

CONTRACT FOR SUPPLIER SERVICES

Section 1 - FORM OF CONTRACT

CONTRACT FOR : Global Mine Action Programme 3 (GMAP 3)
Ukraine

Contract Reference Ecm_5463
NUMBER:

THIS CONTRACT is made

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

AND: The HALO Trust (Charity Registration number: 1001813), whose principal place of business is Carronfoot, Thormhill, Dumfries and Galloway, DG3 5BF

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

WHEREAS:

- A.** FCDO requires the Supplier to provide the Services to the Global Mine Action Programme in Ukraine (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 Form of Contract is not signed and dated on behalf of the Supplier within **15 Working Days** of the date on which it was sent for the electronic signature, FCDO will be entitled, at its sole discretion, to declare this Contract void.



Foreign, Commonwealth
& Development Office



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 24 August 2023 and the end date of the Initial Period shall be 31 March 2025.

4. Financial Limit


Payments under this Contract shall not exceed £6,100,000 (six million and one hundred thousand pounds) inclusive of any government tax, if applicable. The maximum value of total extension(s) is up to £6,600,000 (six million and six hundred thousand pounds) inclusive of any government tax, if applicable.

5. Programme Name

The Programme Name to which this Contract relates is Global Mine Action Programme 3 (GMAP 3) Ukraine.

6. Time of the Essence

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



Foreign, Commonwealth and Development Office (FCDO)

Standard Terms and Conditions – Service Contracts

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Preliminaries

1. DEFINITIONS AND INTERPRETATION

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

2. REPRESENTATIONS AND WARRANTIES

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

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

3. FINANCIAL LIMIT

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

Term of Contract**4. CONTRACT TERM**

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

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

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

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

- 6.1 The Supplier shall not remove or replace any Key Personnel (including when carrying out its obligations under Clause 16 (Exit Management)) unless:

- 6.1.1 requested to do so by FCDO;
- 6.1.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
- 6.1.3 the person's employment or contractual arrangement with the Supplier or a Sub-Contractor is terminated by the employer for material breach of contract; or
- 6.1.4 the Supplier obtains Approval (such Approval not to be unreasonably withheld or delayed).

6.2 The Supplier shall:

- 6.2.1 provide a list of the names of all Supplier Personnel requiring admission to FCDO Sites, specifying the capacity in which they require admission and giving such other particulars as FCDO may reasonably require;
- 6.2.2 ensure that all Supplier Personnel:
 - (a) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - (b) are vetted in accordance with Good Industry Practice and in compliance with the Staff Vetting Procedure;

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/301861/Security_Policy_for_Contractors_Consultants_Suppliers.pdf
 - (c) shall be subject to pre-employment checks that include, as a minimum, employment history for the last three years, identity checks, unspent criminal convictions and right to work (including nationality and immigration status);
 - (d) obey all lawful instructions and reasonable directions of FCDO (including, if so required by FCDO, the ICT Policy) and provide the Services to the reasonable satisfaction of FCDO; and
 - (e) comply with:
 - (i) all reasonable requirements of FCDO concerning conduct at FCDO Sites, including any security requirements; and
 - (ii) any FCDO policies, provided to the Supplier or Supplier Personnel from time to time
- 6.2.3 subject to Schedule 2 (Staff Transfer), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or Contractors of FCDO;
- 6.2.4 be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Contract shall be a Default by the Supplier;
- 6.2.5 use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
- 6.2.6 subject to Clause 6.1, replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
- 6.2.7 bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
- 6.2.8 procure that the Supplier Personnel shall vacate FCDO Sites immediately upon the Expiry Date.
- 6.3 If FCDO reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Contract, it may:
 - 6.3.1 refuse admission to the relevant person(s) to FCDO Sites and/or
 - 6.3.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).
 - 6.3.3 require the Supplier to replace the relevant person(s) without direct or indirect charge to FCDO and the Supplier shall fully indemnify and hold FCDO harmless against any claims of any kind that may arise with regard to the replacement of such Supplier Personnel.

7. SUB-CONTRACTORS AND EXCLUSIVITY

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

- 7.7.4 conferring a right to FCDO to publish the Supplier's compliance with its obligation to pay undisputed invoices to the Sub-Contractor within the specified payment period;
- 7.7.5 giving the Supplier a right to terminate the Sub-Contract if the Sub-Contractor fails to comply in the performance of the Sub-Contract with legal obligations in the fields of environmental, social or labour law; and
- 7.7.6 requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by this Clause 7.7.

7.8 The Supplier shall:

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

8. VISIBILITY OF SUBCONTRACT OPPORTUNITIES

8.1 The Supplier shall:

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

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

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

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

9. STAFF TRANSFER

9.1 The Parties agree that:

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

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

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

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

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

10. DUTY OF CARE

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

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

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

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

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

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

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

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

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

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

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

11. PROCUREMENT OF EQUIPMENT

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

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

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

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

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

12. USE OF AND RESPONSIBILITY FOR EQUIPMENT

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

Contract Governance

13. MONITORING OF CONTRACT PERFORMANCE

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

14. PROGRESS & FINANCIAL REPORTS

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

15. OPEN BOOK ACCOUNTING AND AUDIT

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

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

16. EXIT MANAGEMENT

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

- 16.5 The Supplier shall, within three (3) months after the Commencement Date, deliver to FCDO an Exit Plan which:
- 16.5.1 sets out the Supplier's proposed methodology for achieving an orderly transition of the Services from the Supplier to FCDO and/or its Replacement Supplier on the expiry or termination of this Contract;
 - 16.5.2 complies with the requirements set out in Clause 16.7 below;
 - 16.5.3 is otherwise reasonably satisfactory to FCDO.
- 16.6 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 16.7 Unless otherwise specified by FCDO, the Exit Plan shall set out, as a minimum:
- 16.7.1 how the Exit Information is obtained;
 - 16.7.2 the management structure to be employed during both transfer and cessation of the Services;
 - 16.7.3 the management structure to be employed whilst carrying out the activities to be performed by the Supplier as identified in the Exit Plan;
 - 16.7.4 a detailed description of both the transfer and cessation processes, including a timetable;
 - 16.7.5 how the Services will transfer to the Replacement Supplier and/or FCDO, including details of the processes, documentation, data transfer, systems migration, security and the segregation of FCDO's technology components from any technology components operated by the Supplier or its Sub-Contractors (where applicable);
 - 16.7.6 details of contracts (if any) which will be available for transfer to FCDO and/or the Replacement Supplier upon the Expiry Date together with any reasonable costs required to effect such transfer (and the Supplier agrees that all assets and contracts used by the Supplier in connection with the provision of the Services will be available for such transfer);
 - 16.7.7 proposals for the training of key personnel of the Replacement Supplier in connection with the continuation of the provision of the Services following the Expiry Date charged at rates agreed between the Parties at that time;
 - 16.7.8 proposals for providing FCDO or a Replacement Supplier copies of all documentation:
 - (a) used in the provision of the Services and necessarily required for the continued use of the Replacement Services, in which the Intellectual Property Rights are owned by the Supplier; and
 - (b) relating to the use and operation of the Services;
 - 16.7.9 proposals for the assignment or novation of the provision of all services, leases, maintenance agreements and support agreements utilised by the Supplier in connection with the performance of the supply of the Services;
 - 16.7.10 proposals for the identification and return of all Equipment in the possession of and/or control of the Supplier or any third party (including any Sub-Contractor);
 - 16.7.11 proposals for the disposal of any redundant Services and materials;
 - 16.7.12 procedures to:
 - (a) deal with requests made by FCDO and/or a Replacement Supplier for Staffing Information pursuant to Schedule 2 (Staff Transfer);
 - (b) determine which Supplier Personnel are or are likely to become Transferring Supplier Employees; and
 - (c) identify or develop any measures for the purpose of the Employment Regulations envisaged in respect of Transferring Supplier Employees;
 - 16.7.13 how each of the issues set out in this Clause 16 will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or FCDO with the aim of ensuring that there is no disruption to or degradation of the Services;
 - 16.7.14 proposals for the supply of any other information or assistance reasonably required by FCDO or a Replacement Supplier in order to effect an orderly handover of the provision of the Services.

PAYMENT AND TAXATION

17. Charges

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

18. VAT

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

19. RETENTION AND SET OFF

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

20. SUPPLIER PROFIT

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

21. SATISFACTORY PERFORMANCE

- 21.1 Payments made pursuant to Clause 17.1 are subject to the satisfactory performance by the Supplier of its obligations under the Contract as determined by the FCDO Project Officer in addition to verification by the FCDO Project Officer that all prior payments made to the Supplier under this Contract were properly due.
- 21.2 If for any reason the Services are not provided in accordance with this Contract, or FCDO is dissatisfied with the performance of this Contract, FCDO, without prejudice to any other rights or remedies howsoever arising, shall be entitled to withhold payment of the applicable Charges for the Services that were not so provided until such time as the applicable Services are provided in accordance with this Contract.

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

22. PAYMENTS & INVOICING INSTRUCTIONS

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

23. UNITED KINGDOM INCOME TAX AND NATIONAL INSURANCE CONTRIBUTIONS

- 23.1 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Contract, the Supplier shall:
- 23.1.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration;
 - 23.1.2 indemnify FCDO against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Supplier Personnel.

24. TAX COMPLIANCE

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

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

Intellectual Property, Security and Information

25. INTELLECTUAL PROPERTY RIGHTS

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

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

26. SECURITY REQUIREMENTS

- 26.1 The Supplier shall comply, and shall procure that the Supplier Personnel comply, with the Security Policy and any security plan requested by FCDO, and the Supplier shall ensure that the security plan produced by the Supplier fully complies with the Security Policy.
- 26.2 The Supplier shall ensure that it keeps up to date with the latest version of the Security Policy.
- 26.3 If the Supplier believes that a change to the Security Policy will have a material and unavoidable cost implication to the Services it may submit a variation in accordance with Clause 38. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in discussion with the FCDO Contract Officer.
- 26.4 Until and/or unless a change to the Charges is agreed by FCDO pursuant to Clause 26.3 the Supplier shall continue to perform the Services in accordance with its obligations and for the Charges applicable prior to any change request.

27. MALICIOUS SOFTWARE

- 27.1 The Supplier shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.
- 27.2 Notwithstanding Clause 27.1 if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of FCDO Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.
- 27.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 27.2 shall be borne by the Parties as follows:
- 27.3.1 by the Supplier where the Malicious Software originates from the Supplier Software, the Third Party Software or the FCDO Data (whilst the FCDO Data was under the control of the Supplier); and
- 27.3.2 by FCDO if the Malicious Software originates from the FCDO Software or the FCDO Data (whilst FCDO Data was under the control of FCDO).

28. TRANSPARENCY

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

record should be made available to FCDO upon written request and within the time set out in the request. This record should be updated by the Supplier;

- 28.7.1 as required in the terms of reference;
- 28.7.2 annually;
- 28.7.3 when there are material changes in the delivery chain; and
- 28.7.4 as part of the project completion process.

29. CONFIDENTIALITY

- 29.1 Except to the extent set out in this Clause 29 or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
- 29.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly;
 - 29.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 29.2 Clause 29.1 shall not apply to the extent that:
- 29.2.1 such disclosure is a requirement of Law applicable to the Party making the disclosure, including any requirements for disclosure under the FOIA, the Environmental Information Regulations and associated codes of practice pursuant to Clause 30 (Freedom of Information);
 - 29.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 29.2.3 such information was obtained from a third party without obligation of confidentiality;
 - 29.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
 - 29.2.5 it is independently developed without access to the other Party's Confidential Information.
- 29.3 The Supplier may only disclose FCDO's Confidential Information to the Supplier Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Supplier Personnel are aware of and shall comply with these obligations as to confidentiality.
- 29.4 The Supplier shall not, and shall procure that the Supplier Personnel do not, use any of FCDO's Confidential Information received otherwise than for the purposes of this Contract.
- 29.5 At the written request of FCDO, the Supplier shall procure that those members of the Supplier Personnel referred to in Clause 29.3, respectively sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 29.6 Nothing in this Contract shall prevent FCDO from disclosing the Supplier's Confidential Information:
- 29.6.1 on a confidential basis to any Central Government Body for any proper purpose of FCDO or of the relevant Central Government Body;
 - 29.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - 29.6.3 to the extent that FCDO (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - 29.6.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 29.6.1 (including any benchmarking organisation) for any purpose relating to or connected with this Contract;
 - 29.6.5 on a confidential basis for the purpose of the exercise of its rights under this Contract, including the Audit Rights, its step-in rights pursuant to Clause 15 (Open Book Accounting and Audit), its rights to appoint an advisor pursuant to Clause 47 (Dispute Resolution) and any rights set out in Clause 16 (Exit Management);
 - 29.6.6 on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract; or

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

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

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

30. FREEDOM OF INFORMATION

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

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

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

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

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

30.3 FCDO shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA, the Environmental Information Regulations and associated codes of practice.

30.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by FCDO.

30.5 The Supplier acknowledges that FCDO may, acting in accordance with any code of practice issued pursuant to Section 45 of FOIA ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Services:

30.5.1 in certain circumstances without consulting the Supplier;

30.5.2 following consultation with the Supplier and having taken their views into account;

30.5.3 provided always that where Clause 30.5.1 applies FCDO shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

30.6 The Supplier shall ensure that all Information is retained for disclosure in accordance with Clauses 30.7 and 30.8 and shall permit FCDO to inspect such records as requested by FCDO from time to time.

30.7 The Supplier shall, during this Contract and for a period of at least seven years following the expiry or termination of this Contract, retain and maintain all Information:

30.7.1 in accordance with Good Industry Practice and Law;

30.7.2 in chronological order;

30.7.3 in a form that is capable of audit;

30.7.4 at its own expense.

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

31. OFFICIAL SECRETS ACT

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

32. FCDO DATA

- 32.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to FCDO Data.
- 32.2 The Supplier shall not store, copy, disclose, or use FCDO Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise expressly authorised in writing by FCDO.
- 32.3 To the extent that FCDO Data is held and/or processed by the Supplier, the Supplier shall supply that FCDO Data to FCDO as requested by FCDO in the format(s) specified by FCDO.
- 32.4 Upon receipt or creation by the Supplier of any FCDO Data and during any collection, processing, storage and transmission by the Supplier of any FCDO Data, the Supplier shall take responsibility for preserving the integrity of FCDO Data and preventing the corruption or loss of FCDO Data.
- 32.5 The Supplier shall perform secure back-ups of all FCDO Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Security Policy. The Supplier shall ensure that such back-ups are available to FCDO at all times upon request, with delivery times as specified by FCDO.
- 32.6 The Supplier shall ensure that the system on which the Supplier holds any FCDO Data, including back-up data, is a secure system that complies with the Security Policy.
- 32.7 If FCDO Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, FCDO may:
- 32.7.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of FCDO Data to the extent and in accordance with the Business Continuity and Disaster Recovery Provisions specified in the Security Policy and the Supplier shall do so as soon as practicable but not later than three days following a written request from FCDO; and/or
 - 32.7.2 itself restore or procure the restoration of FCDO Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in the Business Continuity and Disaster Recovery provisions specified in the Security Policy.
- 32.8 If at any time the Supplier suspects or has reason to believe that FCDO Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify FCDO immediately and inform FCDO of the remedial action the Supplier proposes to take.
- 32.9 The Supplier shall obtain and maintain certification under the HM Government Cyber Essentials Scheme.

