



Foreign, Commonwealth & Development Office

CONTRACT FOR SUPPLIER SERVICES

Section 1 - FORM OF CONTRACT

CONTRACT FOR : **Forest Governance, Markets and Climate Phase 2 – Facilitation Services**

**PURCHASE ORDER
NUMBER** : **ecm_8017**

THIS CONTRACT is made

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

AND : **Palladium International Ltd**
whose registered office is situated at HYLO, 16th Floor, 103 -
105 Bunhill Row, London, EC1Y 8LZ ("**Supplier**")

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

WHEREAS:

- A.** FCDO requires the Supplier to provide the Services to the national stakeholders engaged in forest sector governance reform processes, including those framed by Voluntary Partnership Agreements (VPA), and in particular the agencies responsible for forest and land regulation, forest businesses, especially small businesses who have limited capacity for representation at national policy making, concerned civil society organisations as well as representation of Indigenous People and Land Communities (IPLC). (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.



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3. Commencement Date and End Date of Initial Period

The Services shall commence on **01 November 2025** and the end date of the Initial Period shall be **31 October 2029**.

4. Financial Limit

Payments under this Contract shall not, unless approved and agreed by FCDO via a contract amendment, exceed £11,204,365.16 exclusive of any UK VAT, if applicable, but inclusive of any other government tax, if applicable.

5. Programme Name

The Programme Name to which this Contract relates is Forest Governance, Markets and Climate Phase 2.

6. Time of the Essence

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

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

Name:

Position:

Signature: Via Jaggaer

Date: as Jaggaer

Redacted under Section 40 (Personal Information) of the Freedom of Information Act FOIA (2000).

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

Name:

Position:

Signature: Via Jaggaer

Date: as Jaggaer

Redacted under Section 40 (Personal Information) of the Freedom of Information Act FOIA (2000).



FOREIGN, COMMONWEALTH AND DEVELOPMENT OFFICE (FCDO)
STANDARD TERMS AND CONDITIONS – SERVICE CONTRACTS

SECTION 2 - GENERAL CONDITIONS OF CONTRACT



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Preliminaries

1. DEFINITIONS AND INTERPRETATION

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

2. REPRESENTATIONS AND WARRANTIES

- 2.1 The Supplier represents and warrants that:
- 2.1.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
 - 2.1.2 it has full capacity and authority to enter into and to perform this Contract;
 - 2.1.3 this Contract is executed by its duly authorised representative;
 - 2.1.4 it has all necessary consents and regulatory approvals, including in the country of performance, to enter into this Contract;
 - 2.1.5 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Contract;



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- 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 procurement specific 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) are/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 free of all encumbrances, any exceptions must be agreed in writing with FCDO.
- 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.



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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 17 (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).



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- 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/publications/united-kingdom-security-vetting-clearance-levels/national-security-vetting-clearance-levels>)
 - (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. INDEPENDENT CONTRACTOR

- 7.1 Neither the Supplier, its officers, employees or agents are (nor shall they be deemed to be) employees or agents of FCDO in relation to the provision of the Services under the Contract and the Supplier shall represent itself only as an independent contractor.
- 7.2 Neither the Supplier, its officers, employees or agents shall be entitled to any benefits from FCDO in relation to the Services undertaken in relation to this Contract, including health, death, disability or any insurance benefits.
- 7.3 The Supplier acknowledges and agrees that, by reason of its status as an independent contractor, FCDO shall not have any obligations or liability whatsoever to the Supplier, or the Supplier's officers and employees or the Supplier's successors, assignees or creditors for any taxes required to be provided in the United Kingdom or any other jurisdiction, including all taxes due on any monies paid to the Supplier pursuant to this agreement and all national insurance contributions. FCDO may however be required to comply with any withholding requirement stipulated by legislation from time to time.
- 7.4 This Contract constitutes a contract for the provision of services and not a contract of service or employment and so the Supplier shall be fully responsible for and shall indemnify FCDO for and in respect of:
- 7.4.1 any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim (including all costs, expenses and any penalty, fine or interest incurred



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or payable by FCDO in connection with or in consequence of any such liability, deduction, contribution, assessment or claim) arising from or made in connection with either the performance of the Services or any payment or benefit received by the Supplier in respect of the Services delivered using a sub-contractor provided that such recovery is not prohibited by law and has not arisen out of FCDO's negligence or wilful default;

- 7.4.2 any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the sub-contractor or its employees against FCDO arising out of or in connection with the provision of the Services;
- 7.4.3 any liability arising from the employment or termination of employment of the sub-contractor or its employees or employees of the Supplier or any transfer FCDO of the employment of the sub-contractor or its employees or employees of the Supplier or liabilities arising out of their employment or its termination pursuant to or by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006 or any claim that their employment or such claims or liabilities so transfer; and/or
- 7.4.4 any liability arising from a claim, demand or action by the sub-contractor or its employees that FCDO or the Supplier has breached its or their obligations under the Agency Workers Regulations 2010.

8. SUB-CONTRACTORS AND EXCLUSIVITY

- 8.1 FCDO has consented to the appointment of the Sub-Contractors set out in Section 4 (Special Conditions).
- 8.2 The Supplier shall exercise due skill and care in the selection of any Sub-Contractors to ensure that the Supplier is able to:
 - 8.2.1 manage any Sub-Contracts in accordance with Good Industry Practice;
 - 8.2.2 comply with its obligations under this Contract in the provision of the Services; and
 - 8.2.3 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.
- 8.3 Prior to sub-contacting any of its obligations under this Contract, the Supplier shall both act in accordance with Clause 9 below and notify FCDO and provide FCDO with:
 - 8.3.1 the proposed Sub-Contractor's name, registered office and company registration number;
 - 8.3.2 the scope of any Services to be provided by the proposed Sub-Contractor; and
 - 8.3.3 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.
- 8.4 If requested by FCDO within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 8.3, the Supplier shall also provide:
 - 8.4.1 a copy of the proposed Sub-Contract; and
 - 8.4.2 any further information reasonably requested by FCDO.
- 8.5 FCDO may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 8.3 (or, if later, receipt of any further information requested pursuant to Clause 8.4), object to the appointment of the relevant Sub-Contractor if they consider that:
 - 8.5.1 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;
 - 8.5.2 the proposed Sub-Contractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
 - 8.5.3 the proposed Sub-Contractor employs unfit persons,in which case, the Supplier shall not proceed with the proposed appointment.
- 8.6 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:
 - 8.6.1 the Supplier's notice issued pursuant to Clause 8.3; or
 - 8.6.2 any further information requested by FCDO pursuant to Clause 8.4,the Supplier may proceed with the proposed appointment.



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8.7 The Supplier shall ensure that all Sub-Contracts contain provisions:

- 8.7.1 requiring the Sub-Contractor to comply with the FCDO's Supply Partner Code of Conduct (Appendix B) at all times;
 - 8.7.2 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;
 - 8.7.3 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;
 - 8.7.4 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;
 - 8.7.5 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;
 - 8.7.6 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 8.7;
 - 8.7.7 enabling the FCDO to have the ability to directly enforce the benefit of the Sub-Contract under the Contracts (Rights of Third Parties) Act 1999; and
 - 8.7.8 which require the Sub-Contractor to comply with obligations in respect of (i) security and secrecy, (ii) intellectual property and (iii) audit rights for the benefit of FCDO which are substantially equivalent to the obligations placed on the Supplier pursuant to this Contract,
- and shall not sub-contract any of its obligations under this Contract without including such provisions unless it obtains the prior written consent of FCDO. Such consent may be conditional on inclusion within those Sub-Contracts of such alternative or varied provisions to those otherwise required to be included as FCDO reasonably considers necessary.

8.8 The Supplier shall:

- 8.8.1 pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days from the receipt of a valid invoice;
- 8.8.2 include within the Performance Monitoring Reports required under Clause 14.3 a summary of its compliance with this Clause 8.8.1, such data to be certified each quarter by a director of the Supplier as being accurate and not misleading;
- 8.8.3 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;
- 8.8.4 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 51.1 to 51.7, which shall be included in all Supplier Sub-Contracts.

9. NOT USED

10. STAFF TRANSFER

10.1 The Parties agree that:

- 10.1.1 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.
- 10.1.2 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



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- 10.1.3 Part D of Schedule 2 (Staff Transfer) shall apply on the expiry or termination of the Services or any part of the Services;
- 10.2 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.

11. DUTY OF CARE

- 11.1 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.
- 11.2 The Supplier warrants that it has and will throughout the duration of the Contract:
- 11.2.1 carry out the appropriate risk assessment with regard to its delivery of the Services;
 - 11.2.2 provide the Supplier Personnel with adequate information, instruction, training and supervision;
 - 11.2.3 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.
- 11.3 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 11. 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.
- 11.4 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.
- 11.5 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 11, are reasonable and prudent in all circumstances, including in respect of death, injury or disablement, and emergency medical expenses.
- 11.6 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.
- 11.7 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).
- 11.8 The Supplier shall provide training on a continuing basis for all Supplier Personnel, in compliance with the Security Policy and the security plan.

12. PROCUREMENT OF EQUIPMENT

- 12.1 The Supplier shall ensure that procurement of goods and equipment shall:
- 12.1.1 be undertaken in accordance with best practice principles of openness fairness and transparency;
 - 12.1.2 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;
 - 12.1.3 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
 - 12.1.4 be on the basis that the ownership of Equipment shall vest in FCDO, and shall be so marked.



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13. USE OF AND RESPONSIBILITY FOR EQUIPMENT

- 13.1 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.
- 13.2 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.
- 13.3 Subject to Clause 13.4 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
- 13.4 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.
- 13.5 The Supplier shall obtain FCDO's instructions on the disposal of Equipment and comply with such instructions.

Contract Governance

14. MONITORING OF CONTRACT PERFORMANCE

- 14.1 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 14 shall apply.
- 14.2 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.
- 14.3 The Supplier shall provide FCDO with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process and timescales agreed pursuant to Clause 14.2 above which shall contain, as a minimum, the following information:
- 14.3.1 details of compliance with its obligations under Clause 8.8.2
 - 14.3.2 details of compliance with any additional obligations set out in Section 3 (Terms of Reference);
 - 14.3.3 details of compliance with its obligations under Annex 1b of Section 2 (Contractual Annual Compliance Declaration); and
 - 14.3.4 such other details as FCDO may reasonably require from time to time.
- 14.4 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):
- 14.4.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier;
 - 14.4.2 take place at such location and time (within normal business hours) as FCDO shall reasonably require unless otherwise agreed in advance;
 - 14.4.3 be attended by the Supplier's Contract Officer and the FCDO's Project Officer; and
 - 14.4.4 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.
- 14.5 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.



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15. PROGRESS & FINANCIAL REPORTS

- 15.1 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.

16. OPEN BOOK ACCOUNTING AND AUDIT

- 16.1 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.

- 16.2 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 004), 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).

- 16.3 The Supplier shall:

- 16.3.1 keep the records and accounts referred to in Clause 16.1 in accordance with Good Industry Practice and Law; and
- 16.3.2 afford FCDO and/or its Auditors access to the records and accounts referred to in Clause 16.1 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 16.1, 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.



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- 16.4 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.
- 16.5 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:
- 16.5.1 all reasonable information requested by FCDO within the scope of the audit;
 - 16.5.2 reasonable access to sites controlled by the Supplier and to any Supplier Equipment used in the provision of the Services; and
 - 16.5.3 access to the Supplier Personnel.
- 16.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 16, 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.
- 17. EXIT MANAGEMENT**
- 17.1 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:
- 17.1.1 details of the Service(s);
 - 17.1.2 a copy of the Register, updated by the Supplier up to the date of delivery of such Registers;
 - 17.1.3 an inventory of FCDO Data in the Supplier's possession or control;
 - 17.1.4 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
 - 17.1.5 a list of on-going and/or threatened disputes in relation to the provision of the Services;
 - 17.1.6 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
 - 17.1.7 such other material and information as FCDO shall reasonably require, (together, the "Exit Information").
- 17.2 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).
- 17.3 If the Exit Information materially changes from the Exit Information previously provided and it could reasonably adversely affect:
- 17.3.1 the provision of the Services; and/or
 - 17.3.2 the delivery of the exit services/exit plan; and/or
 - 17.3.3 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.
- 17.4 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:
- 17.4.1 prepare an informed offer for those Services; and
 - 17.4.2 not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).
- 17.5 The Supplier shall, within three (3) months after the Commencement Date, deliver to FCDO an Exit Plan which:
- 17.5.1 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;
 - 17.5.2 complies with the requirements set out in Clause 17.7 below;
 - 17.5.3 is otherwise reasonably satisfactory to FCDO.
- 17.6 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.



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- 17.7 Unless otherwise specified by FCDO, the Exit Plan shall set out, as a minimum:
- 17.7.1 how the Exit Information is obtained;
 - 17.7.2 the management structure to be employed during both transfer and cessation of the Services;
 - 17.7.3 the management structure to be employed whilst carrying out the activities to be performed by the Supplier as identified in the Exit Plan;
 - 17.7.4 a detailed description of both the transfer and cessation processes, including a timetable;
 - 17.7.5 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);
 - 17.7.6 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);
 - 17.7.7 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;
 - 17.7.8 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;
 - 17.7.9 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;
 - 17.7.10 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);
 - 17.7.11 proposals for the disposal of any redundant Services and materials;
 - 17.7.12 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;
 - 17.7.13 how each of the issues set out in this Clause 17 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;
 - 17.7.14 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

18. Charges

- 18.1 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 23.
- 18.2 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.

19. VAT

- 19.1 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.



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- 19.2 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.

20. RETENTION AND SET OFF

- 20.1 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.
- 20.2 If FCDO wishes to exercise its right pursuant to Clause 20.1 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.
- 20.3 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

21. SUPPLIER PROFIT

- 21.1 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.
- 21.2 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:
- 21.2.1 pay FCDO an amount equal to the difference between the Projected Profit Margin and the Exceeded Amount; or
 - 21.2.2 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
 - 21.2.3 adjust the Charges.

22. SATISFACTORY PERFORMANCE

- 22.1 Payments made pursuant to Clause 18.1 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.
- 22.2 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.
- 22.3 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.

23. PAYMENTS & INVOICING INSTRUCTIONS

- 23.1 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



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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.

- 23.2 Expenses (if any) arising in foreign currency shall be reimbursed at the exchange rate stated in OANDA (www.oanda.com) on the Friday immediately preceding the date on which the purchase was made or services acquired by the Supplier or, if this took place on a Friday, at the rate so stated on that day.
- 23.3 Unless otherwise expressly provided in Section 4 (Special Conditions) or Section 5 (Schedule of Prices), invoices should be submitted electronically monthly in arrears to the Accounts Payable Section, FCDO Financial Management Group e-invoicing@FCDO.gov.uk, and in accordance with this Clause 23.
- 23.4 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:
- 23.4.1 the Supplier's name;
 - 23.4.2 the invoice amount;
 - 23.4.3 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);
 - 23.4.4 the date of the invoice;
 - 23.4.5 a unique invoice number;
 - 23.4.6 the period(s) to which the relevant charge(s) relate;
 - 23.4.7 the correct reference for this Contract and the purchase order to which it relates;
 - 23.4.8 a contact name and telephone number of a responsible person in the supplier's finance department; and
 - 23.4.9 a detailed breakdown of the Services and the appropriate Charges and supported by any other documentation required by FCDO to substantiate the invoice.
- 23.5 All Valid Invoices should correspond with the budget lines identified in Section 5 (Schedule of Prices) of this Contract.
- 23.6 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.
- 23.7 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.
- 23.8 In the event of any invoiced amounts being disputed, FCDO shall pay any undisputed amounts in accordance with Clause 23.1. The Supplier shall not be entitled to suspend the provision of Services in connection with a dispute and any disputed amounts shall be resolved through the dispute resolution procedure set out in Clause 48.

24. UNITED KINGDOM INCOME TAX AND NATIONAL INSURANCE CONTRIBUTIONS

- 24.1 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:
- 24.1.1 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;
 - 24.1.2 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.

25. TAX COMPLIANCE

- 25.1 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- 25.1.1 notify FCDO in writing of such fact within 5 Working Days of its occurrence;
 - 25.1.2 promptly provide to FCDO:



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- (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

26. INTELLECTUAL PROPERTY RIGHTS

- 26.1 Save as expressly granted elsewhere under this Contract:
- 26.1.1 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.
 - 26.1.2 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.
- 26.2 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 26.1, 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).
- 26.3 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.
- 26.4 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.
- 26.5 Subject to Clause 26.7, 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.
- 26.6 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 26.5 above and the Supplier shall provide full details of the adverse effect this may have on FCDO's use of the Project Specific IPRs.
- 26.7 Where the Supplier is unable to comply with Clause 26.5, 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.
- 26.8 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.
- 26.9 If an IPR Claim is made or anticipated, the Supplier must at its own expense and FCDO's sole option, either:
- 26.9.1 procure for FCDO the rights in Clause 26.5 without infringing the IPR of any third party; or
 - 26.9.2 replace or modify the relevant item with non-infringing substitutes with no detriment to functionality of performance of the Services.



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27. SECURITY REQUIREMENTS

- 27.1 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.
- 27.2 The Supplier shall ensure that it keeps up to date with the latest version of the Security Policy.
- 27.3 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 39. 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.
- 27.4 Until and/or unless a change to the Charges is agreed by FCDO pursuant to Clause 27.3 the Supplier shall continue to perform the Services in accordance with its obligations and for the Charges applicable prior to any change request.

28. MALICIOUS SOFTWARE

- 28.1 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.
- 28.2 Notwithstanding Clause 28.1 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.
- 28.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 28.2 shall be borne by the Parties as follows:
- 28.3.1 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
 - 28.3.2 by FCDO if the Malicious Software originates from the FCDO Software or the FCDO Data (whilst FCDO Data was under the control of FCDO).

29. TRANSPARENCY

- 29.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of Clause 31 (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 and/or the EIR.
- 29.2 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.
- 29.3 FCDO may consult with the Supplier to inform its decision regarding any exemptions with regard to FOIA and/or the EIR but FCDO shall have the final decision in its absolute discretion.
- 29.4 The Supplier shall assist and cooperate with FCDO to enable FCDO to publish this Contract.
- 29.5 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.
- 29.6 The Supplier shall:
- 29.6.1 publish information data to the IATI standard, as outlined in the Supplier Code of Conduct at Appendix B. 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



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- 29.6.2 provide all necessary assistance as reasonably requested by FCDO to enable FCDO to respond to the IATI requirements.
- 29.7 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;
- 29.7.1 as required in the terms of reference;
- 29.7.2 annually;
- 29.7.3 when there are material changes in the delivery chain; and
- 29.7.4 as part of the project completion process.
- 30. CONFIDENTIALITY**
- 30.1 Except to the extent set out in this Clause 30 or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
- 30.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly;
- 30.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 30.2 Clause 30.1 shall not apply to the extent that:
- 30.2.1 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 31 (Freedom of Information);
- 30.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- 30.2.3 such information was obtained from a third party without obligation of confidentiality;
- 30.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
- 30.2.5 it is independently developed without access to the other Party's Confidential Information.
- 30.3 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.
- 30.4 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.
- 30.5 At the written request of FCDO, the Supplier shall procure that those members of the Supplier Personnel referred to in Clause 30.3, respectively sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 30.6 Nothing in this Contract shall prevent FCDO from disclosing the Supplier's Confidential Information:
- 30.6.1 on a confidential basis to any Central Government Body for any proper purpose of FCDO or of the relevant Central Government Body;
- 30.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- 30.6.3 to the extent that FCDO (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- 30.6.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 30.6.1 (including any benchmarking organisation) for any purpose relating to or connected with this Contract;
- 30.6.5 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 16 (Open Book Accounting and Audit), its rights to appoint an advisor pursuant to Clause 48 (Dispute Resolution) and any rights set out in Clause 17 (Exit Management);
- 30.6.6 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
- 30.6.7 for the purpose of the examination and certification of FCDO's accounts,



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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 30.

