



## CONTRACT FOR SUPPLIER SERVICES

### Section 1 - FORM OF CONTRACT

CONTRACT FOR : Social Protection Technical Assistance Facility  
PURCHASE ORDER NUMBER : PO10078

#### THIS CONTRACT is made

**BETWEEN** : The Secretary of State for International Development at the Foreign Commonwealth and Development Office, Abercrombie House, Eaglesham Road, East Kilbride, G75 8EA ("**FCDO**");

**AND** : DAI Global UK Limited ("**Supplier**")  
whose principal place of business, or, where the Supplier is a company, whose registered office is situate at Westside, London Road, Apsley, Herts, HP3 9TD,

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

#### WHEREAS:

- A.** FCDO requires the Supplier to provide the Services to FCDO Social Protection Team (SPT), FCDO country offices, overseas governments and partners implementing humanitarian response, disaster preparedness, social protection and/or gender programming. The end beneficiaries are the populations of the countries supported through the programme (the "Recipient"); and
- B.** the Supplier has agreed to provide the Services on the terms and conditions set out in this Contract.

#### IT IS HEREBY AGREED as follows:

##### 1. Documents

This Contract shall be comprised of the following documents:

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

##### 2. Contract Signature

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

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



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

The Services shall commence on 21st September 2021 and the end date of the Initial Period shall be 31<sup>st</sup> March 2024 .

**4. Financial Limit**

Payments under this Contract shall not, in any circumstances, exceed £ 9,000,000 exclusive of any government tax, if applicable.

**5. Programme Name**

The Programme Name to which this Contract relates is Social Protection Technical Assistance Facility.

**6. Time of the Essence**

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

Signed by an authorised signatory  
for and on behalf of  
The Secretary of State for  
International Development

Name:

Position:

Signature:

Date:

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

Name:

Position:

Signature:

Date:

Foreign, Commonwealth and Development Office (FCDO)

## Standard Terms and Conditions – Service Contracts

**SECTION 2 - GENERAL CONDITIONS OF CONTRACT****Preliminaries**

1. Definitions and Interpretation
2. Representations and Warranties
3. Financial Limit

**Term of Contract**

4. Contract Term

**Provision of Services**

5. Obligations of the Supplier

**Supplier Personnel and Supply Chain Matters**

6. Supplier Personnel
7. Sub-Contractors and Exclusivity
8. Visibility of Sub-Contract Opportunities
9. Staff Transfer
10. Duty of Care
11. Procurement of Equipment
12. Use of and Responsibility for Equipment

**Contract Governance**

13. Monitoring of Contract Performance
14. Progress and Financial Reports
15. Open Book Accounting and Audit
16. Exit Management

**Payment and Taxation**

17. Charges
18. VAT
19. Retention and Set Off
20. Supplier Profit
21. Satisfactory Performance
22. Payments and Invoicing Instructions
23. United Kingdom Income Tax and National Insurance Contributions
24. Tax Compliance

**Intellectual Property, Security and Information**

25. Intellectual Property Rights
26. Security Requirements
27. Malicious Software
28. Transparency
29. Confidentiality
30. Freedom of Information
31. Official Secrets Act
32. FCDO Data
33. Protection of Personal Data
34. Publicity and Branding

**Liabilities**

35. Limit of Liability
36. Indemnity
37. Insurance

**Control of Contract**



- 38. Variations
- 39. Assignment and Novation

#### **Default and Termination**

- 40. FCDO Remedies for Default
- 41. Financial Distress
- 42. Force Majeure
- 43. Termination without Default of the Supplier
- 44. Termination with Default of the Supplier
- 45. Partial Termination, Suspension and Partial Suspension
- 46. Consequences of Expiry or Termination

#### **Miscellaneous and Governing Law**

- 47. Dispute Resolution Procedure
- 48. Prevention of Fraud and Bribery
- 49. Anti-Terrorism Regulations
- 50. Safeguarding
- 51. Discrimination
- 52. Law and Jurisdiction
- 53. Environmental Requirements
- 54. Conflict of Interest
- 55. Waiver
- 56. Entire Agreement
- 57. Third Party Rights
- 58. Notices

- Schedule 1 Definitions
- Schedule 2 Staff Transfer
- Schedule 3 Insurance Requirements
- Schedule 4 Tender

- Appendix A Contract Amendment Letter
- Appendix B FCDO Supply Partner Code of Conduct

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

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

7.8 The Supplier shall:

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

## 8. VISIBILITY OF SUBCONTRACT OPPORTUNITIES

8.1 The Supplier shall:

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

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

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

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

## 9. STAFF TRANSFER

9.1 The Parties agree that:

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

- (b) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B of Schedule 2 (Staff Transfer) shall apply;
  - (c) where the Relevant Transfer involves the transfer of Transferring FCDO Employees and Transferring Former Supplier Employees, Parts A and B of Schedule 2 (Staff Transfer) shall apply; and
  - (d) Part C of Schedule 2 (Staff Transfer) shall not apply.
- 9.1.2 where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Schedule 2 (Staff Transfer) shall apply and Parts A and B of Schedule 2 (Staff Transfer) shall not apply; and
- 9.1.3 Part D of Schedule 2 (Staff Transfer) shall apply on the expiry or termination of the Services or any part of the Services;
- 9.2 The Supplier shall both during and after the Term indemnify FCDO against all Employee Liabilities that may arise as a result of any claims brought against FCDO by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel.

## **10. DUTY OF CARE**

- 10.1 The Supplier owes a duty of care to the Supplier Personnel and is responsible for the health, safety, security of life and property and general wellbeing of such persons and their property and this includes where the Supplier Personnel carry out the Services.
- 10.2 The Supplier warrants that it has and will throughout the duration of the Contract:
- 10.2.1 carry out the appropriate risk assessment with regard to its delivery of the Services;
  - 10.2.2 provide the Supplier Personnel with adequate information, instruction, training and supervision;
  - 10.2.3 have appropriate emergency procedures in place to enable their provision of the Services so as to prevent damage to the Supplier Personnel's health, safety, security of life and property and general wellbeing.
- 10.3 The provision of information of any kind whatsoever by FCDO to the Supplier shall not in any respect relieve the Supplier from responsibility for its obligations under this Clause 10. The positive evaluation of the Supplier's proposal for the provision of the Services and the award of this Contract is not an endorsement by FCDO of any arrangements which the Supplier has made for the health, safety, security of life and property and wellbeing of the Supplier Personnel in relation to the provision of the Services.
- 10.4 The Supplier acknowledges that the FCDO accepts no responsibility for the health, safety, security of life and property and general wellbeing of the Supplier Personnel with regard to the Supplier Personnel carrying out the Services under this Contract.
- 10.5 The Supplier will ensure that such insurance arrangements as are made to cover the Supplier Personnel, or any person employed or otherwise engaged by the Supplier, and pursuant to the Suppliers duty of care as referred to in this Clause 10, are reasonable and prudent in all circumstances, including in respect of death, injury or disablement, and emergency medical expenses.
- 10.6 The costs of any insurance specifically taken out by the Supplier to support the performance of this Contract in relation to the Supplier's duty of care may be included as part of the management costs of the project, and must be separately identified in all financial reporting relating to the project.
- 10.7 Where FCDO is providing any specific security arrangements for the Supplier or Supplier Personnel in relation to the Contract, these will be as detailed in the Section 3 (Terms of Reference).
- 10.8 The Supplier shall provide training on a continuing basis for all Supplier Personnel, in compliance with the Security Policy and the security plan.

## **11. PROCUREMENT OF EQUIPMENT**

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



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

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

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

## **Contract Governance**

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

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

### **14. PROGRESS & FINANCIAL REPORTS**

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

**15. OPEN BOOK ACCOUNTING AND AUDIT**

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

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

15.4 FCDO shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of FCDO.

15.5 Subject to the Supplier's rights in respect of Confidential Information, the Supplier shall on demand provide the Auditor(s) with all reasonable co-operation and assistance in:

15.5.1 all reasonable information requested by FCDO within the scope of the audit;

15.5.2 reasonable access to sites controlled by the Supplier and to any Supplier Equipment used in the provision of the Services; and

15.5.3 access to the Supplier Personnel.

15.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 15, unless the audit reveals a Default by the Supplier in which case the Supplier shall reimburse FCDO for the FCDO's reasonable costs incurred in relation to the audit.

## 16. EXIT MANAGEMENT

16.1 On reasonable notice at any point during the Term, the Supplier shall provide to FCDO and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by FCDO of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:

16.1.1 details of the Service(s);

16.1.2 a copy of the Register, updated by the Supplier up to the date of delivery of such Registers;

16.1.3 an inventory of FCDO Data in the Supplier's possession or control;

16.1.4 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;

16.1.5 a list of on-going and/or threatened disputes in relation to the provision of the Services;

16.1.6 all information relating to Transferring Supplier Employees or those who may be Transferring Supplier Employees required to be provided by the Supplier under this Contract such information to include the Staffing Information as defined in Schedule 2 (Staff Transfer); and

16.1.7 such other material and information as FCDO shall reasonably require,

(together, the "Exit Information").

16.2 The Supplier acknowledges that FCDO may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom FCDO is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that FCDO may not disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-Contractors' prices or costs).

16.3 if the Exit Information materially changes from the Exit Information previously provided and it could reasonably adversely affect:

16.3.1 the provision of the Services; and/or

16.3.2 the delivery of the exit services/exit plan; and/or

16.3.3 any re-tender exercise by FCDO,

then the Supplier shall notify FCDO within a reasonable period of time and consult and shall consult with FCDO regarding such proposed material changes and provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from FCDO.

16.4 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:

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

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

## PAYMENT AND TAXATION

### 17. Charges

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

### 18. VAT

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

### 19. RETENTION AND SET OFF

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

### 20. SUPPLIER PROFIT

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

### 21. SATISFACTORY PERFORMANCE

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

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

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

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

## **24. TAX COMPLIANCE**

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

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

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

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

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

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

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

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

## **26. SECURITY REQUIREMENTS**

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

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

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

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

## **27. MALICIOUS SOFTWARE**

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

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

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

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

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

## **28. TRANSPARENCY**

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

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

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

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

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

28.6 The Supplier shall:



- 28.6.1 publish information data to the IATI standard, that relates to a specific activity in a single, common, electronic format for the transparent, accurate, timely and comprehensive publishing of data, on all activities in the delivery chain, in the delivery of development cooperation and humanitarian aid; and
- 28.6.2 provide all necessary assistance as reasonably requested by FCDO to enable FCDO to respond to the IATI requirements.
- 28.7 The Supplier shall maintain an up-to-date and accurate record of named downstream delivery partners in receipt of FCDO funds and/or FCDO funded inventory or assets. This record should demonstrate how funds flow from initial source to end beneficiaries. This record should be made available to FCDO upon written request and within the time set out in the request. This record should be updated by the Supplier;
  - 28.7.1 as required in the terms of reference;
  - 28.7.2 annually;
  - 28.7.3 when there are material changes in the delivery chain; and
  - 28.7.4 as part of the project completion process.

## 29. CONFIDENTIALITY

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

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

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

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

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

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

- 30.7.2 in chronological order;
- 30.7.3 in a form that is capable of audit;
- 30.7.4 at its own expense.

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

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

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

### **32. FCDO DATA**

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

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

- 33.1 The Parties acknowledge that the factual activity carried out by each of them in relation to their obligations under this Contract will determine the status of each Party under the Data Protection Legislation. A Party may act as "Joint Controller" or a "Controller" or a "Processor" of certain Personal Data under this Contract. The Parties shall detail the envisaged status in Appendix A of the Terms of Reference (at Section 3 of the Contract) and update it where appropriate.
- 33.2 **Where a Party is Processing on behalf of the other Party who is the Controller**
  - 33.2.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, FCDO is the Controller and the Supplier is the Processor unless otherwise specified in Appendix A of the Terms of Reference (at Section 3 of the contract). The only processing that the Processor is authorised to do is listed in Appendix A of the Terms of Reference by the Controller and may not be determined by the Processor.
  - 33.2.2 The Processor shall notify the Controller immediately if it considers that any of Controller's instructions infringe the Data Protection Legislation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 34. PUBLICITY AND BRANDING

34.1 The Supplier shall not:

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

- 34.1.2 use FCDO's name or brand (including the 'UK aid logo') in any promotion, marketing, communications or announcement of orders;  
without the prior written consent of the FCDO.

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

- 34.2.1 shall collaborate with FCDO and proactively look for ways to build support for development and raise awareness of FCDO's funding.
- 34.2.2 shall explicitly acknowledge FCDO's funding, in written and verbal communications about activities related to the funding, to the public or third parties, including in announcements, and through use, where appropriate, of FCDO's "UK aid – from the British people" logo ('UK aid logo') in accordance with FCDO standards for use of the UK aid logo, unless otherwise agreed in advance by FCDO and in all cases subject to security and safety considerations of the Supplier.
- 34.2.3 shall provide a visibility statement of how and when they or Sub-Contractors will acknowledge funding from FCDO and where they will use the UK aid logo. The Supplier shall include reference to this in its progress reports and annual reviews.
- 34.2.4 may use the UK aid logo in conjunction with other donor logos, and where the number of donors to a programme or project is such as to make co-branding impractical, acknowledgement of funding from FCDO shall be equal to that of other co-donors making contributions of equivalent amounts to the programme or project.

## Liabilities

### 35. LIMIT OF LIABILITY

35.1 Neither Party limits its liability for:

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

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

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

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

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

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

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

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

### **36. INDEMNITY**

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

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

### **37. INSURANCE**

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

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

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

## **Control of Contract**

### **38. VARIATIONS**

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

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

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

38.2.2 a formal, technical and commercial justification.

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

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

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

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

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

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

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

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



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

39.2.3 FCDO receiving notification under both Clauses 39.3 and 39.4.

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

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

## Default and Termination

### 40. FCDO REMEDIES FOR DEFAULT

#### 40.1 Remedies

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

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

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

#### 40.2 Rectification Plan Process

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

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

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

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

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

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

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

- 42.4 Subject to FCDO's right to terminate set out in Clause 42.5, the Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 42.5 Where FCDO receives a Force Majeure Notice, from the date of receipt of the Force Majeure Notice, FCDO may, at its sole discretion, either suspend this Contract for a period of up to six (6) months ("the Suspension Period") or terminate this Contract forthwith.
- 42.6 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract.
- 42.7 Relief from liability for the Affected Party under this Clause 42 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under Clause 42.6.
- 42.8 If by the end of the Suspension Period the Parties have not agreed a further period of suspension or re-instatement of the Contract, this Contract shall terminate automatically.

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

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

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

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

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

44.3.5 the Supplier is a company and:

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

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

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

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

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

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

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

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

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

45.3.2 reject the Variation.