33. PROTECTION OF PERSONAL DATA

- 33.1 The Parties acknowledge that the factual activity carried out by each of them in relation to their obligations under this Contract will determine the status of each Party under the Data Protection Legislation. A Party may act as "Joint Controller" or a "Controller" or a "Processor" of certain Personal Data under this Contract. The Parties shall detail the envisaged status in Appendix A of the Terms of Reference (at Section 3 of the Contract) and update it where appropriate.
- 33.2 **Where a Party is Processing on behalf of the other Party who is the Controller**
- 33.2.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, FCDO is the Controller and the Supplier is the Processor unless otherwise specified in Appendix A of the Terms of Reference (at Section 3 of the contract). The only processing that the Processor is authorised to do is listed in Appendix A of the Terms of Reference by the Controller and may not be determined by the Processor.
 - 33.2.2 The Processor shall notify the Controller immediately if it considers that any of Controller's instructions infringe the Data Protection Legislation.
 - 33.2.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
 - (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the services.
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and

- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

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

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

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

- a. receives a Data Subject Access Request (or purported Data Subject Access Request);
- b. receives a request to rectify, block or erase any Personal Data;

- c. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - d. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - e. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - f. becomes aware of a Data Loss Event.
- 33.2.6 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 33.2.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
 - a. the Controller with full details and copies of the complaint, communication or request;
 - b. such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - c. the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - d. assistance as requested by the Controller following any Data Loss Event;
 - e. assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 33.2.7 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
 - a. the Controller determines that the processing is not occasional;
 - b. the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - c. the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 33.2.8 Where the Supplier is the Processor it shall allow for audits of its Data Processing activity by the FCDO or its FCDO's designated auditor.
- 33.2.9 Each party shall designate its own Data Protection Officer if required by the Data Protection Legislation.
- 33.2.10 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
 - a. notify the Controller in writing of the intended Sub-processor and processing;
 - b. obtain the written consent of the Controller;
 - c. enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 33.2 such that they apply to the Sub-processor; and
 - d. provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 33.2.11 The Processor shall remain fully liable for all acts or omissions of any Sub-processor.
- 33.2.12 The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable Controller to Processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

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

33.3 Where the Parties both Control Personal Data Independently

- 33.3.1 With respect to Personal Data which a Party acts as Controller but which is not under the Joint Control (because the Parties determine the means and purposes of processing Personal Data independently of each other) each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controller and with this Clause 33.3.
- 33.3.2 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its processing of Personal Data as independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 33(1)(a), (b), (c) and (d) of the GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the GDPR.
- 33.3.3 Each Party shall promptly (and without undue delay) notify the other Party if in relation to any Personal Data processed by it as independent Controller in the performance of its obligations or the exercise of its rights under this Contract if:
- (a) it receives a complaint, notice or communication which relates to either Party's actual or alleged non-compliance with the Data Protection Legislation; or
 - (b) it becomes aware of a Personal Data Breach;
- and shall provide the other Party with such assistance and cooperation as is reasonably requested by the other Party in order to address and resolve the complaint, notice, communication or Personal Data Breach.
- 33.3.4 In respect of any losses, cost claims or expenses incurred by either Party as a result of a Personal Data Breach (**the "Claim Losses"**): the Party responsible for the relevant breach shall be responsible for the Claim Losses.
- 33.3.5 The Parties agree to erase Personal Data from any computers, storage devices and storage media that are to be retained as soon as practicable after it has ceased to be appropriate for them to retain such Personal Data under applicable Data Protection Law Legislation and their privacy policy (save to the extent and for the limited period) that such information needs to be retained by the a Party for statutory compliance the purposes of complying with Law or as otherwise required by this Contract), and taking all further actions as may be necessary or desirable to ensure its compliance with Data Protection Law Legislation and its privacy policy

33.4 Where the Parties are both Controllers of Personal Data Jointly

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

34. PUBLICITY AND BRANDING

- 34.1 The Supplier shall not:

- 34.1.1 make any press announcements or publicise this Contract or its contents in any way; or
 - 34.1.2 use FCDO's name or brand (including the 'UK aid logo') in any promotion, marketing, communications or announcement of orders;
- without the prior written consent of the FCDO.

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

- 34.2.1 shall collaborate with FCDO and proactively look for ways to build support for development and raise awareness of FCDO's funding.
- 34.2.2 shall explicitly acknowledge FCDO's funding, in written and verbal communications about activities related to the funding, to the public or third parties, including in announcements, and through use, where appropriate, of FCDO's "UK aid – from

the British people” logo (‘UK aid logo’) in accordance with FCDO standards for use of the UK aid logo, unless otherwise agreed in advance by FCDO and in all cases subject to security and safety considerations of the Supplier.

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

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

Liabilities

35. LIMIT OF LIABILITY

35.1 Neither Party limits its liability for:

35.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);

35.1.2 fraud or fraudulent misrepresentation by it or its employees;

35.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

35.1.4 any liability to the extent it cannot be limited or excluded by Law.

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

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

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

35.4.1 loss of profits, turnover, savings business opportunities, revenue or damage to goodwill (in each case whether direct or indirect); and/or

35.4.2 indirect, special or consequential loss or damage of any nature and howsoever caused, even if the losses were reasonably foreseeable or the Party has been advised of the possibility of such losses occurring.

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

35.5.1 any additional operational and/or administrative costs and expenses incurred by FCDO, including costs relating to time spent by or on behalf of FCDO in dealing with the consequences of the Default;

35.5.2 any wasted expenditure or charges;

35.5.3 the additional cost of procuring Replacement Services for the remainder of the Term, which shall include any incremental costs associated with such Replacement Services above those which would have been payable under this Contract;

35.5.4 any compensation or interest paid to a third party by FCDO; and

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

36. INDEMNITY

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

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

37. INSURANCE

- 37.1 The Supplier shall effect and maintain insurances in relation to the performance of its obligations under this Contract in accordance with Schedule 3 (Insurance Requirements).
- 37.2 The Supplier shall ensure that its Sub-Contractors shall effect and maintain insurances (where appropriate) in relation to the performance of their obligations under any Sub-Contracts appropriate to Services being provided.
- 37.3 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities arising under this Contract.

Control of Contract**38. VARIATIONS**

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

39. ASSIGNMENT AND NOVATION

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

Default and Termination

40. FCDO REMEDIES FOR DEFAULT**40.1 Remedies**

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

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

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

40.2 Rectification Plan Process

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

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

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

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

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

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

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

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

41. FINANCIAL DISTRESS

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

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

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

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

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

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

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

41.4.4 The frequency of monitoring and reporting activity;

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

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

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

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

41.6.1 there is a material deterioration of its financial standing;

41.6.2 the appointment of an administrator or receiver;

41.6.3 late filing of statutory accounts with Companies House;

- 41.6.4 it issues a profits warning or other similar public announcement about a deterioration in its finances or prospects;
 - 41.6.5 it is being publicly investigated for improper financial accounting and reporting, fraud or any other financial impropriety;
 - 41.6.6 it commits a material breach of covenant to its lenders;
 - 41.6.7 a key Sub-Contractor not being paid any sums properly due under a specified invoice that is not subject to a genuine dispute;
 - 41.6.8 it is subject to any claims, litigation, investigations, actions or decisions in respect of financial indebtedness.
- 41.7 In the event of a Financial Distress Event occurring, then the Supplier shall and shall procure that any affected key Sub-Contractor shall, as soon as reasonably practicable review the effect of the Financial Distress Event on the continued performance of the Services under this Contract and provide a report to FCDO. Where FCDO reasonably believes that the Financial Distress Event is likely to adversely impact on the performance of the Services, the Supplier shall submit to FCDO for Approval a Financial Distress Service Continuity Plan as soon as is reasonably practicable and shall provide any further financial information as FCDO may reasonably require to assess financial standing and risks.
- 41.8 If FCDO acting reasonably considers that the Financial Distress Service Continuity Plan is insufficient to remedy the effects of the Financial Distress Event on the Service, then it may require the Supplier (and/or key Sub-Contractor) to redraft and resubmit an improved and updated plan or may require the issue to be escalated via the Dispute Resolution Procedure.
- 41.9 If FCDO Approves the Financial Distress Service Continuity Plan, then the Supplier shall execute and continue to review the plan (with submissions to FCDO for Approval where it is updated).
- 41.10 Where the Parties agree that the Financial Distress Event no longer adversely affects the delivery of the Services, the Supplier shall be relieved of its obligations in respect of the current Financial Distress Service Continuity Plan.
- 41.11 FCDO shall be entitled to terminate this Contract for material Default if:
- 41.11.1 The Supplier fails to notify FCDO of a Financial Distress Event in accordance with Clause 41.6;
 - 41.11.2 FCDO and the Supplier fail to agree a Financial Distress Service Continuity Plan or any updates to a plan within a reasonable timescale (taking into account the effects of the Financial Distress Event on the Services);
 - 41.11.3 The Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan or any updates to the plan.
- 42. FORCE MAJEURE**
- 42.1 Subject to the remainder of this Clause 42, a Party may claim relief under this Clause 42 from liability for failure to meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- 42.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 42.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 42 to the extent that consequences of the relevant Force Majeure Event:
- 42.3.1 are capable of being mitigated by any of the provision of any Services but the Supplier has failed to do so; and/or
 - 42.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Contract.
- 42.4 Subject to FCDO's right to terminate set out in Clause 42.5, the Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 42.5 Where FCDO receives a Force Majeure Notice, from the date of receipt of the Force Majeure Notice, FCDO may, at its sole discretion, either suspend this Contract for a period of up to six (6) months ("the Suspension Period") or terminate this Contract forthwith.

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

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

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

43. TERMINATION WITHOUT DEFAULT OF THE SUPPLIER

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

44. TERMINATION WITH DEFAULT OF THE SUPPLIER

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

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

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

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

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

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

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

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

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

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

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

(a) becomes bankrupt; or

(b) is the subject of a receiving order or administration order; or

(c) makes any composition or arrangement with or for the benefit of the Supplier's creditors; or

(d) makes any conveyance or assignment for the benefit of the Supplier's creditors; or

(e) the warranty given by the supplier pursuant to Clause 24 (Tax Compliance) is materially untrue; or

(f) the Supplier commits a material breach of its obligation to notify FCDO of any Occasion of Tax Non-Compliance as required by Clause 24 (Tax Compliance); or

(g) the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of FCDO, are acceptable; or

44.3.5 the Supplier is a company and:

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

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

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

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

45. PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION

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

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

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

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

45.3.2 reject the Variation.

46. CONSEQUENCES OF EXPIRY OR TERMINATION

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

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

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

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

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

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

46.2 Where this Contract is terminated under Clause 44 (Termination with Default of the Supplier) and FCDO makes other arrangements for the provision of Services FCDO may recover from the Supplier pursuant to Clause 19 (Retention and Set Off) or otherwise, the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by FCDO throughout the remainder of the Term provided that FCDO shall take all reasonable steps to mitigate such additional expenditure.

46.3 Where this Contract is terminated for any reason, save as expressly provided in this Contract:

- 46.3.1 termination or expiry of this Contract shall be without prejudice to any rights, remedies or obligations accrued under this Contract prior to termination or expiration and nothing in this Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
- 46.3.2 termination of this Contract shall not affect the continuing rights, remedies or obligations of FCDO or the Supplier under Clauses 15, 16, 17, 18, 19, 21, 22, 25, 28, 29, 30, 31, 32, 33, 35, 36, 46, 47, 52 and 57, and the provisions of Schedule 2 (Staff Transfer) of this Section 2 and any relevant clauses listed under Section 4 (Special Conditions), and, without limitation to the foregoing, any other provision of this Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the Expiry Date.

MISCELLANEOUS AND GOVERNING LAW

47. DISPUTE RESOLUTION PROCEDURE

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

48. PREVENTION OF FRAUD AND BRIBERY

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

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

49. ANTI-TERRORISM REGULATIONS

- 49.1 In accordance to the Terrorism Act 2000 and all subsequent regulations pursuant to this Act, the Supplier will assure itself to the best of its knowledge that UK funding, including financial assets or economic resources is not made available, either directly or indirectly to, or for the benefit of persons, groups or entities listed in accordance with European Council Regulation EC/2580/2001 (as amended) and/or the Terrorism (United Nations Measures) Orders 2009 of the United Kingdom, or contravene the provisions of those and any subsequent applicable terrorism legislation.
- 49.2 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf, have at any time prior to the Commencement Date and/or during the term of this Contract appeared on the Home Office Proscribed Terrorist Organisations List.
- 49.3 The Supplier shall immediately notify FCDO in writing if it becomes aware of any breach of Clause 49.1 and/or Clause 49.2, or has reason to believe that it has or any Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf have:
- 49.3.1 been subject to an investigation or prosecution which relates to an alleged infringement of Clause 49.1 and/or Clause 49.2;
 - 49.3.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts.
- 49.4 Where the Supplier or any of his employees, servants, agents or Sub-Contractors, or any person acting on their behalf, breaches any of the acts mentioned in Clause 49.1 and/or Clause 49.2 commits any offence under the Terrorism Act 2000, with or without the knowledge of the Supplier, in relation to this Contract or any other contract with the Crown, FCDO shall be entitled:
- 49.4.1 to terminate the Contract with immediate effect by written notice to the Supplier and recover from the Supplier the amount of any loss resulting from the termination;
 - 49.4.2 to recover from the Supplier any other loss sustained as a result of any breach of this Clause 49, whether or not the Contract has been terminated.

50. SAFEGUARDING

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

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

- (a) clear and detailed policies and guidance for Supplier Personnel, Supplier Providers and where appropriate, beneficiaries;
- (b) developing, implementing and maintaining a safeguarding plan throughout the term (including monitoring);
- (c) provision of regular training to Supplier Personnel, Supplier Providers and where appropriate, beneficiaries
- (d) clear reporting lines and whistleblowing policies in place for Supplier Personnel, Supplier Providers and beneficiaries,
- (e) maintaining detailed records of any allegations of Serious Misconduct and regular reporting to FCDO and the Appropriate Authorities (where relevant) of any such incidents;
- (f) any other Good Industry Practice measures (including any innovative solutions),

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

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

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

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

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

50.7 The Supplier shall comply with all applicable laws, legislation, codes of practice and government guidance in the UK and additionally, in the territories where the Services are being performed, relevant to safeguarding and protection of children and vulnerable adults, which the Supplier acknowledges may include vetting of the Supplier Personnel by the UK Disclosure and Barring Service in respect of any regulated activity performed by the Supplier Personnel (as defined by the Safeguarding Vulnerable Groups Act 2006 (as amended)) and/or vetting by a local equivalent service. Where FCDO reasonably believes that there is an increased risk to safeguarding in the performance of the Services, the Supplier shall comply with any reasonable request by FCDO for additional vetting to be undertaken.

50.8 Failure by the Supplier to:

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

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

51. DISCRIMINATION

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

52. LAW AND JURISDICTION

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

53. ENVIRONMENTAL REQUIREMENTS

- 53.1 The Supplier shall provide the Services and any goods & equipment required under the Contract in accordance with applicable national and international laws, including those of the country or countries in which the Services or goods & equipment are to be provided, and FCDO's environmental operations policy, which is to conserve energy, water and other resources, reduce waste, phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 53.2 The Supplier shall work with FCDO and the populations that are potentially affected by its operations under the Contract regarding any environmental issues that could affect the sustainable development provisions of the International Development Act (2002), comply with special conditions as stipulated in the Terms of Reference and carry out any reasonable additional request to ensure the protection of the environment, society and the economy throughout the contract period.
- 53.3 The Supplier shall ensure it has the requisite expertise and controls to identify and mitigate all factors that may affect compliance with the conditions outlined in Clauses 53.1 and 53.2 as a result of its own operations or those of Sub-Contractors working on its behalf.
- 53.4 The Supplier shall promptly notify FCDO of any changes in potential material adverse effects from its operations under the Contract and of the occurrence of any incident or accident related to the Project that has or is likely to have a significant adverse effect on the environment.
- 53.5 Nothing in Clauses 53.1 to 53.3 shall relieve the obligations of the Supplier to comply with its statutory duties and Good Industry Practice.

54. CONFLICT OF INTEREST

- 54.1 Neither the Supplier nor any of the Supplier Personnel shall engage in any personal, business or professional activity which conflicts or could conflict with any of their obligations in relation to this Contract.
- 54.2 The Supplier and the Supplier Personnel shall notify FCDO immediately of any actual or potential conflict together with recommendations as to how the conflict can be avoided.

