, before Annual Review
Expenditure	Charges incurred	To be agreed in inception	Quarterly
Spend Forecast	Latest forecasts of a) Cumulative spend for the financial year; b) Forecasted spend in the next quarters of the remainder of the current financial year. Where possible, accompanied by a narrative and linked to project KPIs to be assessed in the upcoming quarter.	To be agreed in inception	Quarterly
	Costs committed to, covering both the Core Team services and costs of commissioned products. Costs committed will be those expected to be necessarily incurred in the proper performance of this Contract and which the Supplier cannot reasonably avoid or recover using reasonable endeavours.	To be agreed in inception	Quarterly
Risks	Updated risk matrix	PDF	Quarterly