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

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

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

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

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

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

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

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

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

## MISCELLANEOUS AND GOVERNING LAW

### 47. DISPUTE RESOLUTION PROCEDURE

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

### 48. PREVENTION OF FRAUD AND BRIBERY

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

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

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

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

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

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

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

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

## 50. SAFEGUARDING

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

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

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

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

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

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

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

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

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



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

50.8 Failure by the Supplier to:

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

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

**51. DISCRIMINATION**

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

**52. LAW AND JURISDICTION**

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

**53. ENVIRONMENTAL REQUIREMENTS**

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

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

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

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

#### **55. WAIVER**

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

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

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

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

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

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

## 58. NOTICES

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

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

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

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

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

- 58.3.2 any notice in respect of:

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

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

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

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

## SCHEDULE 1: DEFINITIONS

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

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

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

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

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

**“Auditor”** means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**“FCDO Background IPR”** means:

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

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

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

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

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

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

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

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

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

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

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

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

**“Euro Compliant”** means that:

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

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

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

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

**“Expiry Date”** means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**“Prohibited Act”** has the meaning;

- (a) to directly or indirectly offer, promise or give any person working for or engaged by FCDO a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;
- (c) an offence:
  - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);



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

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

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

**“Project Specific IPRs”** means:

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

but shall not include the Supplier Background IPR;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) from, to or at which:

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

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

(b) where:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**“Supplier Background IPRs”** means;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## SCHEDULE 2: STAFF TRANSFER

### 1. DEFINITIONS

In this Schedule 2, the following definitions shall apply:

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

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

## 2. INTERPRETATION

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

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

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

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

**2. FCDO INDEMNITIES**

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

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

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



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

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

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

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

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

### 3. SUPPLIER INDEMNITIES AND OBLIGATIONS

3.1 Subject to Paragraph 3.2 the Supplier shall indemnify FCDO against any Employee Liabilities arising from or as a result of:

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **4. INFORMATION**

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

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

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

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

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

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

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

5.2.4 the New Fair Deal.

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

#### **6. PENSIONS**

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

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

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

**2. FUTURE SERVICE BENEFITS**

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

**3. FUNDING**

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

**4. PROVISION OF INFORMATION**

The Supplier and FCDO respectively undertake to each other:

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

## 5. INDEMNITY

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

## 6. EMPLOYER OBLIGATION

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

## 7. SUBSEQUENT TRANSFERS

The Supplier shall:

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

## 8. BULK TRANSFER

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

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

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

**9.1.2** as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplying 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 **£100,000** 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 £5million in respect of any one occurrence, the number of occurrences being unlimited.

**4.TERRITORIAL LIMITS**

4.1.1 WORLDWIDE

**5.PERIOD OF INSURANCE**

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

**6.COVER FEATURES AND EXTENSIONS**

6.1 Indemnity to principals clause.

**7.PRINCIPAL EXCLUSIONS**

7.1 War and related perils.

7.2 Nuclear and radioactive risks.

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

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

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

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

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

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

**8.MAXIMUM DEDUCTIBLE THRESHOLD**

8.1 N/A

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

- 1.1 The Supplier

**2.INTEREST**

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

**3.LIMIT OF INDEMNITY**

- 3.1 Not less than £5 million in respect of any one claim and in the aggregate per annum.

**4.TERRITORIAL LIMITS**

- 4.1 WORLDWIDE

**5.PERIOD OF INSURANCE**

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

**6.COVER FEATURES AND EXTENSIONS**

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

**7.PRINCIPAL EXCLUSIONS**

- 7.1 War and related perils
- 7.2 Nuclear and radioactive risks

**8.MAXIMUM DEDUCTIBLE THRESHOLD**

- 8.1 N/A



**PART C: UNITED KINGDOM COMPULSORY INSURANCES**

**1.GENERAL**

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

## **SCHEDULE 4: TENDER**

### **1.GENERAL**

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

APPENDIX A. CONTRACT AMENDMENT LETTER

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

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

File Ref: [  
Date: [

Contract Amendment No: [

CONTRACT FOR: [

CONTRACT NUMBER: [

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

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

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

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

## APPENDIX B



## FCDO Supply Partner Code of Conduct

### **Principles**

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

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

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

### **FCDO Supply Partner responsibilities**

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

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

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

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

### **Scope**

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

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

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

Key Performance Indicators KPI 1 a - c

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

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

### **Specific requirements include:**

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

## **2. Ethical Behaviour**

Key Performance Indicators KPI 2 a- f

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

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

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

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

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

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

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

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

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

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

### 3. Transparency and Delivery Chain Management

Key Performance Indicators KPI 3 a – f

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

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

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

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

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

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

#### 4. Environmental issues

Key Performance Indicators KPI 4 a – b

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

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

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

#### 5. Terrorism and Security

Key Performance Indicators KPI 5 a – d

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

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

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

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

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

Key Performance Indicators: KPI 6 a – d

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

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

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

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

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

**Specific requirements:**

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

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

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

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



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

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

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

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

Contract Checks and Compliance KPIs		KPI target	Specific Contractual link	Checking mechanism
i.	Declaration of acceptance of the FCDO Supply Partner Code of Conduct	Annual declaration submitted by contracted Supply Partner on behalf of delivery chain	Contract Terms and Conditions Clause 5.1 and Clause 7.7	Declaration of acceptance at the applicable level of compliance with each of the 6 sections received
ii.	Declaration of sign up to the UN Global Compact	Annual declaration submitted by the direct Supply Partner	Standard Selection Questionnaire (SSQ)	Declaration of applicable sign up / application received
1.	<b><u>VfM and Governance standards</u></b>			
a)	Economic and governance policies in practice	Annual updated documentation provided (copy of Policies with detailed annual financial breakdown relating to contract)	Terms and Conditions Clauses 13, 14 & 15	Annual contract review/programme management  Audit checks Compliance checks
b)	VfM being maximised over the life of a contract  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"> <li>Tax the organisation paid on profits made in the last 3 years, and in which countries</li> <li>Compliance with relevant country level tax regulations fully understood and met</li> </ul>	Annually updated documentation submitted by contracted supplier and on behalf of delivery chain partners	Terms and Conditions Clauses 15, 23 & 24  Terms of reference	Annual return  Compliance checks
2.	<b><u>Ethical Behaviour</u></b>			
a)	Recruitment policy (which must address circumstances where there may be potential or actual conflict of interest)	Updated policy documentation submitted once annually by contracted supplier and on behalf of delivery chain partners	Terms and Conditions Clauses 6, 51 & 54	Annual return Compliance checks
b)	Ongoing conflict of interest, mitigation and management	As 2a. above	Terms and conditions Clause 54	Annual return Compliance checks
c)	Refresher ethical training and staff updates (including disclosure restrictions on FCDO confidential information)	Copy of training logs provided Delivery in accordance with training programme in place	Terms and conditions Clause 6, 29, 51 & 54	Annual return Compliance checks
d)	A workforce whistleblowing policy	Continuous workforce awareness maintained Policy in place	Terms and Conditions Clause 48	Annual return Compliance checks
e)	1. Procedures setting out how, staff involved in FCDO funded business, can immediately report all suspicions or allegations of aid diversion, fraud, money laundering or counter terrorism finance to the Counter Fraud and Whistleblowing Unit (CFWU) at <a href="mailto:reportingconcerns@fcdo.gov.uk">reportingconcerns@fcdo.gov.uk</a> or on +44(0)1355 843747  2. Employees working on FCDO Contracts fully aware of the FCDO external website reporting concerns mailbox	Continuous awareness maintained  Procedure in place  Continuous awareness maintained	Terms and Conditions Clauses 6, 48 & 54   Terms and Conditions Clause 48	Annual return Compliance checks   Annual return Compliance checks
f)	Declarations of direct or subcontractor staff members proposed to work on FCDO funded business if employed by FCDO or the Crown in the preceding two years  Supply Partners and their subcontractors must provide proof of compliance with the HMG approval requirements under the	Details submitted as applicable	Terms and Conditions Clause 48  HMG <u><a href="#">business appointment rules</a></u>	Annual return Compliance checks  Contract management

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

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

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

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

### **Supply Partner Compliance Declaration**

#### **Key:**

#### **Contractual Requirement:**

**X denotes full compliance 1 required**

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

#### **Compliance Level 1**

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

#### **Compliance Level 2**

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

#### **Compliance Level 3**

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

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

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

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



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

### UN Global Compact – Human Rights

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

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

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

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

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

#### **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

## Social Protection Technical Assistance Facility

### Terms of Reference

#### Contents

Introduction .....	2
Objective .....	2
The Recipient .....	2
Geographic focus .....	3
Scope .....	3
Budget and Timeframe .....	3
The Requirement .....	4
Inception Phase Requirements (3 months) .....	4
Implementation Phase Requirements (up to 35 months) .....	5
Core Services .....	6
TA assignments .....	8
Team Structure .....	8
Core Team .....	9
Roster of experts .....	10
Contract Model .....	10
Reporting Requirements .....	11
Payment .....	13
Fees at Risk – Implementation .....	13
Key Performance Indicators .....	14
Oversight Requirements .....	15
Governance and Coordination with FCDO .....	15
Contract Management .....	16
Duty of Care .....	16
Background .....	16
Annex A: Expected engagement with other partners .....	18
Annex B: BASIC Theory of Change and programme .....	19
Annex C: GSP Theory of Change .....	23
Annex D: Examples of Summary Risk assessment matrices .....	29

## Introduction

1. This Terms of Reference (ToR) is for a supplier (with or without subcontractors) or consortium to provide a Technical Assistance Facility (TAF) to improve the effectiveness of FCDO, governments and partners investments in gender-responsive social protection and social protection approaches in crises. The TAF will be delivered through a core team managing two sub-windows:
  - Better Assistance in Crises Technical Assistance Services (BASIC TAS), supporting greater use of social protection approaches in crises;
  - Gender-Responsive Social Protection Technical Assistance Services (GSP TAS), enhancing gender-responsive social protection.
2. The TAF will provide a flexible package of support to FCDO, governments and partners' activities at national, regional and international level. This support will be a mix of assignments responding to demand from FCDO (and governments and partners) and core services. Specific assignments will be defined by individual terms of reference, and will aim to:
  - a. Improve the design, implementation, monitoring and evaluation of social protection and humanitarian programmes and systems through targeted, demand-led technical assistance to FCDO country teams, governments and partners;
  - b. Build capacity of FCDO staff, governments and partner organisations to design, implement, monitor and evaluate, and advocate for more effective use of social protection approaches in crises and gender-responsive social protection through, for example, developing guidance, evidence briefs, learning series;
  - c. Support national, regional and international policy development and coordination through provision of thought leadership, for example producing policy briefs, inputting into international processes, standards and mechanisms.
3. The TAF should commence in 2021 and provide services until 31 March 2024. The contract value, including VAT, will be up to a maximum of £9,000,000.
4. There is potential for this TAF to be extended to cover a third thematic window related to social protection systems, providing technical assistance to FCDO, governments' and partners' on strengthening systems and moving towards more universal approaches to social protection. This would be within the overall budget and timeline set out above, and subject to FCDO priorities, supplier performance and appropriate approvals. This work is not confirmed, and should FCDO decide to take up this option a full description of the work would be set out in a later amendment.

## Objective

5. The primary objective of this contract is to improve the effectiveness of FCDO, governments' and partners' social protection investments in both crises and development settings through the delivery of technical assistance and related core services.

## The Recipient

6. The primary recipients of this TAF will be the FCDO Social Protection Team (SPT), FCDO country offices, overseas governments and partners implementing humanitarian response, disaster preparedness, social protection and/or gender programming. The end beneficiaries are the populations of the countries supported through the programme.

### ***Geographic focus***

7. The TAF will have a global focus with the ability to deploy to a wide range of countries, including fragile and conflict affected states. The focus of most work will be countries where FCDO has an existing presence.

### **Scope**

8. As a demand driven service, the scope of the TAF is intentionally broad, as the specific type and level of demand will vary and is expected to evolve during the life of the programme. The facility will provide flexibility in allocating resource to support specific projects (e.g. some TAS activities will be in response to demand from FCDO staff for new programmes, the number and timing of requests are unknown).
9. It is anticipated that there will be significant synergies between activities under the BASIC and GSP windows, and that knowledge gained through, for example, support to programme design, will provide valuable inputs to literature reviews, thematic guides and support to global policy engagement, and vice versa. Knowledge management and learning (KML) services provided by the TAF should include learning across the two windows.

### **Budget and Timeframe**

10. The contract will be for up to £9,000,000 for 38 months between August 2021 and March 2024. This is made up of up to £6,200,000 for the BASIC window and up to £2,800,000 for the GSP window. Management fees, NPAC, profit and any applicable VAT and taxes will be included within this value and split proportionately between the windows. FCDO may increase or decrease the value of either or both windows due to available budget, supplier performance and demand, however, there is no flexibility to move budget between windows.
11. The actual spend will depend on demand from FCDO teams, governments and partner organisations. The BASIC and GSP Senior Responsible Owners (SROs) and programme funded posts (PFPs) will work with the supplier to develop a schedule of work related to knowledge management and learning and international social protection policy and programmes.

### **Extension Option**

12. There is potential to extend this contract by up to 24 months, and up to an additional £4,000,000. This is subject to programme need, available budget, supplier performance and appropriate approvals. FCDO reserves the right to scale back or discontinue this programme at any point if it is not achieving the results anticipated.
13. The contract will comprise 3 phases:
  - a. Inception Phase – 3 Months
  - b. Implementation Phase – 35 Months (with a break point after month 18)

- c. Exit and Closure Phase – 3 Months (in parallel to final 3 months of implementation, with assignments ongoing but in their final stages)

## **The Requirement**

### ***Inception Phase Requirements (3 months)***

14. The Supplier shall deliver the following key milestones in the inception phase:
  - a. Have all core team members in place
  - b. Establish a roster of experts with relevant expertise to respond to the requirements of BASIC and GSP, and refine the approach for roster retention and expansion
  - c. Refine operational mechanism for responding to requests for TAS (covering short and long-term requests, desk based and in-country support).
15. The Supplier shall submit the following documents to FCDO for approval:
  - a. Operational manual outlining the process for responding to requests for technical assistance
  - b. Communication and branding statement outlining how products from both TAS windows will be designed, branded and disseminated to further the impact of both BASIC and GSP, drawing on formats and based on requirements that FCDO will share at the beginning of the contract
  - c. Refined KML strategies for both BASIC and GSP TAS windows and the overarching TAF
  - d. Final monitoring strategy (including logframe) outlining how the supplier will monitor progress of individual TAS assignments and what data it will collect to contribute to BASIC and GSP programme monitoring and evaluation;
  - e. Finalised implementation strategy (how and what the TAF will deliver), including final workplan and budget and internal governance arrangements
  - f. Final risk matrix and approach to risk management and mitigation
  - g. Delivery chain map showing relationships to any downstream partners, including identification of risks and assurance
  - h. BASIC and GSP TAS trackers (one for each window) to track the progress of individual assignments
  - i. Finalised key performance indicators, including methods of verification.
16. These documents will be submitted within 2 months of contract signature, with 1 month to refine and finalise with the FCDO SPT. Formal approval of the inception documents will be required before moving forward with the implementation phase.
17. The supplier will be expected to build on learning and existing material that have already been developed for GSP TAS and BASIC TAS since the beginning of the programmes (delivered under the framework agreement EACDS – see additional information in the Background Section and Annex A). This will include drawing learning from past and ongoing assignments but will not include taking over the management of any ongoing assignments.
18. During the inception phase it is expected that the supplier will need to respond to a number of requests for technical assistance. These should be sequenced and prioritised in agreement with FCDO SPT to ensure adequate systems are in place

to manage the requests, and this will be an opportunity to test and refine the procedures set out in the documents outlined in paragraph 15 above.