- 54.3 The Supplier shall establish and maintain appropriate business standards, procedures and controls to ensure that no conflict of interest arises between Services undertaken for FCDO and that undertaken for other clients. The Supplier shall avoid knowingly committing any acts which are likely to result in any allegation of impropriety against FCDO, including conflicts of interest which are likely to prejudice their independence and objectivity in performing the Contract, howsoever arising.
- 54.4 The Supplier shall notify FCDO immediately of any circumstances of which it becomes aware which give rise or potentially give rise to a conflict with the Services and shall advise FCDO of how they intend to avoid such a conflict arising or remedy such situation. The Supplier shall, subject to any obligations of confidentiality it may have to third parties, provide all information and assistance reasonably necessary (at the Supplier's cost) that FCDO may request of the Supplier in order to avoid or resolve a conflict of interest and shall ensure that at all times they work together with FCDO with the aim of avoiding a conflict or remedy a conflict.
- 54.5 Pursuant to Clause 54.4, FCDO shall have the right to require that the Supplier puts in place Ethical Walls and will ensure and satisfy FCDO that all information relating to the Contract and to the Services (including all working papers, draft reports in both tangible and intangible form) are not shared or made available to person(s) other than Supplier Personnel and that such matters are not discussed by any person(s) other than Supplier Personnel.
- 54.6 In the event of a failure to maintain the Ethical Walls as described above arising during the course of this Contract, FCDO reserves the right to immediately terminate the Contract on giving written notice to the Supplier.

55. WAIVER

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

56. ENTIRE AGREEMENT

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

57. THIRD PARTY RIGHTS

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

58. NOTICES

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

Manner of delivery	Deemed time of delivery	Proof of Service

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

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

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

58.3.2 any notice in respect of:

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

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

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

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

SCHEDULE 1: DEFINITIONS

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

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

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

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

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

“Auditor” means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“DPA 2018” means the Data Protection Act 2018

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

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

“FCDO Background IPR” means:

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

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

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

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

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

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

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

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

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

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

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

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

“Euro Compliant” means that:

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

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

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

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

“Expiry Date” means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Intellectual Property Rights" or "IPRs" means

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Occasion of Tax Non-Compliance” means:

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

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

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

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

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

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

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

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

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

“Prohibited Act” has the meaning;

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

- (i) induce that person to perform improperly a relevant function or activity; or
- (ii) reward that person for improper performance of a relevant function or activity;

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

- (c) an offence:

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

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

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

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

“Project Specific IPRs” means:

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

but shall not include the Supplier Background IPR;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) from, to or at which:

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

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

(b) where:

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

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

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

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

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

- (a) their ages, dates of commencement of employment or engagement, gender and place of work;
- (b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries, bonuses and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;

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

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

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

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

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

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

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

“Supplier Background IPRs” means;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Variation Procedure" means the procedure set out in Clause 38;

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

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

SCHEDULE 2: STAFF TRANSFER**1. DEFINITIONS**

In this Schedule 2, the following definitions shall apply:

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

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

2. INTERPRETATION

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

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

1.1.1 the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring FCDO Employees; and

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

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

2. FCDO INDEMNITIES

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

2.1.1 any act or omission by FCDO in respect of any Transferring FCDO Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring FCDO Employee occurring before the Relevant Transfer Date;

2.1.2 the breach or non-observance by FCDO before the Relevant Transfer Date of:

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

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

2.1.3 any claim by any trade union or other body or person representing the Transferring FCDO Employees arising from or connected with any failure by FCDO to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;

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

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

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

2.1.5 a failure of FCDO to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring FCDO Employees arising before the Relevant Transfer Date;

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

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

3. SUPPLIER INDEMNITIES AND OBLIGATIONS

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

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

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

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

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

4. INFORMATION

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

5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

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

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

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

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

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

5.2.4 the New Fair Deal.

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

6. PENSIONS

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

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

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

2. FUTURE SERVICE BENEFITS

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

3. FUNDING

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

4. PROVISION OF INFORMATION

The Supplier and FCDO respectively undertake to each other:

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

5. INDEMNITY

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

6. EMPLOYER OBLIGATION

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

7. SUBSEQUENT TRANSFERS

The Supplier shall:

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

8. BULK TRANSFER

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

PART B**TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF SERVICES****9. RELEVANT TRANSFERS****9.1** FCDO and the Supplier agree that:

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

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

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

10. FORMER SUPPLIER INDEMNITIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. SUPPLIER INDEMNITIES AND OBLIGATIONS

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

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

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

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

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

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

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

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

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

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

11.1.8 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to obligations under regulation 13 of the

Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations; and

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

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

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

12. INFORMATION

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

13. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

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

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

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

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

13.1.4 the New Fair Deal.

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

14. PROCUREMENT OBLIGATIONS

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

15. PENSIONS

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

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

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

2. FUTURE SERVICE BENEFITS

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

3. FUNDING

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

4. PROVISION OF INFORMATION

The Supplier and FCDO respectively undertake to each other:

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

5. INDEMNITY

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

6. EMPLOYER OBLIGATION

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

7. SUBSEQUENT TRANSFERS

The Supplier shall:

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

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

8. BULK TRANSFER

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

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

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

2. INDEMNITIES

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

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

2.4 The indemnities in Paragraph 2.1:

2.4.1 shall not apply to:

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

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

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

3. PROCUREMENT OBLIGATIONS

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

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

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

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

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

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

2. EMPLOYMENT REGULATIONS EXIT PROVISIONS

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

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

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

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

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

2.7.1 no such offer of employment has been made;

2.7.2 such offer has been made but not accepted; or

2.7.3 the situation has not otherwise been resolved

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

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

2.9 The indemnity in Paragraph 2.8:

2.9.1 shall not apply to:

(a) any claim for:

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

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

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

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

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

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

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

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

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

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

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

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

ANNEX TO SCHEDULE 2: LIST OF NOTIFIED SUB-CONTRACTORS

SCHEDULE 3: INSURANCE REQUIREMENTS

1.OBLIGATION TO MAINTAIN INSURANCES

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

2.GENERAL OBLIGATIONS

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

3.FAILURE TO INSURE

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

4.EVIDENCE OF POLICIES

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

5.AGGREGATE LIMIT OF INDEMNITY

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

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

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

(a) ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Contract; or

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

6. CANCELLATION

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

7. INSURANCE CLAIMS

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

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

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

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

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

1.1 The Supplier

2.INTEREST

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

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

2.1.2 loss of or damage to property;

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

3.LIMIT OF INDEMNITY

3.1 Not less than £5,000,000 in respect of any one occurrence, the number of occurrences being unlimited, but £5,000,000 any one occurrence and in the aggregate per annum in respect of products and pollution liability.

4.TERRITORIAL LIMITS

4.1.1 Global

5.PERIOD OF INSURANCE

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

6.COVER FEATURES AND EXTENSIONS

6.1 Indemnity to principals clause.

7.PRINCIPAL EXCLUSIONS

7.1 War and related perils.

7.2 Nuclear and radioactive risks.

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

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

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

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

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

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

8.MAXIMUM DEDUCTIBLE THRESHOLD

8.1 Not to exceed £10,000 for each and every third party property damage claim (personal injury claims to be paid in full).

PART B: PROFESSIONAL INDEMNITY INSURANCE

1.INSURED

- 1.1 The Supplier

2.INTEREST

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

3.LIMIT OF INDEMNITY

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

4.TERRITORIAL LIMITS

- 4.1 Global

5.PERIOD OF INSURANCE

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

6.COVER FEATURES AND EXTENSIONS

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

7.PRINCIPAL EXCLUSIONS

- 7.1 War and related perils
7.2 Nuclear and radioactive risks

8.MAXIMUM DEDUCTIBLE THRESHOLD

- 8.1 Not to exceed £10,000 each and every claim.

PART C: UNITED KINGDOM COMPULSORY INSURANCES

1.GENERAL

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

SCHEDULE 4: TENDER

1. GENERAL

1.1 This Schedule 4 sets out a copy of the Supplier's Tender.

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

REDACTED

APPENDIX A. CONTRACT AMENDMENT LETTER

Foreign, Commonwealth and Development Office
King Charles Street
London SW1A 2AH

File Ref: [
Date: [

Contract Amendment No: [

CONTRACT FOR: [

CONTRACT NUMBER: [

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

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

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

Name: [
Position:
Signature:
Date: [

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

Name: [
Signature:
Date:

APPENDIX B



FCDO Supply Partner Code of Conduct

Principles

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

Overarching Principles for Supply Partners

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

FCDO Supply Partner responsibilities

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

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

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

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

Scope

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

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

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

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

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

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

3. Transparency and Delivery Chain Management

Key Performance Indicators KPI 3 a – f

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

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

Specific requirements for direct Supply Partners include:

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

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

⁴ <http://www.aidtransparency.net/>

4. Environmental issues

Key Performance Indicators KPI 4 a – b

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

Commitment to environmental sustainability may be demonstrated by:

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

5. Terrorism and Security

Key Performance Indicators KPI 5 a – d

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

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

Specific requirements:

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

6. Safeguarding, Social Responsibility and Human Rights

Key Performance Indicators: KPI 6 a – d

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

⁵ <https://eiti.org/>

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

⁷ <http://digitalprinciples.org/>

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

Specific requirements:

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

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

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

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

Compliance KPIs and contractual checking mechanisms - FCDO Contracts

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

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

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

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

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

	business appointment rules			
3.	<u>Transparency and Delivery Chain Management</u>			
a)	IATI compliance for Supply Partner and their delivery chain Supply Partners	Updated documentation submitted once annually	Contract Terms and Conditions Clause 28	Tender evaluation Periodic spot checks Compliance checks
b)				
c)	Up to date and accurate records of all delivery chain Supply Partners	Updated documentation submitted in accordance with Clause 26.7	Contract Terms & conditions Clause 9 & 28 Tender submittal – delivery chain	Annual return Compliance checks Contract management
d)	Policies and practices for the management of delivery chain partners and affiliates aligned to the FCDO Supply Partner Code of Conduct	Updated documentation submitted annually	Contract Terms & conditions Clause 7	Contract management processes Periodic spot checks Compliance checks
e)	Tax evasion, bribery, corruption and fraud -statements of assurance provided	Updated documentation submitted once annually	Contract Terms and Conditions 23 & 24	Periodic and annual return spot checks Compliance checks
f)	All delivery chain partner employees working on FCDO Contracts fully aware of the FCDO reporting concerns mailbox	Updated documentation submitted once annually	Contract Terms & Conditions Clause 48	Periodic and annual return spot checks
	HMG prompt payment policy adhered to by all delivery chain partners	Updated documentation submitted once annually	Contract Terms & conditions 7	HMG spot checks Compliance checks Annual return
4.	<u>Environmental Issues</u>			
a)	1.Steps in place to identify environmental risks (e.g. by maintaining a risk register) Ensuring legislative requirements are being met 2. Formal context specific environmental safeguarding policies in place to ensure legislative requirements are being met	Updated documentation submitted once annually	Contract Terms & Conditions Clause 53 and ToRs	Contract management Periodic and annual return spot checks Compliance checks
b)	Published annual environmental performance reports	Updated documentation submitted once annually	Contracts ToRs	Periodic and annual return spot checks
5.	<u>Terrorism and Security</u>			
a)	Up to date status declaration regarding the reporting of terrorist offences or offences linked to terrorist activities or financing	Updated documentation submitted if and when changes	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.	<u>Safeguarding, Social Responsibility and Human Rights</u>			
a)	Provision of a current internal document demonstrating good practice and assuring compliance with key legislation on international principles on labour and ethical employment	Confirmation of UN Global Compact Membership	Standard Selection Questionnaire	Tender evaluation Annual return Compliance checks
b)	Agreed level of measures in place and cascaded to assure the prevention of actual, attempted or threatened sexual exploitation or abuse or other forms of inequality or discrimination by employees or any other persons engaged and controlled by the Supply Partner to perform any activities relating to FCDO funded work. Robust procedures for the reporting of suspected misconduct, illegal acts or failures to investigate in place	Updated documentation submitted once annually	Contract T&Cs Clause 50	Tender evaluation, Compliance checks
c)	Recognition of the ILO standards Membership of Ethical Trading Initiative (ETI)	Membership number		Compliance checks
d)	1.Principles cascaded to employees and delivery chain partners via an internal policy or written outline of good practice service delivery approaches to Human 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			
1.	<u>VfM and Governance standards</u>					
a)	Evidence of how economic and governance policies work in practice	X	O			
b)	VfM maximisation over contract life					
	1. Annual confirmation of % profit on contract	X	X			
	2. timely identification and resolution of issues	X	X			
	3. ensuring lessons learned are shared	X	O			
c)	<u>Tax Declaration (HMRC format)</u>					
	Comply with all tax requirements	X	X			
2.	<u>Ethical Behaviour</u>					
a)	Adherence to agreed conflict of interest management procedures	X	X			
b)	Evidence of workforce ethical training updates taking place	X	X			

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

b)	Annual published environmental performance reports	X	O			
5.	<u>Terrorism and Security</u>					
a)	Up to date status declaration regarding the reporting of terrorist offences or offences linked to terrorist activities or financing	X	X			
b)	No engaged employees or delivery chain partner personnel appears on the Home Office Prescribed Terrorist Organisations List	X	X			
c)	Data is managed in accordance with FCDO security policy and systems are in accordance with the HMG cyber essentials scheme	X	X			
d)	Adherence to the best practice global principles for digital development	X	O			
6.	<u>Safeguarding, Social Responsibility and Human Rights</u>					
a)	Provision of a document demonstrating current organisational good practice and assuring compliance with key legislation on international principles on labour and ethical employment (to include Modern Day Slavery Act 2015 compliance detail)	X	O			
b)	Organisational procedures in place directly, and within the delivery chain: 1.To prevent actual, attempted or threatened sexual exploitation and abuse or other forms of inequality or discrimination by employees or any other persons engaged and controlled by the Supply Partner to perform any activities relating to FCDO funded work 2.For reporting suspected misconduct, illegal acts or failures to investigate actual attempted or threatened sexual exploitation or abuse	X X	X X			
c)	Current membership of UN Global Compact Current membership of ETI	X O	O O			
d)	1.Evidence of cascade to employees of an internal policy or written outline of good practice service delivery approaches to Human Rights and Safeguarding reflecting UN Global Compact Principles 1&2 demonstrating an appropriate level of commitment in relation to the Contract 2.Numbers and details of organisational safeguarding allegations reported 3. Examples of delivery practice that demonstrate commitments in line with	X X X	O X O			

	workplace and community in line with UN Global Compact Principles 1 & 2 (Annex 2)					
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UN Global Compact – Human Rights

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

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

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

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

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

In the workplace

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

In the community

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



Foreign, Commonwealth
& Development Office

ecm 5463

Section 3: Terms of Reference (ToR)

for

Global Mine Action Programme 3 - Ukraine

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- A. Glossary of terms
- B. Ukraine context
- C. Capacity Development Needs Assessment Guidance
- D. GMAP3 Theory of Change
- E. GMAP3 logframe (attached as a separate Excel file)
- F. Mine action sector-wide theory of change (attached as a separate pdf file)
- G. Inception Phase milestone table
- H. FCDO Open Booking Accounting spreadsheet (attached as a separate Excel file)
- I. Contract management KPIs table and transparency examples.
- J. Transparency KPI template (attached as a separate file)

- K. Conflict Sensitivity Toolkit (Conflict Sensitivity Guide for the Mine Action Sector ePact / Itad dated 30 May 2022)
- L. Risk Assessment Summary
- M. Asset Register for current grant agreement

Appendix A - Schedule of Processing, Personal Data and Data Subjects

ACRONYMS

APMBC	Anti-Personnel Mine Ban Convention
CCM	Convention on Cluster Munitions
CCW	Convention on Certain Conventional Weapons
CD	Capacity development
CHA	Confirmed hazardous area(s)
CM	Cluster Munitions
CM-KPI	Contract Management Key Performance Indicators
EOD	Explosive Ordnance Disposal
EORE	Explosive Ordnance Risk Education
ERW	Explosive Remnants of War
FCDO	Foreign, Commonwealth and Development Office
GiHA	Gender In Humanitarian Action
GMAP3	Global Mine Action Programme 3
HMG	His Majesty's Government
IMAS	International Mine Action Standards
IP	Implementing Partners
ITT	Invitation to Tender
KPI	Key Performance Indicators
MEL	Monitoring, Evaluation and Learning
MiA	Ministry of Internal Affairs
MoU	Memorandum of Understanding
NMAA	National Mine Action Authority
NMAS	National Mine Action Standards
ODA	Official Development Assistance
PSEA	Protection from Sexual Exploitation and Abuse
SESU	State Emergency Service of Ukraine
SHA	Suspected hazardous area(s)
ToC	Theory of Change
ToR	Terms of Reference
TP-KPI	Transparency Key Performance Indicators
TPM	Third Party Monitoring
UNDP	United Nations Development Programme
UXO	Unexploded ordnance
VA	Victim Assistance

