

**PROVISION OF CONSULTANCY SERVICE FOR THE DEVELOPMENT OF GUIDELINES AND MANUAL OF OPERATIONS ON WHOLE-OF-GOVERNMENT APPROACH FOR THE REENGINEERING OF GOVERNMENT SYSTEMS AND PROCEDURES AS PROVIDED IN REPUBLIC ACT 11032, OTHERWISE KNOWN AS THE “EASE OF DOING BUSINESS AND EFFICIENT DELIVERY OF GOVERNMENT SERVICES ACT OF 2018”**

**ATTACHMENT 1 – RFP COVER AND INSTRUCTIONS**

1. On behalf of the Foreign and Commonwealth Office (FCO) as represented by British Embassy Manila, we are looking for a supplier who can provide consultancy service for the development of guidelines and manual of operations on re-engineering of government systems and procedures using the whole-of-government approach, as provided in Republic Act 11032, otherwise known as the “Ease of Doing Business and Efficient Delivery of Government Services Act of 2018”. Further details on the requirement are set out in the attached Specification/Terms of Reference.
2. Please include in your reply a nominated point of contact with telephone, e-mail and postal address details.
3. Estimated contract duration is to be delivered on or before 30 September 2021.
4. A Purchase Order number for this requirement will be provided.
5. Your quote should remain valid for 90 days from the required date of receipt and all costs should be stated in Philippine Peso. Your quotation should be inclusive all costs.
6. You should submit the quotes before or on 7 September 2020 at 12.00PM. Late bids will not be accepted.
7. Send your response to [nguyen.loan@fco.gov.uk](mailto:nguyen.loan@fco.gov.uk) and use the title: **Consultancy Application in the Philippines**.
8. If you have any questions, please send your queries at [nguyen.loan@fco.gov.uk](mailto:nguyen.loan@fco.gov.uk) . Answers will be shared with all bidders. Use the title: **Enquiry about Consultancy Service in the Philippines**.
9. The maximum budget for this project is 1,200,000 PHP, inclusive of VAT.
10. This Request for Proposal does not imply any commitment on the part of the FCO.
11. From 2<sup>nd</sup> April 2014 the Government is introducing its new Government Security Classifications (GSC) classification scheme to replace the current Government Protective Marking Scheme (GPMS). A key aspect of this is the reduction in the number of security classifications used. All potential suppliers should make themselves aware of the changes as it may impact on this Requirement. The following link to the Gov.uk website provides information on the new GSC - <https://www.gov.uk/government/publications/government-security-classifications>

## ATTACHMENT 2 – STATEMENT OF SERVICE REQUIREMENTS

### 1. BACKGROUND AND RATIONALE

To achieve of the 10-point Socioeconomic Agenda of the Duterte Administration to increase competitiveness and the ease of doing business, Republic Act No. 11032 otherwise known as the “Ease of Doing Business and Efficient Government Services Delivery Act of 2018” was passed on 28 May 2018.

In order to ensure compliance by government agencies on the provisions of R.A. 11032, the Anti-Red Tape Authority (ARTA) was created. ARTA is mandated under R.A. 11032 to implement and oversee national policy on anti-red tape and ease of doing business, as well as implement reforms to improve the competitiveness ranking of the country.

Pursuant to the whole-of-government approach in the streamlining of government services which ARTA is mandated to adopt as provided under Rule III Section 3 of the Implementing Rules and Regulations of Republic Act 11032, to wit: “Inter-agency reviews shall be adopted for horizontal integration or end-to-end processing in the delivery of government services. The reengineering process shall include an interagency review of key permitting and licensing laws, rules, and issuances, with the end in view of eliminating undue regulatory burden from the transacting public”, ARTA conceptualized the program NEHEMIA (National Effort for the Harmonization of Efficient Measures of Inter-related Agencies), which was launched last March 4, 2020 for implementation.

NEHEMIA is an industry-based streamlining effort that is directed towards speeding up and realization of the Socio-Economic Agenda of the Duterte Administration that is intended to be implemented in phases. Phase 1 of the NEHEMIA program targets to reduce the time, cost, requirements, and procedures in the five (5) most over-regulated, silo system oriented industries, namely: telecommunications tower, food and pharmaceutical, socialized housing, logistics, and energy. NEHEMIA is one of the means to implement the whole-of-government approach.