### ***Implementation Phase Requirements (up to 35 months)***

19. The TAF will be a demand led, flexible facility and therefore the activities that will be delivered by the TAF will be identified, agreed and implemented throughout the life of the facility. The Supplier will be directly responsible for the delivery of the individual assignments. Examples of the requirements for assignments are set out in below.
20. Programme and policy scoping, design, review and implementation support:
  - a. Support FCDO Country Offices, governments and partners to scope and design new social protection programmes, policies or broader programmes with a social protection component
  - b. Provide targeted rapid response technical assistance to FCDO Country Offices, governments and partners to tackle programme design and implementation issues during programme implementation
  - c. Gather lessons from FCDO, governments' and other partners' programming on what works/what opportunities there are to improve social protection in crises and/or gender-responsive social protection.
21. Knowledge production, analysis, synthesis and dissemination:
  - a. Develop and publish evidence products to keep FCDO staff, governments and partners, informed on social protection in crises and gender-responsive social protection issues, including those relating to their programmes
  - b. Develop and publish evidence synthesis drawing together lessons emerging from individual TAS assignments, also combining with learning generated through other programmes (FCDO or non-FCDO)
  - c. Conduct mappings of FCDO and/or governments and/or partners' programming on specific areas of interest
  - d. Organise roundtables, seminars and other peer-dialogue and learning events to bring together key experts and stakeholders along with FCDO staff to share knowledge.
22. Capacity development:
  - a. Through a range of approaches, including sessions at FCDO Professional Development Conferences, seminars/webinars and more formal training, build capacity and capability amongst FCDO, governments and partners
  - b. Incorporate a capacity development approach into all assignments to prioritise building long term, sustainable capacity in the recipients of TAF services.
23. Global policy engagement and strategy development:
  - a. Support FCDO to maximise the effectiveness of engagement in global policy debates and to work with partners to drive forward agendas of common interest e.g. support to global coordination and working groups
  - b. Undertake analysis of topical issues to support FCDO in the development of positions on global policy issues and improve its approach towards bilateral and multilateral programming
  - c. Identify priority areas for research and analysis to be undertaken, including through separate funding channels

24. The **implementation requirements** are formed of two distinct areas: core services and TA assignments, as detailed below.

### ***Core Services***

25. **Management and Reporting:** the Supplier will provide the appropriately skilled personnel (under the form of a core team) and systems to ensure the successful day to day management of the delivery of the TAF. This should include:
- a. Day-to-day contact with the FCDO SPT, including separate monthly (or more frequent as required) meetings with the BASIC and GSP Senior Responsible Owners (SROs) and programme manager/s
  - b. Meeting with the BASIC SRO, GSP SRO and TAF core team once every quarter to discuss synergies, learning, any jointly commissioned assignments and overall financial position
  - c. Collaboration with stakeholders including BASIC and GSP implementing partners, participation in monthly/quarterly programme governance and oversight meetings as required (see Annex A for additional information)
  - d. Financial management, accounting and delivery of the required reports as set out in paragraph 54 below. This will include establishing and maintaining systems that provide up to date financial information accurately split across the two programmes (BASIC and GSP)
  - e. Management reports that outline progress on all active TAS assignments, a pipeline of potential assignments, analysis of demand and identification of trends (for example emerging themes, challenges and opportunities)
  - f. Expert advice on long-term TA deployment in the UK and a wide range of countries, including Fragile and Conflict Affected States (FCAS). This will include duty of care requirements, security clearances for access and work in FCDO offices/UK Embassy platforms (if required), tax and IR35 compliance
  - g. Effective management of any downstream/consortia partners, including organisations on the expert roster (if applicable), including related due diligence
  - h. Risk management, internal monitoring, logistics and administrative duties
  - i. Provide inputs into FCDO annual reviews (one BASIC and one GSP per year) and programme completion reports.
26. **Roster:** the supplier will maintain and continually expand a pool of high-quality experts to respond to assignments across the two windows. It is anticipated that a number of experts will qualify under both windows. This must include experts with the ability to deploy worldwide.
27. The Supplier will develop a strategy for retention and expansion of the roster to ensure that there is sufficient quality expertise available. Considering that the themes covered by this TAF are specialist, innovative and emerging policy areas, the supplier will be expected to contribute to the expansion of the experts' knowledge base in themes promoted by GSP and BASIC. This could include KML products and activities directed to experts and pairing of more experienced experts to work alongside and coach less experienced ones. This will include building up a stronger pool of national experts.
28. The supplier will be expected to propose an approach to ensure timely availability of expertise (in volume and quality), avoiding delays in the delivery of assignments.



29. The supplier will develop a mechanism to rapidly draw on this pool of experts to respond to demand. This mechanism will be refined and agreed with FCDO during the inception phase, but it is expected that the supplier will provide the FCDO SROs and commissioning team/partner with a choice between at least two different approaches (consolidated under approach papers) and experts (or teams) to complete each assignment. Members of the core team could form part of these teams but this is not mandatory. The commissioning team or partner will select the most suitable team and approach following a review of the different approaches.
30. **Quality Assurance:** the Supplier will provide quality assurance of individual TAS assignments, including technical and delivery oversight to ensure quality and timeliness of outputs.
31. **Knowledge Management and Learning (KML):** the supplier will develop a KML strategy for the TAF that will include overarching KML activities and BASIC and GSP TAS specific activities. This will include:
  - a. Activities to support learning within and across each individual assignment to improve the performance of the TAF (delivered as part of the core services)
  - b. Identification of themes for evidence synthesis documents, evidence reviews and learning events aimed at FCDO staff, governments and partners (the identification of these themes will be part of core services, and depending on the nature and scale of agreed KML activities these will be delivered through a mix of core services and individual assignments).
32. Given the potential conflict of interest in developing and subsequently implementing the KML activities, the KML strategy will be reviewed and approved by the broader BASIC and GSP governance bodies – see paragraphs 66 and 67 below for more detail. These will be reviewed on an annual basis and will evolve to reflect emerging evidence from GSP, BASIC and other relevant evidence.
33. The BASIC KML strategy will build on the initial version developed with the current BASIC TAS supplier and will be integrated into a BASIC Evidence, Learning and Policy Influencing Strategy, coordinated with the BASIC Research Supplier and overseen by FCDO SPT.
34. The GSP KML strategy will be integrated into a GSP Knowledge Exchange and Learning strategy, coordinated with the other GSP partners and overseen by the GSP Knowledge Exchange and Learning working group made up of representatives of FCDO SPT, the World Bank, UNICEF Office of Research and UNICEF Social Policy team. Once the evaluation supplier and TAF supplier are in place it is expected that they will join the GSP Knowledge Exchange and Learning working group.
35. Some BASIC assignments will be delivered by FCDO's Humanitarian and Stabilisation Operation Team (HSOT), delivered by Palladium through an existing contract, following a clear decision-making process led by BASIC SRO. The TAF supplier will be responsible for gathering technical learning from those assignments even when they are not responsible for delivering the assignments.
36. The supplier will host two FCDO programme funded posts (PFPs), one for BASIC and one for GSP, embedded within the TAF. These two PFPs will be seconded into the lead supplier for at least 80% of their time, they will support the operation of the TAF but will be directly recruited, funded and managed by FCDO. The supplier will provide office space and contribute to line management of these staff.

37. These two FCDO PFPs will be responsible for:
- a. Liaising with FCDO country offices, governments and partner organisations to promote the TAF and generate demand for assignments
  - b. Support FCDO country offices, governments and partner organisations to develop Terms of Reference for the assignments
  - c. Support the KML lead/s to identify the learning needs of FCDO staff and partners, to access internal channels to disseminate learning and contribute to capacity building activities (although the supplier will lead the development and implementation of the KML strategy)
  - d. Contribute to technical quality assurance of assignments;
  - e. Support linkages between the TAS and other programmes (FCDO and non-FCDO) to share learning on both the content of assignments and the process of influencing policy and programmes through provision of different types of technical assistance.

### ***TA assignments***

38. Through a combination of in-house technical expertise (core team) and the roster of experts the supplier will provide the appropriately skilled personnel to deliver the following outputs:
- a. Programme and policy scoping, design, review and implementation support (use of social protection approaches in crises, improving the gender-responsiveness of social protection programmes, systems and policies in both development and humanitarian settings)
  - b. Knowledge production, analysis, synthesis and dissemination
  - c. Capacity development of FCDO, governments and partners on social protection in crises and gender-responsive social protection. This could include long-term embedded support, long-term remote support and shorter-term activities and analysis
  - d. Global policy engagement and strategy development
39. The exact nature of outputs will depend on the specific request from FCDO teams, governments and partners, however this is likely to include a mix of desk reviews, production of guidance notes, expert input into programme design, implementation and monitoring, capacity building products (training sessions, guidance notes), knowledge management and learning products (learning synthesis, briefing papers, newsletters), expert input into global policy dialogue, facilitation of policy and strategy development and national and global level, facilitation of national and global coordination and systems strengthening, and scoping of future programmes.
40. Assignments and related deployments will be from short to long-term, requiring from a few days of work up to two years, extendable for an extra year (up to three years). Depending on the nature of the requirements and applicable legislation, employment taxes and other relevant taxes might apply.
41. Some assignment will require access to UK Embassies / FCDO Country offices: for this, Baseline Personnel Security Standard (BPSS) and Security Clearance (SC) might be required. The supplier will be expected to demonstrate capability to seek BPSS and SC clearances, and to proactively seek security clearance for experts likely to deploy to such places.

### **Team Structure**

42. The supplier will provide appropriate personnel to deliver the services through the core team and roster of experts.
43. Given the diversity of potential assignments and experience required we expect this may require a consortium approach to delivery. Suppliers are invited to submit alternative proposals for the team structure but must clearly define identifiable core team and budget available for the on-demand services.

### ***Core Team***

44. The exact composition of the core team will vary over time as the facility grows to meet varying demand. Suppliers should propose a flexible core team that could respond to changes in demand and an increase in KML and technical capacity over time. It is expected that the core team will include the following skills and expertise:

#### *Programme Delivery*

- Delivering technical assistance and capacity building programmes
- Designing and managing a flexible, demand-driven fund, managing multiple complex assignments, including overseeing a diverse portfolio of assignments
- Working with FCDO, developing country governments, other donors, international organisations and civil society.

#### *Programme Management*

- Excellent financial management of international development programmes
- Contract management
- Risk management, including downstream partner risk management if applicable

#### *Technical Capacity*

- Expertise in planning, designing, implementing and monitoring humanitarian and social protection programmes and systems in crises contexts, and in analysing and developing policies and strategies on social protection approaches in crises (shock responsive social protection, safety nets in crises etc.).
- Expertise in planning, designing, implementing and monitoring social protection programmes, systems, policies and strategies with a particular focus on gender analysis and gender-responsive systems, programmes and delivery mechanisms
- Expertise in successfully integrating social protection and gender equality programmes

#### *Knowledge management and learning*

- Developing and delivering timely communication, dissemination and promotion of learning with a wide range of stakeholders through appropriate channels and tailored products
- Demonstrated understanding of how organisations and individuals learn, and tailoring learning activities to meet individual and institutional needs
- Demonstrated ability to analyse and synthesise a wide range of evidence and learning and distil this into strategic programming and policy advice
- Experience of engaging and working with a wide range of stakeholders with different interests and levels of expertise
- Strong communication skills.

## ***Roster of experts***

45. The supplier will establish a mechanism to provide a pool of experts to meet the demands of the TAS activities as described under 'Implementation Requirements'.
46. This will include a range of experts to respond to specific requests under both BASIC and GSP TAS windows. The minimum areas of expertise that the roster shall cover are:
  - Humanitarian assistance for rapid onset, natural disasters and protracted crises; humanitarian infrastructure
  - Linking humanitarian assistance and social protection: safety nets and social assistance in crises, social protection approaches in crises, shock-responsive social protection.
  - Gender analysis and gender auditing
  - Gender equality and approaches to women's and girls' empowerment, including approaches to gender mainstreaming in policy and programming, capacity building for gender equality
  - Different types of social protection (e.g. social assistance, social insurance, labour market policies, social care)
  - Cash and cash plus approaches
  - Delivery systems (e.g. targeting, enrolment, payments, information systems, grievance)
  - Climate disasters and climate resilience
  - Political economy analysis and governance
  - Economics, value for money and sustainable financing for social protection
  - Policy and strategy development (national processes)
  - International policy development and current policy debates
  - Capacity building and facilitation
  - Engaging civil society (including women's rights organisations and disabled persons organisations) in policy and programme development, implementation and review
  - Disability and other cross-cutting inclusion issues
  - Geographic areas (specific country or regional expertise)
  - Knowledge management and learning
  - Digital technologies, data protection
  - Languages (e.g. Arabic, English, French, Portuguese, Spanish).
47. Members of the roster of experts may be based anywhere, but depending on the duration and nature of activities may be assigned on a long or short-term basis to countries requesting TAS.

## **Contract Model**

48. Due to the demand led nature of this contract the TA assignments will be managed using an Assignment Based Structure.
49. Individual technical assistance assignments will be based on their own Terms of Reference (ToR) and budget, and they will be paid for on an output basis unless agreed otherwise with the SRO. These will be tracked on an activity log which clearly links the activity to the relevant TAS window.
50. Assignments will be identified by FCDO (SPT, PFP and/or country offices) and governments and partners. Those identifying the assignment (FCDO staff,

governments or partners) will be responsible for developing the ToR for each assignment, with FCDO SRO or PFP responsible for finalising.

51. The supplier will respond to the ToR with at least two approach papers (depending on the complexity and urgency of the requirement this may be waived – see paragraph 52), proposed teams and budget (as outlined in paragraph 29). Following selection of the preferred approach by the commissioning team, the budget will be approved by the relevant SRO (BASIC and GSP) prior to the assignment starting. The budget for each assignment will be output based, unless there is explicit agreement for an alternative payment mechanism agreed with the SRO and justified by the supplier.
52. Where a rapid response is required, the assignment may be conducted by the core team without provision of different approach papers or use of the roster of experts. This will be agreed on a case by case basis with the relevant SRO.
53. Assignments will be tracked on a monthly project tracker (paragraph 54 below), this will show the status (e.g. responding to ToR, mobilising team, implementation, concluded), dates for agreed outputs and payments.