- 30.7 Nothing in this Clause 30 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.
- 30.8 The Supplier acknowledges that FCDO is subject to obligations under the Procurement Act which may require the publication of details relating to this Contract and/or the Supplier and its performance of its obligations under this Contract. The Supplier hereby acknowledges these requirements and consents to the publication of such information as FCDO considers is necessary to comply with its obligations under the Procurement Act.

31. FREEDOM OF INFORMATION

- 31.1 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.
- 31.2 The Supplier shall and shall ensure that its Sub-Contractors shall:
- 31.2.1 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;
 - 31.2.2 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
 - 31.2.3 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.
- 31.3 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.
- 31.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by FCDO.
- 31.5 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:
- 31.5.1 in certain circumstances without consulting the Supplier;
 - 31.5.2 following consultation with the Supplier and having taken their views into account;
 - 31.5.3 provided always that where Clause 31.5.1 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.
- 31.6 The Supplier shall ensure that all Information is retained for disclosure in accordance with Clauses 31.7 and 31.8 and shall permit FCDO to inspect such records as requested by FCDO from time to time.
- 31.7 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:
- 31.7.1 in accordance with Good Industry Practice and Law;
 - 31.7.2 in chronological order;
 - 31.7.3 in a form that is capable of audit;
 - 31.7.4 at its own expense.
- 31.8 Wherever practical, original Information shall be retained and maintained in hard copy form.



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32. OFFICIAL SECRETS ACT

- 32.1 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.

33. FCDO DATA

- 33.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to FCDO Data.
- 33.2 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.
- 33.3 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.
- 33.4 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.
- 33.5 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.
- 33.6 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.
- 33.7 If FCDO Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, FCDO may:
- 33.7.1 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
 - 33.7.2 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.
- 33.8 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.
- 33.9 The Supplier shall obtain and maintain certification under the HM Government Cyber Essentials Scheme.

34. PROTECTION OF PERSONAL DATA

- 34.1 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 Annex 5 of the ITT Volume 1 and update it where appropriate.
- 34.2 **Where a Party is Processing on behalf of the other Party who is the Controller**
- 34.2.1 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. The only processing that the Processor is authorised to do is listed in Annex 5 of the ITT Volume 1 by the Controller and may not be determined by the Processor. The term "processing" and any associated terms are to be read in accordance with Article 4 of the UK GDPR.
 - 34.2.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.



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- 34.2.3 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.
- 34.2.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
- (a) process that Personal Data only in accordance with the Annex referred to in Clause 34.2.1, 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. In the event of the Controller reasonably rejecting Protective measures put in place by the Processor, the Processor must propose alternative measures to the satisfaction of the Controller. Failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures. Protective Measures must take 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 Contract (and in particular the Annex referred to in Clause 34.2.1);
 - 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 Contract; 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 UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - a. the destination country has been recognised as adequate by the UK Government in accordance with Article 45 of the UK GDPR or section 74 of the DPA 2018;
 - b. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or section 75 DPA 2018) and/or Article 46 of the EU GDPR (where applicable) as determined by the Controller which could include relevant parties entering into;
 - i. where the transfer is subject to UK GDPR:
 - 1. the International Data Transfer Agreement issued by the Information Commissioner under S119A(1) of the DPA 2018 (the "IDTA"); or
 - 2. the European Commission's Standard Contractual Clauses per decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time ("EU SCCs") together with the UK International Data Transfer Agreement Addendum to the EU SCCs (the "Addendum"), as published by the Information Commissioner's Office from time to time under section 119A(1) of the DPA 2018; and/or
 - ii. where the transfer is subject to EU GDPR, the EU SCCs,
 - c. as well as any additional measures determined by the controller being implemented by the importing party;
 - d. the Data Subject has enforceable rights and effective legal remedies;



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- e. 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
 - f. 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 Contract unless the Processor is required by Law to retain the Personal Data.
- 34.2.5 Subject to clause 34.2.6, the Processor shall notify the Controller immediately 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 Contract;
 - 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.
- 34.2.6 The Processor's obligation to notify under clause 34.2.5 shall include the provision of further information to the Controller, as details become available
- 34.2.7 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 34.2.5 (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.
- 34.2.8 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 UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
 - c. the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 34.2.9 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.
- 34.2.10 Each party shall designate its own Data Protection Officer if required by the Data Protection Legislation.
- 34.2.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, 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 34.2 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.
- 34.2.12 The Processor shall remain fully liable for all acts or omissions of any Sub-processor.
- 34.2.13 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



Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

34.3 Where the Parties both Control Personal Data Independently

34.3.1 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 34.3.

34.3.2 Each Party shall Process the Personal Data in compliance with its obligations under the Data Protection Legislation and not to anything to cause the other Party to be in breach of it.

34.3.3 Where a Party has provided Personal Data to the other Party in accordance with Paragraph 34.3.1 above, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.

34.3.4 The Parties shall be responsible for their own compliance with Articles 13 and 14 of UK GDPR in respect of Processing of Personal Data for the purposes of the Contract.

34.3.5 The Parties shall only provide Personal Data to each other:

34.3.5.1 to the extent necessary to perform their respective obligations under this Agreement and/or any Call down Contract;

34.3.5.2 in compliance with the Data Protection Legislation (including by ensuring all required data privacy information has been given to affected Data Subjects to meet the requirements of Articles 13 and 14 of the UK GDPR); and

34.3.5.3 Where the provision of Personal Data from one Party to another involves transfer of such data to outside the UK and/or the EEA, if the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:

- a. the destination country has been recognised as adequate by the UK government in accordance with Article 45 of the UK GDPR or DPA 2018 Section 74A and/or Article 45 of the EU GDPR (where applicable); or
- b. the transferring Party has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 Section 75 and/or Article 46 of the EU GDPR (where applicable)) as determined by the non-transferring Party which could include:

i. where the transfer is subject to UK GDPR:

- A. the International Data Transfer Agreement (the "IDTA") ""as published by the Information Commissioner's Office or such updated version of such IDTA as is published by the Information Commissioner's Office under section 119A(1) of the DPA 2018 from time to time; or
- B. the European Commission's Standard Contractual Clauses per decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time (the "EU SCCs"), together with the UK International Data Transfer Agreement Addendum to the EU SCCs (the "Addendum") as published by the Information Commissioner's Office from time to time; and/or

ii. where the transfer is subject to EU GDPR, the EU SCCs, as well as any additional measures determined by the Controller being implemented by the importing party;



- c. the Data Subject has enforceable rights and effective legal remedies;
- d. the transferring Party 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 non-transferring Party in meeting its obligations); and
- e. the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data; and

34.3.5.4 Where it has recorded it in [Annex 5 of ITT Volume 1]

34.3.6 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 UK GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.

34.3.7 A Party Processing Personal Data for the purposes of the Contract shall maintain a record of its Processing activities in accordance with Article 30 UK GDPR and shall make the record available to the other Party upon reasonable request.

34.3.8 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to the Contract ("Request Recipient"):

34.3.8.1 the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or

34.3.8.2 where the request or correspondence is directed to the other Party and/or relates to that other Party's Processing of the Personal Data, the Request Recipient will:

- a. promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
- b. provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.

34.3.9 Each Party shall promptly notify the other Party upon it becoming aware of any Data Loss Event relating to Personal Data provided by the other Party pursuant to the Contract and shall:

34.3.9.1 do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Loss Event;

34.3.9.2 implement any measures necessary to restore the security of any compromised Personal Data;

34.3.9.3 work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and

34.3.9.4 not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.



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

34.3.11 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Agreement and/or any Call Down Contract as specified in [Annex 5 of the TT Volume 1]

34.3.12 Personal Data shall not be retained or processed for longer than is necessary to perform each Party’s respective obligations under his Agreement and/or any Call Down Contract which is specified in [Annex 5 of the ITT Volume 1].

34.4 Where the Parties are both Controllers of Personal Data Jointly

34.4.1 With respect to Personal Data which has been identified in [Annex 5 of the ITT Volume 1] as under Joint Control of the Parties, the parties 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.

34.4.2 The Supplier shall be the exclusive point of contact for Data Subjects in Annex 5 of the ITT Volume 1 in who shall:

34.4.2.1 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;

34.4.2.2 be responsible for the Parties’ compliance with all duties to provide information under Articles 13 and 14 of the GDPR; and

34.4.2.3 is responsible for obtaining the informed consent of Data Subjects, in accordance with the UK GDPR, for Processing in connection with the Services where consent is the relevant legal basis for that Processing; and

34.4.2.4 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).

34.4.3 The joint controllers each undertake that they shall

34.4.3.1 report to the other Party every three months on:

- a. the volume of Data Subject Access Requests (or purported Data Subject Access Requests) from Data Subjects (or third parties on their behalf);
- b. the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;
- c. 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;
- d. any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and



- e. 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;

34.4.3.2 notify each other immediately if it receives any request, complaint or communication made as referred to in Clauses 34.4.3.1 (a) to (e) and

34.4.3.3 provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Clauses 34.42 and 34.4.3.1 (a) to (e) to enable the other Party to comply with the relevant timescales set out in the Data Protection Law.

34.4.3.4 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 Annex 5 of the ITT.

34.4.3.5 request from the Data Subject only the minimum information necessary to provide the Services and treat such extracted information as Confidential Information.

34.4.3.6 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

34.4.3.7 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:

- a. are aware of and comply with their duties under Annex 5 of the ITT and those in respect of Confidential Information
- b. 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;
- c. have undergone adequate training in the use, care, protection and handling of personal data as required by the applicable Data Protection Law;

34.4.3.8 ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Event 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.

34.4.3.9 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

34.4.3.10 ensure that it notifies the other Party promptly and in any event within 48 hours if it becomes aware of a Data Loss Event.

34.4.3.11 not transfer such Personal Data outside of the UK and/or the EEA unless the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:



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- a. the destination country has been recognised as adequate by the UK government in accordance with Article 45 of the UK GDPR or DPA 2018 Section 74A and/or the transfer is in accordance with Article 45 of the EU GDPR (where applicable); or
- b. the transferring Party has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 Section 75 and/or Article 46 of the EU GDPR (where applicable)) as agreed with the non-transferring Party which could include:
 - i. where the transfer is subject to UK GDPR:
 - A. the UK International Data Transfer Agreement (the "IDTA"), as published by the Information Commissioner's Office under section 119A(1) of the DPA 2018 from time to time; or
 - B. the European Commission's Standard Contractual Clauses per decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time (the "EU SCCs"), together with the UK International Data Transfer Agreement Addendum to the EU SCCs (the "Addendum") as published by the Information Commissioner's Office from time to time; and/or
 - ii. where the transfer is subject to EU GDPR, the EU SCCs, as well as any additional measures determined by the Controller being implemented by the importing party;
- c. the Data Subject has enforceable rights and effective legal remedies;
- d. the transferring Party 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 non-transferring Party in meeting its obligations); and
- e. the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data.

34.4.4 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 contract 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.

34.4.4.1 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 Data Loss Event, providing the other Party and its advisors with:

- a. sufficient information and in a timescale which allows the other Party to meet any obligations to report a D under the Data Protection Laws;
- b. all reasonable assistance, including:
 - i. co-operation with the other Party and the Information Commissioner investigating the Data Loss Event and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;
 - ii. 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 Data Loss Event;



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- iii. reasonable co-ordination with the other Party regarding the management of public relations and public statements relating to the Data Loss Event;
 - iv. providing the other Party and to the extent requested by the other Party to do so, and/or the Information Commissioner investigating the Data Loss Event, with complete information relating to the Data Loss Event, including, without limitation, the information set out in Clause 34.4.5.
- 34.4.5 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 Data Loss Event 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 Data Loss Event, including providing the other Party, as soon as possible and within 48 hours upon becoming aware of the Data Loss Event relating to the Data Loss Event, in particular:
- 34.4.5.1 the nature of the Data Loss Event;
 - 34.4.5.2 the nature of Personal Data affected;
 - 34.4.5.3 the categories and number of Data Subjects concerned;
 - 34.4.5.4 the name and contact details of the Provider's Data Protection Officer or other relevant contact from whom more information may be obtained;
 - 34.4.5.5 measures taken or proposed to be taken to address the Data Loss Event; and
 - 34.4.5.6 describe the likely consequences of the Data Loss Event.
- 34.4.6 The Parties shall:
- 34.4.6.1 provide all reasonable assistance to 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);
 - 34.4.6.2 maintain full and complete records of all processing carried out in respect of the Personal Data in connection with this Contract, in accordance with the terms of Article 30 UK GDPR.
- 34.4.7 The Parties agree to take account of any guidance issued by the Information Commissioner, or any other regulatory authority. The Buyer may on not less than thirty (30) Working Days' notice to the Supplier amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner, or any other regulatory authority.
- 34.4.8 If financial penalties are imposed by the Information Commissioner on either Joint Controller for a Data Loss Event ("Financial Penalties") then the following shall occur:
- 34.4.8.1 If the FCDO is responsible for the Data Loss Event, 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;
 - 34.4.8.2 If the Supplier is responsible for the Data Loss Event, 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.



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34.4.8.3 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 Data Loss Event can be apportioned. In the event that the Parties do not agree such apportionment then such Dispute shall be referred to Dispute Resolution.

34.4.9 If any of the Joint Controllers is the defendant in a legal claim brought by a third party in respect of a Data Loss Event, 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 Data Loss Event 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.

34.4.10 In respect of any losses, cost claims or expenses incurred by either Party as a result of a Data Loss Event (the "Claim Losses"):

34.4.10.1 the Party responsible for the relevant breach shall be responsible for the Claim Losses; and

34.4.10.2 if responsibility is unclear, then the Parties shall be responsible for the Claim Losses equally.

34.4.11 In respect of any Processing of Personal Data under Joint Control by a sub-contractor or agents of a Party, each Party shall:

34.4.11.1 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 the contract), and provide evidence of such due diligence to the other Party where reasonably requested by the other Party or the Information Commissioner; and

34.4.11.2 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

34.4.12 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.

35. PUBLICITY AND BRANDING

35.1 The Supplier shall not:

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

35.1.2 use FCDO's name or brand (including the 'UK International Development Partnership, Progress Prosperity logo (UK Dev logo') in any promotion, marketing, communications or announcement of orders; without the prior written consent of the FCDO.

35.2 Where and to the extent that FCDO has provided consent pursuant to Clause 35.1, then the Supplier:

35.2.1 shall collaborate with FCDO and proactively look for ways to build support for development and raise awareness of FCDO's funding.

35.2.2 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 International Development – Partnership, Progress Prosperity" logo ('UK Dev logo') in accordance with FCDO standards for use of the UK Dev logo unless otherwise agreed in advance by FCDO and in all cases subject to security and safety considerations of the Supplier.



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- 35.2.3 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 Dev Logo. The Supplier shall include reference to this in its progress reports and annual reviews.
- 35.2.4 may use the UK Dev 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

36. LIMIT OF LIABILITY

36.1 Neither Party limits its liability for:

- 36.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
- 36.1.2 fraud or fraudulent misrepresentation by it or its employees;
- 36.1.3 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
- 36.1.4 any liability to the extent it cannot be limited or excluded by Law.

36.2 Subject to Clause 36.1, 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.

36.3 Subject to Clause 36.1, 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).

36.4 Subject to Clause 36.1 and Clause 36.5, neither Party be liable to the other for any:

- 36.4.1 loss of profits;
- 36.4.2 loss of turnover;
- 36.4.3 loss of savings;
- 36.4.4 loss of business opportunities;
- 36.4.5 loss of revenue; or
- 36.4.6 loss of or damage to goodwill,
(in each case whether direct or indirect); and/or
- 36.4.7 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.

36.5 Subject to Clause 36.2, and notwithstanding Clause 36.4, 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:

- 36.5.1 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;
- 36.5.2 any wasted expenditure or charges;
- 36.5.3 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;
- 36.5.4 any compensation or interest paid to a third party by FCDO; and
- 36.5.5 any fine, penalty or costs incurred by FCDO pursuant to Law.

37. INDEMNITY

37.1 Subject to Clauses 36.1 to 36.5 (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.



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- 37.2 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.

38. INSURANCE

- 38.1 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).
- 38.2 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.
- 38.3 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

39. VARIATIONS

- 39.1 Either Party may request a variation to this Contract provided that such variation does not amount to an unlawful change of this Contract within the meaning of the Procurement Act and the Law. Such a change once implemented is hereinafter called a "**Variation**".
- 39.2 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:
- 39.2.1 the extent of the proposed Variation and any additional cost that may be incurred; and
 - 39.2.2 a formal, technical and commercial justification.
- 39.3 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:
- 39.3.1 agree to continue to perform its obligations under this Contract without the Variation; or
 - 39.3.2 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.
- 39.4 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 39 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 39.
- 39.5 Further to the provisions of this clause, FCDO shall be permitted to publish details of any Variation to this Contract where it considers it necessary to do so in order to comply with its obligations under the Procurement Act.

40. ASSIGNMENT AND NOVATION

- 40.1 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.
- 40.2 Subject to Clause 40.1, 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



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under the Late Payments of Commercial Debts (Interest) Act 1998). Any assignment under this Clause 40.2 shall be subject to:

- 40.2.1 deduction of any sums in respect of which FCDO exercises its right of recovery under Clause 20 (Retention and Set Off);
 - 40.2.2 all related rights of FCDO under the Contract in relation to the recovery of sums due but unpaid; and
 - 40.2.3 FCDO receiving notification under both Clauses 40.3 and 40.4.
- 40.3 In the event that the Supplier assigns the right to receive the Charges under Clause 40.2, the Supplier shall notify FCDO in writing of the assignment and the date upon which the assignment becomes effective.
- 40.4 The Supplier shall notify FCDO of the assignee's contact information and bank account details to which FCDO shall make payment.

Default and Termination

41. FCDO REMEDIES FOR DEFAULT

41.1 Remedies

41.1.1 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 46 (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 46 (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.

41.1.2 Where FCDO exercises any of its step-in rights under Clauses 41.1.1 (c) (ii) or 41.1.1 (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.