It is also aligned with the recently released Administrative Order 23: Eliminating Overregulation to Promote Efficiency of Government Processes signed by President Rodrigo Roa Duterte last February 21, 2020.

In line with this and in light of the MOU between the UK Government and ARTA signed on 4 February 2020, the UK Foreign and Commonwealth Office and the UK Department for Business, Energy, and Industrial Strategy (UK BEIS) will provide support for ARTA in the development of Guidelines and Manual of Operations (“Manual”) on the Whole of Government Approach in the Reengineering of Government Systems and Procedures (“Re-engineering”). This support is under the ASEAN Regulatory Reform Programme, part of the ASEAN Economic Reform Programme, funded by the UK Prosperity Fund. The support includes the deployment of a local consultant to provide technical assistance for the development of the above-mentioned Re-engineering Guidelines and Manual. The Guidelines and Manual will be used by all government offices and agencies including local government units (LGUs), government-owned or controlled corporations (GOCCs), and other government instrumentalities, whether located in the Philippines or abroad, that provide business and non-business related transactions.

### 2. DETAILS OF REQUIREMENT

The local consultant will design, formulate, draft, ensure the effectiveness and perform **consultancy and advisory services**, in line with the development of the expected outputs, hereafter referred to as the “**GUIDELINES and MANUAL on R.A. No. 11032’s WHOLE-OF-GOVERNMENT APPROACH IN THE REENGINEERING OF GOVERNMENT SYSTEM AND PROCEDURES**”, namely:

a) Process Improvement at the agency/office level:

Process Improvement is the achieved level of efficiency in the streamlined system and processes of an agency/office pre-estimated from its post evaluation level based on the scale of efficiency after reengineering pursuant to the guidelines and manual on R.A. 11032’s whole of government approach.

- i) *Reengineering of Systems and Procedures* – is the implementation of the guidelines and manual by an agency/office to achieve process improvement and streamlined system within the range of the estimated level of efficiency from its post evaluation level determined through the mandatory undertaking of cost compliance analysis, time and motion studies, and such other effective methods as may be developed, together with level of efficiency pre-estimation process and scale of efficiency.
- ii) *Accessing Government Services* – the rules and regulations including the level of efficiency pre-estimation process, scale of efficiency and methodologies of general and special application conceptualized, formulated and designed to improve systems and processes in government services implemented by an agency which among others, include the achievement of a pre-estimated level of efficiency in accepting, processing, and thereafter approving or denying of applications and requests, limitation and extension of processing time and all other government actions on the rendered services.

b) Inter-agency Coordination using Whole of Government Approach:

*Harmonization of Policies, Requirements, and Procedures of Inter-agential Government Processes—* Harmonization of policies, requirements, processes, and systems among agencies covered by R.A. 11032 as a means to streamline the delivery of their respective services that are intertwined or converging by reason of their nature; subject; mandate; purpose; jurisdiction and for any other matter concerning the exercise of their functions is mandated to eliminate red tape and achieve efficiency.

c) Systematic Review Methodology:

A Methodology designed to quickly identify and systematically review the existing laws, executive orders and local ordinances of an agency or various agencies with intertwined or converging services that are deemed outdated, redundant and adds undue regulatory burden to the transacting public.

Details of required activities:

- Review existing laws, issuances, studies, and other relevant documents and monitor trends and policy initiatives across national and local governments and share insights and observations to achieve the above desired outputs in the formulation and crafting of **GUIDELINES** and **MANUAL**;
- Provide recommendations for policies, processes, and systems through best practices in the Philippines and abroad that are relevant and applicable to the local setting to achieve the above desired outputs in the formulation and crafting of **GUIDELINES** and **MANUAL**;
- Work closely with ARTA and UK experts to provide technical support to ARTA in the drafting of the **GUIDELINES and MANUAL**, including outlining, drafting, incorporating comments and inputs from different stakeholders, and finalization of the **GUIDELINES and MANUAL**;
- Engage in public consultations with stakeholders and other agencies, such as but not limited to Program NEHEMIA-related consultations and other fora, in the development of the **GUIDELINES and MANUAL**;
- Facilitate Focused Group Discussions (FGDs) and Key Informant Interviews to gather insights and deliberate findings, literature, output, and strategy relative to the **GUIDELINES and MANUAL** with selected agencies;
- Provide **ADVISORY SERVICES** on ARTA’s formulation of the Guidelines for the Classification of Services in to Simple/Complex/Highly Technical, and Multi-stage Processing;
- Engage in participant observation in selected agencies to experience the day-to-day work atmosphere of these agencies.