## Reporting Requirements

54. Supplier is required to deliver the reports:
  - a. Final Inception Report (end of month 3, following at least one month of refining and amending with FCDO SPT)
    - i. Responding to the requirements outlined in paragraph 15 above
  - b. Monthly project tracker
    - ii. Update on the status of each call down assignment, separated by window (paragraph 53 above)
  - c. Monthly financial forecast
    - iii. Status update on invoices to be received that month with an explanation for any variance, detailed financial forecast for the subsequent month and updating outer month forecasting
    - iv. Submission: by email to the FCDO SROs and programme manager on or before 22<sup>nd</sup> of every month
  - d. Quarterly reports:
    - v. Page limit: Technical Report maximum of 15 pages. Financial Report maximum of 4 pages.
    - vi. Submission: by email to the FCDO SROs on or before the 17<sup>th</sup> day of every 3<sup>rd</sup> month of the contract.
    - vii. Content including:
      1. Narrative on TAS activities (core and individual assignments) started and ongoing in the last quarter, separated by window
      2. Summary of learning from an TAS activities and TAF processes concluded in the last quarter
      3. Narrative on pipeline of potential activities
      4. Progress against annual review/audit recommendations as necessary
      5. Adherence against KPIs (outlined at para 61 below)
      6. Value for money – what efficiencies have been made and how have they been redeployed
      7. Update of risk matrix
  - e. Annual reports (one per TAS window):

- viii. Page limit: Technical report maximum of 30 pages. Financial report maximum of 6
- ix. Submission: By email to the FCDO SROs and programme manager by 10 June (GSP) and by 10 September (BASIC)
- x. Content including:
  - 1. Narrative on activities in the past year, based around the format of FCDO's annual review template. This should include a summary of progress of each activity towards overall contract outputs / outcomes and theory of change and reporting against FCDO logframe targets.
  - 2. Updates from any monitoring, evaluation and learning, and how the programme is being adapted to take account of any findings
  - 3. Progress against annual review / audit / other recommendations
  - 4. Progress against Key Performance Indicators (KPIs)
  - 5. Summary of key risks and how these are mitigated and an updated risk matrix
  - 6. Summary of strategic priorities, work-plan and programme priorities for next year
  - 7. Any feedback or recommendations for FCDO
  - 8. Finance/value for money section:
    - a. reconciliation of the previous year's expenditure
    - b. Value for money report on the previous year, broken down by the 4 Es (economy, effectiveness, efficiency and equity), including cost savings, and examples of value for money
    - c. Highlight costs against benchmarks for the year, and trends with time
    - d. Highlight any variances from forecast budget for the year, and explanations for these variances
    - e. Breakdown of spend by type of service
    - f. A financial forecast for the next year, recognising the limitations of exact forecasting in a demand led service
- f. An Annual Audited Statement (AAS)
  - xi. Showing how FCDO funds have been utilised annually, through the life of the programme.
- g. Programme Completion Report (one per TAS window)
  - xii. Page Limit: Maximum of 30 pages
  - xiii. Submission: By email to the FCDO SROs and programme manager within 1 month of programme closure
  - xiv. Content: The report should include a summary of achievements and progress against impact, outcomes and outputs. This should include:
    - 1. Summary of TAS achievements, and a review of the overall impact of the programme
    - 2. Summary of what worked well, what did not and lessons learned.
    - 3. Summary of TAS expenditure
  - xv. More detail on the programme completion report will be provided nearer the time but will be expected to follow the FCDO PCR template.

55. The TAF is funded from two separate programmes (BASIC and GSP) and must be able to report activities and spend separately across these programmes. The TAF will maintain an activity schedule clearly setting out each activity against the two different budget codes for BASIC and GSP. This will be attached to invoices to ensure accurate tracking and payment. The supplier will propose a mechanism for separating administrative costs between the two programmes in a proportionate manner.

## **Payment**

56. A payment by results approach will be used to ensure the effective delivery of the contract.
57. For inception: milestone-based payments linked to the requirements outlined in paragraphs 14 and 15 above will be paid at the end of the inception period. During this time any assignment undertaken (paragraph 18) will be paid on an output basis.
58. For inception, if the criteria are not met, payment for milestones not delivered will be withheld until satisfactory delivery of milestones. The contract will not move to implementation until FCDO has expressly approved all inception outputs. Any delays in approving the inception period will reduce the length of the implementation phase of the contract.
59. For implementation: fees and actual expenses for core services will be paid quarterly with an activity-based payment schedule for each technical assistance assignment.
60. For implementation, the supplier will manage core services payments within the criteria stated in the Key Performance Indicator table below (for example, delays to meeting delivery targets and acceptance that failure to deliver may lead to non-payment). These processes will be finalised and agreed by FCDO during the third month of the inception phase however an indicative process is outlined below.

## ***Fees at Risk – Implementation***

61. The supplier will link an element of payment to the successful achievement of Key Performance Indicators (KPIs) in the table below. The maximum value of this element at risk will be equal to a fixed percentage of the aggregated value of all fees charged for staff contracted by the supplier(s) during the KPI assessment period, inclusive of long term and short-term personnel. All remaining costs will be paid based upon FCDO acceptance of the delivery of agreed workplan deliverables.

### **Assessing Contract Management KPIs**

62. The contract management KPIs will be a minimum of 10% of fees, retained every month and released quarterly upon delivering on the requirements of the KPI for that quarter. The KPIs are set out in more detail in the KPI section below.
63. Contract management KPIs will be assessed by the FCDO SPT quarterly (at the quarterly progress meetings) and released after the 3rd, 6th, 9th and 12th month of each implementation year. Contract management KPIs will be assessed as either pass (100%) or fail (0%) for that quarter. However, the supplier can be paid

per KPI e.g. if 3 x KPIs are achieved as a 'pass' and one as a 'fail', then 3 out of 4 can be paid. There will be no opportunity to "carry over" retained fees relating to contract management KPIs from one quarter to the next. Contract management KPIs may be subject to change dependent upon any updated changes or improvements to FCDO's Supplier Relationship Management process.

## Key Performance Indicators

INDICATOR	TARGET	IMPACT IF NOT MET
<b>KP1</b> Accuracy and Timeliness of Reporting	These will include: <ul style="list-style-type: none"> <li>• Narrative reporting</li> <li>• Financial/forecasting (within 5% tolerance)</li> <li>• Accuracy of work tracker</li> <li>• Risk Matrix, based on ongoing Risk Assessment</li> </ul>	Delayed or poor quality of reporting (defined as requiring more than 1 set of comments from FCDO SRO and/or programme manager) may result in delayed payment and % of core services fees at risk.  In addition, continual poor performance will be reflected in the partner's Annual Performance Assessment during annual reviews.
<b>KP2</b> Customer/Partner Relationship	Response to individual ToRs and appropriateness of Team for assignment.  Active engagement with FCDO commissioning teams (and partners, where relevant) <ul style="list-style-type: none"> <li>• response to initial expression of interest in the TAF within 5 working days</li> <li>• Submission of approach papers within 10 working days of ToR submission</li> <li>• Response to queries about ongoing assignments within 5 working days</li> <li>• 90% of proposed team candidates (of first preference approach paper where applicable) are considered acceptable by FCDO SROs</li> </ul>	Delayed payments and % of core services fees at risk.  Repeated delays in communication with commissioning teams will be reflected in the partner's Annual Performance Assessment during annual reviews.
<b>KP3</b> Core and Deployment Staff Retention Rates	Staff turnover is minimised and appropriate staff continuity is maintained for Core Staff and agreed Assignment teams for the duration of the programme. <ul style="list-style-type: none"> <li>• Attrition rate for Core Staff and Assignment Teams 20% or less per year (as named in the contract)</li> </ul>	Delayed payments and % of core services fees at risk.  High staff turnover and poor retention will be reflected in the Annual Performance Review.



KP4 Customer Satisfaction Surveys	<p>Extent to which supplier is responsive and flexible to client and stakeholder needs and seeks to align with FCDO priorities. This will be assessed by the monitoring supplier's engagements and discussions with stakeholders.</p> <ul style="list-style-type: none"> <li>• Achieve a minimum of 75% customer satisfaction survey score per TA assignment.</li> <li>• Submission of annual lessons learned documents for input into the programme Annual Reviews</li> </ul>	<p>Delayed payments and % of core services fees at risk.</p> <p>Continual poor performance may place the supplier within a Performance Improvement Plan which will be reflected in Annual Performance Reviews</p>

## Oversight Requirements

### ***Governance and Coordination with FCDO***

64. Formal responsibility for programme direction and results will lie with the supplier, with oversight and approval by the FCDO SROs.
65. The core team will meet with the FCDO programme team on a quarterly basis with shorter monthly meetings by TAS window (with the respective SRO and programme manager) to update on operational issues. The objective of quarterly meetings will be to oversee and ensure the effectiveness of operations; discuss achievements and learning, challenges and risks; address any overarching TAF issues.
66. Quarterly meetings for BASIC will be joined by the BASIC Research supplier and will involve a progress review across both programme components (BASIC TAS and BASIC Research). These will be joined by the BASIC Evaluation supplier when appropriate. Progress will be monitored against workplans, logframe and the joint Evidence, Learning and Policy Influencing Strategy.
67. A representative (or representatives, as necessary) from the core team will join the quarterly GSP Knowledge Exchange and Learning Group and the twice yearly GSP partners meeting.
68. The KML strategies for each TAS window have relevance for the broader BASIC and GSP programmes and international evidence in these fields. As such, the KML strategies will be reviewed every 6 months by an external reference group. Both programmes have existing reference groups established for governance of other programme components (evaluation, or cross-programme KML) and these groups will be used to review the KML strategy and ensure it remains relevant and valuable to the sector.
69. The main contact for the TAF will be the FCDO SROs. The main contact for financial management and commercial issues will be the SPT programme manager. These staff are based in the UK in either London or East Kilbride.

70. The supplier shall engage with two independent evaluation teams (one for BASIC and one for GSP), providing data and, if required, modifying monitoring strategies to ensure useful data is collected to support the independent evaluations. Once in place, the suppliers for GSP and BASIC evaluations will be expected to advise and support the strengthening of the logframe and monitoring strategies for each window of the SP TAF. The SP TAF supplier will be expected to engage constructively in this process and work with the evaluation provider to improve the overall monitoring of the programmes.

## **Contract Management**

71. There will be will a formal review of the contract at the end of the inception period (3 months after contract signature) and again at the mid-point (18 months after contract signature). Continuation of the contract beyond the review point will be dependent on supplier performance and continuing need. Formal approval (by email) from both FCDO SROs will be required before the continuation of the contract to the implementation stage and continuation after the mid-point but we do not expect any discontinuation in service unless required.
72. Contract amendments may be required after each of these review points to capture modifications to payments, key performance indicators, staffing and delivery approach.

## **Duty of Care**

73. The programme will operate in a range of contexts, some of which are considered high risk. The majority of assignments will not need to provide this level of duty of care, but several will (especially for the crisis window) and therefore duty of care must be able to extend to these circumstances.
74. Examples of high-risk context risk assessments are provided in Annex D to illustrate the riskier contexts for which SP TAF might be expected to provide services.

## **Background**

75. The Foreign, Commonwealth & Development Office (FCDO) leads the UK government's effort to fight global poverty.
76. Extreme poverty and fragility are closely interlinked: 59% of extremely poor people live in countries affected by fragility, environmental vulnerability or both, and where humanitarian needs are greatest. But the humanitarian system is ill-suited to respond: while crises are most often protracted or recurrent (86% of aid goes to protracted crises lasting three years or more), financing and delivery models are mainly short-term and reactive. Social protection systems and approaches can help address these weaknesses; and help deliver the UK Humanitarian Reform Policy and the 2016 World Humanitarian Summit (WHS) commitments, including to more than double the use of cash in crises by 2025. But social protection systems and approaches are underutilised in crises due to limited evidence, knowledge and capacity to guide programme design and delivery, and political economy challenges to reform.

77. Poverty and gender inequality are also inextricably linked. Women and girls face multiple barriers and vulnerabilities throughout their lives because of their gender. Their lack of access to assets, resources and opportunities makes it more difficult for them to go to school, access health care, and deal with shocks and crises when they happen. Despite this, poverty reduction efforts, including social protection, often fail to take into account gender inequalities, and gender equality policies and programmes often fail to identify social protection as a potential mechanism to support gender equality outcomes. To maximise the impact and value for money of our interventions we need integrated strategies that address income insecurity together with other persistent barriers that the most vulnerable women and girls face.
78. To respond to these challenges FCDO has developed two centrally managed programmes:
- a. Better Assistance in Crises (BASIC), providing up to £20.5m over five years (2018-2024), to help poor and vulnerable people cope better with crises and meet their basic needs through more effective social assistance in contexts of recurrent shocks, protracted conflict and forced displacement.
  - b. Gender-Responsive Social Protection (GSP), providing up to £19million over five years (2018-2023) to improve the gender impacts and value for money of social protection investments in stable and fragile contexts.
79. Both of these programmes aim to address bottlenecks at global and country level through inter-related workstreams including research, technical assistance, advocacy and knowledge exchange and learning. Further details on both programmes, including their Theories of Change, is contained in Annexes B and C. The 2019 annual reviews and logframes for both programmes are available on Devtracker.
80. The TA components of both programme are currently being delivered, separately, through FCDO's Expert Advisory Call Down Services (EACDS) under different lots. EACDS will continue to deliver these services until a new supplier is in place, and there will be a transition period during which some call down assignments are completed by EACDS whilst the new facility is accepting new assignments.

## ***Annex A: Expected engagement with other partners***

The service provider for this contract is expected to engage, complement and coordinate closely with the other components of BASIC and GSP.

### **1. BASIC**

- Technical Assistance – ongoing assignments delivered by EACDS Lot B, led by DAI Europe Ltd. Whilst new assignments will be delivered under this contract, there will be a period of transition and a need to learn from past assignments will require a collaborative relationship.
- Research – subject to ongoing competition
- Evaluation – subject to ongoing competition

### **2. GSP**

For full details of each component, their rationale, link to theory of change and current status of implementation see Annex C.