41.2 Rectification Plan Process

41.2.1 Where FCDO has instructed the Supplier to comply with the Rectification Plan Process pursuant to 41.1.1 (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



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- (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).
- 41.2.2 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.
- 41.2.3 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.
- 41.2.4 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.
- 41.2.5 If FCDO consents to the Rectification Plan, the Supplier shall immediately start work on the actions set out in the Rectification Plan.

42. FINANCIAL DISTRESS

- 42.1 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.
- 42.2 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.
- 42.3 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.
- 42.4 The Financial Monitoring Plan may include (but shall not be limited to):
 - 42.4.1 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.);
 - 42.4.2 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);
 - 42.4.3 The Supplier's proposals for reporting financial standing to FCDO (including the template reporting forms which the Supplier intends to use);
 - 42.4.4 The frequency of monitoring and reporting activity;
 - 42.4.5 Provision of reporting lines for the supply chain to notify FCDO of incidents of non-payment of valid and undisputed invoices;
 - 42.4.6 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.



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- 42.5 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.
- 42.6 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:
- 42.6.1 there is a material deterioration of its financial standing;
 - 42.6.2 the appointment of an administrator or receiver;
 - 42.6.3 late filing of statutory accounts with Companies House;
 - 42.6.4 it issues a profits warning or other similar public announcement about a deterioration in its finances or prospects;
 - 42.6.5 it is being publicly investigated for improper financial accounting and reporting, fraud or any other financial impropriety;
 - 42.6.6 it commits a material breach of covenant to its lenders;
 - 42.6.7 a key Sub-Contractor not being paid any sums properly due under a specified invoice that is not subject to a genuine dispute;
 - 42.6.8 it is subject to any claims, litigation, investigations, actions or decisions in respect of financial indebtedness.
- 42.7 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.
- 42.8 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.
- 42.9 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).
- 42.10 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.
- 42.11 FCDO shall be entitled to terminate this Contract for material Default if:
- 42.11.1 The Supplier fails to notify FCDO of a Financial Distress Event in accordance with Clause 42.6;
 - 42.11.2 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);
 - 42.11.3 The Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan or any updates to the plan.
- 43. FORCE MAJEURE**
- 43.1 Subject to the remainder of this Clause 43, a Party may claim relief under this Clause 43 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.



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- 43.2 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.
- 43.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 43 to the extent that consequences of the relevant Force Majeure Event:
- 43.3.1 are capable of being mitigated by any of the provision of any Services but the Supplier has failed to do so; and/or
- 43.3.2 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.
- 43.4 Subject to FCDO's right to terminate set out in Clause 43.5, 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.
- 43.5 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.
- 43.6 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.
- 43.7 Relief from liability for the Affected Party under this Clause 43 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 43.6.
- 43.8 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.
- 44. TERMINATION WITHOUT DEFAULT OF THE SUPPLIER**
- 44.1 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)).
- 45. TERMINATION WITH DEFAULT OF THE SUPPLIER**
- 45.1 FCDO may terminate this Contract for material Default by issuing a Termination Notice to the Supplier where:
- 45.1.1 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;
- 45.1.2 FCDO expressly reserves the right to terminate this Contract for material Default;
- 45.1.3 the Supplier commits any material Default of the Contract which is not, in the reasonable opinion of FCDO, capable of remedy; and/or
- 45.1.4 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.
- 45.2 For the purpose of Clause 45.1, 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.
- 45.3 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:
- 45.3.1 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



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- 45.3.2 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 49 or 50 of this Contract; or
- 45.3.3 FCDO has the right to terminate under Clause 39.3.2; or
- 45.3.4 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 25 (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 25 (Tax Compliance); or
 - (g) the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of FCDO, are acceptable; or
- 45.3.5 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
- 45.3.6 the Supplier is a partnership or a company and there is a Change of Control.
- 45.4 FCDO may terminate this Contract by issuing a Termination Notice to the Supplier where:
- 45.4.1 the Contract has been substantially amended in breach of the Procurement Act;
- 45.4.2 FCDO has become aware that the Supplier has, since the award of this Contract, become an Excluded or Excludable Supplier (including by reference to an Associated Person); or
- 45.4.3 a Sub-contractor performing all or part of the Supplier's obligations under this Contract is an Excluded or Excludable Supplier.
- 45.5 If FCDO decides to terminate this Contract in accordance with Clause 45.5 FCDO shall notify the Supplier and provide the Supplier with a reasonable opportunity to make representations about FCDO's decision to terminate this Contract. If the Contract is to be terminated pursuant to Clause 45.4.3, the Supplier will be provided with a reasonable opportunity to cease subcontracting with the relevant Sub-contractor and if necessary, find an alternative replacement.
- 45.6 Where this Contract is terminated in accordance with this Clause 45, 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 17 (Exit Management) but shall not be entitled to any further payment in relation to this Contract.
- 46. PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION**
- 46.1 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.
- 46.2 Any suspension of this Contract under Clause 46.1 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.
- 46.3 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 39 (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:
- 46.3.1 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 45 (Termination With Default of the Supplier) except Clause 44 (Termination Without Default of the Supplier); and
- 46.3.2 reject the Variation.



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47. CONSEQUENCES OF EXPIRY OR TERMINATION

- 47.1 Where this Contract has been terminated pursuant to Clause 44 (Termination Without Default of the Supplier), the Supplier shall:
- 47.1.1 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;
 - 47.1.2 act in accordance with Clause 17 (Exit Management); and
 - 47.1.3 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 47.1.3 to the Supplier within 30 days of receipt from the Supplier of a Valid Invoice in respect of the amount due.
- 47.2 Where this Contract is terminated under Clause 45 (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 20 (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.
- 47.3 Where this Contract is terminated for any reason, save as expressly provided in this Contract:
- 47.3.1 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
 - 47.3.2 termination of this Contract shall not affect the continuing rights, remedies or obligations of FCDO or the Supplier under Clauses 16, 17, 18, 19, 20, 22, 23, 26, 29, 30, 31, 32, 33, 34, 36, 37, 47, 48, 53 and 58, 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

48. DISPUTE RESOLUTION PROCEDURE

- 48.1 Either Party shall give to the other written notice of the Dispute, setting out its nature and full Particulars ("**Dispute Notice**"), together with relevant supporting documents. On receipt of the Dispute Notice, the Parties will attempt in good faith to resolve the Dispute between them arising out of or in connection with this Contract. Such efforts shall involve the escalation of the Dispute to an appropriately senior representative of each Party.
- 48.2 If the matter is not resolved within 45 days of being escalated in accordance with Clause 48.1 the Parties will refer the Dispute to mediation in accordance with CEDR (Centre for Effective Dispute Resolution in London, UK) Model Mediation Procedure. To initiate the mediation, a Party must serve notice in writing ("**ADR Notice**") to the other Party to the Dispute, requesting mediation. A copy of the ADR Notice should be sent to CEDR. The mediation will start not later than 30 days after the date of the ADR Notice.
- 48.3 If the Parties fail to resolve the Dispute within 90 days after service of the ADR Notice, or either party fails to participate or to continue to participate in mediation before the expiration of 90 days, or the mediation terminates before the expiration of 90 days, the Dispute shall be resolved by arbitration.



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48.4 Where the Dispute is to be resolved by arbitration in accordance with Clause 48.3, the Parties may refer the Dispute 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.

48.5 The decision of any arbitrator appointed to resolve a Dispute pursuant to Clause 48.4 shall be final and binding on both Parties.

48.6 The seat and place of arbitration shall be London.

49 PREVENTION OF FRAUD AND BRIBERY

49.1 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:

49.1.1 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

49.1.2 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.

49.2 The Supplier, Supplier Personnel, or any person acting on their behalf shall not during the Term:

49.2.1 commit a Prohibited Act; and/or

49.2.2 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.

49.3 The Supplier shall during the Term:

49.3.1 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;

49.3.2 keep appropriate records of its compliance with its obligations under Clause 49.3.1 and make such records available to FCDO on request.

49.4 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:

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

49.4.2 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

49.4.3 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.

49.5 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:

49.5.1 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

49.5.2 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.

49.6 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.



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- 49.7 Where the Supplier or Supplier Personnel, or any person acting on their behalf, does any of the acts mentioned in Clause 49.5 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:
- 49.7.1 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;
 - 49.7.2 to recover from the Supplier the amount or value of any such gift, consideration or commission;
 - 49.7.3 to recover from the Supplier any other Losses sustained as a result of any breach of this Clause 49, whether or not the Contract is terminated.

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

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

50 ANTI-TERRORISM REGULATIONS

- 50.1 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.
- 50.2 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.
- 50.3 The Supplier shall immediately notify FCDO in writing if it becomes aware of any breach of Clause 50.1 and/or Clause 50.2, 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:
- 50.3.1 been subject to an investigation or prosecution which relates to an alleged infringement of Clause 50.1 and/or Clause 50.2;
 - 50.3.2 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.
- 50.4 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 50.1 and/or Clause 50.2 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:
- 50.4.1 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;
 - 50.4.2 to recover from the Supplier any other loss sustained as a result of any breach of this Clause 50, whether or not the Contract has been terminated.

51 SAFEGUARDING

- 51.1 For the purposes of this Clause 51, “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



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“**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),

- 51.2 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 Contract (“**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.
- 51.3 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 51.1.
- 51.4 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 the FCDO Investigations Department at reportingconcerns@fcdo.gov.uk or +44 (0)1355 843747, and where necessary, the Appropriate Authorities.
- 51.5 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
- 51.6 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.
- 51.7 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.
- 51.8 Failure by the Supplier to:



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- 51.8.1 put in place preventative measures to eliminate and/or reduce the risk of Serious Misconduct; or
- 51.8.2 fully investigate allegations of Serious Misconduct; or
- 51.8.3 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.

52 DISCRIMINATION

- 52.1 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.
- 52.2 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.
- 52.3 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.
- 52.4 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.

53 LAW AND JURISDICTION

- 53.1 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.

54 ENVIRONMENTAL REQUIREMENTS

- 54.1 The Supplier shall provide the Services and any goods and/or equipment required under the Contract in accordance with applicable national and international laws, including those of the country or countries in which the Services, goods and/or 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.
- 54.2 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.
- 54.3 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 54.1 and 54.2 as a result of its own operations or those of Sub-Contractors working on its behalf.



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54.4 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.

54.5 Nothing in Clauses 54.1 to 54.3 shall relieve the obligations of the Supplier to comply with its statutory duties and Good Industry Practice.

55 CONFLICT OF INTEREST

55.1 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.

55.2 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.

55.3 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.

55.4 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.

55.5 Pursuant to Clause 55.4, 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.

55.6 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.

56 WAIVER

56.1 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.

57 ENTIRE AGREEMENT

57.1 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 57.1 shall not exclude liability in respect of any fraudulent misrepresentation.

57.2 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.

57.3 Nothing in this Contract is intended to make nor shall it make FCDO the employer of the Supplier or any of the Supplier Personnel.

57.4 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).



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58 THIRD PARTY RIGHTS

- 58.1 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"**).
- 58.2 Subject to Clause 58.1, 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.
- 58.3 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.
- 58.4 Any amendments or modifications to this Contract may be made, and any rights created under Clause 58.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

59 NOTICES

- 59.1 Except as otherwise expressly provided within this Contract, any notices sent under this Contract must be in writing. For the purpose of Clause 59, an e-mail is accepted as being "in writing".
- 59.2 Subject to Clause 59.3, 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 59.3 and 59.4)	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day	Properly addressed and delivered as evidenced by signature of a delivery receipt
Royal Mail Signed For™ 1 st Class or other prepaid, next Working Day service providing proof of delivery	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm)	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

- 59.3 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 59.2:
- 59.3.1 any Termination Notice (Clause 44 (Termination Without Default of the Supplier) and Clause 45 (Termination With Default of the Supplier)); and
- 59.3.2 any notice in respect of:
- (a) partial termination, suspension or partial suspension (Clause 46 (Partial Termination, Suspension and Partial Suspension)),
 - (b) waiver (Clause 56 (Waiver)); or
 - (c) Default.



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- 59.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 59.3 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 59.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.
- 59.5 Clause 59 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.
- 59.6 For the purposes of Clause 59, the address and email address of each Party shall be as specified in Section 4 (Special Conditions).



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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 21.1;

“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;

“Associated Person” means a person that the Supplier relied on in order to satisfy the Condition of Participation but not a person who is to act as a guarantor in accordance with section 22(9) of the Procurement Act 2023;

“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;

“Condition of Participation” means the conditions of participation the Supplier was required to satisfy in order to be awarded this Contract as part of FCDO’s procurement process (to the extent applicable);

“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



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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;

“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 Data Protection Legislation;

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

“Data Protection Legislation” (i) all applicable UK law relating to the processing of personal data and privacy, including but not limited to the UK GDPR, and the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and (ii) (to the extent that it may be applicable) the EU GDPR). The UK GDPR and EU GDPR are defined in section 3 of the Data Protection Act 2018;

“Data Protection Impact Assessment”: an assessment by the Controller carried out in accordance with Section 3 of the UK GDPR and sections 64 and 65 of the DPA 2018;

“Data Subject Request”: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to 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 Contract, down to the end beneficiary;

“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 48;

“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;

“EIR” means the Environmental Information Regulations;

“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,



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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;

“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 17;

“Excludable Supplier” shall have the same meaning as in section 57 of the Procurement Act 2023;

“Excluded Supplier” shall have the same meaning as in section 57 of the Procurement Act 2023;

“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);

“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;



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"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;

"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" means any event, circumstance, matter or cause affecting the performance by the Supplier of its obligations arising from:

- a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Supplier which prevent or materially delay the Supplier from performing its obligations under the Contract;
- b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;
- c) acts of a Crown Body, local government or regulatory bodies;
- d) fire, flood or any disaster; or
- e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available,

but excluding:

- f) any industrial dispute relating to the Supplier, the Supplier's personnel (including any subsets of them) or any failure in the Supplier of their sub-contractors supply chain;
- g) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Supplier; and
- h) any failure or delay caused by a lack of funds,

and which is not attributable to any wilful act, neglect or failure to take reasonable preventative action by that party;

"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);

"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 and ordinarily be expected 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;

"Guidance" means any code of practice, policy or guidance (or part thereof) issued by an UK or EU regulatory or other relevant authority, in each case to the extent that it is mandatory and enforceable in the United Kingdom and applicable to the Supplier;

"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>;



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“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 1 (Form of Contract);

“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, semi-conductor 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” takes the meaning given in Article 26 of the UK GDPR;

“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 in accordance with Clause **Error! Reference source not found.** ;

“Law” means any:

- (a) Legislation
- (b) applicable judgment of a relevant court of law which establishes or changes a binding precedent;
- (c) (to the extent not covered by limbs (a) and (b) above retained EU law within the meaning of Section 6 of the European Union (Withdrawal) Act 2018; and
- (d) Guidance;

“Law enforcement processing” means processing under part 3 of the DPA 2018.

“Legislation” means any:

- (a) Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978;
- (b) exercise of the Royal Prerogative;
- (c) enforceable EU right within the meaning of Section 2 of the European Communities Act 1972; and
- (d) retained EU law within the meaning of Section 6 of the European Union (Withdrawal) Act 2018, which continues to be, or forms part of, domestic law in the United Kingdom by virtue of Section 2, 3 or 4 of the European Union (Withdrawal) Act 2018;

“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;



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“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;

“Procurement Act” means the Procurement Act 2023 (as amended from time to time) and all related secondary legislation (including the Procurement Regulations 2024/691);

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

“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 Contract;

“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



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(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 (including offences by the Supplier under Part 3 of the Criminal Finances Act 2017); or

(d) any activity, practice or conduct which would constitute one of the offences listed under (c) 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 designed to ensure compliance with obligations of the Parties arising under Data Protection Legislation and this Contract, 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 including those outlined Annex 5 of the ITT Volume 1;

"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;

"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;



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“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;



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“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 2018), 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 Contract;

“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 Contract, 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 Contract;



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“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;

“UK GDPR” has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018

“Valid Invoice” means an invoice issued by the Supplier to FCDO and containing the information set out in Clause 23.4;

“Variation” means a properly executed variation to the Contract in compliance with Clause 39;

“Variation Procedure” means the procedure set out in Clause 39;

“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.



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SCHEDULE 2: STAFF TRANSFER

1. DEFINITIONS

In this Schedule 2, the following definitions shall apply:

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



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governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the Designated Stakeholder Pension Scheme and “alpha” introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014;

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

2. INTERPRETATION

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



PART A

TRANSFERRING FCDO EMPLOYEES AT COMMENCEMENT OF SERVICES

1. RELEVANT TRANSFERS

1.1 FCDO and the Supplier agree that:

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

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

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

2. FCDO INDEMNITIES

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

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

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

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

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

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

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

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



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- (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



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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



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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.



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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 Contract 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,



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

8. BULK TRANSFER

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



PART B

TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF SERVICES

9. RELEVANT TRANSFERS

9.1 FCDO and the Supplier agree that:

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

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

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

10. FORMER SUPPLIER INDEMNITIES

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

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

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

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

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

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

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



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- (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;



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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:



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- (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



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after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.

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

12. INFORMATION

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

13. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

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

14. PROCUREMENT OBLIGATIONS

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

15. PENSIONS

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



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16. PARTICIPATION

- 16.1 The Supplier undertakes to enter into the Admission Agreement.
- 16.2 The Supplier and FCDO:
- 16.2.1 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;
 - 16.2.2 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;
 - 16.2.3 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
 - 16.2.4 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.
- 16.3 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.

17. FUTURE SERVICE BENEFITS

- 17.1 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.
- 17.2 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.
- 17.3 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.



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- 17.4 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.

18. FUNDING

- 18.1 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.
- 18.2 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.

19. PROVISION OF INFORMATION

The Supplier and FCDO respectively undertake to each other:

- 19.1 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
- 19.2 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).

20. 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.

21. 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.

22. SUBSEQUENT TRANSFERS

The Supplier shall:

- 22.1 not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the Service Transfer Date;
- 22.2 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
- 22.3 for the applicable period either



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- 22.3.1 after notice (for whatever reason) is given, in accordance with the other provisions of this Contract, to terminate the Contract or any part of the Services; or
- 22.3.2 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.

23. BULK TRANSFER

- 23.1 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:
- 23.1.1 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;
- 23.1.2 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;
- 23.1.3 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
- 23.1.4 indemnify FCDO on demand for any failure to pay the Shortfall as required under Paragraph 23.1.3 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



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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;



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- 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



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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 disappplied 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;



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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.



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- 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



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- (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



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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 3 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 supplier 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 supplier 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 Contract.



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5. AGGREGATE LIMIT OF INDEMNITY

5.1 Where the minimum limit of indemnity required in relation to any of the Insurances is specified as being "in the aggregate":

5.1.1 if a claim or claims which do not relate to this Contract are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Supplier shall immediately submit to FCDO:

- (a) details of the policy concerned; and
- (b) its proposed solution for maintaining the minimum limit of indemnity specified; and

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

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

6. CANCELLATION

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

7. INSURANCE CLAIMS

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

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

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

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



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PART A: THIRD PARTY PUBLIC & PRODUCTS LIABILITY INSURANCE

1.INSURED

1.1 The Supplier

2.INTEREST

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

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

2.1.2 loss of or damage to property;

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

3.LIMIT OF INDEMNITY

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

4.TERRITORIAL LIMITS

4.1.1 Global

5.PERIOD OF INSURANCE

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

6.COVER FEATURES AND EXTENSIONS

6.1 Indemnity to principals clause.

7.PRINCIPAL EXCLUSIONS

7.1 War and related perils.

7.2 Nuclear and radioactive risks.

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

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

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



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- 7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
- 7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

8. MAXIMUM DEDUCTIBLE THRESHOLD

- 8.1 Not to exceed **£0** for each and every third party property damage claim (personal injury claims to be paid in full).