- Engage in constant exchange of ideas that pertains to challenges and best practices on reengineering of services and procedures with the UK experts.
- Provide technical advice to ARTA as regards incremental improvements in process, systems, and procedures.
- Prepare materials for consultative workshops and technical meetings as required by ARTA and UK BEIS
- Take documentary records of all workshops, meetings, and engagements with different stakeholders through notes, reports, audio recordings, photos etc.

### **Work Plan**

<b>Specific Activities</b>	<b>Target Timeline</b>
Virtual Program Launch	2 <sup>nd</sup> week of Sept 2020
Submission of Inception Report of Reengineering Guidelines and Manual and Sending of Letter Requests to Priority Sectors	2 <sup>nd</sup> week of Sept 2020
Data Gathering - Immersion – Sector 1: Telecommunications	3 <sup>rd</sup> week of Sept – 4 <sup>th</sup> week of Sept 2020
Data Gathering - Immersion – Sector 2: Socialized Housing	1 <sup>st</sup> week - 2 <sup>nd</sup> week of October 2020
Data Gathering - Immersion – Sector 3: Food and Pharma	3 <sup>rd</sup> week – 4 <sup>th</sup> week of October 2020
Data Gathering - Immersion – Sector 4: Logistics	1 <sup>st</sup> – 2 <sup>nd</sup> week of November 2020
Data Gathering - Immersion – Sector 5: Energy	3 <sup>rd</sup> - 4 <sup>th</sup> week of November 2020
Writing and Submission of First Draft to ARTA and UK BEIS  Sectors 1, 2, 3: <ul style="list-style-type: none"> <li>● Process Improvement At the firm level</li> <li>● Inter-agency Coordination using Whole of Government Approach</li> <li>● Systematic Review Methodology</li> </ul>	1 <sup>st</sup> – 2 <sup>nd</sup> week of December 2020
Agency Consultation on the Draft Guidelines and Manual to Pilot Agencies	2 <sup>nd</sup> week of December 2020
Writing and Submission of First Draft to ARTA and UK BEIS  Sectors 4 and 5: <ul style="list-style-type: none"> <li>● Process Improvement At the firm level</li> <li>● Inter-agency Coordination using Whole of Government Approach</li> <li>● Systematic Review Methodology</li> </ul>	2 <sup>nd</sup> – 3 <sup>rd</sup> week of December 2020
Stakeholder Consultation for the Five Priority Sectors	3 <sup>rd</sup> week of December 2020
Writing and Submission of Second Draft to ARTA and UK BEIS	3 <sup>rd</sup> week of December 2020
Final Revision of Guidelines and Manual and Submission to ARTA and UK BEIS	4 <sup>th</sup> week of December 2020
Dissemination of final Guidelines and Manual to Priority Sectors	2 <sup>nd</sup> week of January 2021

Assessment of Reengineering Outcome Among Priority Sectors by Local Consultants	3 <sup>rd</sup> week of January 2021
Training of Trainers (ToT) for ARTA on the Guidelines and Manual	4 <sup>th</sup> week of February 2021 – 1 <sup>st</sup> week of February
National Roll Out	2 <sup>nd</sup> week of February 2021 – 1 <sup>st</sup> week of March 2021
Review of Reengineering Outcomes of NEHEMIA Phase 1 Sectors and Advisory Assistance on implementation of NEHEMIA Phase 2*	April 2021 to September 2021

*\*The implementation of this work is subject to availability of funding, and the continuity of such will be mutually agreed with the local consultant at a time when the funding is guaranteed.*

### 3. EXPECTED DELIVERABLES, TIMEFRAMES AND BUDGET

The table below specifies the deliverables, timeframes and budget per deliverables. The indicated budget for each deliverable is inclusive of all applicable government taxes and charges, professional fees, and other incidental and administrative costs, which shall be paid on an instalment basis.