- Technical Assistance – ongoing assignments delivered by EACDS Lot D, led by Oxford Policy Management. Whilst new assignments will be delivered under this contract, there will be a period of transition and a need to learn from past assignments will require a collaborative relationship.
- Research – UNICEF Office of Research (Innocenti)
- World Bank – RSR Management Team within the Social Protection and Jobs Practice
- KEL – workstream led by FCDO secondee to UNICEF Headquarters, comprised of activities from all programme partners
- Evaluation – subject to ongoing competition

## ***Annex B: BASIC Theory of Change and programme***

1. The BASIC Business Case can be found on devtracker <https://devtracker.dfid.gov.uk/projects/GB-GOV-1-300467>. The current logframe can be found here: [http://iati.dfid.gov.uk/iati\\_documents/50245633.xlsx](http://iati.dfid.gov.uk/iati_documents/50245633.xlsx).
2. The overall BASIC programme intended impact is: "Vulnerable people are better able to cope with crises and meet their basic needs through:
  - More efficient social assistance in crises (earlier, more timely, less fragmented, lower cost);
  - Social assistance in crises more effective in addressing household needs;
  - Diversified, comprehensive and more sustainable funding for social protection approaches in crises (domestic, development, private)."
3. The theory of change for the programme is that by tackling bottlenecks at global and country level that prevent greater use of social protection approaches in crises, we will enhance the effectiveness of assistance in contexts of recurring shocks, protracted conflict and forced displacement. Bottlenecks include limited evidence, knowledge and capacity to guide programme design and delivery, and political economy challenges to reform.
4. To address these constraints, BASIC programme intends to deliver:
  - Technical assistance and capacity building: to provide high quality advice for the design and delivery of country plans, policies, programmes and systems, as well as targeted capacity building support to FCDO, agencies, governments and donors;
  - Learning, coordination and high-level influencing to generate greater awareness, knowledge and learning across countries and agencies on social protection approaches in countries;
  - Research and evidence to generate and effectively disseminate high quality evidence on what works in different contexts.
5. In doing so the programmes is expected to deliver the following outcomes:
  - Improved human and institutional capability and capacity;
  - New or strengthened country plans, policies, programmes and systems designed and implemented;
  - Increased political commitment to and use of social protection approaches in crises;
  - Greater coherence, coordination and synergies between actors and initiatives across the nexus between humanitarian aid and social protection;
  - Evidence used by governments, donors and agencies to inform policies and practice.

### **BASIC components**

BASIC is delivered through three interrelated components:

6. **Technical Assistance Services (BASIC TAS)** for country support, capacity building, learning, coordination and high-level policy influencing across multiple countries and at global level. This is currently being delivered through an existing FCDO framework contract ('Strengthening Resilience and Response to Crises' which is Lot B of the Expert Advisory Call-Down Service (EACDS), managed by DAI Europe Ltd). A Programme Funded Post (PFP) is also seconded into the

TAS supplier to support demand generation, oversight of delivery and learning. The Humanitarian and Stabilisation Operations Team database (HSOT, managed by Palladium) is also used to fill specific humanitarian expertise gaps. (total budget up to £9.625m over the whole duration of the programme);

7. **Research** to strengthen both global and country-specific evidence on using social protection approaches to build resilience and respond to crises, in different contexts, for different vulnerable groups, and the costs and benefits of such approaches. BASIC Research will include global questions, country level questions and research uptake. This is currently being procured externally (total budget up to £10m over the whole duration of the programme);
8. **Monitoring and Evaluation** to ensure that the programme is on-track in achieving its outputs and contributing towards the desired outcomes and impact. An independent performance evaluation will assess the effectiveness of BASIC. It will also generate learning for FCDO, governments and partners that provide technical assistance, research and capacity strengthening on what works to influence policy, programme and systems-level change. A supplier is currently being procured through the FCDO Global Evaluation Framework Agreement (£0.875m over the whole duration of the programme).
9. When all components of the programme are operational, coherence and collaboration between them will be ensured through a strong governance structure, the PFP and a joint Evidence, Learning and Policy Influencing Strategy for the BASIC programme as a whole.

### **BASIC TAS progress**

10. The delivery of BASIC TAS started in March 2019.
11. While BASIC TAS is demand based, we are developing an approach to develop a coherent TAS portfolio by prioritising demand and supporting the development of longer-term plans that deliver on the programme's expected results. Countries with high potential for transformational impact have been prioritised and transformational potential has been defined as:
  - a FCDO country office developing a new multi-year Business Case; and / or
  - an opening or government shift in policy towards greater use of social protection; and / or
  - significant influencing opportunities with other donors and global actors.
 Prioritisation might change over the course of the programme to adapt to evolutions in needs, contexts and opportunities. Importantly, we are adapting this approach to factor the new needs, challenges and opportunities brought by the COVID-19 pandemic.
12. BASIC's focus on recurring shocks, protracted conflicts and forced displacement, and its demand-led nature, have resulted in technical assistance being provided in the following countries since March 2019: Yemen, Nigeria, Mozambique, Lebanon, Sudan, DRC, Jordan and Afghanistan. Medium-term TAS are being provided for Yemen and Jordan, and medium-term TAS plans are under consideration for Lebanon and Nigeria. A centrally commissioned study on the role of Management Information Systems (MIS) in crises was completed in May 2020 with Yemen and South Sudan as case studies. To support the response to secondary impacts of the COVID-19 pandemic, FCDO and the German

Development Cooperation (GDC) have launched the Social Protection Approaches to COVID-19: Expert advice helpline (SPACE). SPACE aims to provide bespoke on-demand support to developing country governments, FCDO and GDC programme teams and implementing partners during the preparation, planning and execution of COVID-19 responses. SPACE is a joint initiative of FCDO's Better Assistance in Crisis (BASIC) and Gender Responsive Social Protection (GSP) programmes and GIZ, funded by UKAid and the GDC. By end of May 2020, SPACE had provided or planned to provide expert advice to over 20 countries, including Nigeria, Sudan, Uganda, Zambia, Nepal, Zimbabwe, Mozambique, Jordan, Sierra Leone, DRC, Ghana, Liberia, Myanmar and Iraq. More information can be found in the SPACE flyer: [https://socialprotection.org/sites/default/files/SPACE%20Flyer\\_2\\_0.pdf](https://socialprotection.org/sites/default/files/SPACE%20Flyer_2_0.pdf).

13. BASIC has been supporting the Grand Bargain sub-group on Linking Humanitarian Cash and Social Protection co-led by FCDO, UNICEF and IFRC. In 2020, BASIC is supporting global Knowledge management, Learning and influencing through the funding of a knowledge management and learning expert and activities managed by UNICEF. In 2019, BASIC supported the delivery the first workshop of the sub-group. In 2020, the programme supports the facilitation of the sub-group through the consolidation of a workplan and the facilitation of sub-group webinars focusing on planning, priorities delivery and common messages generation.
14. Based on the transformational potential as well as country office interest and capacity, BASIC will also select up to four 'deep engagement' countries and provide them with sustained advisory, research, learning, and policy influencing over longer time periods as required. The four deep engagement countries will be selected and signed off by FCDO, during the BASIC Research Inception Phase. An initial mapping exercise has identified the following potential countries for BASIC Research and to potentially become deep engagement countries: Somalia, Yemen, South Sudan, Iraq, Nigeria, DRC, Jordan, Lebanon, Mali, Niger.
15. A first version of the BASIC Knowledge Management and Learning strategy has been developed and will be integrated into the joint Evidence, Learning and Policy Influencing Strategy once other BASIC suppliers are operational.

### **BASIC Research**

16. The overall objective of BASIC Research is to deliver and maximise uptake of new policy and operationally-relevant evidence on: how and when to use social protection approaches in different crises contexts, to deliver more effective and efficient social assistance so that vulnerable people, in particular women, children and people with disabilities, cope better with crises and meet their basic needs.
17. The research is aimed at influencing policy and informing operational design. Research uptake will mean more evidence based – and therefore more effective – policy positions and development initiatives by FCDO, governments, other donors, and agencies in a range of FCDO priority and other countries.
18. BASIC Research will procure the services of research experts to manage and deliver three research components:
  - Component 1 will focus on global questions; it shall use country-level evidence generated through component 2 where relevant and could include learning and evidence generated through practice supported by BASIC TAS and other FCDO and non-FCDO funded programmes. We expect an ambitious and

rigorous approach to research, requiring collection and analysis of new data and rigorous use of secondary data.

- Component 2 will focus on country level research responding to policy and operational needs in up to four BASIC deep engagement countries. Research methods will include quantitative, qualitative and mixed methods, including experimental or quasi-experimental research methods where feasible.
- Component 3 will focus on research uptake, through the development and implementation of a research uptake strategy, which will include dissemination of robust research outputs, and learning events through which to share and discuss emerging lessons and research findings. The uptake strategy will be part of the Evidence, Learning and Policy Strategy for BASIC Programme.

### **Coordination with other programmes**

19. BASIC complements and coordinates with other existing and planned FCDO centrally managed social protection programmes and other research investments especially on protracted conflict contexts. FCDO's Humanitarian Innovation and Evidence Programme (HIEP) supported shock responsive social protection research has played a catalytic role, but it did not address protracted conflict and forced displacement contexts. FCDO funded joint World Bank/UNHCR research on Forced Displacement, has a social protection window, but will not provide technical assistance. The MAINTAINS (Maintaining Essential Services After Natural Disasters) programme is focussing its research on shock-responsive service delivery but will not cover conflict related contexts. The Centre for Disaster Protection is supporting countries to strengthen their disaster planning and get finances in place before disaster strikes.
20. The MAINTAINS programme operates in Pakistan, Bangladesh, Sierra Leone, Ethiopia, Uganda and Kenya. MAINTAINS is a FCDO research programme that will develop an improved evidence base on how education, health, social protection, nutrition, and water and sanitation services can adapt and expand in response to shocks such as floods, droughts, cyclones and disease outbreaks. BASIC and MAINTAINS teams have agreed to continuously coordinate: if BASIC services are needed, those will be designed and delivered complementarily to MAINTAINS.
21. Synergies and shared learning between these programmes are a priority. An internal and an external reference group are being set up for this purpose.
22. Gender and disability are key considerations for BASIC. Providing better assistance in crises can potentially help improve outcomes for women, girls, disabled people and other marginalised groups, but further research is required. Research from more stable contexts, suggests that social assistance can provide major benefits across protection, health, nutrition, education and empowerment objectives. There is a need to research this from more crises contexts and to build sensitivity to these objectives into the design of any programme or policy. BASIC is working closely with the Gender-Responsive Social Protection Programme to share and apply learning, to ensure a strong gender lens to the activities and approaches of this programme.



## ***Annex C: GSP Theory of Change***

1. The programme aims to improve the well-being and empowerment of women and girls through gender-responsive social protection. The premise is that by ensuring social protection programmes are gender-responsive they will increasingly **reach** the poorest and most vulnerable women and girls, be more relevant or appropriate to their specific vulnerabilities, and hence deliver greater **benefits** to them and be more **empowering**.
2. The theory of change for the programme is that by addressing *critical constraints* that have been inhibiting a greater gender focus in social protection policies and programmes, we will enhance benefits for women and girls. These constraints include a lack of data, limited evidence on what works, weak capacity, and lack of coordination and incentives for alignment between gender equality interventions and social protection systems.
3. To address these constraints the programme will provide *research and evidence, technical advisory services, capacity strengthening, knowledge exchange and learning* to strengthen gender-responsiveness of social protection programmes, systems and policies both *for FCDO programmes* (including reach to partner governments and development partners in country), *UNICEF and World Bank operations* and *knowledge exchange and learning across the programme and the sector*.
4. In so doing, this will deliver the following **outputs**:
  - *high quality evidence base* on what works and why,
  - *increased demand for advice and capacity to deliver* on gender-responsive social protection among FCDO programmes and partner governments' operations,
  - *improved gender-equality focus and responsiveness* in World Bank social protection investments, and
  - *greater awareness, knowledge and learning* across countries and agencies working on social protection.
5. The programme has also funded *two posts in key development partners* to strengthen capacity – a Senior Gender Specialist in the World Bank's Social Protection and Jobs practice and a FCDO secondee to UNICEF's Child Poverty and Social Protection Unit. These roles will influence and strengthen institutional capacity, facilitate learning and knowledge exchange on gender-responsive social protection and influence these organisations operations, addressing a critical human resource constraint to investing in learning.
6. Through these workstreams, the programme aims to achieve the following **outcomes**:
  - *improve the gender capabilities and capacities* of social protection actors, *including partner governments*,
  - *develop new and strengthened gender-responsive social protection policies, programmes and systems*, informed by *rigorous evidence*; and
  - *increase resource allocation* for gender-responsive social protection.

7. The four workstreams will work in an interconnected way to enhance evidence, knowledge and learning on what works and to strengthen capacity and influence partner governments', donors and development partners' behaviours. Therefore, the programme will achieve **impacts** on the poorest and most vulnerable women and girls by improving **coverage and reach of relevant and appropriate social protection systems** and **improved multi-sectoral approaches and packages**, including through cash plus interventions, going beyond cash transfers to comprehensive social protection systems and linkages to other services and support.
8. By working closely with the programme partners and other internal and external stakeholders we aim to create global momentum in gender-responsive social protection policy and practice, informed by robust evidence.

### **GSP workstreams – rationale and progress**

#### **Building the evidence base through high quality research on what works and why (UNICEF Research):**

9. **Approach:** Operationally-relevant research will be conducted by UNICEF Office of Research - Innocenti to address fundamental questions on *the mechanisms through which social protection and social protection 'plus' can enhance gender equality and improve outcomes for women and girls; and the costs and benefits of addressing gender inequalities in the design and implementation of social protection policies, systems and programmes*. We are particularly interested in generating rigorous evidence on the impact of social protection on outcomes of concern such as violence against women and girls and women's economic empowerment, the mechanisms that drive results, in particular the role of complementary interventions and services (social protection 'plus').
10. **Rationale:** The GSP programme identified **lack of evidence both on the impacts of social protection on** gender equality and women's empowerment, and on the pathways of change, as a critical constraint to greater uptake of gender-responsive social protection. While evidence on the former is growing, the case remains to be made with national and global policy makers on the centrality and cost-effectiveness of gender equalities to poverty reduction efforts and vice versa; and then to provide robust evidence on how to achieve gender equality outcomes through social protection.
11. **Progress:** A Contribution Framework was signed with UNICEF's OoR in October 2018 and the first fund transfer was made in November 2018. UNICEF OoR initiated a seven-month inception phase to May 2019, which was intended to scope out the priorities and focus of the research, including detail on the research methods and uptake, updating the original proposal they submitted to FCDO. The inception phase was extended until the end of 2019. Final country selection was completed in early 2020, however, this is now under review to take into consideration the impact of COVID-19 on the ability to collect primary data and the status of social protection programmes the research was planning to target.