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PART B: PROFESSIONAL INDEMNITY INSURANCE

1.INSURED

- 1.1 The Supplier

2.INTEREST

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

3.LIMIT OF INDEMNITY

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

4.TERRITORIAL LIMITS

- 4.1 Global

5.PERIOD OF INSURANCE

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

6.COVER FEATURES AND EXTENSIONS

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

7.PRINCIPAL EXCLUSIONS

- 7.1 War and related perils
7.2 Nuclear and radioactive risks

8.MAXIMUM DEDUCTIBLE THRESHOLD

- 8.1 Not to exceed **£0** each and every claim.



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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.



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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.



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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 [

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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

Name: [

Secretary of State for Foreign,

Commonwealth and Development Affairs

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

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

Overarching Principles for Supply Partners

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

FCDO Supply Partner responsibilities

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



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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 the 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. The 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.

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

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



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Specific requirements include:

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

2. Ethical Behaviour

Key Performance Indicators KPI 2 a- f

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

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

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

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

Supply Partners and their delivery chain partners must declare to FCDO where there may be instances or allegations of previous unethical behaviour by an existing or potential staff member or where there is a known or suspected conflict of interest. Where a potential or existing staff member has been employed by FCDO or the Crown in the preceding two years Supply Partners and their delivery chain partner must provide proof of compliance with the HMG approval requirements under the Business Appointment Rules.

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

- ✓ Development and proof of application and embedding of a Staff Recruitment, Management and Retention policy (which must address circumstances where there may be potential or actual conflict of interest and embedding of a Whistleblowing Policy)
- ✓ Ongoing monitoring of potential or existing personal, business or professional conflict of interest and their mitigation and management
- ✓ Ethical training for every staff member and staff updates in ethical working practices suitable to the development sector (e.g. UN Global Compact principles) including awareness of modern day slavery and human rights abuses



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- ✓ 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 and any suspicions/allegations/concerns which relate to safeguarding to the FCDO Investigations Department at reportingconcerns@fcdo.gov.uk or on +44(0)1355 843747.

3. Transparency and Delivery Chain Management

Key Performance Indicators KPI 3 a – f

The 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.

The 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 the 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' mailbox³ found on FCDO's external website and of the circumstances in which this should be used;
- ✓ Publication of FCDO funding data in accordance with the International Aid Transparency Initiative (IATI)⁴
- ✓ Supply Partners shall adhere to HMG prompt payment policy and not use restrictive exclusivity agreements with sub-partners.

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

⁴ <http://www.aidtransparency.net/>

**4. Environmental issues**

Key Performance Indicators KPI 4 a – b

FCDO Supply Partners must be committed to high environmental standards, recognising that FCDO 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 the FCDO.

Commitment to environmental sustainability may be demonstrated by:

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

5. Terrorism and Security

Key Performance Indicators KPI 5 a – d

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

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

Specific requirements:

- ✓ Development and proof of application and embedding of a comprehensive Terrorism and Security Policy
- ✓ Development and proof of application and embedding of personal data processing processes within a Data Protection Policy
- ✓ FCDO Supply Partners must safeguard the integrity and security of their IT and mobile communications systems in line with the HMG Cyber Essentials Scheme⁶. Award of the Cyber Essentials or Cyber Essential Plus badges would provide organisational evidence of meeting the UK Government-endorsed standard;
- ✓ All FCDO Supply Partners who manage aid programmes with a digital element must adhere to the global Principles for Digital Development⁷, which sets out best practice in technology-enabled programmes

⁵ <https://eiti.org/>

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

⁷ <http://digitalprinciples.org/>



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

Specific requirements:

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

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

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

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



Compliance KPIs and contractual checking mechanisms - FCDO Contracts

Maintaining standards of assurance and driving sustainable improvements, in connection with the Code's principles through Supply Partner relationships is a key focus for the 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, the 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 the 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 8.7	Declaration of acceptance at the applicable level of compliance with each of the 6 sections received
	Declaration of sign up to the UN Global Compact	Annual declaration submitted by the direct Supply Partner	Procurement Specific Questionnaire (PSQ)	Declaration of applicable sign up / application received



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1.	<u>VfM and Governance standards</u>			
	<p>Economic and governance policies in practice</p> <p>a)</p>	<p>Annual updated documentation provided</p> <p>(copy of Policies with detailed annual financial breakdown relating to contract)</p>	<p>Terms and Conditions Clauses 14, 15& 16</p>	<p>Annual contract review/programme management</p> <p>Audit checks</p> <p>Compliance checks</p>
	<p>VfM being maximised over the life of a contract</p> <p>b)</p> <ol style="list-style-type: none"> 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 	<p>Updated documentation submitted once annually</p>	<p>Contract T&Cs Clauses 16 & 21</p> <p>Terms of Reference</p> <p>Terms of Reference</p>	<p>Compliance checks</p> <p>Annual contract review/programme management</p> <p>Compliance checks</p> <p>Annual contract review/programme management</p> <p>Compliance checks</p>



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c)	<u>Tax Declaration (HMRC format)</u> <ul style="list-style-type: none"> • Tax the organisation paid on profits made in the last 3 years, and in which countries • Compliance with relevant country level tax regulations fully understood and met 	Annually updated documentation submitted by contracted supplier and on behalf of delivery chain partners	Terms and Conditions Clauses 16, 24 & 25 Terms of reference	Annual return Compliance checks
2. a)	<u>Ethical Behaviour</u> 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, 52 & 55	Annual return Compliance checks
b)	Ongoing conflict of interest, mitigation and management	As 2a. above	Terms and conditions Clause 55	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	Terms and conditions Clause 6, 30, 52 & 55	Annual return Compliance checks



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		programme in place		
d)	A workforce whistleblowing policy	Continuous workforce awareness maintained Policy in place	Terms and Conditions Clause 49	Annual return Compliance checks
e)	<p>1. Procedures setting out how, staff involved in FCDO funded business, can immediately report all suspicions or allegations of aid diversion, fraud, money laundering or counter terrorism finance or any suspicions/allegations/concerns which relate to safeguarding to the Investigations Department at reportingconcerns@fcdo.gov.uk or on +44(0)1355 843747</p> <p>2. Employees working on FCDO Contracts fully aware of the FCDO external website reporting concerns mailbox</p>	<p>Continuous awareness maintained</p> <p>Procedure in place</p> <p>Continuous awareness maintained</p>	<p>Terms and Conditions Clauses 6, 49& 55</p> <p>Terms and Conditions Clause 49</p>	<p>Annual return</p> <p>Compliance checks</p> <p>Annual return</p> <p>Compliance checks</p>
f)	<p>Declarations of direct or subcontractor staff members proposed to work on FCDO funded business if employed by FCDO or the Crown in the preceding two years</p> <p>Supply Partners and their subcontractors must provide proof of compliance with the HMG approval requirements</p>	<p>Details submitted as applicable</p>	<p>Terms and Conditions Clause 49</p> <p>HMG</p>	<p>Annual return</p> <p>Compliance checks</p>



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	under the business appointment rules		business appointment rules	Contract management
3.	<u>Transparency and Delivery Chain Management</u>			
a)	IATI compliance for Supply Partner and their delivery chain Supply Partners	Updated documentation submitted once annually	Contract Terms and Conditions Clause 29	Tender evaluation Periodic spot checks Compliance checks
b)	Up to date and accurate records of all delivery chain Supply Partners	Updated documentation submitted in accordance with Clause 26.7	Contract Terms & conditions Clause 10 & 29 Tender submittal – delivery chain	Annual return Compliance checks Contract management
c)	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 8	Contract management processes Periodic spot checks Compliance checks
d)	Tax evasion, bribery, corruption and fraud -statements of assurance provided	Updated documentation submitted once annually	Contract Terms and Conditions 24 & 25	Periodic and annual return spot checks



				Compliance checks
e)	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 49	Periodic and annual return spot checks
f)	HMG prompt payment policy adhered to by all delivery chain partners	Updated documentation submitted once annually	Contract Terms & conditions 8	HMG spot checks Compliance checks Annual return
4. a)	<p><u>Environmental Issues</u></p> <p>1.Steps in place to identify environmental risks (e.g. by maintaining a risk register) Ensuring legislative requirements are being met</p> <p>2. Formal context specific environmental safeguarding policies in place to ensure legislative requirements are being met</p>	Updated documentation submitted once annually	Contract Terms & Conditions Clause 54 and ToRs	Contract management Periodic and annual return spot checks Compliance checks
b)	<p>Published annual environmental performance reports</p> <p><u>Net zero by 2050 tracking</u></p>	Updated documentation submitted once annually	Contracts ToRs	Periodic and annual return spot checks
5.	<p><u>Terrorism and Security</u></p> <p>Up to date status declaration regarding the reporting of terrorist offences or offences</p>			



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a b c d)	linked to terrorist activities or financing	Updated documentation submitted if and when changes identified since tender submittal	Procurement Specific Questionnaire (PSQ)	Annual return Spot checks Compliance checks Annual contract review
	Certification at or above the level set out in the tender submittal	Updated documentation submitted if changes identified since tender submittal	Procurement Specific Questionnaire (PSQ)	Annual return Compliance checks
b c d)	Data managed in accordance with the 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 33 & 34	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



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6.	<u>Safeguarding, Social Responsibility and Human Rights</u>			
a)	Provision of a current internal document demonstrating good practice and assuring compliance with key legislation on international principles on labour and ethical employment	Confirmation of UN Global Compact Membership	Procurement Specific Questionnaire	Tender evaluation Annual return Compliance checks
b)				
c)	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 51	Tender evaluation, Compliance checks
d)				
	Recognition of the ILO standards Membership of Ethical Trading Initiative (ETI)	Membership number		Compliance checks



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	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	Contract T&Cs Clause 51	Annual return
	2. Number and details of any organisational safeguarding allegations reported	Updated documentation submitted if and when changes identified since tender submittal		Compliance checks
	3.Level of commitment in relation to the Contract evident in delivery practices in line with the workplace and community guidance provided in the FCDO Supply Partner Code of Conduct Annex 2	Updated documentation submitted annually		Annual checks
				Compliance checks
				Tender evaluation
				Compliance checks

**Contractual Annual Compliance Declaration**

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

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

X denotes full compliance 1 required

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

Compliance Level 1

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

Compliance Level 2

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

Compliance Level 3

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



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



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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 or any suspicions/allegations/concerns which relate to safeguarding to the Investigations Department (CFWU) at reportingconcerns@fcdo.gov.uk or on +44(0)1355 843747	X	X			
f)	HMG Business appointment rules followed - Conflict of Interest(COI) declarations made for direct or delivery chain staff members proposed to work on FCDO funded business if employed by FCDO or the Crown in the preceding two years.	X	X			
3.	<u>Transparency and Delivery</u>					



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	<u>Chain Management</u>					
	a) Supply Partner and delivery chain partners IATI compliant	X	O			
	b) Provision of up to date and accurate records of all delivery chain Supply Partners provided within the required frequencies, including annual contractual spend on SME's, women owned businesses and modern apprenticeships in place	X	O			
	c) Verification that policies and practices for the management of delivery chain Supply Partners are aligned to the FCDO Supply Partner Code of Conduct i.e. by demonstrating delivery chain governance arrangements in place	X	O			
	d) Assurance there has been no change to previous statements provided in relation to tax evasion, bribery, corruption and fraud	X	X			
	e) Confirmation that all delivery chain Supply Partners' employees working on FCDO Contracts are fully aware of the FCDO external website reporting concerns mailbox	X	X			
	Confirmation of adherence to HMG prompt payment policy with all their delivery chain	X	O			



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f)	Supply Partners					
4.	<u>Environmental Issues</u>					
a)	Environmental risks identified (e.g. by maintaining a risk register) with formal context specific environmental safeguarding policies in place	X	O			
b)	Annual published environmental performance reports Net zero by 2050 tracking in place	X	O			
5.	<u>Terrorism and Security</u>					
a)	Up to date status declaration regarding the reporting of terrorist offences or offences linked to terrorist activities or financing	X	X			
b)	No engaged employees or delivery chain partner personnel appears on the Home Office Prescribed Terrorist Organisations List	X	X			
c)	Data is managed in accordance with the FCDO security policy and systems are in accordance with the HMG cyber essentials scheme	X	X			



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d)	Adherence to the best practice global principles for digital development	X	O			
6.	<u>Safeguarding, Social Responsibility and Human Rights</u>					
a)						
b)	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			
c)	Organisational procedures in place directly, and within the delivery chain:					
d)	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			
	Current membership of UN Global Compact	X	O			



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Current membership of ETI	O	O			
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			
2.Numbers and details of organisational safeguarding allegations reported					
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)	X	X			
	X	O			



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



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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



SECTION 3 - TERMS OF REFERENCE



TERMS OF REFERENCE

FOREST GOVERNANCE MARKETS AND CLIMATE – Phase 2 (FGMC2) FACILITATION SERVICE November 2025 to October 2029

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Key Acronyms

CSO	Civil Society Organisations
DRC	Democratic Republic of Congo
ECED	Energy, Climate and Environment Department
EFI	European Forest Institute
EU	European Union
EUDR	European Union Deforestation Regulation
FCDO	Foreign, Commonwealth and Development Office
FGMC	Forest Governance, Market and Climate
FLEGT	Forest Law Enforcement Governance and Trade Action Plan
IPLCs	Indigenous People and Local Communities
MEL	Monitoring, Evaluation and Learning
NDCs	National Determined Contributions
PMSST	Programme Management Strategy and Support Team
PNG	Papua New Guinea
PRO	Programme Responsible Officer
SEAH	Sexual Exploitation, Sexual Abuse and Sexual Harassment
SRO	Senior Responsible Officer
TOC	Theory of Change
VfM	Value for Money
VPA	Voluntary Partnership Agreement



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Part 1 - Requirement

A. Introduction to FGMC2 and context for this ToR

1. **The aim of the Forest Governance, Markets and Climate (FGMC2) programme** is to reduce the illegal and unsustainable use of forest resources, while benefitting poor, forest-dependent people, especially Indigenous People and Local Communities. It promotes sustainable growth in developing countries, supporting them to trade their way out of poverty by changing the way forest products are bought and sold across the globe, establishing forest stewardship to reverse forest and biodiversity decline.
2. FGMC2 builds on a successful first phase (FGMC1: £280m, 2011-24) which provided evidence and strong foundational partnerships that drove governance reforms and improved forest stewardship. **FGMC2 doubles the ambition to a £500m 10-year Business Case with an initial phase running from 2024-2029 with a total value of £220m.** Ministers will be asked to approve the remaining second phase based on satisfactory progress.
3. **FGMC2's programme vision is that by 2035** there will be no major international outlets for illegal forest material and that regional and domestic trade in illegal forest products will be significantly reduced. Rights for local communities and Indigenous People will be clarified and respected, and sustainable multiple use forest management practices that incorporate carbon values will be operational in the productive forest areas across 16 partner countries, representing over 360million ha of primary forests (roughly 40% of tropical forests)¹.
4. It will contribute to deliver the Glasgow Leaders Declaration's ambition to halt and reverse forest loss by 2030 and the FCDO's White Paper commitments to tackle illegality in trade and secure forest tenure reforms including in SE Asia, the Congo Basin and the Amazon.
5. The programme focus is on **forest land stewardship** establishing governance arrangements and rules-based systems (outcomes) and the changed behaviour of key actors as a result of the implementation and enforcement of those rules (impact). The ultimate benefits to forest, environment and people are captured at the super-impact level.
6. FGMC1 experience demonstrates the importance of **robust governance foundations** if lasting change is to be secured. These foundations enable a fair and formal set of rules and system reforms that underpin the distribution of forest benefits. In particular, they must recognise the rights of Indigenous People and Local Communities (IPLCs) as well as the urgency of addressing the threats to climate, eco-system services and biodiversity from mismanagement of forests. They must be credibly enforced and overseen through independent monitoring, effective traceability systems, and transparent government and business processes that reduce the scope for corruption and elite capture.
7. **The challenge for FGMC2** is to take forward this tried and tested approach into new countries and to address new threats to forests, including forest conversion, biodiversity loss, illegal mining and the new incentives (and challenges) created by carbon markets.
8. The programme will be delivered through three interlinked components:
 - **Component I: Partnerships with tropical producer countries for national scale forest governance reforms (£136m/ 5yr; £305m/ 10 years).** FGMC2 will provide support to establish national rules-based systems that ensure good forest land governance with a fair distribution of the costs and benefits (timber, agricultural commodities, mining, carbon and biodiversity payments) arising from the ownership and management of forest lands and their assets and accruing directly to forest owners and managers or indirectly as public goods. It will build from established partnerships under FGMC1, to sustain on-going reforms, or where new problems threaten forests, the process would focus on new governance challenges related to illegal agriculture and mining or forest carbon governance. It will also explore opportunities for new partnerships to take advantage of the replicable approach and significant demand. Budget provision would support engagement with up to 16 countries in total. Precise geographical



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scope will be finalised during inception and mobilisation phases but will include Indonesia, Ghana, Liberia, Republic of Congo, Guyana, Cameroon, Papua New Guinea, Solomon Isles, Laos and DRC. A further group of countries will be identified in the 2nd year of the programme following further scoping activity. Engagement will be phased, with a gradual increase in the number of new partnerships.