1. INTRODUCTION

- 1.1 This document comprises the Terms of Reference (ToR) for FCDO's Global Mine Action Programme 3 (GMAP3) Contract in Ukraine. The expected Contract value is up to £6.1M. The Contract is expected to run from July/August 2023 to the end of March 2025 with a possible extension(s) of up to 24 months and potential additional value of up to £6.6M (for a total value of up to £12.7M). GMAP3 Ukraine will contribute to the overall GMAP3 programme.
- 1.2 As one of the founding signatories to the Anti-Personnel Mine Ban Convention (APMBC) in 1997 and the Convention on Cluster Munitions (CCM) in 2008, the UK has had a historic role in tackling the global impact of landmines, cluster munitions (CM) and explosive remnants of war (ERW). The UK has supported some of the poorest countries around the world to clear landmines, CM and ERW post conflict. UK funding for mine action saves lives, prevents injuries, releases land for productive use, helps pave the way for further development programming, and contributes to security and stabilisation outcomes.
- 1.3 The GMAP3 project in Ukraine will focus on humanitarian and development outcomes. It must avoid aggravating the causes and consequences of conflict. It must remain compliant with the Official Development Assistant (ODA) rules and not deliver results which directly assists military objectives. The Supplier for this tender will be required to support priorities set by the National Mine Action Authorities where they are ODA compliant.
- 1.4 The Business Case for GMAP3 allows FCDO to contract one or more suppliers for the release of land contaminated by landmines, CM and ERW, the delivery of Explosive Ordnance Risk Education (EORE) and the capacity development (CD) of national authorities and local implementing partners (IPs) in up to 13 countries.
- 1.5 GMAP3, which commenced in April 2022, is being delivered through a combination of grant agreements and/or commercial contracts covering different regions and countries. A procurement covering Afghanistan was awarded in April 2023. Procurement for the remaining commercial contract(s) will be launched during 2023. Additional funding will be spent on a central monitoring, evaluation, and learning (MEL) contract, which will cover all remaining multi-year contract(s) and/or agreement(s) issued under GMAP from 2023.
- 1.6 This ToR covers GMAP3 in Ukraine only. Suppliers bidding for this tender will also be able to bid for other contracts being issued under GMAP3. Should the same supplier win more than one contract, it will be expected to deliver further savings and efficiencies to provide value for money. **Please note that in order to ensure the independence of the activities under MEL, a supplier is not permitted to monitor and evaluate a contract the same supplier delivers. For the avoidance of doubt, suppliers can bid for both the GMAP3 MEL and implementing tenders but cannot be successful in both.** Were one supplier to win more than one GMAP3 implementing tender, FCDO would require negotiations to determine efficiency savings.
- 1.7 A glossary of terms used in this ToR is provided at Annex A.

2 CONTEXT

- 2.1 The full extent of contamination by landmines and explosive remnants of war (ERW) in Ukraine is not known. Prior to the invasion by Russian forces in February 2022, the heaviest contamination was believed to be inside the buffer zone on either side of the Line of Contact between the warring parties within the Donetsk and Luhansk regions. Post invasion, contamination has spread, including in the East, South and the regions around Kyiv in the North.
- 2.2 The ongoing war and rapidly deteriorating security environment has put hundreds of thousands of people's lives at risk. The continuation of the conflict is projected to deepen and expand humanitarian needs amongst millions of Ukrainians.
- 2.3 GMAP3 is now the UK Government's primary mechanism for implementing mine action in Ukraine, covering survey activity, area clearance, explosive ordnance disposal (EOD) where permissions are granted by the national authorities, and explosive ordnance risk education (EORE). GMAP3 is currently funding a grant agreement for immediate response mine action in Ukraine, which will run until 30 June 2023. It is delivering survey, clearance and risk education in liberated areas, and some capacity building in partnership with SESU. Assets from the grant agreement will be transferred to the successful Supplier for this contract. Asset details are provided at Annex M.
- 2.4 A summary of the mine action situation and HMG policy on Ukraine is provided at Annex B.

3 NATIONAL OWNERSHIP

- 3.1 The Third APMBC Review Conference in Maputo in 2014 set 2025 as a target for a world free of anti-personnel mines. The Fourth APMBC Review Conference in Oslo in November 2019 reiterated this aim, with States Parties declaring that they "aspire to meet these goals to the fullest extent possible by 2025."
- 3.2 While it is probable that a number of countries including Ukraine will remain contaminated by mines and other ERW beyond 2025, it is recognised that the responsibility for reducing the potential harm and removing the socio-economic impact of any residual threat from mines and ERW will increasingly be transferred to national authorities. It is likely that some ongoing international assistance will be needed in 2026 and beyond, however it is important that mine-affected countries have the necessary capacity to regulate, coordinate, manage and implement their national mine action programmes with minimal external technical or financial support. This has been an intended outcome of UK-funded mine action since the start of GMAP1 in 2014.
- 3.3 The emphasis on assisting the Government of Ukraine to regulate, coordinate, manage and implement its national mine action programme will continue through GMAP3. Annex C contains guidance on conducting a needs assessment to support this outcome.

- 3.4 Whilst Ukraine has an established mine action architecture, this ToR recognises that the national regulation, coordination, management and strategic oversight of mine action in Ukraine will likely evolve over time. Whilst the country remains under martial law, the Ukrainian Ministry of Defence (MoD) has been tasked with operational leadership of Ukraine’s mine action programme. Another key national stakeholder is the Ministry of Interior, which is responsible for the main national IP (alongside other roles) the State Emergency Services of Ukraine (SESU), and the Ministry of Economy has an oversight and convening role. The selected GMAP3 supplier will be expected to work to humanitarian development priorities set by the Ukrainian national authorities.
- 3.5 In this ToR, the enhancement of the capacity of the national authorities will be achieved by the supplier providing advice which leads to better regulation, coordination and management of the National Mine Action Programme. The Supplier will be required to take a proactive role in developing the capacities of one or more local IPs over the duration of the project, and bids should explain how the supplier will deliver this, reflecting the preferences of the local IP(s). This may involve advice on how to improve/ enhance operational procedures and/or management systems.

4 COLLABORATION AND COOPERATION

- 4.1 The selected Supplier is expected to work with appropriate parts of the Ukrainian government and Mine Action organisations and stakeholders to effectively deliver activities under GMAP3. The selected Supplier is expected to play an active role in [Ukraine’s Mine Action Subcluster](#) (chaired by UNDP) and with relevant working groups.
- 4.2 The report “[Clearing the Mines 2022](#)” of 10 November 2022 refers to 23 organisations involved in regulating, managing, coordinating and implementing mine action in Ukraine under the leadership of the Ukraine Ministry of Defence, where the national mine action authority sits. The selected Supplier is expected to engage with these organisations at the international, national, regional (oblast) and community levels. Such coordination is necessary to understand the need and priorities for mine action, and to gain access to contaminated areas.
- 4.3 The requirement for collaboration and cooperation is addressed under Outcome 3 and Output 3 of the GMAP3 Ukraine ToC and logframe; see Sections 5.3 and 5.4.

5 STRATEGIC OBJECTIVE, OUTCOMES AND OUTPUTS

- 5.1 GMAP3 is expected to deliver increased peace and human security, support towards development in countries affected by landmines, CM and ERW, and contribute to security and stabilisation outcomes.
- 5.2 Strategic objective. GMAP3 will release land and conduct EORE that supports a range of broader outcomes as defined in the theory of change (see below). The mine action activities in Ukraine delivered through GMAP3 must be aligned with Ukraine’s strategic priorities and those identified by the Global Protection

Cluster, managed by UNDP, which will draw evidence from an evolving Humanitarian Needs Overview. A national survey of the threat from mines and ERW, including improvised anti-personnel mines, and the associated socio-economic impact, is planned. As this survey is conducted it is likely the prioritisation of activities (in both form and location) will change due to new information. The GMAP3 project in Ukraine must be designed to respond to this evolving need.

- 5.3 Theory of Change. The Theory of Change (ToC) for GMAP3 is based on the sector-wide ToC developed by Itad in 2021/22 with funding from the UK and Dutch Governments. However, the GMAP3 ToC differs from the sector-wide ToC as it does not include victim assistance (VA) or stockpile destruction as neither of these activities were included in the GMAP3 Business Case and are therefore not covered by this ToR. The ToC for GMAP3 in Ukraine is at Annex D.
- 5.4 Logframe. The draft logframe for the GMAP3 Ukraine programme is at Annex E (see separate Excel file). The indicators proposed in the logframe will be reviewed and agreed during the Inception Phase with FCDO, the selected Supplier and the selected provider of the Monitoring, Evaluation and Learning (MEL) Contract (to be awarded separately). Beneficiary data must be disaggregated by gender, age and disability. Where this is not considered possible, this must be agreed by FCDO. The same logframe will be used across all future contracts and/or agreements signed under GMAP3. However, one or more country-specific indicators may be used in addition to the global GMAP3 indicators. Suppliers should use only those indicators given in the GMAP3 Ukraine logframe at Annex E.
- 5.5 Outcomes. The GMAP3 project in Ukraine – contracted through this tender - will be designed and implemented to achieve all five outcomes of the GMAP3 ToC:
- Outcome 1: Measurable progress towards APMBC, CCM and Convention on Certain Conventional Weapons (CCW) treaty compliance and universalisation.

This will be achieved primarily through the clearance of areas of land known to be contaminated by anti-personnel mines (including improvised anti-personnel mines) and CM.

Outcome 2: Responsive and equitable nationally owned mine action through improved governance and with increased local implementation.

This will be achieved through support to one or more local mine action IPs - for example by the local mine action IP working as a sub-contractor - and by providing support and advice to the national mine action authority(ies) in Ukraine.
 - Outcome 3: Mine action integrated or sequenced with humanitarian, development, peacebuilding or stabilisation initiatives.

This will be achieved primarily through collaboration with humanitarian, peace, stabilisation and/or development actors. The selected Supplier will

be expected to demonstrate how such collaboration will be achieved in Ukraine.

- Outcome 4: Safe and productive land use improves livelihoods and basic services, improving the quality of life and the environment.

This will be achieved primarily from contaminated land cleared in accordance with International Mine Action Standards (IMAS) and national mine action standards (NMAS), and formally handed over to authorities which represent the intended beneficiaries of the cleared land.

- Outcome 5: Risk of harm reduced which increases returns and the freedom of movement.

This will be achieved primarily through the removal of risk from explosive hazards (both area clearance and EOD spot tasks) and increased awareness of the risk of harm through effective EORE of men, women, boys and girls.

5.6 Outputs. This Supplier will be required to deliver the following:

- Output 1: Land released for safe and productive use.

This will be achieved by: (i) cancelling suspected hazardous areas (SHA) when confirmed safe; (ii) reducing and clearing confirmed hazardous areas (CHA); and (iii) rendering safe unexploded ordnance (UXO) which are located outside of SHA and CHA.

Output 1 is to be delivered in accordance with IMAS/NMAS.

- Output 2: Increased awareness of the risk of harm from explosive ordnance.

This will be achieved by EORE designed and delivered to make men, women, boys and girls more aware of the risk of harm from mines, CM and ERW, retain risk education knowledge, and behave in a safer manner.

- Output 3: Increased collaboration with humanitarian, peace, stabilisation, development and environmental actors.

This will be achieved by collaboration and coordination with international, national, local and community stakeholders leading to an effective and measurable contribution of GMAP3 to broader humanitarian, development, peacebuilding, stabilisation and environmental outcomes.

- Output 4: Enhanced capacity of national authorities.

This will be achieved by liaising with the national authorities and providing advice based on international experience which leads to the enhanced regulation, coordination and management of the National Mine Action Programme by national authorities.

- Output 5: Enhanced capacity of local implementers.

This will be achieved by conducting CD activities which lead to enhanced operational and management procedures, skills and systems of local mine action IPs.

- 5.7 Indicators. The outcome and output indicators are shown in the overall GMAP3 logframe. The logframe template for use in the GMAP3 programme is at Annex E. The description of the outcomes and outputs is consistent with those given in the GMAP3 ToC at Annex D. During the Inception Phase, the indicators will be reviewed and targets will be agreed for Ukraine with the GMAP3 Suppliers, MEL Provider and FCDO.
- 5.8 Delivery Key Performance Indicators (D-KPIs). For the GMAP3 Ukraine Contract four Delivery Key Performance indicators (D-KPI) will be used:
- Land cleared (sqm);
 - Land reduced (sqm);
 - EORE sessions; and
 - EORE beneficiaries.
- 5.9 Community liaison (CL) visits will not be included as a D-KPI, however FCDO will require the Supplier to report quarterly on all CL activity undertaken as part of this Contract. For the purposes of GMAP3, CL refers to meetings with communities to exchange information on the presence and impact of mines, CM and ERW, to create a reporting link with the mine action programme and to develop risk reduction strategies. CL aims to ensure that the different community needs and priorities, such as access to basic services, are central to the planning, implementation, and monitoring of mine action activities in all countries in scope of GMAP3.

6 BENEFICIARIES

- 6.1 GMAP3 will use the definitions given in '*Standardising Beneficiary Definitions (SBD) in Humanitarian Mine Action*', Second Edition, October 2020. The particular needs of women, girls and vulnerable ethnic and religious groups should be prioritised in defining the beneficiaries of GMAP3.
- 6.2 The intended beneficiaries are:
- communities currently at risk of harm from mines, CM and ERW;
 - communities unable to use land productively because of the fear of harm from mines, CM and ERW;
 - communities unable to access to emergency humanitarian assistance and basic services, facilities and vital infrastructure because of mines, CM and ERW;
 - aid agencies who require access to areas contaminated by mines, CM and ERW;
 - national mine action authorities; and,
 - local mine action IPs who over time will assume a greater responsibility for conducting mine action activities with minimal international assistance.

7 SCOPE

- 7.1 This ToR refers to the delivery requirements in Ukraine.

7.2 The contract will provide services that deliver elements of:

- Non-technical surveys of SHA.
- Technical survey and clearance of CHA;
- Rendering safe UXO located outside of SHA and CHA;
- EORE; and
- Support to national mine action authorities and CD of local IPs.

Collectively, these services are referred to as 'mine action activities'.

7.3 GMAP3 applies the definition of victim assistance (VA) in mine action as set out in IMAS 13.10 (dated 13 October 2021). Although the Supplier will not be expected to deliver VA under this contract, the Supplier will be expected to collect age, sex and disability disaggregated data on victims, and other tasks as set out in Section 5.2 of IMAS 13.10. The output of such work will aim to increase access to emergency and on-going medical care, rehabilitation, psychological and social support delivered by other suppliers and agencies.

8 TIMEFRAME

8.1 This contract, for the provision of GMAP3 in Ukraine is anticipated to commence in August 2023 and run until to March 2025 with a total budget of up to £6.1M. The contract may be extended by 24 months with an associated optional increase of funding of up to £6.6M, at the discretion of FCDO.

8.2 There will be an Inception Phase of three months or as otherwise agreed between the Parties, at the beginning of the Contract with a formal Review Point at the end of the Inception Phase. Movement from Inception to Implementation and continuation of the Contract beyond the first year of Implementation will be subject to the satisfactory performance of the Supplier and progress of the Contract. FCDO reserves the right to terminate the Contract in the event of unsatisfactory performance and / or failure in the delivery of outputs and/ or in accordance with the Terms and Conditions. Unsatisfactory performance is defined in Section 15.

9 SCALE UP / DOWN

9.1 FCDO may scale up the programme, including changing the funding, outputs, and outcomes of the GMAP3 Contract.

9.2 FCDO reserves the right to scale down or discontinue this programme at any point in line with the terms and conditions of the Contract. Scaling down is at FCDO's discretion, and may occur for a number of reasons including, but not limited to, changes to the political economy in Ukraine or a change in funding. Political economy reasons include a change in security, government stability, corruption or interference in local engagement that negatively affect delivery.

9.3 Any such changes will be fully communicated to the Supplier and implemented in accordance with the terms and conditions of the Contract.