Documentary Deliverables	Target Date	Percentage of the Documentary Work Done	Budget
Inception Report		4.16%	
Document on initial findings from the Immersion with Priority Sectors		4.16%	
First draft of the Guidelines and Manual for Sectors 1, 2, and 3 <ul style="list-style-type: none"> <li>• Process Improvement At the firm level</li> <li>• Inter-agency Coordination using Whole of Government Approach</li> </ul>		6.25%	
Summary of the Consultation on the Draft Guideline and Manual to Sectors 1, 2, and 3		1.6%	
<b>First Instalment Payment</b>	<b>December 11, 2020</b>		<b>PHP175,000</b>
First draft of the Guideline and Manual for Sectors 4 and 5 <ul style="list-style-type: none"> <li>• Process Improvement At the firm level</li> <li>• Inter-agency Coordination using Whole of Government Approach</li> </ul>		6.25%	
Summary of the Stakeholder Consultation		1.6%	
Second Draft of the Guideline and Manual for Sectors 1-5 <ul style="list-style-type: none"> <li>• Process Improvement At the firm level</li> <li>• Inter-agency Coordination using Whole of Government Approach</li> </ul>		12.5%	

Final Draft of the Guideline and Manual for Sectors 1-5		16.66%	
<b>Second Instalment Payment</b>	<b>December 18, 2020</b>		<b>PHP465,000</b>
Written Report of the Conduct of Training Among Specified Agencies on the Guidelines and Manual		16.66%	
Written Report of the Conduct of Training of ARTA staff on the Guidelines and Manual		10.83%	
<b>Third instalment Payment</b>	<b>31 March 2020</b>		<b>PHP235,000</b>
Summary of Assessment of Reengineering Outcome among Priority Sectors		16.66%	
Written Outcome Implementation Report of Sectors 1-5		2.5%	
<b>Final Instalment Payment</b>	<b>September 30, 2021</b>		<b>PHP230,000</b>
<b>TOTAL CONTRACT VALUE</b>			<b>PhP1,200,000</b>

**PhP1,200,000** (One Million Two Hundred Thousand Pesos Only) is the total contract value, inclusive of all applicable government taxes and charges, professional fees, and other incidental and administrative costs. All necessary filing and payment of applicable taxes and charges shall be for the account of the Local Consultant who shall hold the UK government and ARTA and their respective agencies and instrumentalities free and harmless from such responsibility.

*\* Payment of the Second and Final Instalment shall depend on the relevance of the guidelines and guideline and manual both as to general (i.e., applicable to all sectors) and special (i.e., applicable to certain set of conditions only) methodologies; practical use of scale of efficiency; accuracy of the pre-evaluation range vis-à-vis the actual result of the level of efficiency; and effectiveness of the Systematic Review Methodology. Each category is worth 25% of the amount and an average efficiency rate of 80% for each category shall be required to be entitled thereto. Provided that, if the efficiency rate does not meet the required average in the second instalment but was able to meet the same in the Final instalment, he shall be entitled to full payment.*

*\*The amount of work for the outputs to be paid by the final instalment is subject to availability of funding, and the continuity of such will be mutually agreed with the local consultant at a time when the funding is guaranteed.*

#### **4. REPORTING STRUCTURE, AND PAYMENT ARRANGEMENTS**

##### **Reporting structure:**

The **local consultant** shall be legally bound and accountable to FCO until all the deliverables stated in this contract have been met.

The **local consultant** shall turn over all manuals, reports, materials, references, and other relevant documents acquired through this consultancy to UK BEIS, FCO and ARTA, and these entities shall ensure due acknowledgement of the contributions of the **local consultant**.

The focal contact points for submission of deliverables are as follows:

ARTA: Jesus Ezekiel B. Mauhay [EzekielMauhay@arta.gov.ph](mailto:EzekielMauhay@arta.gov.ph)

UK BEIS: Nguyen Cong To Loan [Nguyen.Loan@fco.gov.uk](mailto:Nguyen.Loan@fco.gov.uk); Zoe Dayan [Zoe.Dayan@fco.gov.uk](mailto:Zoe.Dayan@fco.gov.uk)

FCO: Josephine Orense [Josephine.Orense@fco.gov.uk](mailto:Josephine.Orense@fco.gov.uk)

##### **Payment arrangements:**

The processing of payment shall only proceed upon evaluation and acceptance of the deliverables and services rendered by local consultant to ARTA, UK BEIS and FCO through the focal contacts above-listed.

Payment shall be made in three instalments as reflected in the table under Section 3 above.