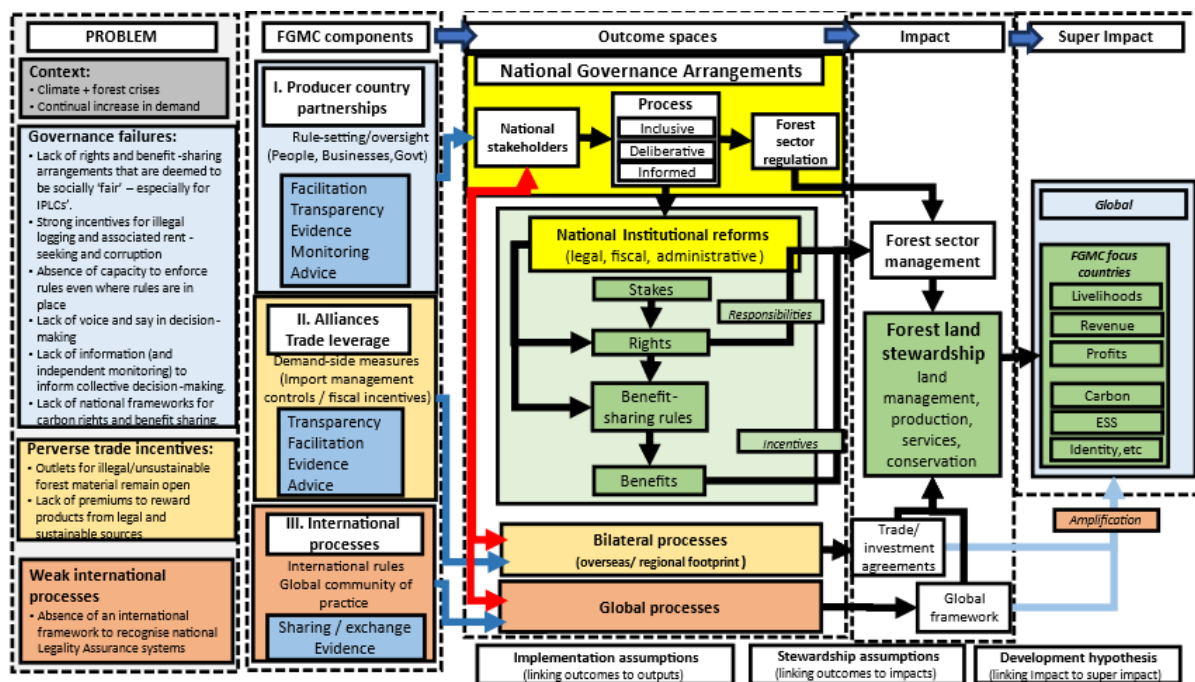
- **Component II: Forest footprint alliances with consumer markets** (£34m/ 5 yrs; £79m 10yrs). FGMC2 will support building of alliances with key consumer countries, China, Vietnam, Malaysia and India ("Alliance countries") for sustainable forest footprints to reduce the negative impacts on forests and poor people from risky investments and will promote responsible business practices in partner consumer countries. The focus of this component is generating the evidence and understanding to inform consumer market policies that support and incentivise the governance reforms of producer countries. The ambition is to close markets to trade in illegal and unsustainable forest products through effective import management regulations, public and private procurement policies and recognition, and by rewarding trade from countries with effective forest governance systems in place. This component will identify market "pull" from partner countries and will likely include engagement with major processing and consumer hubs, notably EU, China, India, Vietnam.
- **Component III: Global forest governance.** (£33m 5 years, £81m 10 years). This component will seek to shape international market norms and initiatives, support policy engagement that catalyses change in international markets and global forest governance, encourage positive international frameworks to prohibit trade in illegal material and incentivise national forest stewardship through rules that place governance at the heart of schemes/ investment strategies. Action will be supported through accountable grants which support non-government organisations who are working to sustain global forests through policy action (e.g. think tanks, advocacy groups, trade associations) who are encouraged to form coalitions to inform pertinent international policy and initiatives aligned to FGMC2 objectives. Through the establishment of an International Forest Governance Hub, independent advice will be provided to developing forest countries, enabling FGMC partners to draw on their experience and encourage other countries in their efforts to strengthen forest governance, thereby amplifying FGMC2 outcomes and impacts. This will also create a mechanism that allows for pooling of donor resources further amplifying potential impact.

9. The intervention logic is depicted through an overarching **Theory of Change** (Figure 1 below). In a nutshell the intervention logic is that: national, multi-stakeholder deliberative processes (Output) will result in a consensus interpretation of the rules (forest laws, norms, institutions etc) that govern the forest sector (Outcome) which will be enforced effectively and fairly (Impact) and, in turn, lead to benefits for People, the Forests and the Planet (Super Impact).’ To secure results at scale, consumer markets (including carbon) must address demand through the rules governing their forest footprint and global norms established through international processes seeking to safeguard forests.



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Figure 1 - Overarching Theory of Change



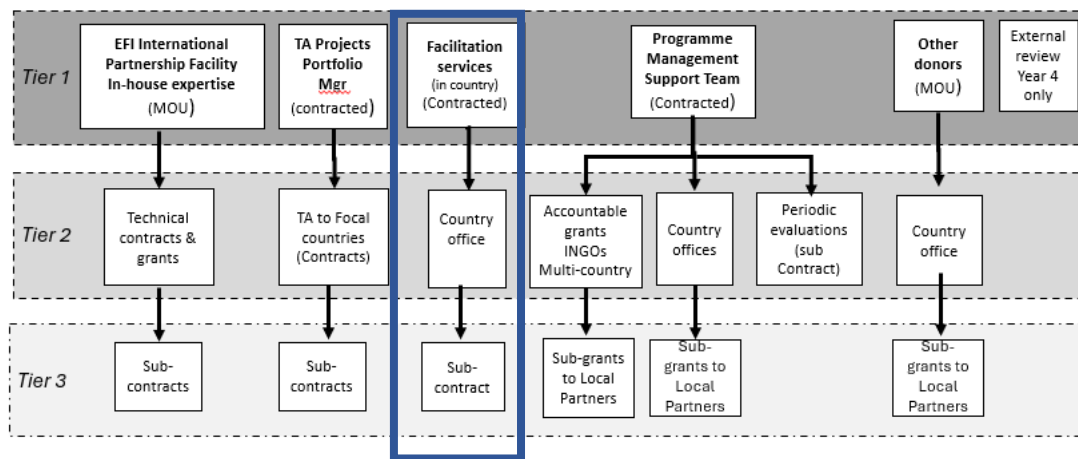
10. The programme will use a similar format to the first phase, which demonstrated the right mix of agility and soft diplomacy to build strong trusting relationships and drive change. It will be delivered through a mix of facilitation and TA contracts, accountable grants, and expertise (see programme governance in figure 3 below). Building on the proven model of FGMC1, the programme will be delivered through three service provider contracts and a limited number of MOU grant agreements with strategic international partners, some of which will enable us to work with other donors and engage directly in international policy initiatives. Coherence across the three components of the programme will be achieved through the coordination, monitoring and planning role envisaged for an outsourced programme management strategy and support team (PMSST). This builds on the successful approach to delivery under FGMC1.

11. FGMC2 will be delivered via five delivery instruments set out in figure 1 below. The 3 components outlined above will be delivered through the coherent implementation of a combination of these delivery instruments. This ToR focuses on Facilitation services.

Figure 2 - FGMC delivery structure and mechanisms.



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12. These ToR set out FGMC's requirements for the provision of **Facilitation Services** to help FGMC partner countries strengthen the inclusive multistakeholder dynamic of national forest governance reform processes. These processes could include those framed in Voluntary Partnership Agreements (VPA) or other inclusive policy and regulatory reforms. The Facilitation Services will support national multi-stakeholder reform processes in approximately 10 priority countries under Component 1. (see the FGMC2 Business Case¹¹ for details of geographic focus, and Annex H of the Business Case for specific country contexts)

13. FGMC's approach to engaging with complex forest issues with competing claims and expectations, has been to support deliberative processes that bridge the differences in perceptions of the diverse stakeholders and help them reach agreement. The quality of a deliberative process¹² is just as important as the product itself- as without legitimacy (derived from the process) the product (negotiated decisions based on clear laws and regulations) risks lacking credibility and implementation would likely be limited. Experience under FGMC1 demonstrated that impartial facilitation improves the quality of national deliberations and inclusion, and helps stakeholders address misunderstandings and promotes lesson learning, helping to secure effective implementation in resulting reforms. **Box 1 sets out how FGMC works with deliberation.**

14. Facilitators have demonstrated their value: providing trusted, impartial advice to government, community and industry stakeholders, and helping to overcome conflicts and blockages in reform processes. Governance reform processes may take many years, and both trusted relationships and understanding of local political sensitivities are critical to the success of the facilitation work. The approach developed in building a consensus on forest regulations for timber (under VPA processes) can be applied to other forest-related policy and regulatory domains that are linked to deforestation and go beyond illegal timber, such as illegal land grabbing or illegal mining in forests. **FGMC2 will mobilise** facilitators to support national multi-stakeholder forest governance policy reforms.

15. Apart from government regulators, the national governance reform processes include private sector operators from large corporate enterprises to small artisanal loggers or farmers, and civil society groups representing local forest communities and environmental interests. Often, they are debating different actors' rights and obligations under a country's forest-related laws for the first time. As the reform processes expand to address threats beyond the direct forest uses (e.g. from illegal agriculture expansion or mining) and new opportunities (such as from biodiversity and carbon market developments), the stakeholder deliberations will expand. FGMC2 assistance to the processes will

¹¹ ¹¹ <https://devtracker.fcdo.gov.uk/programme/GB-GOV-1-301073/documents>

¹² refers to a process of reasoning about political choices. In a deliberative process the actors are open to the facts, arguments and proposals that come to their attention and share a willingness to learn from their colleagues and others



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include facilitation of negotiations between government, civil society and business, assistance to build capacities of various stakeholders as well as support to generating the evidence that may inform the deliberations.

16. Under FGMC1, facilitation ensured the quality of national deliberations and inclusion and helped clarify misunderstandings and promoted lesson learning. Over the course of FGMC1 we learned that it was more efficient to establish a single Facilitation Service that mobilised Facilitators to different countries when most needed rather than having individual single country Facilitation contracts. Deploying multiple country facilitators under a single contract improved flexibility and adaptability allowing resources to be deployed to match the dynamics of specific country contexts as well as strengthening lesson sharing across countries.

17. The facilitators provide country-level intelligence that informs and updates Political Economy Analysis and may help encourage coordination of FGMC-financed actions. The facilitators have proved a valuable resource for FCDO Posts. Facilitators helped build trust between stakeholders who were traditionally antagonistic and helped them to cooperate in finding solutions.

Box 1: FGMC understands ‘deliberation’ to be:

- a formal process of reaching collective decisions, made in the common interest, resulting in agreements or settlements that are subsequently defined in law (or other rules) and framed into systems with the genuine intention that these rules will be implemented or enforced.
- an informed process, which is not just based on negotiation between stakeholders and interest groups, but on collective engagement and reasoning around evidence. For the process to be truly deliberative and not reduced to either negotiation/horse-trading or mere consultation, stakeholders need to have access to credible evidence, to deconstruct this evidence, to reconstruct a common understanding of the collective issues facing them and to agree on practical and fair solutions.
- an inclusive process, which takes place within a country and includes participation of all national stakeholders, each with an incentive to engage with others and reach a settlement in their overall common interest. This requires stakeholders not just to have an incentive and interest in reaching agreement but also the capacity to engage knowledgeably in the process.

In tropical forest countries, multi-stakeholder deliberation is often a new and challenging mechanism for public decision-making.

The key hypothesis underlying the FGMC approach is that an inclusive deliberative process will result in socially legitimate and sustainable governance reforms that, with support, can be enshrined in law and enforced in practice.

Deliberative processes require sufficient gravitas to be taken seriously by all stakeholders by creating sufficient incentives for them to engage in addressing forest stewardship.

FGMC2 will promote national rules-based systems that are applicable across the whole country, to all actors and across all commodity chains, thereby avoiding differentiation between legal and illegal, sustainable and unsustainable material emanating from the same source country.

FGMC2 will do this through facilitation, support and capacity building for national stakeholders, studies and evidence to inform deliberations, third party monitoring, and technical assistance for legality assurance systems.

It is important to note that in war-torn countries where forests are fuelling violent constitutional conflicts



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B. Objectives

18. The objective of this contract is to establish and operate a Facilitation Service with the capacity to deploy country-based facilitators who will help encourage and support national stakeholder engagement in forest sector policy and legal reforms, encouraging well-informed stakeholder deliberations in partner countries. FCDO will identify and agree the need for the deployment of facilitators with partner governments.

19. Facilitation support will improve the quality of national deliberation, encouraging inclusion of different stakeholder interests, helping clarify misunderstandings and promoting lesson learning and thereby helping to establish a strong foundation for lasting transformation in the ways forests are governed and managed. The Facilitation Service will contribute to FGMC programme-wide monitoring and lesson learning managed by the FGMC Programme Management Strategy and Support (PMSST) team and will engage in the coordination of FGMC action at the country level, overseen by the PMSST, to improve programme effectiveness.

C. The Recipients

20. The **recipients** will be the national stakeholders engaged in forest sector governance reform processes, including those framed by VPA, and in particular the agencies responsible for forest and land regulation, forest businesses, especially small businesses who have limited capacity for representation at national policy making, concerned civil society organisations as well as representation of IPLC.

21. Working arrangements may vary from one country to another depending on the "positioning" of the facilitator. In some instances, a facilitator will need to work closely with a responsible government agency, while in others a facilitator might play a more impartial role in between government and non-government actors, while in another context an impartial role between the national actors and international (FCDO) interests may be more appropriate. For each country context this positioning will be agreed in the Inception phase (or in advance of any new deployment), informed by the country specific "roadmap" and following consultations in country and with the PMSST and FCDO FGMC team.

22. The **client** is the UK Foreign, Commonwealth and Development Office (FCDO).

23. The intended **beneficiaries** of the services are the forest communities and small businesses working in forests and other citizen's whose livelihoods depend on forests, and the Governments seeking to manage their forests sustainably and other citizens engaged in ensuring effective law enforcement and accountability in FGMC partner countries.

D. Scope of Work

24. The Supplier will establish a Facilitation Service capable of deploying country-based Facilitators as the need is identified by FCDO. The Facilitation service will support the concerned governments and national stakeholders with the full time equivalent of up to 10 facilitators at any one time.

25. The Facilitation service will improve understanding and stakeholder capacities so as to maintain momentum in national forest sector governance reform processes with:

- Government agencies responsible for oversight or monitoring forest sector performance
- Private sector businesses and associations (including small enterprises and community forest organisations) to enable them to fully participate in governance reforms and national policy making as well as to improve their understanding of international market requirements;

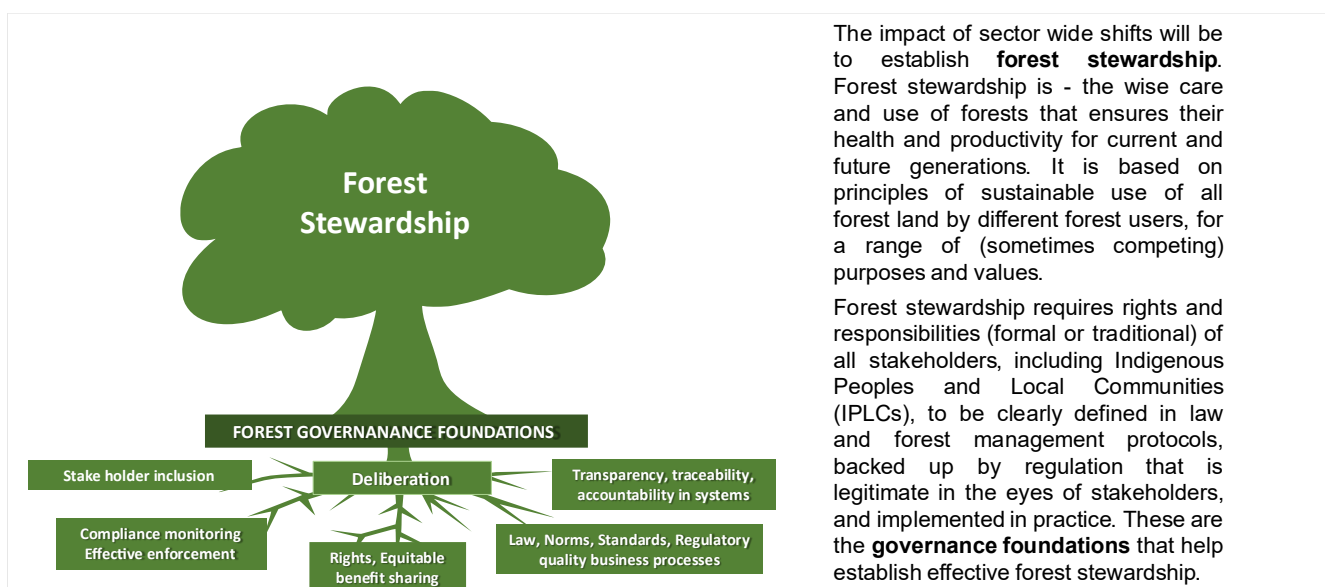


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- National civil society organisations (CSO) and the various representative bodies of forest communities and forest enterprises to enable them to fully participate in governance reforms and national policy making.

26. Facilitation support will improve the quality of national deliberation, encouraging inclusion of different stakeholder interests, helping clarify misunderstandings and promoting lesson learning and thereby helping to establish a strong foundation for lasting transformation in the ways forests are governed and managed. This helps build local ownership for results in each country where the facilitators are deployed. As FGMC expands into new countries with a consideration of a broader scope beyond the timber sub-sector, facilitators will be encouraged to explore opportunities to support multi-stakeholder national deliberations that will promote **forest stewardship** and bring benefit to people, climate and nature. Figure 1 below sets out how FGMC understands forest stewardship and the underlying governance foundations that are needed to support it.

Figure 1. Forest stewardship and governance foundations



The role and functions of Facilitators differs significantly from classic Technical Assistance, this distinction is explained in Annex 1. The Bid proposals, in describing their methodology for service delivery, will demonstrate a clear understanding of the role of Facilitators in fostering local ownership and an inclusive policy dynamic. Box 1 and Annex 1 taken together provide information on what is to be expected from a facilitator. (Linked to Criteria T3.)

27. Facilitators foster dialogue between stakeholders with divergent and competing interests, they contribute knowledge and analysis from other processes to inform this dialogue and draft reports, briefs, feedback to improve communications on progress and challenges. Therefore, this facilitation service relies heavily on the diplomatic skills and qualities of the individual Facilitators and for this reason, bid assessment places significant weight on the experts proposed to work as Facilitators. (Linked to Criteria T3)

28. The geographical focus for the Facilitation services will be agreed during the inception phase but from the outset, will include the need for facilitators in: Ghana, Liberia, Republic of Congo, DRC, Cameroon, Papua New Guinea, and Guyana. Other countries where facilitators will be deployed will be identified in the first year of the programme following further scoping activity. Engagement of Facilitators will be phased, with a gradual increase in the number of new partnerships. The approach to the deployment of facilitators and the qualities of the facilitation experts identified in the bid, will form a critical part of the bid assessment. (Linked to Criteria T1)



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29. The Facilitators will provide analyses of the country political and economic contexts, intelligence, and reports on progress of key processes including quarterly reports. These reports will assist the FCDO FGMC team to gauge progress. The facilitators will also provide country-level intelligence and coordination for other FGMC-financed actions, as well as guidance to FCDO Posts where appropriate.

30. Learning from FGMC1 experience, FGMC2 will operate under the following **guiding principles** in the facilitation of inclusive stakeholder deliberations: 13

- a. Supporting and fostering deliberative approach
- b. Working with existing available structures in-country;
- c. Ensuring synergy and linkages with existing initiatives;
- d. Fostering inter- agency cooperation, and nurturing engagement of civil society and private sector organisations so as to build political momentum;
- e. Encouraging local ownership of the in-country processes and institutions;
- f. Demonstrating impacts on inclusion, gender and equality;
- g. Applying a learning-centred approach to capture and share lessons with national stakeholders and the FGMC community of practice.