10 REQUIREMENTS

10.1 Capability and knowledge. The Supplier must throughout the Contract:

- a) understand the national and local context in Ukraine and how it will influence the outcomes to be achieved;
- b) understand HMG's policy in Ukraine and how it will influence the outcomes to be achieved;
- c) have the experience, technical knowledge, information, procedures and equipment to deliver the objectives of the programme;
- d) have the ability to scale up its capability during implementation should FCDO enhance the GMAP3 Ukraine programme ; and
- e) manage the programme and conduct its mine action activities in a conflict sensitive manner.

10.2 Personnel. The Supplier must throughout the Contract:

- a) employ international and national staff who are able to lead, manage and implement the GMAP3 Ukraine programme, effectively, efficiently and safely;
- b) have a system in which its national staff are recruited and trained; and
- c) have plans and the resources to redeploy / demobilise national staff at the end of the project.

10.3 Project design. The Supplier must throughout the Contract:

- a) collaborate and coordinate with international, local and community stakeholders at every stage of the programme cycle;
- b) prioritise and maximise the outcomes to achieve the overall objective of the programme;
- c) achieve the output targets proposed in the Supplier's plan;
- d) enhance the capacity of one or more local mine action IPs in a way that contributes to national ownership and sustainability;
- e) take into account the different needs, priorities, knowledge and capabilities of women, girls, men and boys, ensuring that they participate in, and benefit equally from, the programme; and
- f) take into account the needs and capabilities of people with disability and other vulnerable groups.

10.4 Project management. In planning and implementing the project, the Supplier must:

- a) conduct internal QA and QC in accordance with IMAS 07.12;
- b) conduct internal monitoring of its work in accordance with IMAS 07.40;
- c) apply innovation to improve efficiency and effectiveness; and
- d) share lessons learned to improve efficiency, effectiveness and safety. The Supplier must have a formal system that identifies, documents, validates and disseminates lessons identified and learned to other mine action organisations in the wider mine action community.

11 REQUIREMENTS – ADDITIONAL INFORMATION

- 11.1 Accreditation. The Supplier must provide evidence of valid existing organisational and operational accreditation to conduct mine action activities in Ukraine throughout the duration of the project.
- 11.2 Memoranda of Understanding (MOU). The Supplier must provide evidence of any MOUs required with the necessary authorities to operate in Ukraine. If the MOU(s) is dependent on being awarded the contract, the Supplier must provide statements from the necessary authorities that the MOU(s) will be awarded without delay on award of contract, i.e. there is no other conditionality.
- 11.3 Value for Money. The Supplier’s approach to maximising value for money must be structured around the five Es: economy, efficiency, effectiveness, equity, and cost effectiveness throughout the duration of the project.
- 11.4 Conflict sensitivity. The Supplier should set out an assessment of its work in Ukraine and the steps it will take to avoid aggravating the causes and consequences of conflict. The Supplier’s strategy must include a localised conflict analysis in each area where the programme will operate. Creating an understanding of the drivers of conflict and political economy aims to ensure the programme will not exacerbate conflict dynamics. The Supplier will be expected to monitor the context at frequent intervals to assess how the programme is impacting on conflict dynamics and how the changing contextual realities might impact the implementation of the programme, to enable the programme to adapt to these realities. The Supplier’s strategy must demonstrate how it will ensure that GMAP3 will remain conflict sensitive throughout its implementation, using updated analysis and lesson learning to inform the programme delivery. The Conflict Sensitivity strategy will be finalised and agreed with FCDO during the Inception Phase and reviewed annually. Guidance is given in *Conflict Sensitivity Guide for the Mine Action Sector*, ePact / Itad dated 30 May 2022.
- 11.5 Gender. The Supplier should set out how it will design, develop, and implement the Ukraine country programme in a way that takes into account the different needs, priorities, knowledge and capabilities of women, girls, men and boys, ensuring that they participate in, and benefit equally from, GMAP3. This should include consultation with women and girls, consideration of how gender equality can be promoted through employment practices, EORE messages, and data collection, disaggregation, and analysis. The Suppliers must also explain how mine action can promote girls’ education, for example by prioritising land release tasks that enable girls to travel to school safely. Within the first three months of the contract the Supplier must demonstrate it has access to or is actively recruiting expertise to support the implementation of their gender strategy. The Supplier must be a member of Gender in Humanitarian Action (GiHa) and the Protection from Sexual Exploitation and Abuse (PSEA) network throughout the contract duration. The Gender strategy will be finalised and agreed with FCDO during the Inception Phase and reviewed annually.
- 11.6 Disability and Inclusion. The Supplier should set out how it will design, develop, and implement GMAP3 in ways that take into account the needs and

capabilities of people with disability and other vulnerable groups. This should include details of how the Supplier will: consult with people with disabilities and other vulnerable groups; report disability disaggregated beneficiary data; ensure that people with disabilities are not excluded from risk education messaging; and encourage inclusive employment practices. Where possible, local Organisations of People with Disabilities should be engaged in target communities. Guidance is available in FCDO's *Disability, Inclusion and Rights Strategy 2022 to 2030*. Within the first three months of the Contract, the Supplier must demonstrate that it has access to, or is actively recruiting, inclusion expertise to support the implementation of this commitment.

- 11.7 Demining for Essential Basic Service delivery. The Supplier should outline how it will throughout the contract effectively design programming that directly supports Outcome 3 and 4 to progress agriculture, livelihoods, critical infrastructure, other development opportunities and basic service delivery through demining. This should include how the Supplier will engage with other agencies delivering services. The Supplier should also consider how to best work with partners delivering basic services for EORE provision in terms of access and awareness to communities e.g., through community-based education, or health centres. The Supplier should clearly demonstrate how information collated through CL can be shared more broadly within sectors to inform data and mapping on service delivery planning and strategy.
- 11.8 Risk Assessment. The Supplier must provide quarterly a risk assessment for Ukraine which aims to reduce the probability and mitigate the impact of the risks. The assessments should include risks associated with the successful design, development and implementation of the programme, and must propose measures systematically to monitor risk throughout the programme lifecycle and the escalation chain. Risks will be identified in accordance with FCDO's risk matrix.
- 11.9 Climate and Environment. The Supplier should set out how it will consider climate and the environment in its delivery in Ukraine, assessing and mitigating any climate or environmental impact and risks specific to GMAP3, (including both climate and environment-related risks on the programme, as well as any impacts of the programme). The overall approach that should be taken is to adhere to the principle of "Do No Harm" to the environment and consider opportunities where GMAP3 might deliver environmental and climate benefits. For example, noting the UK Government's commitment to tackling climate change, increased emphasis should be given to reducing the carbon footprint of UK-funded mine action programmes. The strategy must explain how the Supplier has refined, and will continue to refine, its procedures and practices to minimise their environmental impact (carbon footprint, protection of the environmental assets and biodiversity). The strategy must also explain how changes to the prioritisation of mine action programmes (such as the productive use of cleared land) can contribute to climate adaptation, where practical. The Supplier must be able to demonstrate consideration of climate and environment throughout programme delivery.
- 11.10 Social Value. The Supplier must comply with the UK Government's Social Value Policy (<https://www.gov.uk/government/publications/procurement->

[policy-note-0620-taking-account-of-social-value-in-the-award-of-central-government-contracts](#)). The Supplier's approach to Social Value will be evaluated within the technical criteria and monitored by FCDO throughout the lifetime of the Contract.

- 11.11 Local implementing partners. The use of local IPs as Sub-Contractors will be subject to FCDO's standard terms and conditions on Sub-Contractors, including those regarding due diligence and risk. Any additional Sub-Contractors (including local IPs) must be agreed with FCDO before being contracted.

12 INCEPTION PHASE

- 12.1 During the Inception Phase the Supplier must produce an Inception Report that includes a full GMAP3 country workplan, final baseline data, a final logframe and strategies to be agreed with FCDO and a country-level ToC and Theories of Action (ToA) for each GMAP3 country that describes how the outcomes will be achieved. Note: the concept and application of ToAs is described in the Sector-wide Theory of Change User Guide (Annex F). The requirements for data gathering for the outcome and output indicators will be reviewed and agreed with the GMAP3 Ukraine Supplier, MEL Provider and FCDO during the Inception Phase. FCDO is anticipating that some mine action activities will take place during the Inception Phase depending on the supplier's mobilisation plans, however it is not a requirement. FCDO is anticipating the supplier will be procuring equipment during the Inception Phase to be able to be fully operational by the end of this phase.
- 12.2 Full GMAP3 workplan. The Supplier must provide the final workplan that covers the full length of the Contract. Planned activities must be provided in detail for the first year of the Implementation Phase and in outline for the remaining term of the Contract for FCDO review and approval. There is no template for the workplan.
- 12.3 Baseline Data. The Supplier must work with the MEL provider to refine its technical baseline data and seek approval from FCDO on the baseline against which programme performance will be measured. The baseline data must:
- a) include information on suspected and confirmed hazardous areas, and the types and predicted distribution of mines, CM and ERW to be cleared;
 - b) provide quantitative and qualitative data on the quality of life of mine/ERW-affected communities (including accessibility of existing basic essential services such as schools and health centres) prior to land release and EORE interventions in the areas proposed for operations; and
 - c) describe the CD baseline for the Supplier's local mine action IP(s).
- 12.4 Logframe. As part of the Inception Report, the Supplier must submit to FCDO an updated logframe which takes into account the refined baseline data. During the Inception Phase, FCDO and the MEL provider will work with the Supplier to agree/ confirm country-specific outcome and output indicators and targets.
- 12.5 Exit Plan. As per clause 16.5 of FCDO's Term and Conditions, the Supplier must submit the Exit Plan within 3 months after the Commencement Date for FCDO's approval.

- 12.6 During the Inception Phase the Supplier must mobilise the core team and programme governance.
- 12.7 It is expected that the Supplier will promptly initiate mobilisations of demining teams, beginning mine action activity outlined in these terms of reference at the earliest possible opportunity. All activity during the Inception Phase must be agreed with FCDO.
- 12.8 The deliverables related to the mobilisation of the Contract are captured in the Inception Phase Milestones table (Annex G).
- 12.9 During the Inception Phase the Supplier must agree reporting templates and timelines with FCDO and MEL provider.

13 IMPLEMENTATION PHASE

- 13.1 Throughout the Implementation Phase, the Supplier must achieve the output targets, agreed with the FCDO during the Inception Phase, in a way that maximises the quality and sustainability of the intended outcomes. The Supplier must provide a written report quarterly (Quarterly Report) on progress to MEL provider.
- 13.2 In addition to the scheduled meetings and quarterly reporting, the Supplier must maintain communication with FCDO throughout the Inception and Implementation Phases to flag any urgent risks or issues and be responsive to ad hoc FCDO requests.
- 13.3 Prioritisation. The Supplier must work closely with the relevant national authorities to establish strategic priorities for its work (e.g. locations for non-technical survey, technical survey, land clearance and EORE) which will achieve the overall objective of GMAP3. The focus must always be to maximise the quality and sustainability of the intended outcomes.
- 13.4 Task selection. The Supplier must work closely with beneficiaries and their representatives (such as local councils) to prioritise and select mine action tasks which will address local needs and contribute to the project outcomes. The focus must always be to maximise the quality and sustainability of the intended outcomes.
- 13.5 Lessons learned. The Supplier must work with the MEL provider to establish a system to identify, document, validate and disseminate lessons to other mine action organisations and humanitarian NGOs operating in Ukraine and the wider mine action sector. The Supplier must work with FCDO to incorporate lessons learned from previous GMAP programmes into GMAP3 delivery. If invited by the MEL provider, the Supplier is also required to participate in learning dissemination seminars and workshops.
- 13.6 Assets. The Supplier must maintain an asset register throughout the life of the Contract using a template provided by FCDO. The assets recorded in the asset register remain the property of FCDO and can only be used for the purpose of delivery of the GMAP3 programme. Disposal or transfer of assets procured throughout the lifetime of the Contract must be in accordance with FCDO procedures on asset management and disposal and with FCDO agreement.

- 13.7 Project phase out and exit. The Supplier must produce a final version of the Exit Plan for approval by FCDO at least 90 calendar days before the end of the Contract or when instructed (within 30 calendar days from the request).
- 13.8 The Supplier must allow for a period of up to 90 calendar days after the Contract end date (or termination date) for the exit process to be fully implemented.

14 PAYMENT AND PERFORMANCE

- 14.1 Inception Phase payments. Payment for the Inception Phase will be paid in arrears – 60% of the Milestone value on the submission of the final version of the deliverable. The remaining 40% will be paid subject to acceptance by FCDO of the delivered Milestones following their assessment against the criteria as set out in Annex G. No payments will be made in advance of the Milestone completion. The expectation is that all Milestones are completed on time and to the required high-quality standards. As stated in Section 5.6 of the ToR, during the Inception Phase the indicators will be reviewed and targets will be agreed with the GMAP3 Ukraine Supplier, MEL Provider and FCDO.
- 14.2 The Supplier must inform FCDO as soon as possible, if it anticipates missing the deadlines for any Milestones. In this circumstance, the Supplier will provide to the FCDO a justification for the anticipated delay in delivery and propose a new deadline for FCDO's consideration. FCDO may, at its sole discretion, agree to extend the deadline for completion of a Milestone – this approval will be provided in writing and will not be unreasonably withheld. In such a scenario, the payment will be made in the next invoicing period following the completion of the Milestone and its acceptance by FCDO.
- 14.3 Any delays due to the Supplier's performance will attract a deduction of up to 10% of the total Milestone value. 6% of the total Milestone value (10% of 60%) will be deducted, should the final version of the deliverable be below reasonably expected quality or its submission delayed. Further 4% of the total Milestone value (10% of 40%) may be deducted should the requested by FCDO revisions required in order to allow FCDO to accept the Milestone are delayed beyond the agreed deadline. Severe delays (10 Working Days or more) to the submission of the Milestone or if applicable revisions requested by FCDO of one or more Milestone will trigger a contract performance review and may result in the termination of the Contract in line with clause 44 (Termination with Default of the Supplier).
- 14.4 If Supplier undertakes operations during the Inception Phase, i.e. land clearance or mine risk education sessions, all activity must be approved by FCDO prior to activity commencing. The Supplier will be reimbursed for any operational activity during the Inception Phase on a time and materials basis, subject to receipt of evidence of actual costs incurred.
- 14.5 Implementation Phase payments During the Implementation Phase, the Supplier shall be paid on a time and materials basis. Payment will be made quarterly in arrears, aligned with UK recognisable financial quarters. The Supplier must submit the FCDO Open Booking Accounting spreadsheet (a copy of which can be found at Annex H) with each invoice, as well as other supporting documentation including spend forecasts.

- 14.6 Forecasts will be reviewed and subject to approval by FCDO each quarter to ensure accurate activity planning and financial management. FCDO expects limited variance between financial forecasts and invoiced actual costs.
- 14.7 The Supplier must provide and 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 must demonstrate how funds/assets flow from the initial source to end beneficiaries. This record needs to be updated quarterly by the Supplier and when there are material changes to the delivery chain.
- 14.8 Contract Management KPIs (CM-KPIs). The Supplier will also align to and report against the Contract Management KPIs.
- 14.9 Service Credits are a reduction of the amounts payable in respect of the Deliverables and do not include VAT. The Supplier shall set-off the value of any Service Credits against the appropriate invoice. The value of one (1) Service Credit is £500.
- 14.10 Service Credits will be associated with each of the CM-KPIs (Annex I) and will be used to monitor performance during the Implementation Phase. FCDO may, at its sole discretion, further refine these CM-KPIs in consultation with the Supplier.
- 14.11 On a quarterly basis, the Supplier will be required to provide evidence of achievement against each of the CM KPIs to FCDO. FCDO and Supplier will meet to moderate scores based on the supporting evidence. FCDO must accept that documents and evidence submitted meet the measurement criteria to an adequate standard Approval by FCDO's SRO will trigger payment for the Supplier.
- 14.12 Transparency Key Performance Indicators (T-KPIs). Three Transparency Key Performance Indicators agreed between the Parties during the Inception Phase will be published quarterly in line with the government's transparency agenda. These should be the three most relevant to demonstrating whether the contract delivers its objectives. The Parties may agree to use the performance against the Delivery-KPIs and/or selected CM KPIs for publications or decide to create alternative T-KPIs. T-KPIs will be in the format provided in Annex J.
- 14.13 Where the Supplier is unable to meet its agreed performance targets due to the reasons deemed by FCDO as beyond the Supplier's control, FCDO reserves the right to amend the requirements within said Contract to reduce the mine action activities to be delivered by that Supplier without triggering contract performance management tools, e.g. CM-KPIs or performance review.
- 14.14 The examples of the circumstance beyond the Supplier's control include but are not limited to:
- conflict inhibiting the safe operation of deminers' work;
 - natural disasters;
 - nationally imposed Covid-19 restrictions.