## **5. IMPLEMENTATION ARRANGEMENTS**

In coordination with the Anti-Red Tape Authority, the consultant will be responsible for the following:

- Ensure timely delivery of the deliverables required as stated above;
- Ensure delivery of high-quality outputs. To guarantee this, the deliverables to be submitted are still subject for review and approval by the Anti-Red Tape Authority. The consultants shall incorporate comments and additional inputs from the Anti-Red Tape Authority prior to the deliverables' finalization.

## **6. SKILLS AND COMPETENCIES**

- Must demonstrate thorough understanding of the Philippine public policy process;
- Must have at least a specialization in Industrial Engineering, Management Engineering, Organizational Development, and/or Public Administration;
- Preferably with professional expertise and experience on the fields of regulatory management, policy-making, process improvement, issue analysis, and human resources development, and total quality management;
- Track record and capability in Reengineering of Systems and Procedures; and
- Must be involved in similar and/or relevant consulting or professional services of complexity and technical specialty comparable to the job under consideration;
- Must be free and clean from any pending criminal administrative charges and liabilities.

## **7. DUTY OF CARE *[Note: this section is FCO's standard part of this document]***

- i. The Supplier(s) is responsible for the safety and well-being of their Personnel and Third Parties affected by their activities under this contract, including appropriate security arrangements. They will also be responsible for the provision of suitable security arrangements for their domestic and business property. FCO will share available information with the Supplier(s) on security status and developments in-country where appropriate.
- ii. The Supplier(s) 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 a briefing as outlined above. Travel advice is also available on the FCO website and the supplier(s) is responsible for and must ensure they (and their Personnel) are up to date with the latest position.
- iii. Suppliers must develop their Tender on the basis of being fully responsible for Duty of Care. They must confirm in their Tender that:
  - They fully accept responsibility for Security and Duty of Care.
  - They understand the potential risks and have the knowledge and experience to develop an effective risk plan.
  - They have the capability to manage their Duty of Care responsibilities throughout the life of the contract.

- iv. Acceptance of responsibility must be supported with evidence of capability (no more than two A4 pages and the Project Team reserves the right to clarify any aspect of this evidence).
- v. In providing evidence the Supplier(s) should consider the following questions:
  - a) Have you completed an initial assessment of potential risks that demonstrates your knowledge and understanding, and are you satisfied that you understand the risk management implications (not solely relying on information provided by the Project Team)?
  - 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?



### ATTACHMENT 3 – ASSESSMENT SCORE AND EVALUATION CRITERIA

1. The tender process will be conducted to ensure that the tenders are evaluated fairly to ascertain the most economically advantageous tender from the point of view of the purchasing Authority.
2. Account will be taken of any factor emerging from the tendering process that impacts a Tenderer’s suitability and relates to information previously provided by the Tenderer as part of the pre-qualification process, in particular any additional information which comes to light in respect of its financial standing.
3. Your response to our requirement be evaluated under the following headings based on a **80:20** split between the quality aspects to your tender and the pricing thereof.
4. No importance should be attached to the order in which these criteria are listed. Any tender that is not compliant with the Conditions of Contract may be rejected.
5. Bidders must be explicit and comprehensive in their responses to this proposal. Bidders are advised neither to make assumptions about their past or current supplier relationships with the Authority nor to assume that such prior business relationships will be taken into account in the evaluation procedure.
6. The Authority will evaluate each response in line with the published scoring methodology and reserves the right to exclude and bid that scores either:
  - a) “Unacceptable / Non-compliant” for any question; or
  - b) scores two (2) or more “Serious Reservations”

All proposals will be scored as above in accordance with the marking system set out below:

Score Key Assessment	Score	Interpretation
Good	4	Satisfies the requirement with additional benefits. Above average demonstration by the Tenderer of the understanding and evidence in their ability/proposed methodology to deliver a solution for the required supplies/services. Response identifies factors that will offer potential added value, with evidence to support the response.
Acceptable	3	Satisfies the requirement. Demonstration by the Tenderer of the understanding and evidence in their ability/proposed methodology to deliver a solution for the required supplies/services.
Minor Reservations	2	Satisfies the requirement with minor reservations. Some minor reservations of the Tenderer's understanding and proposed methodology, with limited evidence to support the response. Tenderer has accepted FCO standard terms and conditions of contract.
Serious Reservations	1	Satisfies the requirement with major reservations. Major reservations of the Tenderer's understanding and proposed methodology, with little or no evidence to support the response.
Unacceptable/ Non compliant	0	Does not meet the requirement. Does not comply and/or insufficient information provided to demonstrate that the Tenderer has the understanding or suitable methodology, with little or no evidence to support the response. Tenderer has rejected FCO standard terms and conditions of contract.
Price / Commercial	Scores will be computed through inverse percentage	