31. Experience has shown that having several country facilitators under a single contract has had the added benefit of adaptability and lesson sharing across countries. This will be particularly important to strengthen learning and performance. Annex 1 highlights some of the key lessons learnt. In addition, details of previous contracts, including for Facilitation services are published on FCDO's DevTracker.¹⁴

32. **Geographic Scope:** FGMC2 will not operate in all countries (potentially in up to 16) from the outset and is unlikely to work with Facilitators simultaneously across all countries. The nature of the work delivered in each country will depend upon the country context and the strategies and theories developed for it. As described, the first group of 7 countries that will require facilitation services is Ghana, Liberia, Republic of Congo, DRC, Cameroon, Papua New Guinea, and Guyana. Other countries (bringing the total up to 10 countries at any given time) are likely to be drawn from Solomon Islands, Indonesia, Vietnam, and as further scoping is carried out, potentially from Laos, Gabon, Cote d'Ivoire, Bolivia, Cambodia, Mozambique, Myanmar, Thailand. Bids should therefore identify named facilitators for the 7 confirmed countries, but cost for a total of 10 facilitators.

E. Requirements

33. The Supplier will establish a Service to mobilise, support and coordinate the actions of country-based Facilitators. The bids will propose Facilitators for various country-specific roles as well as setting out necessary backstopping functions that may include: HR management, technical and financial oversight, reporting, monitoring and learning. The programme-wide monitoring, evaluation and learning framework developed by the PMSST will be available during inception. (Linked to Criteria T2)

34. By the end of the Inception period the Supplier will deploy a facilitator to Ghana, Liberia, Republic of Congo, DRC, Cameroon, Papua New Guinea, and Guyana¹⁵. The Supplier will develop a specific 1st year workplan for each country by the end of the inception period, based on feedback obtained during country visits, dialogue with stakeholder bodies, discussion with PMSST and EFI experts and

¹³ Annex 2 describes the context for on-going governance reform processes in the seven countries specified, and details of the VPA can be found here <http://www.euflegt.efi.int/home>

¹⁴ <https://www.contractsfinder.service.gov.uk/Notice/ee281553-53e4-437a-abc1-30fac6847531>

¹⁵ The need for facilitators in additional countries will be identified over the course of the first year; it is expected there will be a need for up to 10 facilitators at any point in time.



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FGMC's Senior Responsible Owner (SRO). These workplans should clarify the positioning of the Facilitator and the needs of the stakeholder process. Experience has demonstrated that local presence is critical to build effective relationships and coordination

35. For the purposes of bid-preparation, the Supplier will consider the following cross cutting issues throughout: (Linked to Criteria T4)

36. Value for Money: In their approach to management of the Facilitation service, the Supplier should explain how they will deliver and demonstrate VfM in the quality of facilitation services across multiple countries and policy processes. Suppliers should ensure their proposals demonstrate how they will deliver maximum value for money.

37. Gender: The Supplier shall provide, as part of their proposal, a gender strategy that will detail its approach to develop and implement the project in a way that takes into account the different needs, priorities, knowledge and capabilities of women, girls, men and boys, ensuring that they participate in, and benefit equally from, the processes supported by the project. (Linked to Criteria T3c)

38. Suppliers should propose in their tender response the approach they will adopt to encourage **inclusive decision-making in policy processes**. The service requirements include: (Linked to Criteria T4)

- a. Placement of country-based facilitators deployed to meet identified need that supports governance reform processes. It is expected that this will be a full-time role in most contexts, although flexibility will be required to shift to part-time functions, perhaps covering several countries if appropriate
- b. Provision of project management, technical, financial, and administrative oversight of actions across all countries – aiming at all times to deliver Value for Money;
- c. Shared learning between actors engaged across countries;
- d. Timely intelligence of progress and challenges to FCDO and PMSST together with regular political economy analysis so as to inform FGMC2's risk monitoring. This reporting will be as circumstances dictate, but at least quarterly through confidential communications or reports;
- e. Performance management, quality assurance and monitoring covering VfM, finance, risk, challenges and progress in the stakeholder dynamics, political analysis, supported by quarterly reporting to an agreed FGMC framework.
- f. Quarterly reporting to the FCDO that includes a report on progress in each country reflecting on transformation of sector governance as well as an indication of new opportunities to support forest sector deliberations. These reports will draw on documentation of stakeholder processes and assist FGMC in documenting progress overall, including informing FGMC2 Annual Reviews.
- g. Monitoring and learning drawing together best practice from across the partner countries. This includes contributing to FGMC's monitoring indices covering the quality of the deliberative process, building of capacity and systems, and policy change. These will be shared during inception.

39. In each partner country the Facilitators will:

- a. Establish a baseline for future monitoring and help guide the development of country-specific Facilitator workplans and monitoring indicators.
- b. Support the multi-stakeholder processes, in particular:
 - o Encourage those leading the national stakeholder processes to foster inclusive, active, dialogue between stakeholders to inform decision-making on national



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forest governance reforms and ensure that consultations are well documented and information is distributed to wider groups;

- Assist stakeholder representatives in their representation functions and encourage them to identify and articulate their respective group interests
 - Identify impediments to stakeholder inclusion and strategies for addressing these.
 - Support national stakeholders to enable them to make effective contributions.
- c. Share information and experience with national stakeholders, in particular:
- Share lessons learnt from wider FGMC community of practice with decision-makers, civil society organisations, the private sector within and between partner countries so that best practice informs the process;
 - Share information with national stakeholders on the requirements of international market standards and legislation (such as EUDR) related to the trade in timber products and agricultural products grown on forest land;
 - Ensure information exchange and encourage coordination between all FGMC and other donor projects supporting governance reforms and FLEGT in the country;
- d. Work with national stakeholders to promote synergies between the process and any other forest-related initiatives particularly those framed by the National Determined Contributions (NDCs) to address climate change
- e. Provide quarterly reports to the PMSST and FCDO (including FCDO Posts) that includes a progress report and the extent of transformation of sector governance. These reports will draw from national progress reports, EFI updates, JIC reports and assist FGMC in documenting progress overall, notably on:
- Progress in the implementation of Timber Legality Verification System (LAS) such that the system's credibility with national and international stakeholders is maintained;
 - monitoring through Independent Audits or other processes;
 - design and implementation of joint impact monitoring;
 - market access for FLEGT-licensed timber products (from ITTO);
 - governance reforms (such as artisanal chainsaw milling, community-based land tenure, transparency); and
 - promotion of legal and sustainable forest management and trade
- f. Work with the PMSST to develop and inform annual assessments of the quality of deliberation, gender and inclusion, and policy change for each country.

40. As indicated above the specific focus for Facilitation support will vary from country to country depending on the strength and opportunities of the national processes and the needs of different stakeholder groups. Country-specific facilitation work plans will be developed during the Inception period and will outline the priorities for facilitation support, propose targets for key tasks relative to the baselines confirmed during Inception period. The Inception Report will propose a monitoring framework, developed in close consultation with the PMSST so that it is coherent with and contributes to the programme-wide MEL and reporting framework. Progress will be reported quarterly and will be verified periodically through monitoring visits by the PMSST and feedback to the SRO from FCDO in country.

41. The Supplier will ensure that the Service retains flexibility to respond to changing needs and priorities, to manage risks and maximise opportunities in pursuit of FGMC2's outcome and impact. This flexibility will be agreed through annual work planning process with the PMSST and FCDO FGMC team.



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42. Suppliers should demonstrate in their bid how they intend to ensure continuity of their core personnel over the life of the contract, through strong recruitment, retention, and performance management processes.

43. The country-specific Facilitators are considered core personnel as is the Project Leader. Any need for changes to key personnel shall be agreed, in writing, with FCDO in advance. FCDO will consult with in-country stakeholders before giving its agreement to changes in Facilitators. For any long-term staff, the Supplier will operate a staff performance management system modelled on international best practice.

F. Budget

44. FCDO has a budget of up to a maximum of £15million, inclusive of mobilising the FT equivalent of up to 10 Facilitators and all applicable taxes, covering the 48-month period. An additional budget of £20m may be available should an extension of 60 months be agreed at the end of this contract period. Suppliers should not craft their bids in such a way as to reach the budget ceiling that this parameter implies. Note that FCDO projects are not automatically tax exempt and therefore Suppliers will be liable to pay any relevant taxes in the country of operation. Tax liabilities should therefore be taken into consideration in commercial proposals.

45. Subject to the satisfactory performance, continuing need and availability of funding, the contract may be extended for a period of up to a further 60 months and up to the value shown above to cover continuing work.

G. Time Frame

46. The initial term of this Contract will be for approximately 48 months from the Commencement Date with options of an extension of up to 60 months.

47. **Extensions:** The extension option of up to 60 months will be at FCDO's sole discretion. In deciding whether the Contract should be extended, FCDO will have regard to the following non-exhaustive list of considerations:

- a) performance based on Review Points;
- b) ongoing future demand for interventions;
- c) interventions continuing to be live at the end of the term;
- d) the programme continuing to be an FCDO priority and aligned to geographic and thematic strategies;
- e) FCDO affordability assessment
- f) available funds through future Spending Reviews.
- g) subject to a business case addendum being approved by Ministers for the second 5-year period of FGMC2.

48. There will be a Review Point in the contract at the end of the Inception period, 3 months after contract start date. Advance to the Implementation period will be subject to satisfactory performance of the Supplier in working with national stakeholders to establish an in-country presence and proposing country-specific positioning and workplan in the Inception Report that is approved by FCDO. There will be a review point at the end of FY25/26 to reflect on resource



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availability subject to the Spending Review. Thereafter, yearly reviews of the service will be carried out by FCDO.

49. There will be a 6- month probationary period included in every Facilitator sub-contract entered into by the Supplier to allow for a review of performance and an assessment whether the placement is a good fit for the particular political context.

Table 1. *Timeline of key requirements*

Requirement	Timing
Gender Strategy	As part of the bid/proposal
Facilitation service MEL integrated with wider programme MEL in dialogue with PMSST	As part of inception report
Country specific year one work plan drafted in consultation with national stakeholders, including agreement on proposed country-based Facilitators	As part of inception report
Inception report	Within 3 months of contract start date
Narrative reports on the quality of multi-stakeholder processes, political and stakeholder analysis, VPA progress updates	Quarterly and Annually
Finance reports, risk register, including updated quarterly forecasts and annually summarising VfM	Quarterly and Annually
Learning and progress updates to inform PMSST annual assessment of gender inclusion, provide inputs for monitoring indices for each country	Annual workshops with PMSST
Learning seminars and workshops, including cross countries	Throughout the contract
Project closure/Final report and asset disposal plan	Draft 90 days before contract end date; final closure report within 3 months of closure.

H. Team Structure

50. . The Supplier's **Core Team** will be responsible for day-to-day leadership and management of the Facilitation Service. The skills and experience provided by the Core Team will be required throughout implementation, regardless of the specific facilitator deployment in each country. We would expect the Core Team to consist of, but not be restricted to:



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51. . **Project Director** holding ultimate contractual responsibility to FCDO, including overall quality assurance of deliverables. The Project Director should have proven expertise and experience of successful leadership, direction and quality assurance for international development programmes, with demonstrable results and experience in supporting forest or governance sector reforms.

52. **Team Leader** would lead the Core Team and be responsible for delivering the Facilitation Service and for achieving value for money throughout the Contract. The Team Leader would have a strong track record in leading and delivering contracts in the forest sector in developing countries with demonstrable results. This will include, but not be limited to, knowledge and experience of working with international development programmes, the facilitation of multi-stakeholder processes and engagement with developing country Government Authorities. They must have experience and expertise in the successful delivery of projects - mobilising at pace and running competitive processes, with agile delivery adapting to stakeholder priorities across multiple countries. They should have clear knowledge and understanding of political and economic contexts for the indicated priority countries/regions detailed in this Terms of Reference.

53. **The remainder of the Core Team will comprise the following skills:**

- **Programme Management** - providing support, particularly financial management to the broader delivery and reporting throughout the Contract.
- **Monitoring, Evaluation and Learning expertise** to support adaptive management/ reporting/ learning in close collaboration with the PMSST. The MEL personnel should have relevant experience in developing MEL adapted to stakeholder driven processes and knowledge management in comparable programmes, where facilitation of policy processes is the main programme output.
- **Gender and inclusion** – ensuring that the principles developed in the facilitation service gender strategy and approach to inclusion is understood and followed, providing advice and support to facilitators in-country

54. Country-based Facilitators would be mobilised during the inception period for partner countries identified in these TOR. Additional Facilitators will be mobilised as indicated by FCDO to support priority needs as the programme expands its scope. Facilitators must have: relevant experience of supporting multi-stakeholder processes, the appropriate diplomatic and people skills to accompany governance reforms in the forest sector in the specific developing country context with keen understanding and awareness of the different thematic areas where support might be required; knowledge of or access to knowledge/experience of gender and disability inclusion and forest sector issues as well as understanding of approaches to political economy analysis. See skills and attributes of facilitators under Annexes 1 and 2 for more detail.

55. For clarity, the Leadership Team consists of the Project Director and the Team Leader, and these individuals will be regarded as Key Personnel. Other Key Personnel will be other members of the Core Team agreed with FCDO as set out above and the country-specific Facilitators.



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Part 2 – Contract Management

I. Contract Provisions [Operating Model]

Inception Period

56. The contract will have a 3-month Inception Period which will commence from the Contract start date. The performance of the Supplier will be assessed at the end of this Inception period, which will also serve as a formal review point. FCDO will review the performance of the Supplier, and the Inception Report itself, and if satisfied confirm approval to move to the Implementation Phase. Any delay with the delivery of the Inception report will delay start of implementation.

57. The main objectives of the Inception period are to establish a Facilitation Service that is fit for purpose, including the deployment of facilitators in 7 countries (bringing the total upto 10 countries at any given time), a stocktaking of the state of the multi-stakeholder dynamic in each country positioning the Facilitators to meet the country-specific needs.

58. During the 3-month inception period, the Supplier will:

- i. visit each 7 identified counties that are initially in scope y and consult with the Government, FCDO country office (where relevant) and PMSST country lead to determine the detailed facilitation requirements for each country and the positioning for this country-specific support. A workplan, stocktaking baseline for the Facilitator in each country will be developed during the Inception period. Part of this baseline should include an assessment of local structures and initiatives that already exist.
- ii. Develop an Inception Report that includes i) a short stocktake of stakeholder perceptions of the processes to be supported, ii) a baseline of stakeholder dynamics and engagement as well as the political space for engagement of non-state actors; iii) a detailed outline of tasks framed into a workplan, iv) monitoring framework and reporting arrangements in close cooperation with the PMSST, and v) facility requirements.
- iii. Develop the first overall annual work-plan to be reviewed by the PMSST.

59. FCDO will provide a written response to the draft Inception report within two weeks of receipt. A final Inception Report will be submitted to FCDO within two weeks of receiving FCDO's response to the draft Inception Report.

The Supplier will develop as part of the Inception period the following key documents that will form the basis for operations in the Implementation period:

- i. Results Framework, setting out indicators that will provide evidence of the facilitation service's contribution to improving the quality of stakeholder engagement, sustaining political momentum, helping local actors address blockages and influencing positive progress. This will contribute to FGMC's country strategy and Theory of Change, programme results and outcome monitoring, notably the PMSST's assessment of the quality of deliberation, policy change and transformational change.
- ii. Monitoring, evaluation and learning plan, outlining the way the project will stimulate learning and ensure adequate monitoring; linking up to FGMC's monitoring processes and working closely with the PMSST;
- iii. Annual Country Workplans, outlining activities agreed through consultation with stakeholders, which will be updated periodically;
- iv. Financial plan, outlining financial review and performance management processes, audit requirements, an asset register, and an approach to prevent fraud;



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- v. Risk register and management, outlining principal risks and plans for their treatment where needed;
- vi. Reporting plan, outlining the schedule for drafting, reviewing, and finalisation and consistent with the FGMC reporting requirements as indicated by the PMSST.

60. . The Supplier will be required to have the information, knowledge, experience, procedures, equipment and trained people deployed and ready to implement the project by the end of the Inception period. This should include having all necessary government approvals in place before the end of the Inception Period.

Implementation Period

61. The implementation period will commence from the date of acceptance of the Inception Report. During the implementation period, the Supplier will:

- a. Administer the project, monitor progress, provide quality assurance, especially of facilitator performance (Suppliers should propose an approach to benchmarking in their tender response), financial control of project spending and reporting of progress with the stakeholder processes, political dynamics as well as implementation progress.
- b. Coordinate implementation with in-country donors supporting implementation and with concerned government and non-government organisations involved in the multi-stakeholder bodies including:
 - i. supporting and facilitating networking among stakeholders, including through seminars, conferences and study-tours to engage with other parts of FGMC2;
 - ii. promoting coordination and shared lesson learning between other development partners working in related fields;
- c. Where needed, provide advice to national stakeholders drawing from the FGMC community of practice (guided by PMSST where needed) to provide guidance on independent forest monitoring, international market requirements, due diligence requirements, international trade, UK, EU and China import controls, sustainable forest land-use investment, international legal frameworks and sector governance reforms;
- d. Promote the visibility of FCDO and FGMC2 where appropriate.

62. The Supplier will operate the Facilitation Service by ensuring the best value for money. It is expected that this will require a lean core staff to provide administrative services, monitoring and oversight and consolidated reporting.

J. Payment and Performance

63. . For the inception period 100% of the suppliers' fees will be linked to fixed milestone payments: 50% upon submission of the draft inception report and 50% upon acceptance of the final version. Expenses will be reimbursed based on actuals, up to the agreed ceiling for the inception phase.

64. For the implementation period, 20% of the supplier's fees will be contingent on the Key Performance Indicators described in Annex 3 to be scored quarterly by FCDO with inputs from the PMSST monitoring and country visits, and feedback from concerned country stakeholders to the SRO. KPIs cover the effectiveness of delivery of the facilitation services, and quality of overall management and financial management.

65. During the Inception period, consideration will be given to refining the KPIs based on discussions with key stakeholders, the country-specific workplans and framing other elements of



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Implementation fees into work plan-related milestones where appropriate. Payments for all costs and expenses will be in arrears. All expenditure will be against pre-agreed fee rates and project costs.

K. Contract Management

66. The Facilitation Support project will be managed directly by the FGMC team in FCDO/ECED. **It will report directly to FGMC's Senior Responsible Owner (SRO).** The Facilitation Services' operations will be subject to the terms and conditions set out in the FCDO contract.

67. The Facilitation Service Supplier will coordinate closely with other FGMC2 delivery partners working at country level, including any TA projects or technical experts deployed by the European Forest Institute (EFI). Facilitation support will be targeted to the priorities established and to address any emerging concerns over the quality and nature of national stakeholder deliberations.

68. The Facilitation Service Supplier's reports will be shared with and collated by the FGMC PMSST in a format agreed with the PMSST.