#### **Improving the effectiveness of FCDO and our partners investments in gender-responsive social protection (GSP TA Facility):**

12. **Approach:** This workstream provides advisory support to FCDO teams and through FCDO to partner governments, other development partners and potentially civil society, to develop and strengthen the gender focus of social protection policies, programmes and systems and to build capacity of organisations to continue to design, implement and monitor gender responsive social protection. The workstream will share learning and good practices across FCDO and GSP programme partners, and more broadly (e.g. guidelines, thematic papers and other knowledge products). Technical Advisory (TA) services are currently delivered via an existing FCDO framework agreement, the Expert Advisory Call Down Service (EACDS) Lot D, which is led by Oxford Policy Management.
13. **Rationale:** This workstream addresses some of the *fundamental constraints* – capacity and incentives – to the design and implementation of gender-responsive social protection. It gives FCDO teams the *resources to influence* partner governments, other donors and development partners on this critical issue both through producing high quality evidence on what works and demand-driven advisory inputs on key policy and programme issues. The demand driven model assumes that energy and resources are focused where there are reform champions and they can have maximum impact, or alternatively create an enabling environment for gender-responsive social protection in the future. This assumption should be tested as part of the evaluation. In the Business Case, set out the rationale for working through the existing Expert Advisory Call Down Service (EACDS) Lot D, which is led by Oxford Policy Management. This option provided value for money, as it is an existing framework for providing technical advice and allowed services to be provided immediately.
14. **Progress:** Over the course of year one a number of call downs have been procured through Lot D at country and central level. The includes support to global policy development and evidence reviews, specific country assignments in Mozambique, Nepal, Ghana, the Sahel and Madagascar. EACDS lot D does not provide a long-term solution to the TA requirements of the GSP programme and the FCDO SPT is undertaking this procurement for a new TA facility to meet the longer-term needs of the GSP programme.

### **Strengthening capacities and influencing World Bank social protection operations**

15. **Approach:** A partnership with the World Bank was established to boost outcomes for women and girls and promote gender equality through gender-responsive social protection systems, programmes and/or policies. A gender window has been established in the World Bank's existing multi-donor trust fund – the Rapid Social Response programme (RSR). FCDO is currently the largest funder to the window, providing £8 million. The GSP programme is also funding a Senior Gender Specialist in the Social Protection and Jobs global practice to strengthen World Bank capacities and learning on gender-responsive social protection.
16. **Rationale:** The decision to focus on the World Bank is due to its important role as a funder and thought leader on social protection. Social safety net and risk management lending was the Bank's largest lending portfolio in Africa in 2016<sup>1</sup>.

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<sup>1</sup> Social protection and risk management was 22% of World Bank lending in Africa in 2016.

The World Bank's Social Protection and Jobs (SPJ) practice operates in 70 countries globally and has total commitments of US\$14.7 billion. In Africa, total commitments are just under US\$7 billion, making up 48% of the SPJ portfolio globally<sup>2</sup>. This shows the priority the World Bank places on social protection and increasing partner government demand for social protection programmes. Due to the scale of the World Bank's operations and close links with governments, the GSP programme can have wider and more sustained impacts on the social protection sector. However, the World Bank's Independent Evaluation Group (IEG) found that the World Bank has not done enough to integrate gender equality into its social protection investments in its 2014 evaluation<sup>1</sup>. The IEG found that 40% of the World Bank's projects do not consider gender at all and while 67% of project indicators could have been meaningfully disaggregated by gender only 19% were.

17. The partnership with the World Bank aims to address a number of critical constraints in the practice to better integrating gender equality considerations into social protection:
  - There is insufficient gender **capacity** in the SPJ practice;
  - There is a need to shift the **mind-set** in the practice on why gender is important for social protection objectives, and vice versa;
  - There is a need to create **incentives** (e.g. resources) to integrate gender effectively;
  - Staff need support to **influence** partner governments' decisions, e.g. tools, evidence.
18. This partnership addresses these constraints by supporting the Bank to work differently in its social protection operations, going beyond simply targeting women in some social protection investments, to designing social protection policies, programmes and systems that address the specific vulnerabilities and poverty faced by women across the life cycle. To enable this shift, the partnership will deliver:
  - **Data, Diagnostics, Stocktaking and Technical Assistance:** these activities are intended to diagnose and address the differing and complex intersecting constraints and vulnerabilities facing women and girls, and men and boys through social protection policies, systems and programmes. It includes the following activities: (a) diagnosing, stocktaking and mapping gender-responsive social protection by reviewing existing systems, programmes and services; (b) identifying and developing effective gender-responsive options for social protection policies, systems and programmes; (c) identifying and disseminating best practices, and providing TA to governments and (d) identifying ways to facilitate gender-responsive programme harmonisation and coordination across social protection programmes and other services; developing an understanding of the gender-specific consequences of social protection policies, system and programmes.
  - **Awareness, Knowledge Exchange and Learning:** These activities are intended to support the aggregation and synthesis of operational experiences to facilitate the dissemination of lesson learned and inform policy dialogue with client countries. This includes: (a) identifying lessons learned from RSR Gender activities; (b) synthesising evidence, experience and lessons learned and developing knowledge products; (c) knowledge dissemination and training events globally and nationally; (d) capacity building among clients and

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<sup>2</sup> Data as of November 2017.

other stakeholders and (e) supporting communities of practice for gender-responsive social protection.

19. **Progress:** The Administrative Agreement was signed with the World Bank in November 2018, including agreement of more stretching results under the RSR Gender window than previously agreed for FCDO funding to the RSR classic MDTF (2012-2018). The first call for proposals (round 1) was launched in December 2018 and successful proposals selected in May 2019. The second call for proposals was launched in October 2019 and successful proposals selected in February 2020. There was high demand and generally good quality proposals. The Senior Gender and Social Protection Specialist was recruited to the practice and started in post in September 2019. A particular challenge is how to measure the quality and impacts of knowledge and advisory services provided under the RSR Gender window (see logframe for output and outcome indicators) and trace the contribution of RSR Gender to larger IDA/IBRD projects and systems-level change within Bank operations and partner governments' social protection policies, systems and programmes. The third call for proposals is expected to launch in October 2020.

**Strengthening awareness, knowledge and learning of what works and why through knowledge exchange, evaluation and learning**

20. **Approach:** This is a crucial component of the programme, ensuring that we **are effectively** monitoring, evaluating and learning about the effects of each of the individual workstreams and their collective impact on the practices, behaviours and knowledge of key social protection stakeholders and any resulting impact on social protection policies, programmes and systems. This workstream brings together a number of interventions to share knowledge within FCDO, programme partners and other development partner and governments on good practice. These include: seconding a FCDO Social Development Advisor to UNICEF, knowledge exchange and learning events and an independent evaluation.
21. **Rationale:** Changing behaviours and practices requires investment in learning and evidence on what works, and wide engagement of key stakeholders.
22. **Progress:** The FCDO SPT invested heavily in raising the profile of gender-responsive social protection in FCDO and with key partners. The team organised, funded and/or presented in 4 events through the GSP programme on a range of issues to raise awareness of and deepen dialogue on gender-responsive social protection<sup>3</sup>. A priority during the first year of the programme was the 63<sup>rd</sup> session of the Commission on the Status of Women (CSW), which included social protection in the priority theme. The programme supported a series of events in the run up to, during and after CSW. The programme also supported events at the ILO social protection week in 2019 and the relaunch of the SPIAC-B gender-responsive online community, including a series of gender and social protection webinars as part of COVID-response. The FCDO secondee to UNICEF was recruited and started in post in September 2019. GSP programme partners discussed how to strengthen knowledge exchange and learning across the programme at the GSP Partners Meetings in May 2019 and September 2019. This was used to inform the programme wide Knowledge Exchange and Learning (KEL) Strategy that was

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<sup>3</sup> The events are: three webinars in the ODI/FCDO webinar series and the Social Protection Inter-Agency Cooperation Board (SPIAC-B) side event on gender-responsive social protection.

approved in April 2020. The independent evaluation contract is subject to ongoing competition.

## ***Annex D: Examples of Summary Risk assessment matrices***

BASIC and GSP operate in a variety of countries, as illustrated for example in Annex B – BASIC Theory of Change and programme. The below indicates an example of high duty of care risk country for which BASIC can deliver technical assistance services.

### **Summary Risk Assessment matrix**

Location: **Mogadishu/South Central Somalia**

Date of assessment: **15 April 2020**

Theme	DFID Risk score	DFID Risk score		DFID Risk score	DFID Risk score	DFID Risk score
	Mogadishu Airport	Mogadishu	Kismayo Airport	Kismaayo	Dollow	Other Parts of South Central Somalia
OVERALL RATING	4	4	4	4	4	4
FCO travel advice	4	4	4	4	4	4
Host nation travel advice	Not available	Not available	Not available	Not available	Not available	Not available
Transportation	5	4	5	4	4	5
Security	3	4	3	4	3	4
Civil unrest	2	4	2	4	4	4
Violence/crime	3	4	2	4	4	4
Terrorism	3	5	3	4	4	4
War	2	2	2	2	2	2
Hurricane	1	1	1	1	1	1
Earthquake	1	1	1	1	1	1
Flood	1	1	1	1	1	1
Medical Services	2	5	3	4	5	5
<b>Nature of Project/ Intervention</b>						

1 Very Low risk	2 Low risk	3 Med risk	4 High risk	5 Very High risk
			<b>SIGNIFICANTLY GREATER THAN NORMAL RISK</b>	

Location: **PUNTLAND**Date of assessment: **15 April 2020**

Theme	DFID Risk score	DFID Risk Score	DFID Risk score	DFID Risk score
	Garowe	Bossaso	Galkayo	Other Parts of Puntland
OVERALL RATING	4	4	4	5
FCO travel advice	4	4	4	4
Host nation travel advice	Not available	Not available	Not available	Not available
Transportation	5	4	5	5
Security	4	4	5	4
Civil unrest	3	4	3	4
Violence/crime	3	3	5	4
Terrorism	4	4	5	5
War	2	3	3	3
Hurricane	2	2	1	1
Earthquake	1	1	1	1
Flood	2	2	1	1
Medical Services	4	5	5	5
<b>Nature of Project/ Intervention</b>				

1 Very Low risk	2 Low risk	3 Med risk	4 High risk	5 Very High risk
			<b>SIGNIFICANTLY GREATER THAN NORMAL RISK</b>	

Locations in **Yemen**Date of assessment: **December 2019**

Theme	DFID Risk Score	DFID Risk Score	DFID Risk Score
Regions	North	Sana'a	South and East
FCO Travel Advice	5	5	5
Host Nation Travel Advice	N/A	N/A	N/A
Transportation	5	5	4
Civil Unrest	5	5	5



Violence/ crime	4	4	4
Terrorism	4	4	4
Conflict (war)	5	5	5
Hurricane	3	3	4
Earth-quake	3	3	3
Flood / Tsunami	3	3	3
Medical Services	4	4	4
Nature of Project Intervention	4	4	4

1 Very Low Risk	2 Low Risk	3 Medium Risk	4 High Risk	5 Very High Risk
Low		Medium	High	

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

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

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

Description	Details
<b>Identity of the Controller and Processor for each Category of Data Subject</b>	<p>The Parties acknowledge that for the purposes of the Data Protection Legislation, the following status will apply to personal data under this contract:</p> <ol style="list-style-type: none"> <li>1) The Parties acknowledge that Clause <b>33.2</b> Protection of Personal Data and <b>33.4</b> ( Section 2 of the contract) shall not apply for the purposes of the Data Protection Legislation as the <b>Parties are independent Controllers</b> in accordance with Clause 33.3 in respect of the Personal data necessary for the administration and/or fulfilment of this contract.</li> </ol>
<b>Subject matter of the processing</b>	
<b>Duration of the processing</b>	
<b>Nature and purposes of the processing</b>	
<b>Type of Personal Data [and Special Categories of Personal Data]</b>	

<b>Plan for return and destruction of the data once processing complete.</b>	<b>(UNLESS requirement under EU or European member state law to preserve that type of data)</b>
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## **Appendix B: of Contract Section 3 (Terms of Reference)**

### **Joint Control: Data Sharing Agreement**

**[To be used only where there is Joint Control of Personal Data in accordance with [Clause 33.4 / Clause 30.4] and refined by the Parties to reflect the relationship of Joint Control. FCDO may remove this section where it is certain that no Joint Control of Personal Data is likely to apply to this Agreement.**

**This joint control agreement is subject to change by agreement of the Joint Controllers where this is to better reflect the transaction, as a greater understanding of any identified Joint Control relationship evolves.]**

- 1.1 With respect to Personal Data which has been identified in Appendix A as under Joint Control of the Parties because envisage that they shall jointly determine the purpose and means of processing and each be a Data Controller in respect of that Personal Data. Accordingly, the Parties each undertake to comply with the applicable Data Protection Law in respect of their Processing of such Personal Data as Joint Data Controllers.
- 1.1 The Supplier shall be the exclusive point of contact for Data Subjects in Appendix A In who shall:
  - (a) direct Data Subjects to the exclusive point of contact's Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;
  - (b) be responsible for the Parties' compliance with all duties to provide information under Articles 13 and 14 of the GDPR; and
  - (c) shall make available to Data Subjects the essence of this Clause Data Sharing Agreement (and notify them of any changes to it) concerning allocation of responsibilities as Joint Controller and its role as exclusive point of contact. This must be outlined in the exclusive point of contact's privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).
- 1.3 The Joint Controllers each undertake that they shall:
  - (a) report to the other Party every three months on:
    - (i) the volume of Data Subject Access Requests (or purported Data Subject Access Requests) from Data Subjects (or third parties on their behalf);
    - (ii) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;

- (iii) any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party's obligations under applicable Data Protection Law;
- (iv) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
- (v) any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;

that it has received in relation to the Personal Data under Joint Control during that period;

- (b) notify each other immediately if it receives any request, complaint or communication made as referred to in Clauses 1.3(a)(i) to (v); and
- (c) provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Clauses 1.3(a)(iii) to (v) to enable the other Party to comply with the relevant timescales set out in the Data Protection Law.
- (d) obtain the consent of Data Subjects or carrying out and documenting legitimate interest assessments, in accordance with the GDPR, for all Processing;
- (e) not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, save where such disclosure or transfer is specifically authorised under this Agreement or is required by Law). For the avoidance of doubt to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Annex.
- (f) request from the Data Subject only the minimum information necessary to provide the Services and treat such extracted information as Confidential Information.
- (g) ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data
- (h) take all reasonable steps to ensure the reliability and integrity of any of its Personnel who have access to the Personal Data and ensure that its Personnel:
  - (i) are aware of and comply with their duties under this Appendix B (*Data Sharing Agreement*) and those in respect of Confidential Information
  - (ii) are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where that Party would not be permitted to do so;
  - (iii) have undergone adequate training in the use, care, protection and handling of personal data as required by the applicable Data Protection Law;

- (i) ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Event having taken account of the:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures.
- (j) ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Law, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that the Supplier holds; and
  - (i) ensure that it notifies the other Party promptly and in any event within 48 hours if it becomes aware of a Data Loss Event.