The following will not be examples of the circumstance beyond the Supplier's control:

- the Supplier has consistently shown not to be on track to meet the minimum output target for a country; and
- the Supplier's work has been delayed significantly by events which could have been foreseen (e.g. religious holidays, staff departures) but were not accounted for in a timely manner in the delivery plans.

14.15 Unsatisfactory performance may include but is not limited to: a consistent (more than twice) breach in fulfilling obligations related to reporting in a timely fashion; a consistent (more than twice) failure to achieve agreed targets as set out in the logframe; a severe disregard for due care towards its staff or employees, and those of its partners; evidence of malfeasance, fraud or corruption and/or a failure to respond to such instances in a timely manner.

14.16 FCDO will also address performance in accordance with the associated Standard Terms & Conditions and the agreed performance management methodology.

15 GOVERNANCE, MANAGEMENT ARRANGEMENTS, QUALITY MANAGEMENT AND REPORTING

15.1 GMAP3 will be managed by GMAP3 Senior Responsible Owner (SRO) and GMAP3 Programme Responsible Owners (PRO) in the Humanitarian and Migration department.

15.2 During implementation, the Supplier will be required to attend monthly Programme Management meetings with FCDO and Quarterly meetings with the MEL provider and FCDO to review progress. A programme of meetings will be agreed between the Supplier and FCDO for the Inception Phase.

15.3 Programme MEL will be conducted by an independent MEL provider, which will report on all GMAP3 deliverables to FCDO. The GMAP3 Supplier will provide quarterly reports to the MEL contractor who will QA the reports and update FCDO including alerting it to any significant challenges the Supplier is facing with programme delivery. The deadline for the Quarterly Report to be submitted by the Supplier to the MEL provider will be agreed with the Supplier ahead of Contract award but is likely to be within two-three weeks after the completion of each quarter. The Supplier will be expected to collate information from all other consortium and downstream partners in order to present consolidated reports to FCDO using an agreed format.

15.4 Quarterly reports will contain information on progress against outputs and outcomes, evidence of innovations and lessons learned, and an updated logframe, risk assessment and asset register. Certain elements of reporting, such as scoring related to CD, may be required on a six monthly rather a quarterly basis.

15.5 The Supplier must provide annual audited statements. The audit reports must be completed within six months of the completion of each financial year (FY23/24 and FY25/26).

- 15.6 The Supplier must ensure and maintain the appropriate governance arrangements with the Sub-Contractors.

16 TRANSPARENCY

- 16.1 FCDO requires Suppliers receiving and managing funds, to release open data on how this money is spent, in a common, standard, re-usable format and to require this level of information from immediate Sub-Contractors, sub-agencies and partners. It is a contractual requirement for all Suppliers to comply with this, and to ensure they have the appropriate tools to enable routine financial reporting, publishing of accurate data and providing evidence of this - further information is available from <https://iatistandard.org>
- 16.2 In accordance with clause 34.1 of Section 2 of Terms and Conditions no publicity is to be given to this Contract without the prior written consent of FCDO. There may be locations where the use of the UK Aid logo will not be appropriate. Any exceptions to the rule above must be discussed with FCDO on a case-by-case basis.
- 16.3 Where and to the extent that FCDO has provided consent pursuant to Clause 34.1 of Section 2 of Terms and Conditions, the Supplier may use the UK Aid logo which, with few exceptions, should appear alongside the partner's own logo and those of other donors on programme communications and assets, at events etc. Partners should also acknowledge UK Government funding in interviews, press releases, public statements, on social media and in all other public communications; and make use of a content disclaimer as appropriate.
- 16.4 Transparency, value for money, and results are top priorities for the UK Government. FCDO has a duty to show UK taxpayers where their money is being spent, its impact, and the results achieved. FCDO has guidance on the use of its logos, which will be shared with the Supplier(s) as necessary.

17 DUTY OF CARE

- 17.1 The Supplier is fully responsible for the Duty of Care of its staff for the duration of the Contract; see ITT Volume 1.
- 17.2 FCDO will share information with the Supplier on the security status and in-country developments (see Annex L – Country Risk Assessment Matrix). Travel advice is also available on the FCDO website. The Supplier must ensure it (and its personnel) are up to date with the latest position for each country of operations. See: [Foreign travel advice - GOV.UK \(www.gov.uk\)](https://www.gov.uk/foreign-travel-advice)
- 17.3 The Supplier must provide appropriate safety and security briefings for all their personnel working under this Contract and ensuring that their personnel register and receive briefing as outlined below.

Conflict Affected Zones and training:

- a) The delivery of the Contract may require the Supplier to operate in conflict-affected areas. Travel to certain areas may be subject to travel clearance from the UK government in advance. The security situation may be volatile

and subject to change at short notice. The Supplier must be experienced working in such an environment and should be capable of deploying to any areas required in order to deliver the Contract (subject to travel clearance being granted where applicable).

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

18 DO NO HARM

- 18.1 FCDO requires assurances regarding protection from violence, exploitation and abuse through involvement, directly or indirectly, with FCDO Suppliers and programmes. This includes sexual exploitation and abuse but should also be understood as all forms of physical or emotional violence or abuse and financial exploitation.
- 18.2 GMAP3 is targeting a highly sensitive area of work. The Supplier must demonstrate a sound understanding of the ethics in working in this area and applying these principles throughout the lifetime of the programme to avoid doing harm to staff or beneficiaries. The Supplier must include in its tender a statement that it has a duty of care to the beneficiaries, other programme stakeholders and its own staff, and the Supplier will comply with the ethics principles in all its activities. The Supplier's adherence to this duty of care, including reporting and addressing incidences, should be included in both regular and annual reporting to FCDO.
- 18.3 The Supplier must evidence its internal safeguarding and fraud reporting processes, evidencing a survivor-centred approach and confirm ability to adhere to FCDO reporting mechanisms and will fully engage in FCDO due diligence process as requested.

Annex A – Glossary of terms

The definitions of terms used in this ToR are taken from International Mine Action Standards (IMAS), apart from ‘beneficiary’, which has been defined by the current GMAP Suppliers and accepted by FCDO.

Beneficiary

GMAP3 will use the definitions given in ‘*Standardising Beneficiary Definitions (SBD) in Humanitarian Mine Action*’, Second Edition, October 2020. SBD provides separate definitions for direct and indirect beneficiaries of EORE, land release, EOD and victim assistance (VA). Note: VA is not included in GMAP3.

Cancelled land

A defined area where there is no evidence of mine/ERW contamination following the NTS of confirmed or suspected hazardous areas.

Clearance

In the context of mine action, the term refers to tasks or actions to ensure the removal and/or the destruction of all mine and ERW hazards from a specified area to a specified depth, or other agreed parameters as stipulated by the NMAA.

Cluster munition (CM)

A conventional munition that is designed to disperse or release explosive sub-munitions each weighing less than 20 kilograms and includes those explosive sub-munitions.

Community liaison

Liaison with men, women and children in mine/ERW affected communities to exchange information on the presence and impact of mines and/or ERW, create a reporting link with the mine action programme and develop risk reduction strategies. Community liaison aims to ensure that the different community needs, and priorities are central to the planning, implementation and monitoring of mine action operations.

Explosive ordnance disposal (EOD)

The detection, identification, evaluation, render safe, recovery and disposal of explosive ordnance (EO).

Explosive ordnance risk education (EORE)

Activities which seek to reduce the risk of injury from mines/ERW by raising awareness of men, women and children in accordance with their different vulnerabilities, roles and needs, and promoting behavioural change. Previously referred to as mine risk education (MRE).

Explosive remnants of war (ERW)

All munitions (including CM) containing explosives, nuclear materials, or biological and chemical agents. The munitions may have been fired and not detonated and therefore potentially dangerous or left behind or dumped by a party to an armed conflict.

Land release

The process of applying all reasonable effort to identify, define and remove the presence and suspicion of mines/ERW through NTS, technical survey and/or clearance. The criteria for “all reasonable effort” is defined by the NMAA.

Mine action

Activities which aim to reduce the risk of harm from landmines, ERW and improvised explosive devices to a level where people can live safely; in which economic, social and health development can occur free from the constraints imposed by landmine and ERW contamination. Mine action comprises: (a) EORE; (b) humanitarian demining, i.e. mine and ERW survey, mapping, marking and clearance; (c) victim assistance, including rehabilitation and reintegration; (d) stockpile destruction; and (e) advocacy against the use of anti-personnel mines.

A number of other enabling activities are required to support these five components of mine action, including: assessment and planning, the mobilisation and prioritisation of resources, information management, human skills development and management training, quality management and the application of effective, appropriate and safe equipment.

National Mine Action Authority (NMAA)

The government entity, often an inter-ministerial committee, in a mine-affected country charged with the responsibility for the regulation, management and coordination of mine action.

In the absence of a NMAA, it may be necessary and appropriate for the UN, or some other recognised international body, to assume some or all of the responsibilities, and fulfil some or all the functions, of a NMAA.

Non-technical survey (NTS)

The collection and analysis of data without the use of technical interventions about the presence, type, distribution and surrounding environment of mine/ERW contamination, to define where mine/ERW contamination is present, and where it is not, and to support land release prioritisation and decision-making processes through the provision of evidence.

Programme manager

A FCDO staff member who manages the programme and relationships with implementing partners on a day-to-day basis. The programme manager reports to the SRO.

Programme Responsible Owner (PRO)

The PRO role is accountable to the SRO for driving, on a day-to-day basis, the delivery of programme outcomes within agreed time, cost and quality constraints. This includes effective management of risk, compliance with the Rules, objectivity about performance and design and adaptation of programmes to uncertain or changing contexts.

Reduced land

A defined area concluded not to contain evidence of mine/ERW contamination following the technical survey of a suspected or confirmed hazardous areas.

Senior Responsible Owner (SRO)

A FCDO staff member who has been designated as the SRO is accountable for the vision and overall performance of a project/programme.

Technical survey (TS)

The collection and analysis of data using appropriate technical interventions about the presence, type, distribution and surrounding environment of mine/ERW

contamination, in order to define better where mine/ERW contamination is present, and where it is not and to support land release prioritisation and decision-making processes through the provision of evidence.

Annex B – Ukraine context

1. INTRODUCTION

The full extent of contamination by landmines and explosive remnants of war (ERW) in Ukraine is not known. Prior to the invasion by Russian forces in February 2022, the heaviest contamination was believed to be inside the buffer zone on either side of the Line of Contact between the warring parties within the Donetsk and Luhansk regions. Post invasion, contamination has spread, including in the East, South and the Oblasts around Kyiv in the North. The ongoing war and rapidly deteriorating security environment throughout the country has put hundreds of thousands of people's lives at risk. The expansion of the conflict is projected to deepen and expand humanitarian needs among millions of Ukrainians.

GMAP3 is now the UK Government's primary mechanism for implementing mine action in Ukraine covering survey, area clearance, explosive ordnance disposal (EOD) and explosive ordnance risk education (EORE). We are funding an immediate response mine action programme, which will run until end June 2023.

2. ENABLING ENVIRONMENT

2.1 Security - access

OCHA publishes weekly reports, which summarise the general security and humanitarian situation in Ukraine. There is limited safe and permitted access in occupied territories. Indiscriminate attacks on critical national infrastructure continue across Ukraine. In occupied territories in the East and South Russian forces continue to build defensive positions. Like in 2022 when the Government of Ukraine launched successful counter-offensives to liberate areas, when civilians returned home there was an increase in the numbers of explosive related casualties. According to the Office of the UN High Commissioner for Human Rights (OHCHR) there were recorded 22,209 civilian casualties in the country from 24 February 2022, which marked the start of the large-scale armed attack by the Russian Federation, to 19 March 2023: 8,317 killed and 13,892 injured. OHCHR believes that the actual figures are considerably higher, as the receipt of information from some locations where intense hostilities have been going on has been delayed and many reports are still pending corroboration. Almost 139,000 square kilometres (54,000 square miles) of land in Ukraine have to be checked for mines, booby traps and unexploded ordnance. Mines aren't just found in fields and forests, either — Russian soldiers also booby-trapped house doors, washing machines and children's toys. As at mid-July 2022, the OSCE reports "... the war in Ukraine continues to shatter the lives of millions of people across the country as reports of new attacks emerge and the fighting escalates in the east of the country. While the east accounts for most of the active warfare, ongoing missile attacks and casualties have been reported in several other regions of the country, including in eastern Kharkivska and western Khmelnytska oblasts taking a heavy toll on civilians and civilian infrastructure. According to the National Mine Action Authority, 160,000km² of Ukrainian territory has been exposed to conflict and is an area of interest to be surveyed to identify the nature and extent of explosive ordnance contamination in Ukraine. Currently, about 120,000km² of this territory is under the control of Russian Forces. The Ukrainian Government reports that some 25,000km²

roads and more than 300 bridges, and other critical infrastructure across the country worth a total of US\$95 billion have so far been damaged or destroyed due to the war.”

2.2 Governance

The government of Ukraine has made significant progress in establishing architecture for mine action programming. Following amendments to the Law of Ukraine ‘On Mine Action in Ukraine’ in December 2020, an institutional structure for Mine Action was established with a dedicated National Mine Action Authority (NMAA), an inter-departmental body under the Cabinet of Ministers, responsible for the coordination of state regulation and planning of MA, chaired by the Minister of Defence (MoD) of Ukraine. Two National Mine Action Centres (NMACs), one under MoD and one under Ministry of Internal Affairs (MIA)/State Emergency Service of Ukraine (SESU) were established. The Mine Action Law and the new structure however has not yet been completely operationalised, and institutional frameworks and sector coordination must now be significantly enhanced to respond to current and developing requirements.

To achieve this, the MoD has been tasked to develop by a draft resolution on the distribution of mine action roles and responsibilities of the central executive authorities in particular those of the State Emergency Services of Ukraine (SESU), MoD and the Ministry of Foreign Affairs.

2.2 Evolving context

The situation in Ukraine is fluid and as such the project needs to be designed to accommodate changes over its duration in both the international context and the internal environment.

The mine action activities delivered through GMAP3 shall be aligned with Ukraine’s strategic priorities and those identified by the Global Protection Cluster, managed by UNDP, which will draw evidence from an evolving Humanitarian Needs Overview. A national survey of the threat from mines and ERW, including improvised anti-personnel mines, and the associated socio-economic impact is planned. As the survey is conducted it is likely the prioritisation of activities (in both form and location) will change due to new information. The GMAP3 project in Ukraine must be designed to respond to this evolving need.

3. HMG POLICY ON UKRAINE

The FCDO, working with other UK government departments, aims to:

- Provide humanitarian aid in Ukraine and to people seeking refuge in the region. This includes protection and life-saving assistance, with a focus on the most vulnerable, including women and children;
- Work with our allies to ensure that the international humanitarian system delivers a well-coordinated and well-funded response; and
- Press for respect for International Humanitarian Law (IHL) and call for unimpeded humanitarian access to ensure humanitarian aid gets to those who need it most and enable people to leave the worst affected areas safely.

The UK is continuing to provide a significant amount of humanitarian assistance.

The priority for UK funding is to [support the most vulnerable people](#), including women and children, the elderly and disabled, in Ukraine and in the region around Ukraine.

Subject to the evolving situation, it is envisaged that GMAP3 will focus on the clearance of routes, arable land and critical infrastructure, and facilitate the work of other humanitarian organisations initially in recently liberated areas and responding to evolving priorities of the UK's early recovery, reconstruction and stabilisation programmes. The project will also include EORE that provides communities living and working near contaminated areas with the knowledge and incentive to adopt safer behavioural norms. The scope of capacity development (CD) will be determined during the inception phase of GMAP3.

Bids will need to demonstrate how Suppliers would scale up in Ukraine should the security and political context allow.