69. The PMSST working relationship with FCDO is set out in section L and in Figure 2 below. The PMSST provides technical and management support to FCDO across the FGMC programme. It will be important that the Facilitation Service and PMSST build a strong working relationship together to support the critical multi-stakeholder dynamic of forest governance reforms. This will include in-country facilitators maintaining regular contact with the PMSST focal points, meetings between the Facilitation Service Supplier and PMSST at least once every quarter to review engagement processes with country stakeholders to inform the PMSST and Facilitation Services. The PMSST will receive and review Facilitation Service quarterly reports, making use of information to inform ongoing political economy analysis and programme strategy

70. The PMSST will work with the Facilitation Service Supplier to establish a detailed reporting framework that will assess progress with the national stakeholder dynamic and contribute to FGMC-wide annual reporting. The Facilitation Service Supplier will establish a strong working relationship with the PMSST in the inception period, and thereafter fully support the programme-wide performance monitoring tasks of the PMSST, as described above, throughout the duration of the Service.

71. The PMSST will report back to the SRO in ECED at least quarterly on the performance of the Supplier in the provision of Facilitation services.

72. The Facilitation Service Supplier will be expected to contribute to the evidence (including lessons learned and best practice) gathered by the PMSST for FGMC reviews and evaluations. The Facilitation Service Supplier will also be expected to contribute evidence to the FGMC Independent Review Team on instruction of the SRO.

73. The Facilitation Service Supplier will deliver quarterly progress reports to FCDO. These reports may be shared with other concerned donors. The Facilitation Service Supplier may therefore provide separate confidential reports on any intelligence or perspectives that they do not want shared with others. The quarterly reports will provide regular political analyses, intelligence and progress updates. In particular, the Facilitators will work with the PMSST to assess the quality of country-specific deliberation and transformational change on an annual basis.

74. If the prospective Supplier has chosen to submit a proposal which will be delivered through a consortium model, the proposal must include a governance plan which sets out the proposed management structure and arrangements including lines of reporting and accountability. It should elaborate how downstream partners would be engaged and managed.

75. Any change in a named Facilitator assigned to support a specific national process will require agreement with FCDO in advance, who will in turn consult with national counterparts to ensure an ability to engage effectively.



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L. Division of Tasks and Responsibilities

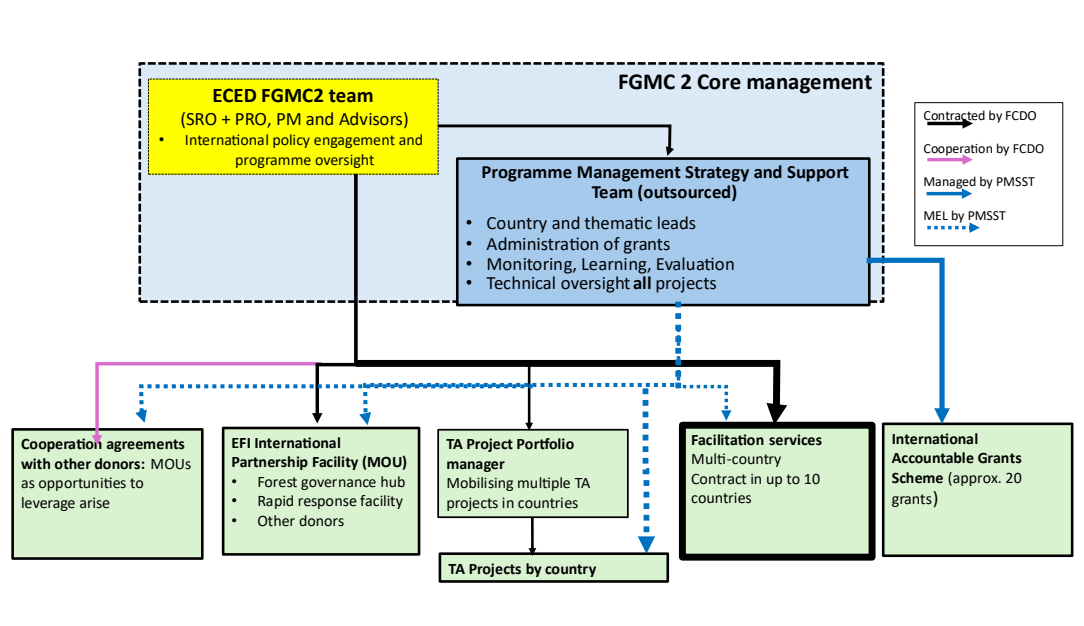
76. The Facilitation Service contributes to political reform processes in FGMC partner countries and helps to strengthen and coordinate the actions of other FGMC projects working in these countries. In particular, projects that are seeking to build national systems of governance and accountability will be supported by improved understanding of the local stakeholder dynamics and greater access to diverse stakeholder interests.

77. The Facilitation role must establish an impartial approach and be seen by national stakeholders to be impartial and objective so as to function effectively with a diversity of stakeholder interests. Where Suppliers, or consortia partners are engaged (or bidding) in other TA projects in the sector in the partner countries careful consideration of potential perceived conflicts of interest and how to manage them would need to be addressed in the inception report.

M. Governance and Oversight

78. At global level the FGMC2 core management team is made up of ECED's FGMC Team and the PMSST. This combined core team will oversee FGMC's day-to-day delivery, including finances, risk, reporting, monitoring, and stakeholder engagement with oversight of all country engagement. The figure below shows the overarching governance structure for FGMC2.

Figure 2 FGMC2 Governance Structure



79. The FCDO FGMC2 team will comprise an SRO, PRO and a Programme Manager. Provision is also being made for up to 7 programme funded roles in partner countries to provide greater FCDO presence on FGMC in-country. Currently three are in place (Indonesia, China and Congo Basin). Plans for a further role in the Pacific are underway. Further roles will be identified as per need as the programme develops. During the inception period for this contract, arrangements to ensure close cooperation between PMSST, the Facilitation Service, and individual Facilitators will be agreed.

80. At country level, arrangements for FGMC2 governance in partner countries will be developed specifically since priorities and needs of the partner country, stakeholders, capacities and their corresponding delivery modalities will differ from country to country. All country-level governance arrangements will have in common the importance of ensuring local ownership, that they are inclusive of diverse views, that coherence with other sector programmes is considered, and that structures allow maximum flexibility. The facilitator will be key to helping ensure that national

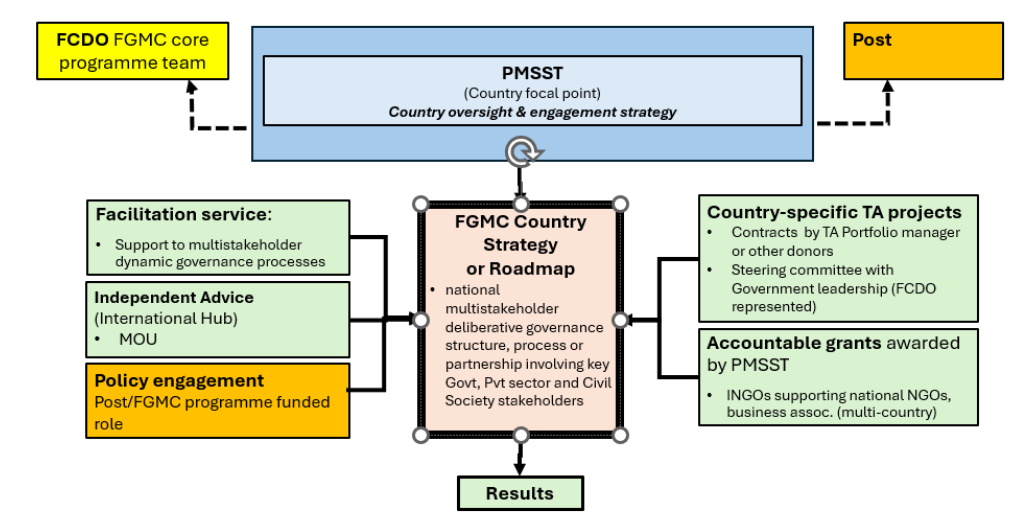


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stakeholders are empowered to drive the governance reform processes drawing from technical assistance of projects and grants where appropriate. Figure 3 below sets out this generic structure for where we will be forging country partnerships around the nationally agreed theory of change and strategy/roadmap.

81. The Facilitator's country-specific annual work-plans will be framed by the country roadmaps and provide the main reference for monitoring and reporting the effectiveness of facilitation support and progress in stakeholder engagement and inclusion.

Figure 3 Generic Country level governance structure



N. Reporting Requirements

82. The Supplier will deliver the following reports during the lifetime of the contract:

- a) **Quarterly progress reports**, covering progress in each country during the previous quarter, including intelligence and progress updates on multistakeholder process. The quarterly reports will provide regular political analyses, an assessment of the quality of engagement of different stakeholder interests, as well as a review of process and country risks. The reports also provide an assessment of financial performance. The reports shall be submitted within 30 working days following the end of each calendar quarter.
- b) **Annual reports**, covering progress and providing in depth discussion of results at the outcome and impact levels and reflecting on the learning objectives, submitted to inform the FGMC2 Annual review, so by June 1st of each calendar year. These reports will adopt the FGMC wide reporting template that will be provided by the PMSST. In addition, the Supplier will provide annual audited statements. The audit reports must be completed within six months of the completion of financial year.
- c) **A final report**, providing in depth discussion of results at the outcome and impact levels and reflecting on learning designed to inform future programmes and stakeholder processes.
- d) **An Exit Plan**, submitted in draft within 3 months of the contract start date and updated 3 months before conclusion of the contract.

83. The objectives and main headings of the reports will be outlined in the Inception Report.



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84. All reports are to be submitted to FCDO for review within the stated timescales. With the exception of annual independent audits, all submitted reports will also be reviewed by the PMSST.

85. These reports may be shared with HMG Posts and other concerned donors. The Supplier may therefore provide separate confidential reports on any intelligence or perspectives that they do not want shared with others.

86. End of Contract Activities: Three months before the expiry date of the contract the Supplier will prepare for FCDO approval an updated draft Exit Plan which shall include plans for:

- a. disposal for all assets procured throughout the lifetime of the project in accordance with FCDO procedures on asset management and disposal;
- b. addressing any material items that are necessary or desirable for the continued co-operation of the UK Government after the contract ends;
- c. ensuring the smooth transfer of responsibilities from the Supplier to any persons or organisations taking over such responsibilities after the contract ends;
- d. delivering to FCDO (if requested or as otherwise directed by FCDO) prior to the contract end date (or termination of the contract) any finished work or unfinished materials or work-in-progress which relate to the contract;
- e. providing FCDO before the contract ends a summary of the status and next steps in relation to any on-going projects or other material and unfinished activities being conducted or monitored by the supplier;
- f. the supplier will prepare a short lesson-learned briefing focused on the challenges faced by and opportunities generated
- g. returning all confidential information to FCDO before the contract end date.
- h. Any other relevant information in accordance with Standard Terms and Conditions

O. Financial Management

87. Any procurement undertaken by the Supplier will be in accordance with international best practice, although very limited procurement is anticipated. The Supplier will be required to provide capital upfront initially and claim back from FCDO monthly in arrears.

88. The Supplier will be expected to generate and maintain a Delivery Chain Map that captures in visual form the names of any subcontracts and downstream partners involved in delivering the project through to the end recipient. The Map will include a summary assessment of risk identified through due diligence procedures and on-going performance monitoring of sub-partners.

P. Risk Management

89. The Supplier shall evaluate the risks associated with the successful implementation of the Facilitation Service in each country context and shall propose measures which aim to reduce the probability and mitigate the impact of the risks. The risk assessment will form part of the Supplier's proposal and will be further elaborated during the Inception period. In the Inception report the Supplier will propose how they will systematically monitor risk throughout the project lifecycle and the escalation chain. Risks will be identified in accordance with the FCDO risk matrix. For the avoidance of doubt, this risk assessment is in addition to the risk assessments required to meet the Supplier's Duty of Care set out in section Q below.

Q. Other Requirements

Transparency



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90. FCDO requires Suppliers receiving and managing funds to release data on how this money is spent, in a common, standard, re-usable format and to require this level of information from immediate sub-contractors, sub-agencies and partners.

91. It is a contractual requirement for all Suppliers to comply with this approach, and to ensure they have the appropriate tools to enable routine financial reporting, publishing of accurate data and providing evidence of this to FCDO. Further information is available from the International Aid Transparency Initiative (IATI): www.aidtransparency.net.

UK Aid Branding

92. Suppliers that receive funding from FCDO must use the UK aid logo on their development and humanitarian programmes to be transparent and acknowledge that they are funded by UK taxpayers. Suppliers should also acknowledge funding from the UK government in broader communications, but no publicity is to be given to this Contract without the prior written consent of FCDO. The Supplier must adhere to UK aid branding guidance. For more information see: www.gov.uk/government/publications/uk-aid-standards-for-using-the-logo.

Digital

93. Suppliers that receive funding from FCDO must follow UK Government's and FCDO's standards for the use of digital in international development programmes.

Duty of Care

94. The supplier must ensure the highest standards of ethical and professional conduct, respecting transparency obligations, environmental sustainability and social responsibility.

95. The Supplier is responsible for the safety and well-being of their personnel and third parties affected by their activities under this contract, including appropriate security briefings and arrangements. They will also be responsible for the provision of suitable security arrangements for their domestic and business property.

96. FCDO will share available information with the Supplier on security status and related developments in-country where appropriate.

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

98. . The Supplier must develop their proposal on the basis of being fully responsible for Duty of Care. They must confirm in their bid that they:

- a. Fully accept responsibility for Security and Duty of Care of all programme Personnel;
- b. Understand the potential security risks and have the knowledge and experience to develop an effective risk mitigation plan;
- c. Have the capability to manage their Duty of Care responsibilities throughout the life of the programme.

99. Acceptance of Security and Duty of Care responsibility must be supported with evidence of capability and FCDO reserves the right to clarify any aspect of this evidence. In providing evidence the bidders should consider the following questions:

- a. Have you completed an initial assessment of potential risks that demonstrates your knowledge and understanding of the security environment in Liberia, and are you



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satisfied that you understand the risk management implications (not solely relying on information provided by FCDO)?

- b. Have you prepared an outline plan that you consider appropriate to manage these risks at this stage (or will you do so if you are awarded the contract) and are you confident/comfortable that you can implement this effectively?
- c. Have you ensured or will you ensure that your staff are appropriately trained (including specialist training where required) before they are deployed and will you ensure that on-going training is provided where necessary?
- d. Have you an appropriate mechanism in place to monitor risk on a live/on-going basis (or will you put one in place if you are awarded the contract)?
- e. Have you ensured or will you ensure that your staff are provided with and have access to suitable equipment and will you ensure that this is reviewed and provided on an on-going basis?
- f. Have you appropriate systems in place to manage an emergency/incident if one arises?

100. The Supplier will take all reasonable steps to prevent SEAH of any person linked to the delivery of this ToR by both its employees and any Downstream Partner.

101. FCDO has a zero-tolerance approach towards SEAH. The Supplier will immediately contact FCDO's Counter Fraud Section, to report any credible suspicions of, or actual incidents of SEAH related to this contract. The Supplier should assess credibility based on the source of the allegation, the content, and the level of detail or evidence provided. All sexual activity with children (persons under the age of 18) is prohibited, regardless of the age of majority, or age of consent locally.

102. The Supplier will fully co-operate with investigations into such events, whether led by FCDO or any of its duly authorised representatives or agents.

Do No Harm

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

104. The supplier will be required to include a statement that they have duty of care to project stakeholders and their own staff, and that they will comply with the ethics principles in all activities. Their adherence to this duty of care, including reporting and addressing incidences, should be included in both regular and annual reporting to FCDO.

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

106. FCDO does not envisage the necessity to conduct any environmental impact assessment for the implementation of this project given that it aims to improve environmental and social safeguards of forest operations in Liberia, Ghana, the Congo Basin, the Pacific, and Guyana. It is, nonetheless, important to adhere to principles of "Do No Harm" to the environment.



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General Data Protection Regulations (GDPR)

107. Please refer to the details of the GDPR relationship, status and personal data (where applicable) for this Service contract as detailed in Annex 4 which appears as standard clause 34.2 in section 2 of the contract.



Annex 1: Facilitators and Technical Advisors: A Comparison Based on Lessons Learnt from FGMC1

Introduction

Facilitation has been a valuable tool in supporting the multi-stakeholder deliberative process envisioned in the EU Forest Law Enforcement, Governance and Trade (FLEGT) Voluntary Partnership Agreements (VPAs). It has been noted that 'In the forestry sector, the high level of trust between VPA stakeholders has been built over the years thanks in large part to the FLEGT facilitator.'¹⁶ While this role evolved in support of VPA processes, in FGMC-2, facilitation support is also envisaged in support of multi-stakeholder deliberative processes that address forest governance challenges beyond those within the scope of VPAs. These may include but are not limited to drivers of deforestation other than timber (e.g. illegal mining or forest conversion for the production of agricultural commodities) or other uses that value standing forests (e.g. carbon markets and other payments for ecosystem services).

However, there remain some misunderstandings around what a facilitator does and what makes this function different from other roles one typically encounters in the global aid sector.

This note is intended to clarify the role by providing a distinction between a facilitator and a technical advisor, drawn from the experiences of Forest Governance, Markets and Climate (FGMC) Facilitation Unit facilitators.

Key Differences between a Facilitator and a Technical Advisor

Level of Impartiality

Central to their ability to function effectively in their roles, FGMC Facilitation Unit **facilitators**, must act with **impartiality**. Within a complex and expansive ecosystem of competing interests, the presence of an impartial honest broker is a unique one. Facilitators must avoid injecting their opinions into dialogues that they facilitate. Instead, it is important that they listen actively without evaluation and encourage participation irrespective of differences in views.¹⁷ **Technical advisors**, however, are not impacted to the same degree, and this **impartiality is rarely mentioned in job postings** to that effect. It may be appropriate, or even required, for a technical advisor to offer one's own views or opinions. While the risk of perceived alignment is hard to avoid entirely, given the nature of bilateral funding, impartiality is something these facilitators must take great pains to maintain.

Objectives and Stakeholder Interests

Impartiality is possible because the facilitators are encouraged to work towards objectives that are **in service of a principle** - promoting an inclusive multi-stakeholder process of sector reform - **rather than in the service of a stakeholder or a technical area**. Facilitators' goals are to ensure that decisions on the sector are made with the meaningful input from the various stakeholders impacted, through the establishment and running of well-functioning platforms for multi-stakeholder engagement. **Technical advisors**, in contrast, usually work **for and in the interests of a client or strategic objectives**: 'It is essential that the facilitators be equally accessible and supportive to all. Their core task is to ensure that all stakeholders are informed about the process, have opportunities to engage through effective representation, and are able to advocate for their constituent stakeholder group.'

Leadership vs Facilitation

Facilitators are not leaders in the classical sense: their position does not sit comfortably within a hierarchy. **Technical advisors**, on the other hand, are expected to direct, instruct, and indeed, **lead**

¹⁶ <https://www.fern.org/fileadmin/uploads/fern/Documents/Briefing-cocoa-final.pdf>

¹⁷ https://www.fern.org/fileadmin/uploads/fern/Documents/makingforestryfairer_internet_0.pdf



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others. For the multi-stakeholder deliberative process to be successful, it must be developed through building national consensus, which means that responsibility for leadership of the process must remain firmly with national stakeholders. For that reason, facilitators also find that in some situations, stepping back and letting (or encouraging) others handle a situation, is more appropriate than intervening directly; they often need to be patient and let stakeholders resolve an issue instead of trying to 'fix' it quickly by themselves.