1.4 Each Controller shall use its reasonable endeavours to assist the other Controller to comply with any obligations under applicable Data Protection Law and shall not perform its obligations under this Appendix in such a way as to cause the other Controller to breach any of the its obligations under applicable Data Protection Law to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

1.5 Each Party shall notify the other Party promptly and without undue delay, and in any event within 48 hours, upon becoming aware of any Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the other Party and its advisors with:

- (i) sufficient information and in a timescale which allows the other Party to meet any obligations to report a Personal Data Breach under the Data Protection Laws;
- (ii) all reasonable assistance, including:
  - (a) co-operation with the other Party and the Information Commissioner investigating the Personal Data Breach and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;
  - (b) co-operation with the other Party including taking such reasonable steps as are requested by the other Party to assist in the investigation, mitigation and remediation of a Personal Data Breach;
  - (c) reasonable co-ordination with the other Party regarding the management of public relations and public statements relating to the Personal Data Breach;
  - (d) providing the other Party and to the extent requested by the other Party to do so, and/or the Information Commissioner investigating the Personal Data Breach, with complete information relating to the Personal Data Breach, including, without limitation, the information set out in Clause 1.6.

1.6 Each Party shall take all steps to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a Personal Data Breach as if it was that Party's own data at its own cost with all possible speed and shall provide the other Party with all reasonable assistance in respect of any such Personal Data

Breach, including providing the other Party, as soon as possible and within 48 hours upon becoming aware of the Personal Data Breach relating to the Personal Data Breach, in particular:

- (i) the nature of the Personal Data Breach;
- (ii) the nature of Personal Data affected;
- (iii) the categories and number of Data Subjects concerned;
- (iv) the name and contact details of the Provider's Data Protection Officer or other relevant contact from whom more information may be obtained;
- (v) measures taken or proposed to be taken to address the Personal Data Breach; and
- (vi) describe the likely consequences of the Personal Data Breach.

1.7 The Parties shall:

- (a) provide all reasonable assistance to the each other in preparing any data protection impact assessment as may be required (including provision of detailed information and assessments in relation to processing operations, risks and measures);
- (b) maintain full and complete records of all processing carried out in respect of the Personal Data in connection with this [Framework Agreement/Call Off Contract], such records shall include the following information:
  - (i) the categories and purposes of processing carried out in respect of the Personal Data;
  - (ii) where applicable, complete information about transfers of Personal Data outside the EU, and the safeguards implemented in respect of such transfers necessary to comply with Law;
  - (iii) a general description of the Protective Measures which the Provider has implemented to safeguard the Personal Data in accordance with this clause and in compliance with Law.

1.8 If financial penalties are imposed by the Information Commissioner on either Joint Controller for a Personal Data Breach ("**Financial Penalties**") then the following shall occur:

- a) If the FCDO is responsible for the Personal Data Breach, in that it is caused as a result of the actions or inaction of the FCDO, its employees, agents, contractors (other than the Supplier) or systems and procedures controlled by the FCDO, then the FCDO shall be responsible for the payment of such Financial Penalties. In this case, the FCDO will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such data incident. The Supplier shall provide to the FCDO and its third party investigators and auditors, on request and at the FCDO's reasonable cost, full cooperation and access to conduct a thorough audit of such data incident;
- b) If the Supplier is responsible for the Personal Data Breach, in that it is not a breach that the FCDO is responsible for, then the Supplier shall be responsible for the payment of these Financial Penalties. The FCDO will provide to the Supplier and its auditors, on request and at the Supplier's reasonable cost, full cooperation and access to conduct a thorough audit of such data incident.

- c) If responsibility is unclear, then the Joint Controllers shall work together to investigate the relevant data incident and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any financial penalties equally if no responsibility for the Personal Data Breach can be apportioned. In the event that the Parties do not agree such apportionment then such Dispute shall be referred to Dispute Resolution.
- 1.9 If any of the Joint Controllers is the defendant in a legal claim brought by a third party in respect of a Personal Data Breach, then unless the Parties otherwise agree, the Party that is determined by the final decision of a court of competent jurisdiction or the Information Commissioner to be responsible for the Personal Data Breach shall be liable for the losses arising from such breach. Where both Parties are liable, the liability will be apportioned between the Parties in accordance with the decision of the Court or the Information Commissioner, as the case may be.
- 1.10 In respect of any losses, cost claims or expenses incurred by either Party as a result of a Personal Data Breach (the "Claim Losses"):
  - a) the Party responsible for the relevant breach shall be responsible for the Claim Losses; and
  - b) if responsibility is unclear, then the Parties shall be responsible for the Claim Losses equally.
- 1.11 In respect of any Processing of Personal Data under Joint Control by a sub-contractor or agents of a Party, each Party shall:
  - (i) carry out adequate due diligence on such third party or the sub-contractor to ensure that it is capable of providing the level of protection for the Personal Data as is required by Clause 1.3(e), and provide evidence of such due diligence to the other Party where reasonably requested by the other Party or the Information Commissioner; and
  - (ii) ensure that a suitable agreement is in place with the third party or the Sub- contractor or Key Sub-contractor including as may be required under applicable Data Protection Law
- 1.11 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 and their privacy policy (save to the extent (and for the limited period) that such information needs to be retained by the a Party for statutory compliance purposes or as otherwise required by this Agreement), and taking all further actions as may be necessary or desirable to ensure its compliance with Data Protection Law and its privacy policy.

**Section 4**  
**SPECIAL CONDITIONS**

**1. Party Contacts**

**FCDO**

- 1.1 The Contract Officer is:  
Fiona Crawford

Foreign, Commonwealth and Development Office

Email: Fiona.crawford@fcdo.gov.uk

Telephone: 01355 843877

- 1.2 The Project Officer is:  
India Perry

Email: India.perry@fcdo.gov.uk

Telephone: 07584 336955

**Supplier**

- 1.3 The Contract Officer is:  
Cathy Shaw

DAI Global UK Limited

Email: Cathy\_Shaw@dai.com

Telephone: +44 1442 202400

- 1.4 The Project Officer is:  
Cathy Shaw

Email: Cathy\_Shaw@dai.com

Telephone: +44 1442 202400

**2. Expiry Date**

- 2.1 End date of Extension Period:

31<sup>st</sup> March 2026

- 2.2 Minimum written notice to Supplier in respect of extension:

60 Days



**3. Additional Documents to be included in this Contract**

The following documents are included in and form part of the Contract in addition to Sections 1-5 inclusive:

Part A: Executive Summary  
Part B: Technical Proposal  
Part C: Commercial Proposal  
Commercial Clarifications

**4. Key Personnel**

The following of the Supplier's Personnel cannot be substituted by the Supplier without FCDO's Approval:

Cathy Shaw  
Ed Archibald  
Megan Smith  
Charlotte Maugham  
Valentina Barca  
Courtenay Cabot Venton  
Ric Goodman  
Rebecca Holmes  
Sophie Pongracz  
Gaby Smith

**5. Sub-Contractors**

FCDO has consented to the appointment of the following Sub-Contractors:

Overseas Development Institute  
Key Aid Consulting  
Caribou Digital (UK) limited  
International Rescue Committee  
Oxford Policy Management Limited  
Valid Evaluations Limited

**6. Limitation of Liability**

The Supplier's limit of liability shall be as provided for in Clause 35.2 of Section 2 (Standard Terms and Conditions) unless a different amount is provided for below in which event that different amount shall apply.

n/a

**7. Termination Notice**

The period of written notice under Clause 43 (Termination Without Default of the Supplier) in Section 2 (Standard Terms and Conditions) shall be as follows:

30 Days

**8. Reports**

The Supplier is required to submit project reports to the Recipient through the Project Officer at the address shown in Clause 1.2 of Section 4 in accordance with Section 3 (Terms of Reference)

## **9. Medical Insurance**

The Supplier is responsible for ensuring adequate and appropriate medical insurance cover before beginning work overseas under a FCDO contract for services. The Supplier's fee is deemed to include an element to cover the cost of medical insurance.

It is not the responsibility of the local FCDO office, British Embassy or High Commission to meet the cost of the Supplier's medical care nor to make arrangements for evacuation in a medical emergency, although they will provide assistance if they can. On arrival, the Supplier should report to the FCDO local office, British Embassy or High Commission with details of medical insurance arrangements in case of a medical emergency.

## **10. Retention of Rights**

The following Clauses shall continue in force (in addition to those provided for in Clause 46 of Section 2 (Standard Terms and Conditions)) following the termination of this Contract:-

n/a

## **11. Commercially Sensitive Information**

Preferred Suppliers Executive Summary Part A  
Preferred Suppliers Technical Proposal Part B  
Preferred Suppliers Commercial Proposal Part C  
Preferred Suppliers Budget Proforma  
Any clarifications

## **12. Visibility of Sub-Contract Opportunities**

**Clause 8 of Section 2 shall be deleted and replaced by the following provision**

8.1 The obligations in Clause 8 shall not apply to this contract.

## **13. On Demand Technical Assistance**

It is acknowledged that there may be instances once the contract has been awarded and extended team personnel have been identified, that there will be by exception, approval granted by FCDO to include personnel within the programme with a gross fee rate that exceeds our rate card caps. This will be approved on a case by case basis and a robust VFM justification will be required by bidders before approval is received.

## Section 5

### SCHEDULE OF PRICES

It is a requirement that all invoices are presented in the format of the payment basis, and in the case of Fees and Expenses only those categories defined are separately identified. Only one invoice per period per programme (BASIC and GSP), as defined in Section 2, Clause 22, should be submitted.

#### **Inception**

Inception fees and expenses will be made on a milestones basis totalling £170,842 as detailed in ITT Volume 3 – Terms of Reference para 14 and 15.

DETAILED DESCRIPTION (Milestone, Project Stage etc)	FINANCIAL YEAR OF PAYMENT	MONTH OF PAYMENT	NET PAYMENT VALUE	NPAC	PROFIT
<i>inception milestones - ToR reference 15a</i>	2021/22	October	£9,771	3,400	2,413
<i>inception milestones - ToR reference 15b</i>	2021/22	October	£5,095	1,536	808
<i>inception milestones - ToR reference 15c</i>	2021/22	October	£27,874	8,258	3,349
<i>inception milestones - ToR reference 15d</i>	2021/22	October	£11,470	4,148	2,905
<i>inception milestones - ToR reference 15e</i>	2021/22	October	£47,161	14,108	4,177
<i>inception milestones - ToR reference 15f</i>	2021/22	October	£5,351	1,632	981
<i>inception milestones - ToR reference 15g</i>	2021/22	October	£1,571	490	385
<i>inception milestones - ToR reference 15h</i>	2021/22	October	£5,272	1,882	1,227
<i>inception milestones - ToR reference 15i</i>	2021/22	October	£3,527	1,219	834

Any assignments undertaken will be paid on completion of the output.

#### **Implementation**

Implementation core services fees and expenses will be paid on an actuals basis with a 100% of fees retained against Key Performance Indicators as specified in ITT Volume 3 – Terms of Reference.

	Total
Core Fees linked to KPIs	1,044,861
Reimbursable (input based expenses)	64,712
Profit	187,691
NPAC	367,933

**Demand Led Budget**

The budget allocated to the demand led element of the programme to deliver short term assignments is £7,163,961 inclusive of NPAC and profit. An activity-based payment schedule for each technical assignment will be made and payment made upon completion of each output unless agreed otherwise with the SRO on a given assignment.

**NPAC and profit**

The maximum amount of NPAC payable on this contract will be 25% of the total programme budget (£2,250,000) and profit will be 5% (£450,000) of the total programme budget.

OFFICIAL

VERSION CONTROL

VERSION CONTROL - clarifying changes between DFID Commercial Cost Template version 3.9 and the FCDO version 1.0						
DFID TEMPLATE VERSION 3.9			EQUATES TO:	NEW FCDO TEMPLATE VERSION 1.0		EXPLANATION OF CHANGES
Tab No.	Tab Name	Tab Description		Tab No.	Tab Name	
No corresponding tab				This tab	Version Control	NEW TAB: Version control of changes (as here) as the first tab in each new version release.
No corresponding tab				0.	Template Completion Guidance	NEW TAB: Practical guidance tips now included within the Template rather than in a separate Cost Template guidance document. This tab gathers the same information, but there are fewer fields for the Supplier to complete and overall, it has been made clearer where possible.
1.	Information	Provides high level Programme costs/detail.		1.0	Programme Information	Summarises programme costs at category level (Direct/NPAC/Profit-Surplus/Fund Value/Local Taxes), with explanatory guidance shown at the top of the tab.
2.	Total Programme Cost	Summarises Programme costs.		2.0	Total Programme Cost	Summarises totals of succeeding detailed tabs 2.1-4.0, with explanatory guidance shown at the top of the tab.
2.1	Commodities	Summarises Commodity costs		2.1	Programme Activities - Frontline Programme Delivery	Neither the 'Commodities' nor 'Disbursements' tab names were universally understood, so these two tabs have been replaced by one tab to cover all FPD costs and, rather than simply provide generic descriptions of cost headers to be entered, for greater clarity, DFID contract officers will pre-populate Col A (prior to issue) with customised cost headers appropriate to the programme tender prior to issue. Profiling has been designed to mirror that of tab 2.0 to facilitate clarity and linkage, with the first programme year seeking increased transparency on cost breakdown to support evaluation.
2.2	Disbursements	Summarises Disbursement costs				
2.3	Capital Expenditure	Lists expenditure items of a capital nature, purchased through varying methods.		2.2	Capital Expenditure	The information this tab seeks is largely unaltered from v3.9, but the annual profiling has been designed to mirror that of tab 2.0 to facilitate clarity and linkage, with the first programme year seeking increased transparency on cost breakdown to support evaluation.
2.4	Programme Team	Summarises programme team (excl fund mgt and M&E) staff costs across Job Family categories, identifying net and gross rates of lead organisation and delivery partners, showing NPAC and Profit allocations across team members.		2.3	Programme Staff - Pay	Enhancements incorporated in this tab comprise: inclusion of separate columns for each programme stage ('Design', 'Incipient' etc) to remove the need to have more than one line for a team member engaged in more than one stage; incorporation (via Technical Discipline column) of Fund Management & M&E staff costs on this schedule rather elsewhere within Template; greater level of auto-populated summary analysis to aid both bidder and DFID evaluation staff; and greater use of checkboxes to ensure NPAC/Profit-Surplus allocation on this tab and agree to the NPAC total calculated on tab 3.0 and Profit-Surplus amount on tab 2.0.
2.6	Fund Management Team	Summarises fund management team staff costs across Job Family categories, identifying net and gross rates of lead organisation and delivery partners, showing NPAC and Profit allocations across team members.				
2.5	Travel	Summarises staff travel, accommodation and subsistence expenses.		2.4	Programme Staff - Travel	The information this tab seeks is largely unaltered. A few more columns have been added in order to summarise by programme stage for evaluation purposes.
No corresponding tab				2.5	Monitoring, Evaluation and Learning	NEW TAB: to allow for non-staffing M&E costs to be entered directly as summary totals on tab 2.0. The annual profiling has been designed to mirror that of tab 2.0 to facilitate clarity and linkage, with the first programme year seeking increased transparency on cost breakdown to support evaluation.
3.	NPAC	Provides a matrix to allow for calculation of Non Programme Attributable Costs that may be claimed in relation to tender bid.		3.0	NPAC	This tab has been simplified and greater guidance provided. The range of cost sharing methodologies are still offered to facilitate calculation of an appropriate level of NPAC to each tender bid.
4.	Payment	Bidder completes this tab to provide a breakdown of programme milestones and related contractual values.		4.0	Payment Profiling	This remains an important tab that will guide post-commencement performance monitoring. DFID to take the lead in completing narrative sections, so that the tab can be customised according to tender type.
5.	Variance	Bidder re-populates entire Template at periodic intervals post commencement as agreed with DFID (entering on each line on all tabs, actual spend to date plus reforecast of remaining balance of contract spend), the totals of which are captured here, allowing for comparison with original budget		No corresponding tab		Rather than ask successful bidders to re-populate and submit entire Template for post-award monitoring, tab 4.0 will be used to compare actual v original budget values.