Annex C – Capacity Development Needs Assessment Guidance

1. INTRODUCTION

UK mine action policy stresses the importance of mine-affected countries assuming responsibility for their mine action programmes. To achieve full national ownership, it is important that the governments of mine-affected states demonstrate the will and develop the capacity to regulate, coordinate, manage and implement their own mine action programmes with minimal external technical and/or financial support. There is also a need for local implementing partners (IPs) to have a major role in the delivery of mine action activities.

For the GMAP3 project in Ukraine, the capacity development (CD) of Ukraine’s national authorities will be achieved by the Supplier liaising with the Ministry of Defence of Ukraine and the Ministry of Internal Affairs / State Emergency Service of Ukraine (SESU), and by providing advice based on international experience which leads to the enhanced regulation, coordination and management of Ukraine’s National Mine Action Programme.

The GMAP3 project in Ukraine will also aim to enhance the capacity of one or more local implementers. This will be achieved by the Supplier conducting CD activities which lead to enhanced operational and management procedures, skills and systems of local mine action IPs.

Preparing a work plan of CD activities requires a thorough understanding of the need, demand and commitment of the local IPs to ensure the support being provided through GMAP3 will be effective in meeting the local needs. This understanding should be informed by a political economy analysis that considers the institutional structures and norms that may inhibit a national operator capacity and sustainability.

During the Inception Phase, the Supplier shall submit to FCDO a report which assesses the need for CD as part of GMAP3.

2. NEEDS ASSESSMENT OF IPs

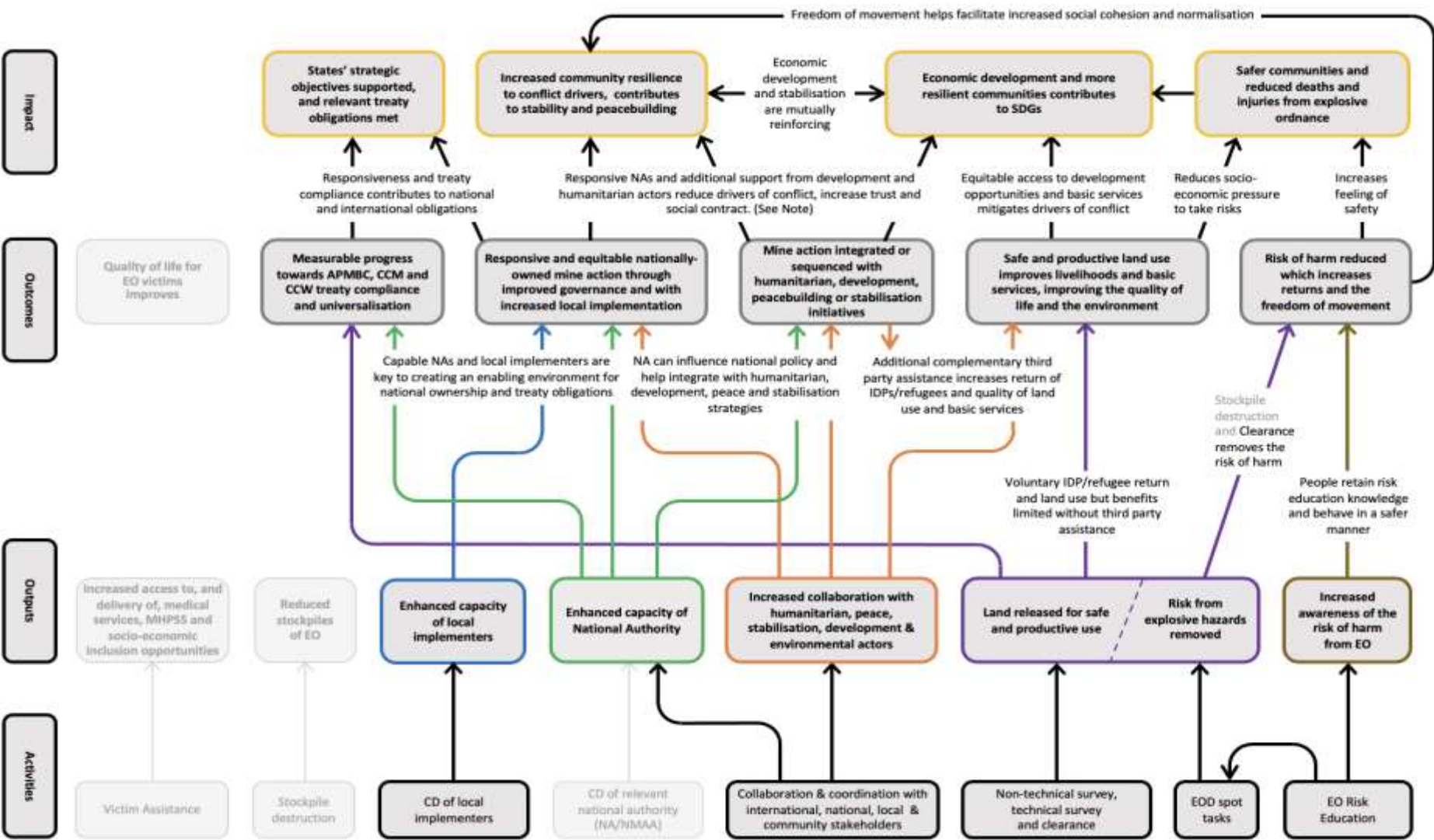
For IPs, a needs assessment should address the following questions:

- (1) What is the IP’s organisational purpose and status, for example: NGO, commercial, emergency services or disaster response entity, and how is it funded?
- (2) What is the current role, and intended future role, of the IP for example humanitarian demining, specialist EOD services, community liaison, EORE or medical support? Consider the capabilities in terms of the IP’s ability to conduct mine action activities effectively, efficiently and safely.
- (3) What structure, systems, processes, procedures, information, skills, equipment, funding and culture are required by the IP in order to fulfil its role?
- (4) What structure, systems, processes, procedures, information, skills, equipment, funding and culture does the IP currently have to fulfil its role?
- (5) What are the gaps in capability? Ideally the gaps should be categorised in terms of degree and urgency.
- (6) Does the IP agree with the identified gaps, and the proposed categorisation?

- (7) Which of the gaps could be successfully addressed as part of a GMAP3 project in Ukraine?
- (8) What resources would be required to successfully address the gaps as part of the GMAP3 project?
- (9) What assumptions (of the external environment / context) need to be met to successfully address the gaps as part of a GMAP3 project in Ukraine?

Needs assessments should include a table proposing 'baseline' and 'target' scores against which the CD work plans will be designed, and the performance will be measured. On award of Contract, FCDO will provide a template to be used by the selected Supplier during the Inception Phase for scoring baseline capabilities, identifying capability gaps, and proposing how the gaps can be addressed during the GMAP3 project in Ukraine.

Annex D – GMAP3 Theory of Change for Ukraine



Note: Enhancing the NMAA in Ukraine will be achieved through collaboration and coordination with the Supplier and not through GMAP3-funded CD activities

Annex G - Inception Milestones table

#	Inception Phase Milestone	Milestone Description	Acceptance criteria	Due Date	FCDO responsibility
Milestone 1	Supplier is operational	<ul style="list-style-type: none">• Supplier contract management team is in place.	<p>The evidence:</p> <ul style="list-style-type: none">• Organigram submitted to FCDO clearing showing senior contract management team have been appointed, job roles, responsibilities and contact information.	One week from the start of the Inception Phase.	Confirm acceptance of contract management team and supply detail of FCDO contract and programme management structure.
Milestone 2	Supplier is operational	<ul style="list-style-type: none">• All required office(s) rented and equipped; all required transport equipment acquired and operational	<ul style="list-style-type: none">• Plan for office rentals, procurement processes submitted to FCDO.	Plan submitted by end of week 6 and fully implemented by 5 Working Days before the last Working Day of Month 3.	FCDO to confirm acceptance of timeline and proposed procurement within 5 working days.
Milestone 3	Supplier is Operational	<ul style="list-style-type: none">• All of core team hired and started employment• Organigram and delivery chain map completed, submitted to and approved by FCDO• Agreements with consortium partners (where applicable) finalised and submitted to FCDO• <i>Agreement and documentation of roles and responsibilities of</i>	<p>The evidence:</p> <ul style="list-style-type: none">• Full programme organogram and delivery chain map including due diligence assessment of downstream partners• Draft agreements with downstream partners submitted to FCDO for SRO approval, with evidence that due	<p>The evidence submitted to FCDO 5 Working Days before the last Working Day of Month 3.</p> <p>The evidence submitted to FCDO 5 Working Days before the last Working Day of Month 3.</p>	<p>To review the evidence within X Working Days and to provide the Supplier feedback, if any.</p> <p>To review the evidence within X Working Days</p>

		<i>supplier and consortium partners, along with details of ways of working, submitted to and approved by FCDO</i> <ul style="list-style-type: none">• Operational teams formed and ready for deployment	diligence checks have been undertaken. <ul style="list-style-type: none">• Confirmation of training and accreditation of all country staff.		and to provide the Supplier feedback, if any.
Milestone 4	Final Logframe	Agreed Delivery KPIs (D-KPIs)	<ul style="list-style-type: none">• Meeting with FCDO and MEL representatives to initiate process.• Final logframe submitted to FCDO for approval	Meeting with FCDO and MEL representatives 2 weeks from contract start date. Final logframe submitted by end of week 6 To review the evidence within 5 Working Days and to provide the Supplier feedback, if any.	As above
Milestone 5	Conflict Sensitivity Strategy	Final document agreed with FCDO as set out in ToR (11.4).	Document delivered on time and to the agreed high quality standard, as agreed with FCDO.	Plan submitted by end of week 6 and fully implemented by 5 Working Days before the last Working Day of Month 3.	As above
Milestone 6	Gender Strategy	Final document agreed with FCDO as set out in ToR (11.5). Responding to Section T11 of the Technical Evaluation Criteria, Potential Suppliers should explain	As above	As above	As above

		in outline how they will design, develop, and implement the project in a way that takes into account the different needs, priorities, knowledge and capabilities of women, girls, men and boys, ensuring that they participate in, and benefit equally from, GMAP3 in Ukraine.			
Milestone 7	Plan for delivering value for money against 5 Es	Final document agreed with MEL provider and FCDO covering the methodology to be used to deliver VfM through the programme.	As above	As above	As above
Milestone 8	Disability and Inclusion Strategy	Final document agreed with FCDO as set out in ToR (11.6). Responding to Section T4 of the Technical Evaluation Criteria, Potential Suppliers should demonstrate their understanding of conflict sensitivity and how their work in Ukraine would avoid aggravating the causes and consequences of conflict. Responding to Section T12 of the Technical Evaluation Criteria, Potential Suppliers should explain in outline how they will design, develop and implement GMAP3 in Ukraine in ways that take into account the needs and	As above	As above	As above

		capabilities of people with disability and other vulnerable groups.			
Milestone 9	Climate and Environment Strategy	Final document agreed with FCDO as set out in ToR (11.9). Responding to Section T14 of the Technical Evaluation Criteria, Potential Suppliers should address the requirement as described in Section 11.9 of the ToR.	As above	As above	As above
Milestone 10	Risk Management Approach	Develop risk register and refine risk and mitigation framework. Must include fiduciary risk management approach, delivery chain risk maps, safeguarding approach (including of vulnerable beneficiary groups), and clarify monitoring and reporting mechanisms.	The documents meets the quality and format criteria agreed between with FCDO and MEL provider. Where applicable - the Supplier has provided a revised version of the document, addressing each point raised by FCDO and provided to the Supplier in the feedback, within 10 Working Days.	As above	As above
Milestone 11	Workplan	Planned activities must be provided in detail for the first year of the Implementation Phase and in outline for the remaining term of the Contract for FCDO review and approval.	As above	As above	As above

Milestone 12	Final baseline data	<p>The baseline data must:</p> <ul style="list-style-type: none">a) include information on suspected and confirmed hazardous areas, and the types and predicted distribution of mines, CM and ERW to be cleared;b) provide quantitative and qualitative data on the quality of life of mine/ERW- affected communities (including accessibility of existing basic essential services such as schools and health centres) prior to land release and EORE interventions in the areas proposed for operations; andc) describe the CD baseline for the Supplier's local mine action IP(s).d) Be agreed with MEL supplier	As above	As above	As above
Milestone 13	CD assessment	Conduct a needs assessment in accordance with guidelines as set out in Annex C	As above		
Milestone 14	Inception Report	Collation of all above	As above	<p>The evidence submitted to FCDO X Working Days before the last Working Day of Month 3.</p> <p>The evidence submitted to FCDO 5 Working</p>	As above

				Days before the last Working Day of Month 3.	
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Annex J - Contract Management KPIs table and Transparency KPIs examples
Contract Management KPIs (CM-KPIs)

CM-KPI	Performance Measure	Acceptance criteria (Including due date)	FCDO responsibility	Payment by Result (PbR) – Service Credit
REPORTING				
Quarterly Reports to MEL provider	<p>Narrative reports with update on progress against logframe, quarterly payment and risk registers. Updated asset register. Progress report showing CD of IPs (6 monthly – baseline score and new score)</p> <p>The format and the final scope to be agreed during the Inception Phase.</p>	<p>The final document submitted to MEL provider 10 Working Days after the end of the quarter.</p> <p>MEL provider confirms standards meet criteria for payment.</p>	<p>To review the QA analysis a report from MEL provider related to the performance of the GMPA3 Ukraine based on the Quarterly Report within X* Working Days and provide the feedback to the Supplier and MEL provider.</p>	<p>1 Service Credit for every 5 Working Days delay.</p> <p>1 Service Credit for quality not meeting the agreed requirements, including but not limited to accuracy of reporting, capture of all and any changes, reviews and approvals throughout the quarter along with the country level supplier reporting.</p>
FINANCIAL MANAGEMENT & FORECASTING				
Forecasting accuracy	<p>Forecasting is, on average, 95% accurate. This will be measured on quarterly basis against Valid Invoice(s).</p>	<p>The evidence of % accuracy of the actual cost against the forecast must be submitted to FCDO 10 Working Days after the end of the quarter. Note, the event beyond the supplier control must be reported to FCDO and any</p>	<p>To review the evidence within X Working Days</p>	<p>1 Service Credit for every 5 Working Days delay.</p> <p>1 Service Credit for each 5% of variance per quarter.</p>

		changes to the forecast agreed in advance.		
Invoice accuracy and submission	This measures the Supplier's performance for the previous quarter, e.g. at the end of Q3 assessing Q2. Not measured in Q1	<p>The evidence must be submitted to FCDO 10 Working Days after the end of the quarter.</p> <p>For an invoice to be valid, it must contain:</p> <ul style="list-style-type: none">• the correct purchase order (PO);• the date of the invoice;• a unique invoice number• the period(s) to which the relevant charge(s) relate; and• a detailed breakdown of the Services and the appropriate Charges and supported by any other documentation required by FCDO to substantiate the invoice.	To review the evidence within X Working Days and provide the feedback at the Quarterly Review meeting;	<p>1 Service Credit for every (5) Working Days.</p> <p>1 Service Credit for more than 10 incorrect or disputed charges (a disputed charge shall be one where the FCDO's dispute is upheld).</p>
RISK MANAGEMENT and CLIENT RELATIONSHIP				
Risk Management	For any high/major impact fiduciary, safeguarding or reputational risks, the Supplier must inform FCDO within 1 Working Days of the risk being identified; and an action plan is to be shared with the Customer	Provision of evidence of risk identification date and Risk Register updated accordingly, by the end of the month following the next		1 Service Credit per day after the Performance Measure; and an additional 1 Service Credit for each 5 Working Days after the Performance Measure.

	within 5 Working Days of the risk being identified.	Monthly Management Meeting with FCDO.		
Extent to which Supplier is responsive and flexible to FCDO	Regularity of formal and informal communication by the Supplier to FCDO [to be agreed during the Inception Phase. Ability of Supplier to respond to FCDO requirements or requests for information. The type of requests and the timeframes for their submission to be agreed during the Inception Phase.	Response to FCDO feedback within timeframe as stipulated by FCDO	To provide feedback to the Supplier within a reasonable timeframe	1 Service Credit for not meeting pre-agreed KPIs for communication with FCDO;
Extent to which Supplier is responsive to the external stakeholders' needs	Regularity of formal and informal communication between the Supplier and other stakeholders. This includes but is not limited to MEL provider, other GMAP3 contracts and agreements, and other key stakeholders to be agreed between the Parties during the Inception Phase, e.g. government, private sector, civil society and other development programmes.	Performance of this metrics will be based on the quarterly stakeholder feedback. The feedback must be assessed as "Meeting requirements", using the following scale: <ul style="list-style-type: none">• Exceeding expectations;• Meeting requirements;• Approaching Target;• Requires Improvement; and• Inadequate;	To review the evidence within X Working Days. To conduct stakeholder feedback with MEL prior to the Quarterly review meeting.	1 Service Credit for "Approaching Target"; 3 Service Credits for Requires Improvement; and 5 Service Credits for "Inadequate"

*to be agreed between the Parties.