Levels of Change

Facilitators consider the desired changes **at impact or outcome level and drive towards these, but** the activities and outputs they select to achieve this depend on the circumstances. Facilitators' scope at a task-based level varies widely and is rarely planned more than three months in advance. This is because the facilitators must be constantly assessing the political, economic, and social context in which they are operating and adapting to the changes as they occur. Yet, facilitators' overarching goals are simple: they work for progress towards multi-stakeholder deliberative process, in the service of nationally-led multistakeholder policymaking. In contrast, a **technical advisor's** success is typically defined by the timely provision of well-defined discrete work packages at **output and activity level**, within a broader programme of impact- or outcome-level change. Put another way, 'A Facilitator's job is to support a locally-owned and country-driven process, not drive or push a particular output.' (ibid)

Skills and Attributes

A facilitator's effectiveness relies heavily on "**soft**" **skills**: those that are largely self-developed and difficult to transfer, including communication skills, emotional intelligence, self-awareness, tact, diplomacy, empathy, cultural sensitivity, and the ability to maintain an impartial stance in challenging contexts. For a **technical advisor**, however, the emphasis will be on "**hard skills**": skills obtained through educational or career experience that can be readily transferred and more easily measured.



Annex 2: Country context descriptions

Country	Short Contextual Paragraphs to Situate the Need for Facilitation
Ghana	<p>FGMC has been supporting forest governance reform and systems in Ghana for over a decade, with various instruments deployed over time to strengthen the national deliberative process and stakeholders' capacity to engage.</p> <p>Sixteen years after the conclusion of VPA negotiations between Ghana and the EU, Ghana is now expected to start issuing FLEGT licenses sometime in 2025, marking a significant achievement in a process that FGMC has been instrumental in supporting.</p> <p>Yet Ghana achieving FLEGT licensing is not the end of the journey. There will remain a need for sustained stakeholder engagement in ensuring that Ghana's forest governance systems continue to deliver and demonstrably help forests to retain high value. Supporting Ghana's communications and engagement in international forest governance arenas will also be a priority. Experience has shown that a Facilitator would be a strong asset in these areas of work.</p> <p>Moreover, with mounting evidence of, public scrutiny over, and political attention to the health and environmental threats (including to forest cover) posed by illegal, informal gold mining, there may now be an opportunity for Ghana to engage in systemic reform with a focus on the mining/forest intersect – a space where processes are yet to be set up, but with a potential role for a Facilitator in supporting and structuring stakeholder deliberations.</p> <p>Professional skills and expertise required of the proposed facilitator for Ghana include: knowledge of Ghana, or a similar West African country, expertise in forest sector governance and related trade, and multistakeholder engagement processes, in addition to the skills and attributes outlined in Annex 1.</p>
Liberia	<p>Liberia has more than half of West Africa's remaining forests, which currently cover around 68% of the country, some 6.6 million hectares. Liberia is still the most densely forested country in West Africa, hosting over 40% of the Upper Guinea Forest. However, these forests are at risk as Liberia has been experiencing significant forest loss over the last years. In 2022 Liberia recorded a 23% increase in change in primary forest loss, the tenth country with increase in primary forests loss.</p> <p>FGMC has been supporting Liberia in its forest governance reforms since more than a decade, which has resulted in structures and systems to monitor the forest sector. These systems have proved to work but need further support to resist being undermined by significant non-compliance and limited capacity for enforcement, contributing to good carbon governance for the benefit of forests and people.</p> <p>There is a need to continue the Facilitation of the deliberative process in Liberia that started with the forest governance reforms following the civil war and the subsequent VPA-process that started in 2009. It is important to continue to support inclusive and deliberative decision-making processes to bring transformative change through delivering broadly fair, socially legitimate, sustainable and enforceable rules-based systems, contributing to benefits for both people and forests.</p> <p>Recently the EU has indicated its intention to cancel the VPA risking the weakening of forest governance reform processes. There are concerns around carbon governance, in particular the absence of a legal framework, lack of transparency and potential impacts on local communities and land rights that need further deliberation. An increasing concern is the unauthorised mining activities in forest areas with procedural violations, in particular the Free Prior and Informed Consent (FPIC), and coordination lapses between the relevant authorities.</p>



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	<p>Facilitation services are needed to continue the national forest governance processes in Liberia, that will inform forest sector reforms for the national timber verification system, and other processes where relevant such as for carbon and mining.</p> <p>Professional skills and expertise required of the proposed facilitator for Liberia include: expertise in working in fragile states, in particular with forest governance policy-oriented work, operating independently, and with political sensitivity. Additionally, demonstrate the skills and attributes outlined in Annex 1</p>
Cameroon	<p>Cameroon's forest & wildlife sector is a vital contributor to the national economy. In recent years, the government has been under considerable pressure, both internally and externally, to increase the generation of revenue, with implications not just for the timber sector (an important purveyor of direct and indirect jobs that typically accounts for around 4% of the country's GDP) but also for forests at large, due to growing exposure to threats including mining, infrastructure construction projects, and small- and large-scale agricultural conversion.</p> <p>The VPA process between Cameroon and the EU, which had stalled since 2019, took a further hit in October 2024 when the European Commission stated its intention to terminate the agreement. Although the latter got automatically renewed for another 7 years in November 2024, momentum appears to have been lost and the prospect of the VPA being salvaged is now unlikely.</p> <p>Yet Cameroon has demonstrated strong determination to further deploy its national forest governance system underpinned by the principles of the VPA, including a commitment to ensure transparency and deliberation in evidence-based decision-making. Ultimately, Cameroon's ambition is to develop a "national certification system" that will cover not only the legality aspects of forest management, but also the sustainability aspects.</p> <p>National stakeholders, including Govt officials quite significantly, have stated their interest in having facilitated processes to ensure these commitments deliver, and the role of the Facilitator is now seen as being critical in that respect.</p> <p>Professional skills and expertise required of the proposed facilitator for Cameroon include: knowledge of country or of a similar country context, expertise in multi-stakeholder engagement, supporting stakeholder led processes and forest sector governance and related trade, fluency in French. Additionally, demonstrate the skills and attributes outlined in Annex 1</p>
RoC	<p>RoC is a Congo Basin country with a forest cover of 64% (21.9 million ha). Around 3.9 million hectares of forest have been set aside as protected zones, 15 million hectares are intended for production, and 71,000 ha of commercial plantations exist.</p> <p>FGMC has been supporting forest governance reforms in RoC for over a decade to strengthen the Forestry Ministry's capacities to verify legal compliance of timber production, and support stakeholders' capacities to engage in ongoing legal reforms in the forest sector. RoC's efforts to deliver credible assurance of timber legality and origin are structured around their <i>Legality Verification System</i> described in their bilateral agreement with the European Union: the <i>FLEGT Voluntary Partnership Agreement</i>. RoC is also a member of the <i>Broader Market Recognition Coalition</i> with the aim of getting market recognition for their Legality verification system: demonstrating that timber produced from RoC has credible assurance of legality and origin.</p> <p>Experience in RoC shows that all stakeholder groups (Private Sector, Civil Society, and RoC government) struggle to follow the pace of the reforms that they undertake and the related pace of international support. They also struggle to gather all initiatives around their strategic priorities. Experience shows that having a neutral facilitator in country to help stakeholders getting organised around their priorities and all the ongoing initiatives and support has been key to realise long lasting supported results.</p>



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	<p>FGMC's support in ROC has been building on facilitating strong stakeholder deliberation as a foundation for governance reforms, making sure that reforms are both credible and sustainable. FGMC is positioned to further support deliberations of policy options with a view to optimising the capture of value from forests, exploring further the integration of carbon and biodiversity values with sustainable timber management.</p> <p>Professional skills and expertise required of the proposed facilitator for RoC include: knowledge of RoC or of a similar country context, in particular expertise in forest sector governance and trade, multistakeholder processes and engagement, and fluency in French is a requirement. Additionally, demonstrate the skills and attributes outlined in Annex 1</p>
DRC	<p>DRC is host to the major share of the Congo Basin's forests – a natural wealth that in recent years has been threatened by an accelerating trend in forest loss/degradation. To attract forest-positive finance, DRC has proved eager to demonstrate leadership and position itself as a “solution country” on the global climate change scene.</p> <p>Yet meeting these ambitions will require strong governance foundations as well as a consensual understanding of the multiple ways in which value can be best derived from standing forests.</p> <p>Processes exist both at national and provincial levels through which the Government is enabling stakeholder consultation and inputs in policymaking. However, there have been constraints to the proper functioning of these processes – budgetary and operational constraints as well as, equally crucially, the limited quality of the discussions taking place due to a lack of stakeholder preparedness and coordination.</p> <p>In the context of DRC, a Facilitation service would be key in ensuring that stakeholders are well represented, well informed, well prepared to participate meaningfully in discussions, and overall well connected with issues that are not directly relevant for their own constituencies but are important for the management of the country's forests at large.</p> <p>Professional skills and expertise required of the proposed facilitator for DRC include: expertise in working in fragile states, with forest sector governance, in particular of stakeholder-led policy-oriented work in a crowded donor landscape, operating independently with political sensitivity. Fluency in French is a requirement. Additionally, demonstrate the skills and attributes outlined in Annex 1</p>
Guyana	<p>Guyana's rainforests cover approximately 89% of the country, with the government owning 86% and Indigenous Peoples owning 15%. The annual deforestation rate was estimated at 0.048% in 2017, primarily due to gold and bauxite mining. The government's Low Carbon Development Strategy 2030 (LCDS) outlines how Guyana will use its forests to forge an economy based on low deforestation, low carbon emissions, and climate resilience. Guyana began Voluntary Partnership Agreement (VPA) negotiations with the EU in 2012, with the VPA being ratified in 2023. Guyana has also taken a leading role in the Broader Market Recognition Coalition (BMRC) to incentivise good forest governance in tropical countries.</p> <p>The UK's support for forest governance in Guyana dates back to the 1990s/early 2000s, when it helped strengthen the Guyana Forestry Commission's (GFC) policies and management systems. This laid the foundation for FGMC's support to the VPA process, beginning in 2012. Following the VPA's initialling in 2018, the UK has supported its implementation to date by helping develop the Guyana Timber Legality Assurance System (GTLAS), engaging stakeholders, increasing transparency and accountability, improving dialogue on land rights, and enhancing the legal framework. This support has proven fundamental to Guyana's forestry sector, laying the groundwork for the forest governance reforms that enabled Guyana to present itself as a credible high integrity supplier of forest carbon credits, leading to the sale of 30% of its credits for US\$750 million.</p>



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	<p>Guyana is expected to graduate from the list of countries eligible for Official Development Assistance (ODA) in 2026, after maintaining high-income status since 2022. This classification is somewhat misleading, as the oil boom has created a statistical illusion of prosperity that doesn't reflect the actual distribution of wealth, institutional development, or access to effective public services for Guyana's population of approximately 825,000 people. Notwithstanding this reality, FGMC2 aims to remain a key partner to Guyana in pursuit of its forest governance objectives beyond the ODA end date. The Facilitator will be strategically placed to support this evolving partnership, including through regional and global initiatives, like the BMRC.</p> <p>The Facilitator will remain engaged in the multistakeholder processes surrounding the development and marketing of the GTLAS. The Facilitator will continue to support emerging multistakeholder initiatives that contribute to inclusive forest governance, such as the Free Prior and Informed Consent (FPIC) working group, the Gender and Forests Group, and the nascent youth network. The Facilitator will also continue to play an important role in managing conflict dynamics between the government and civil society surrounding the LCDS. This will continue to be an implicit function of the role, particularly as Guyana seeks high quality markets for the remaining 70% of its 2016-2030 credits.</p> <p>Furthermore, the Facilitator's engagement at the regional and global levels will increase when Guyana transitions from being ODA eligible, including providing facilitation support to country-led global initiatives, promoting the benefits of multistakeholder deliberation in natural resource management policy processes to different audiences and sharing Guyana's experience with stakeholders in other countries.</p> <p>Professional skills and expertise required of the proposed facilitator for Guyana include: knowledge of Guyana or of similar countries, in particular expertise in forest sector governance and related trade, and multistakeholder engagement especially with IPLCs. Additionally, demonstrate the skills and attributes outlined in Annex 1.</p>
PNG	<p>PNG's forest cover has declined from 93% in 2000 to 89% in 2022, with primary forests decreasing from 70.4% to 68.5%. The government aims to increase value from forest exports by addressing suspected transfer pricing, implementing a log export ban from 2025, and establishing a State Marketing Agency for log sales and processing investments. While seeking income from forest carbon markets, the government has paused new projects pending regulations after issues with existing initiatives. The palm oil sector presents challenges, as production targets require forest conversion, and some investors are exploiting permit loopholes to harvest timber without developing plantations.</p> <p>The government has taken some steps towards assuring legality in the forest sector. A Timber Legality Standard (TLS), which would form part of a Timber Legality Verification System (TLVS), has been developed and piloted. To date, FGMC has supported audits of the pilot. Going forward, the programme will continue to support the PNG Forest Authority (PNGFA) and other national stakeholders to develop and implement a roadmap towards the TLVS. The Facilitator will play an important role in ensuring relevant stakeholders are included in a meaningful and productive way throughout this process.</p> <p>The Facilitator in PNG will also continue to support processes that foster multistakeholder deliberation on sector policy choices, initially through the ongoing development of a Forest Sector Economic Model (FSEM). This will allow stakeholders to examine the consequences of different options for forests, ranging from the current log export approach to one where forests are conserved, and their value captured via payments for carbon or other ecosystem services.</p> <p>FGMC is currently exploring opportunities to foster stakeholder engagement in other forest sector policy processes, including relating to carbon and palm oil. The Facilitator would play a key role in identifying these opportunities and providing the support, if agreed with the Government of PNG and other national stakeholders.</p>



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	<p>Professional skills and expertise required of the proposed facilitator for PNG include: knowledge of PNG or of a similar Pacific context, in particular expertise with inclusive policy-oriented work in a crowded donor landscape, knowledge of forest sector governance, and experience of operating independently. Additionally, demonstrate the skills and attributes outlined in Annex 1.</p>
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ANNEX 3: Key Performance Indicators to trigger payments (to be updated based on inception report agreements)

20% of suppliers' fees will be contingent on KPIs which will be scored quarterly.

Payments for all costs and expenses will be strictly in arrears. All expenditure will be against pre-agreed fee rates and project costs.

KPIs will be based upon:

Theme	Indicator	Overall % of Fee	Scoring Criteria			Scoring Criteria
			100% payment	75% payment	50% payment	0% payment
Effectiveness in delivery of the facilitation support	Timely and effective support provided to all countries fostering dynamic stakeholder processes ¹⁸	15	Support services enabling multi-stakeholder engagement in all countries are meeting the expectations set out in country-specific workplans.	Support services off track by more than 2 months in at least 1 country	Support services off track in more than 2 countries; or for more than 3 months	Support services off track in 5 countries by over 2 months

¹⁸ As indicated in paragraph 60 of the ToRs the country-specific workplans will propose targets for key tasks relative to the baselines confirmed during Inception period. The quarterly reports will report progress to these targets and present evidence that activities are contributing to (i) active dialogue between stakeholders; (ii) functioning of stakeholder structures, (iii) an understanding of VPA and or other process progress. This progress will be verified periodically through monitoring visits of the PMSST and independent review.



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Management: Reporting Quality	Draft quarterly and other project reports are clear, concise and timely.	4	Reports are timely and provide clear update on progress	Substantial redrafting of content required, or deadlines missed (unless revised deadlines agreed in advance with FCDO)	Reporting not signed off within one month of submission in draft (unless agreed in advance with FCDO)	Reporting due in the period not submitted by the KPI assessment date.
Management: Financial	Strong financial management of the facilitation services, demonstrated through: accurate and timely invoicing; accurate forecasting, and ; optimisation of value for money	1	Invoices do not require queries or correction; Strong evidence of vfm provided e.g. additional project benefits and /or savings achieved in assessment period; No more than 5% variance between annual spend and an agreed baseline forecast (unless vfm related).	More than one invoice unclearly presented or contains errors requiring correction. Weak evidence of vfm ; over 5% variance between annual spend and an agreed baseline(unless vfm related) forecast.	n/a	Repeated inaccuracies in invoicing or forecasting. No evidence that vfm is being considered in project delivery.

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ANNEX 4: Schedule of Processing, Personal Data and Data Subjects

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

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

Description	Details
Identity of the Controller and Processor for each Category of Data Subject	<p>The Parties acknowledge that for the purposes of the Data Protection Legislation, the following status will apply to personal data under this contract</p> <p>1) The Parties acknowledge that Clause 33.2 and 33.4 (Section 2 of the contract) shall not apply for the purposes of the Data Protection Legislation as the Parties are independent Controllers in accordance with Clause 33.3 in respect of the following Personal Data:</p> <ul style="list-style-type: none">Any personal data deemed necessary to collect from third party stakeholders and retain for the duration of the services, for purposes such as workshops, training and other events, communications and surveys.

Section 3

Supplier Proposal Part A, Part B and Part C

Redacted under Section 40 (Personal Information) and Section 43 (Commercial Interests) of the Freedom of Information Act FOIA (2000).

SECTION 4 – SPECIAL CONDITIONS

Redacted under Section 40 (Personal Information) and Section 43 (Commercial Interests) of the Freedom of Information Act FOIA (2000).

SECTION 5

SCHEDULE OF PRICES

1. INVOICING

- 1.1. 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, as defined in Section 2, Clause 23, should be submitted.

2. FEES AND EXPENSES

- 1.2. The amount of fees and expenses are shown separately and reflects the financial ceilings within each category. Only expenditure actually incurred will be reimbursed, and receipts for expenditure incurred may be required before any payment is made under this contract.
- 2.2 Expenses (including but not limited to Travel, Subsistence, Accommodation, Office running Costs, Security, capital expenditure, other programme activities etc.) will be reimbursed quarterly in arrears and shall be based on actual expenditure – with the final Pro Forma Cost Template unit rates as a ceiling (provided they are in line with the overall budget agreed with FCDO and FCDO policy on expenses).
- 2.3 Inception / Exit Phase: 100% of the suppliers' fees will be linked to fixed milestone payments: 50% upon submission of the draft inception/ exit report and 50% upon acceptance of the final version. Expenses will be reimbursed based on actuals, up to the agreed ceiling for the inception phase.
- 2.4 Implementation Phase: 20% of the supplier's fees will be contingent on the Key Performance Indicators to be scored quarterly by FCDO with inputs from the PMSST monitoring and country visits, and feedback from concerned country stakeholders to the SRO. KPIs cover the effectiveness of delivery of the facilitation services, and quality of overall management and financial management.

3. PROFIT AND NPAC

Redacted under Section 43 (Commercial Interests) of the Freedom of Information Act FOIA (2000).

Annex 1 (Commercial Cost Pro Forma)

Redacted under Section 43 (Commercial Interests) of the Freedom of Information Act FOIA (2000).