**Version 1.0**

Issued for use on/after:

**01/09/2029**

## Foreign, Commonwealth & Development Office

### Instructions for successful completion of Commercial Cost Template

Guidance set out here and embedded as notes within the separate tabs of this Cost Template will assist you in completing the full cost recovery budget template. The guidance will explain how to calculate the full cost of your programme including an appropriate share of all relevant support services and other overheads, defined as 'non-programme attributable costs' or 'NPAC'.

**Throughout the Cost Template, you will find TRUE/FALSE check boxes that will assist to ensure linked totals correspond.**

Cell protection has been discarded in this version to enable suppliers to have full functionality. Please therefore take care not to inadvertently delete or overwrite a formula box. If you insert additional rows/columns, ensure you copy all formula cells down/across.

**You should refer to FCDO's Cost Eligibility guidance to ensure all costs included are eligible for inclusion.**

#### The following principles apply to the Cost Template:

- (a) Enter values in GBP.
- (b) Enter costs **inclusive** of non-recoverable taxes but **exclusive** of reclaimable Input VAT from HMRC.
- (c) Enter budget for local government taxes on the contract.
- (d) **Enter or select information within yellow cells.**
- (e) **Do not enter information in greyed or blank cells.**
- (f) **Do not alter formula. If there is an error, contact the Contract Officer.**
- (g) **Any non-budgeted item will be at the supplier's expense.**
- (h) Do not include any costs to be funded via other (non-FCDO) funding source.
  - (i) If 'other' is selected in any category, enter details in the notes section.
- (j) Budget monthly in year one and annually thereafter.



PLEASE ONLY ENTER DATA WHERE HIGHLIGHTED YELLOW

FCDO GUIDANCE NOTES FOR TAB 1. PROGRAMME INFORMATION

This tab should be completed in the following order:  
(a) Enter details about the programme in Table 1.  
(b) Enter details requested for lead organisation and all partners in columns B-D of Table 3. For column D, the definition of SMEs is set in the EU recommendation 2003/361 (link below), with an organisation determined to be small, medium or large in accordance with set limits in relation to the following criteria, subject to periodic EU review and uplift: Staff Headcount, and Either Turnover Or Balance Sheet total  
EU recommendation 2003/361  
(c) Table 4 provides a completion checklist, allowing manual tick off as each Cost Template tab is completed.  
(d) Table 2 will auto-populate as the Cost Template is completed. Ensure it tallies with the programme cost total on tab 2, using the True/False checkbox.  
(e) Complete columns F-H of Table 3 once Cost Template has been fully completed.

TABLE 1: FULL COST RECOVERY BUDGET - PROGRAMME INFORMATION	
Lead organisation name	DAI Global UK
Programme name	for completion by PCO
PIJ number	for completion by PCO
Programme start date	for completion by PCO
Programme end date	for completion by PCO
Total programme cost (auto-fill from Table 2)	£ 9,000,000
Programme country/region supported by Programme	for completion by PCO
Prepared by:	Binda Gurung
Date prepared:	12/11/2020

TABLE 2: SUMMARY OF PROGRAMME COSTS	
Direct Programme Costs	£ 1,226,063
Indirect Costs - Non programme attributable cost (NPAC)	£ 404,606
Contract Profit/Surplus	£ 204,770
Fund Value	£ 7,163,561
Local Government Taxes on Contract Value	£ -
TOTAL PROGRAMME COSTS	£ 9,000,000

CHECK TRUE

TABLE 3: SPLIT OF PROGRAMME COSTS ACROSS LEAD ORGANISATION AND DELIVERY PARTNERS							
Lead organisation/ Delivery partner	Name	Is the Delivery Partner based in the same country/countries as programme delivery?	SME?	Total cost	Direct Programme Costs	Lead Organisation: Indirect Costs (NPAC), Profit and Fund Value	Local Government Taxes on contract
Lead organisation	DAI Global UK	No	Not SME	£ 1,218,039	£ 1,208,663	£ 605,376	£
Delivery partner one	Overseas Development Institute (ODI)	No	Not SME	£ 18,000	£ 18,000		
Delivery partner two	Demand Led TA Assignment			£ 7,163,961	£ 7,163,961		
Delivery partner three				£ -			
Delivery partner four				£ -			
Delivery partner five				£ -			
Delivery partner six				£ -			
Delivery partner seven				£ -			
Delivery partner eight				£ -			
Delivery partner nine				£ -			
Delivery partner ten				£ -			
Delivery partner eleven				£ -			
TOTAL PROGRAMME COST IN GBP				£ 9,000,000	£ 8,390,624	£ 605,376	£

CHECK TRUE

TABLE 4: COMPLETION CHECKLIST	
TAB	COMPLETED: Y/N
1.0 Information	Y
2.0 Total Programme Cost	Y
2.1 Frontline Programme Delivery	Y
2.2 Capital Expenditure	Y
2.3 Programme Staff - Pay	Y
2.4 Programme Staff - Travel	Y
2.5 Monitoring, Evaluation and Lessons Learned	Y
3.0 NPAC	Y
4.0 Payment Profiling	Y

SUPPLIER NOTES (insert more rows as required)

Table 3, Cell F37: The Demand Led TA Assignment Total Amount is included separately as these amounts will be used on demand-driven basis and cost split between lead organisation and Delivery Partners is unknown at this stage.

[illegible]

Copy of PR0610078 - Part C - Pro forma Cost Templates - D4i Global UK







The screenshot displays a complex web application interface. On the left, there is a vertical sidebar containing a list of items, each with a small icon and text. The main area of the page is filled with several large, empty rectangular boxes, suggesting a workspace or a grid for content. At the bottom of the page, there are two smaller, stacked rectangular boxes, one on the left and one on the right, which appear to be part of a footer or a navigation bar. The overall layout is clean and modern, with a light gray background and dark text.

[illegible]

1. **Task 1:** A company has a fixed cost of \$100,000 and a variable cost of \$20 per unit. The company sells its product for \$50 per unit. The company's break-even point is 2,500 units.

M&E Staff PAY and TRAVEL should NOT be included on this tab. Instead please use tabs 2.3 and 2.4 respectively.

M&E Staff PAY and TRAVEL should NOT be included on this tab. Instead please use tabs 2.3 and 2.4 respectively.

PLEASE ONLY ENTER DATA WHERE HIGHLIGHTED YELLOW

[illegible][illegible]

七、其他应付款
应付利息
应付股利
应付账款
预收账款
应付职工薪酬
应交税费
应付债券
长期应付款
专项应付款
预计负债
递延收益
递延所得税负债
其他应付款
其他非流动负债
其他权益工具
其他综合收益
其他





LEAD ORGANISATION PAYMENT  
PROFILING TAB

CONTRACT OFFICER SHOULD COMPLETE  
COLUMNS A-F BEFORE ISSUE  
(then delete this box)

PLEASE ONLY ENTER DATA WHERE  
HIGHLIGHTED YELLOW

PAYMENT SCHEDULE										
PAYMENT NUMBER	PAYMENT TYPE	DETAILED DESCRIPTION (Milestone, Project Stage etc)	PROCESSED BY	PROPOSED YEAR OF PAYMENT	MONTH OF PAYMENT	NET PAYMENT VALUE	NPAC	PROFIT	TOTAL PAYMENT VALUE	PROJECT %
Output-based	Incception milestones - Toll reference 15a	Incception	2021/22	June	£5,771	3,400	2,413	15,383	0.17%	
Output-based	Incception milestones - Toll reference 15b	Incception	2021/22	June	£5,095	1,536	808	7,439	0.08%	
Output-based	Incception milestones - Toll reference 15c	Incception	2021/22	June	£27,874	8,258	3,349	39,481	0.44%	
Output-based	Incception milestones - Toll reference 15d	Incception	2021/22	June	£11,476	4,148	2,905	18,524	0.21%	
Output-based	Incception milestones - Toll reference 15e	Incception	2021/22	June	£47,161	14,108	4,177	65,446	0.73%	
Output-based	Incception milestones - Toll reference 15f	Incception	2021/22	June	£5,351	1,632	981	7,964	0.09%	
Output-based	Incception milestones - Toll reference 15g	Incception	2021/22	June	£1,571	498	385	2,446	0.03%	
Output-based	Incception milestones - Toll reference 15h	Incception	2021/22	June	£5,272	1,882	1,227	8,381	0.09%	
Output-based	Incception milestones - Toll reference 15i	Incception	2021/22	June	£3,527	1,219	834	5,579	0.06%	
Reimbursable (input-based fees)	care services	Implementation	2021/22	September						
Reimbursable (input-based fees)	care services	Implementation	2021/22	December						
Reimbursable (input-based fees)	care services	Implementation	2021/22	March						
Reimbursable (input-based fees)	care services	Implementation	2022/23	June						
Reimbursable (input-based fees)	care services	Implementation	2022/23	September						
Reimbursable (input-based fees)	care services	Implementation	2022/23	December						
Reimbursable (input-based fees)	care services	Implementation	2022/23	March						
Reimbursable (input-based fees)	care services	Implementation	2023/04	June						
Reimbursable (input-based fees)	care services	Implementation	2023/04	September						
Reimbursable (input-based fees)	care services	Implementation	2023/04	December						
Reimbursable (input-based fees)	care services	Implementation	2023/04	March						
Reimbursable (input-based expenses)	care services	Implementation	2021/22	September	9,499			9,499	0.11%	
Reimbursable (input-based expenses)	care services	Implementation	2021/22	December	5,986			5,986	0.07%	
Reimbursable (input-based expenses)	care services	Implementation	2021/22	March	£6,053			6,053	0.07%	
Reimbursable (input-based expenses)	care services	Implementation	2022/23	June	£5,363			5,363	0.06%	
Reimbursable (input-based expenses)	care services	Implementation	2022/23	September	£5,363			5,363	0.06%	
Reimbursable (input-based expenses)	care services	Implementation	2022/23	December	£5,363			5,363	0.06%	
Reimbursable (input-based expenses)	care services	Implementation	2022/23	March	£5,316			5,316	0.06%	
Reimbursable (input-based expenses)	care services	Implementation	2023/04	June	£5,293			5,293	0.06%	
Reimbursable (input-based expenses)	care services	Implementation	2023/04	September	£5,293			5,293	0.06%	
Reimbursable (input-based expenses)	care services	Implementation	2023/04	December	£5,293			5,293	0.06%	
Reimbursable (input-based expenses)	care services	Implementation	2023/04	March	£5,893			5,893	0.07%	
Performance-based (KPI's)	retained against all staff fees	Implementation	2021/22	September	145,225	52,214	26,397	228,846	2.52%	
Performance-based (KPI's)	retained against all staff fees	Implementation	2021/22	December	90,066	31,792	16,204	138,062	1.53%	
Performance-based (KPI's)	retained against all staff fees	Implementation	2021/22	March	89,419	31,525	15,989	136,933	1.52%	
Performance-based (KPI's)	retained against all staff fees	Implementation	2022/23	June	88,958	31,338	15,845	136,137	1.51%	
Performance-based (KPI's)	retained against all staff fees	Implementation	2022/23	September	88,864	31,297	15,810	135,970	1.51%	
Performance-based (KPI's)	retained against all staff fees	Implementation	2022/23	December	90,066	31,792	16,204	138,062	1.53%	
Performance-based (KPI's)	retained against all staff fees	Implementation	2022/23	March	89,419	31,528	15,989	136,933	1.52%	
Performance-based (KPI's)	retained against all staff fees	Implementation	2023/04	June	88,958	31,336	15,845	136,137	1.51%	
Performance-based (KPI's)	retained against all staff fees	Implementation	2023/04	September	88,864	31,297	15,810	135,970	1.51%	
Performance-based (KPI's)	retained against all staff fees	Implementation	2023/04	December	90,066	31,792	16,204	138,062	1.53%	
Performance-based (KPI's)	retained against all staff fees	Implementation	2023/04	March	91,956	32,028	17,394	141,376	1.57%	
TOTAL PAYMENT						1,278,063	604,626	204,710	1,835,039	20.40%
TOTAL PROJECT COST INC. LOCAL GOVERNMENT TAXES									9,000,000	
						CHECK TOTALS		FALSE		

SUPPLIER NOTES (insert more rows as required)

Cell JB3: It is showing false as we have only entered the payment value for care services in the payment schedule as per the guidance and clarification response.

#### C4 Total Core Team Cost

Total Core Team	£	1,836,039
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#### C5 Proposed Risk Share Percentage

Total Fees put at risk against KPIs	100%	6,413,188
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#### C6 Gross Fee Rates

Expert Band (National/International)	Capped Daily Fee Rate	Confirmation of Acceptance of Rate
Principal Expert	max £800	confirmed
Senior Expert	max £650	confirmed
Expert	max £500	confirmed
Assistant Expert	max £400	confirmed
Generalist/Administration	max £135	confirmed



**PROJ10078 ITT Commercial Clarification Form**

Contract Title	SPTAF
Contract Reference	PROJ10078
Organisation	DAI Global

Criteria	Clarifications to be asked	Clarification responses	FCDO responses	
	<p><b><u>Supplier Profit and NPAC</u></b></p> <p>Whilst we appreciate there is an element of unknown in relation to the demand led TA budget please confirm the maximum percentage of profit and NPAC for the total programme budget which would be adhered to should your Company be identified as preferred bidder.</p>	<p>Dear Fiona,</p> <p>Thank you for your message and your question.</p> <p>We are happy to provide an overview of our anticipated maximum NPAC and profit in relation to the total programme budget of £ 9 million. As you indicated, there is an element of unknown in relation to the demand led TA budget, but we would adhere to a maximum of 25 % NPAC and 5 % profit overall.</p> <p>Please don't hesitate to let us know should you require any further information.</p> <p>Best regards, Benita</p>	<p>Thanks Benita,</p> <p>For the avoidance of doubt, please confirm the value of the total programme cost of £9 million apportioned to NPAC and profit assuming these maximum percentages.</p> <p>Best Fiona</p>	<p>Dear Fiona,</p> <p>Thanks for your message. To confirm, this would equal a maximum NPAC of £ 2,250,000 and a maximum profit of £ 450,000.</p> <p>Thank you and best regards, Benita</p>