## EVALUATION CRITERIA – TECHNICAL QUESTIONS

Evaluation Criteria – Quality/Technical (Questions 1 - 5)	Criteria Weighting	Evaluation Methodology
<p><b>1 –Skills, Competencies &amp; Experience</b> Statement of suitability/ relevant qualifications / years of experience</p> <ul style="list-style-type: none"> <li>• Degree in Industrial Engineering, Management Engineering, Organizational Development, and/or Public Administration</li> <li>• Professional expertise and experience on the fields of regulatory management, policy-making, process improvement, issue analysis, and human resources development, and total quality management;</li> <li>• Track record and capability in Reengineering of Systems and Procedures; eg. being involved similar and/or relevant consulting or professional services of complexity and technical specialty comparable to the job under consideration</li> </ul>	40%	0 – 4 score
<p><b>2 – Methodology</b> Please provide a clear method statement outlining your understanding of the requirement, and your approach to achieving the project objectives and delivering the outputs detailed in the Terms of Reference.</p>	25%	0 – 4 score
<p><b>3 – Project Plan</b> Please provide the following:</p> <ul style="list-style-type: none"> <li>• A project plan referring to the Terms of Reference, detailing milestones, deliverables, and timescales.</li> <li>• Indicate how the project will be monitored and reported to the Authority to ensure it is delivered in terms of quality, timeliness and cost.</li> <li>• Indicate the level of support that will be required from the Authority/ARTA to complete the project.</li> </ul>	15%	0 – 4 score
<p><b>4 - Free and clean from any pending criminal administrative charges and liabilities.</b></p>	Pass / Fail	Pass / Fail
<p><b>5 – Duty of Care</b> Please refer to the Duty of Care section within the Terms of Reference. Outline how you will fulfil your obligations under this requirement and provide all necessary statements</p>	Pass / Fail	Pass /Fail
<b>TOTAL – Quality/Technical</b>	<b>80%</b>	<b>Max Score 320</b>

**EVALUATION CRITERIA – PRICING/COMMERCIAL QUESTION**

Reference No.	Evaluation Criteria – Pricing & Commercial	Criteria Weighting	Score
Question 1	Competitiveness of fee rates and overall project cost in relation to the market to demonstrate value for money (Refer to Schedule of Prices and Rates)	20%	Inverse Percentage
	<b>TOTAL – Pricing &amp; Commercial</b>	<b>20%</b>	<b>Max Score – 80</b>
<b>GRAND TOTAL EVALUATION CRITERIA</b>		<b>100</b>	<b>Max Score – 400</b>

**Pricing & Commercial Questions scoring:**

Marks will be awarded as an inverse percentage. The most financially attractive offer submitted to the Authority will score 80. Scores for bids other than the most financially attractive bid will be awarded on an inverse percentage difference from the most financially attractive offer:

Example: Bid A: \$60,000 = 80 pts (Maximum Score)  
 Bid B: \$70,000 = 69 pts ( $60,000/70,000 \times 80$  pts)

## ATTACHMENT 4 - TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES

<Insert copy of FCO T&Cs for £10k to £25k. You may download the latest version [here](#).>

### SHORT CONTRACT CONDITIONS

*These conditions shall not apply where the supply of goods or services is subject to the terms of a framework contract between the Contractor and the Authority or any other government department or agency. These short form conditions of contract shall not take precedence over or replace any existing Contractual agreements between the Contractor and the Authority.*

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#### Annexes

- A **FCO Supplier Code of Conduct (Generic – not Programme!) / FCO Supplier Code of Conduct (Programme including ODA)**
- A.1 **Compliance with the Code and contractual checking mechanisms (Programme including ODA)**
- A.2 **Contractual Annual Compliance Declaration (Programme including ODA)**
- A.3 **UN Global Compact – Human Rights (Programme including ODA)**
- B.1 Processing, Personal Data and Data Subjects Schedule
- B.2 Joint Controller Agreement