Transparency KPIs

T-KPI	Performance Measure	Acceptance criteria (Including due date)	FCDO responsibility	Payment by Result (PbR) – N/A
Delivery KPIs # 1	<ul style="list-style-type: none">Land cleared (sqm);	100% - 90% of the delivery target for the Quarter (Q) will be rated 'Good'; 85 - 89 % the delivery target for the Q will be rated 'Approaching Target'; 75 - 84 % the delivery target for the Q will be rated 'Requires Improvement'; and 74 % or less than agreed for the Q will be rated - 'Inadequate'. With allowances made for non-delivery of targets due to circumstances beyond the Suppliers control.	To review the evidence provided within X Working Days	N/A – publication by Cabinet Office in the public domain
Delivery KPIs # 2	<ul style="list-style-type: none">Land reduced (sqm);	As above	As above	As above
Delivery KPIs # 3	<ul style="list-style-type: none">EORE beneficiaries.	As above	As above	As above

Annex L – Risk Assessment Summary

FCDO Summary Risk Assessment Matrix for Ukraine

Theme			FCDO Risk Score		
Country			Ukraine		
Overall Rating*			4		
FCDO Travel Advice			5		
Host Nation Travel Advice			5		
Transportation			4		
Security			4		
Civil Unrest			2		
Violence/crime			2		
Terrorism			4		
Conflict (war)			5		
Hurricane			1		
Earthquake			2		
Flood / Tsunami			3		
Medical Services			3		
Nature of Project Intervention			4		
1	2	3	4	5	
Very Low Risk	Low Risk	Medium Risk	High Risk	Very High Risk	
Low		Medium	High		

**Appendix A: of Contract Section 3 (Terms of Reference)
Schedule of Processing, Personal Data and Data Subjects**

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

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

Description	Details
Identity of the Controller and Processor for each Category of Data Subject	<p>The Parties acknowledge that for the purposes of the Data Protection Legislation, the following status will apply to personal data under this contract;</p> <p>1) The Parties acknowledge that Clause 33.2 Protection of Personal Data and 33.4 (Section 2 of the contract) shall not apply for the purposes of the Data Protection Legislation as the Parties are independent Controllers in accordance with Clause 33.3 in respect of the following Personal Data:</p> <ul style="list-style-type: none">• [to be agreed during the Inception Phase]
Subject matter of the processing	
Duration of the processing	

Nature and purposes of the processing	
Type of Personal Data [and Special Categories of Personal Data]	
Plan for return and destruction of the data once processing complete.	(UNLESS requirement under EU or European member state law to preserve that type of data)

GMAP3 logframe template for Ukraine				Baseline as at 1 January 2023		Milestone 31 March 2023		Milestone 30 June 2023		Milestone 30 September 2023		Milestone 31 December 2023		Milestone 31 March 2024		Milestone 30 June 2024		Milestone 30 September 2024		Milestone 31 December 2024		Milestone 31 March 2025			
				Planned	Achieved	Planned	Achieved	Planned	Achieved	Planned	Achieved	Planned	Achieved	Planned	Achieved	Planned	Achieved	Planned	Achieved	Planned	Achieved				
IMPACT																									
To be developed during inception phase	Impact Indicator 1																								
	To be developed during inception phase			(include here the source(s) of data for the reported results)																					
	Impact Indicator 2																								
To be developed during inception phase	To be developed during inception phase			(include here the source(s) of data for the reported results)																					
OUTCOME 1				Outcome Indicator 1.1																				Assumptions	
Measurable progress towards APMBC, COM and COV treaty compliance and universalisation				Area of land released disaggregated by land cleared, land reduced and land cancelled (m2)			(include here the source(s) of data for the reported results)																		
INPUTS (I)				FCDO		Total (I)		FCDO SHARE (%)																	
INPUTS (IR)				FCDO (FTEs)																					
OUTCOME 2				Outcome Indicator 2.1																				Assumptions	
Responsive and equitable nationally-owned mine action through improved governance and with increased local implementation.				Enhanced capacity of NMAA's programme management systems, procedures & practices			(include here the source(s) of data for the reported results)																		
				Outcome Indicator 2.2																					
				Enhanced capacity of NMAA's operations management systems, procedures & practices			(include here the source(s) of data for the reported results)																		
				Outcome Indicator 2.3																					
				Enhanced capacity NMAA's quality management plans, systems, procedures and practices			(include here the source(s) of data for the reported results)																		
				Outcome Indicator 2.4																					
				Enhanced capacity of NMAA's information management systems, procedures and data			(include here the source(s) of data for the reported results)																		
				Outcome Indicator 2.5																					
				Local IPs have enhanced operational plans, systems, procedures and practices (CD score from			(include here the source(s) of data for the reported results)																		
				Outcome Indicator 2.6																					
				Local IPs have enhanced management skills and knowledge (CD score from matrix)			(include here the source(s) of data for the reported results)																		
				Outcome Indicator 2.7																					
				Local IPs have enhanced Information Management systems procedures and practices (CD score from			(include here the source(s) of data for the reported results)																		
INPUTS (I)				FCDO		Total (I)		FCDO SHARE (%)																	
				FCDO (FTEs)																					
OUTCOME 3				Outcome Indicator 3.1																				Assumptions	
Mine action integrated or sequenced with humanitarian, development, peacebuilding or stabilisation initiatives				Number and percentage of mine action activities that have resulted in sequenced or integrated			(include here the source(s) of data for the reported results)																		
				Outcome Indicator 3.2																					
				Number of beneficiaries from joint plans between IPs and other development, humanitarian, peace,			(include here the source(s) of data for the reported results)																		
INPUTS (I)				FCDO		Total (I)		FCDO SHARE (%)																	
INPUTS (IR)				FCDO (FTEs)																					
OUTCOME 4				Outcome Indicator 4.1																				Assumptions	
Safe and productive land use improves livelihoods and basic services, improving the quality of life and the environment				Number of direct beneficiaries surveyed reporting improved livelihoods as a result of GMAP3			(include here the source(s) of data for the reported results)																		
				Outcome Indicator 4.2																					
				Number of indirect beneficiaries surveyed reporting improved livelihoods as a result of GMAP3			(include here the source(s) of data for the reported results)																		
				Outcome Indicator 4.3																					
				Household or direct representatives surveyed reporting improved access to basic services as a result of GMAP3			(include here the source(s) of data for the reported results)																		
				Outcome Indicator 4.4																					
				Area of formerly contaminated land in use following land release activities (in %)			Residential																		
							Agricultural/pastoral																		
							Community dev																		
							Natural resources																		
							Infrastructure																		
							Access																		
							Total																		
				Outcome Indicator 4.5																					
				Number and percentage of mine action interventions demonstrating a positive impact on			(include here the source(s) of data for the reported results)																		
INPUTS (I)				FCDO		Total (I)		FCDO SHARE (%)																	
INPUTS (IR)				FCDO (FTEs)																					
OUTCOME 5				Outcome Indicator 5.1																				Assumptions	
Risk of harm reduced which increases returns and the freedom of movement.				Number of direct beneficiaries from land released and ECO SHADO and percentage with disabilities)			Women																		
							Men																		
							Girls																		
							Boys																		
							Total W, M, G & B # or total with % of total with disabilities)																		
								(include here the source(s) of data for the reported results)																	
				Outcome Indicator 5.2																					
				Number of indirect beneficiaries from land released and ECO SHADO and percentage with disabilities)			Women																		
							Men																		
							Girls																		
							Boys																		
							Total W, M, G & B # or total with % of total with disabilities)																		
								(include here the source(s) of data for the reported results)																	
				Outcome Indicator 5.3																					
				Number and percentage of people from impacted communities			Total surveyed																		
							Total reporting increase in safe behaviour																		
							% of total surveyed																		
				Outcome Indicator 5.4																					
				Number and percentage of people surveyed			Total surveyed																		
							Total reporting increase in freedom of movement																		
							% of total surveyed																		

Outcome of		(include here the source(s) of data for the reported results)									
Outcome Indicator 5.5											
Number and percentage of people surveyed who report that mine action helped	Total surveyed reporting mine action enabled their return home										
Outcome Indicator 5.6		(include here the source(s) of data for the reported results)									
Number and percentage of people surveyed who report feeling safer as a result of	Total surveyed feeling safer										
		(include here the source(s) of data for the reported results)									
INPUTS (E)		FCDO	Total (E)	FCDO SHARE (%)							
INPUTS (HR)		FCDO (FTEs)									
OUTPUT 1		Output Indicator 1.1									
Land has been released for safe and productive use (in accordance with MAS/NMAS)	Area of land cleared (m²)	0									
	(include here the source(s) of data for the reported results)										
	Output Indicator 1.2										
	Area of land reduced (m²)	0									
Output Indicator 1.3		(include here the source(s) of data for the reported results)									
Area of land cancelled (m²)	0										
		(include here the source(s) of data for the reported results)									
INPUTS (E)		FCDO	Total (E)	FCDO SHARE (%)							
INPUTS (HR)		FCDO (FTEs)									
OUTPUT 2		Output Indicator 2.1									
Increased awareness of the risk of harm from explosive ordnance	Number of EORE sessions delivered	0									
	(include here the source(s) of data for the reported results)										
	Output Indicator 2.2										
	Number of direct beneficiaries of EORE (GAD) and percentage with disabilities	Women	0								
	Men	0									
	Girls	0									
	Boys	0									
	Total W, M, G & B	0									
	# or total with	0									
	% of total with	0									
Output Indicator 2.3		(include here the source(s) of data for the reported results)									
Number of indirect beneficiaries of EORE (through other EORE programmes)	Women	0									
Men	0										
Girls	0										
Boys	0										
Total W, M, G & B	0										
# or total with	0										
% of total with	0										
Outcome Indicator 2.4		(include here the source(s) of data for the reported results)									
Percentage of EORE beneficiaries surveyed who demonstrate increased	Total surveyed, total increased	0									
	% of total surveyed	0									
		(include here the source(s) of data for the reported results)									
INPUTS (E)		DFID	Total (E)	FCDO SHARE (%)							
INPUTS (HR)		FCDO (FTEs)									
OUTPUT 3		Output Indicator 3.1									
Collaboration with humanitarian, peace, stabilisation, development and environment actors	Number of mine action activities for which there is joint or sequenced support by other actors										
	(include here the source(s) of data for the reported results)										
	Output Indicator 3.2										
	Number of informal or formal agreements/MOUs in place with humanitarian, peacebuilding and/or development										
INPUTS (E)		FCDO	Total (E)	FCDO SHARE (%)							
INPUTS (HR)		FCDO (FTEs)									
OUTPUT 4		Output Indicator 4.1									
Enhanced capacity of NMAA For GMAP2 in Ukraine, Output indicators 4.1 - 4.5 will not be used.	Number and % of capacity development objectives (from the plan) achieved.	0									
	(include here the source(s) of data for the reported results)										
	Output Indicator 4.2										
	Number of personnel from NMAA trained or supported by CD activities (disaggregated by										
	(include here the source(s) of data for the reported results)										
	Output Indicator 4.3										
	Improved coordination between stakeholders in the mine action sector										
	(include here the source(s) of data for the reported results)										
	Output Indicator 4.4										
	Number of policies, systems, and procedures developed and in place in NMAA										
(include here the source(s) of data for the reported results)											
Output Indicator 4.5											
Revision of SOPs to be Gender and Conflict sensitive											
INPUTS (E)		FCDO	Total (E)	FCDO SHARE (%)							
INPUTS (HR)		FCDO (FTEs)									
OUTPUT 5		Output Indicator 5.1									
Enhanced capacity of local implementers	Number and percentage of CD objectives (from the plan) achieved.	0									
	(include here the source(s) of data for the reported results)										
	Output Indicator 5.2										
	Number of policies, systems, and procedures developed and in place for local IPs	0									
	(include here the source(s) of data for the reported results)										
	Output Indicator 5.3										
	Number of trained local staff conducting mine action activities										
	(include here the source(s) of data for the reported results)										
	Output Indicator 5.4										
	Number of local organisations or national actors supported by CD										
(include here the source(s) of data for the reported results)											
Output Indicator 5.5											
Number of personnel from local IPs trained or supported by CD activities (disaggregated by gender and by area of training (e.g. EORE, medical, EOD etc.))											
(include here the source(s) of data for the reported results)											
INPUTS (E)		FCDO	Total (E)	FCDO SHARE (%)							
INPUTS (HR)		FCDO (FTEs)									

EXAMPLE

ecm 5463_Section 3_ToR_Annex H - FCDO Open Book Accounting template

Overview

Programme Budget Area	PCD Budget	Quarter 1	Quarter 2	Quarter 3	Total
Programme Activities					
Capital Expenditure					
Programme Staff Costs - Pay					
Programme Staff Costs - Travel etc					
Monitoring and evaluation					
Non-profit attributable costs					
TOTAL					
Original Forecast					
Forecast updates					

Frontline project delivery cost

	PCD Budget	Q1	Q2	Q3	Total
Country office space (rent, utilities etc)					
Field office space (rent, utilities etc)					
IT and Communications					
Security costs					
Other office costs					
Commodities					
Any other costs					
Quarterly total					

Frontline Capital Expenditure Total

	PCD Budget	Q1	Q2	Q3	Total
Quarterly Totals					

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Staff costs

Job Family	PCD Budget	Q1	Q2	Q3	Total
Quarterly Total					

M&E

Travel, subsistence and accommodation	PCD Budget	Q1	Q2	Q3	Totals
					0.00
					0.00
					0.00
Quarterly total					

Travel, Subs & Accom

	PCD Budget	Q1	Q2	Q3	Total
Travel					-
Accommodation					-
Subsistence					-
Quarterly Total	-			-	-

Non-project attributable costs

	PCD Budget	Q1	Q2	Q3	Total
International Staff Costs					
Travel					
Office Costs					
Organisational Development					
Professional & Consultancy					
Other Costs					
Quarterly total					

Subcontractor Budget Split

	PCD Budget	Q1	Q2	Q3	Total
Total					

Country total

	PCD Budget	Q1	Q2	Q3	Total



Foreign, Commonwealth
& Development Office

Section 4
SPECIAL CONDITIONS

REDACTED

Section 5

SCHEDULE OF PRICES

REDACTED

Annex 1
SCHEDULE OF PRICES

REDACTED

Annex 2 Eligible Cost Guidance for Commercial Contracts

Foreign, Commonwealth and Development Office (FCDO)

Programme Expenditure: **Eligible Cost Guidance for Commercial Contracts**

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

1. Background to guidance

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

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

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

2. Principles of eligibility

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

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

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

1. 2.1 Foreign exchange

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

3. Ineligible costs (applicable to all budget categories)

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

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

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

4. Expenditure cost categories

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

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

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

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

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

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

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

5. Direct programme costs

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

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

5.1 Frontline programme delivery costs

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

5.2 Capital expenditure items

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

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

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

5.3 Staff costs (including payroll taxes and benefits)

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

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

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

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

2. FCDO will only reimburse productive days.

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

3. Management fees

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

4. Other staff-related costs

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

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

We will not cover any repatriation or termination costs.

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

5.4 Travel, subsistence and accommodation

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

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

Alcohol and tobacco are not allowable subsistence items.

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

5.5 Monitoring, Evaluation and Learning costs

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

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

5.6 Fund management costs

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

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

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

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

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

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

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

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

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

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

6.1 Premises and office costs

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

6.2 Central function costs

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

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

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

7. Payment basis and cost verification

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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