C Security [Optional]

# 1. INTERPRETATION

## 1.1 In these terms and conditions:

“Agreement”	means the contract between (i) the Customer acting as part of the Crown and (ii) the Supplier constituted by the Supplier’s countersignature of the Award Letter and includes the Award Letter and Annexes;
“Authority”	means the Secretary of State for Foreign and Commonwealth Affairs and includes the Authority's Representative. In this Contract, the Authority is acting as part of the Crown. The “Authority” shall be construed so as to include its successors in title (including, as applicable, the Foreign, Commonwealth and Development Office or any other Crown Body that succeeds the Authority as a result of its anticipated merger with the Department for International Development), permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Contract;
"Authority's Representative"	means the individual authorised to act on behalf of the Authority for the purposes of the Contract;
“Condition”	means a clause in the Contract;
“Confidential Information”	means the terms of this Contract, together with all information in whatever form and on whatever media of either party which relates to the business, affairs, trade secrets, products, services, marketing plans, software, databases, know-how, personnel, customers or suppliers of either party (as the case may be), whether marked as confidential or which otherwise may reasonably be regarded as the confidential information of a party and which is disclosed or acquired at any time whether before or after the Contract Commencement Date as a result or in anticipation of this Contract;
“Contractor”	means the supplier of the Goods or Services;
“Contract”	means the agreement between the Authority and the Contractor consisting of these Conditions together with any amendments and/or additions thereto as specified on the Purchase Order;
“Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer”	take the meaning given in the GDPR;
“Credit transfer”	is a payment instruction from the Authority to its bank or payment service provider to transfer an amount of money to another account.
“Crown Body”	means any department, office or agency of the Crown “FOIA” means the Freedom of Information Act 2000;
“DPA 2018”	means the Data Protection Act
“Data Loss Event”	means any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;
“Data Protection Legislation”	means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
“Data Protection Impact Assessment”	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
“Data Subject Request”	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

“Gateway”	means a review which may be conducted by or for a government department into whether or not a programme, project or any activity is making progress in line with agreed objectives;
“GDPR”	means the General Data Protection Regulation ( <i>Regulation (EU) 2016/679</i> );
“Goods”	means anything which the Contractor supplies to the Authority under the Contract including any materials provided as part of the Service;
“A GPC (Government Procurement Card)”	is a credit card used for purchasing and/or payment;
“Intellectual Property Rights”	means patents, trademarks, service marks, copyright, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto;
“Joint Controllers”	means where two or more Controllers jointly determine the purposes and means of processing
“LED”	means the Law Enforcement Directive ( <i>Directive (EU) 2016/680</i> )
“Law”	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Processor is bound to comply;
“Notice”	means information from either Party to the other Party about a particular action that has been taken;
“Party”	means a Party to this Agreement;
“Processor Personnel”	means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement
“Protective Measures”	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it <b>[including those outlined in Annex C]</b> .
“Purchase Order”	means the form, on the other side of these Conditions or attached separately, which the Authority sends to the Contractor setting out the Authority’s specific requirements, the contract terms which apply to the Goods and/or Services and any documents referred to therein;
“Regulatory Body”	means any organisation/authority that is authorised to set directions for or monitor standards set out in law;
“Services”	means all the services (including any works) which the Contractor provides to the Authority under the Contract;
“Sub-processor”	means any third Party appointed to process Personal Data on behalf of that Processor related to this Agreement;
“The Crown”	means any central government department of the United Kingdom, or a Devolved Administration, or any other body which is legally defined as a Crown Body.

## 2. SUPPLY OF GOODS

- 2.1 The Contractor shall supply the Goods specified in the Contract. Goods may be returned at the Contractor's expense if they do not correspond with the Contract and/or any sample provided.
- 2.2 All Goods shall be transported at the Contractor's risk and delivered, carriage paid, in the quantities and at the time and place specified in the Purchase Order. Where no delivery time is stipulated by the Authority the Goods and/or provision of Services shall be made within ten working days of receipt of the order by the Contractor.
- 2.3 The Authority may notify the Contractor of a change in the specified delivery time/date up to **[insert time period i.e. 24 hours]** before delivery.
- 2.4 The Contractor shall provide a delivery note with all deliveries as well as other appropriate documentation and/or copies of proof of deliveries as reasonably requested by the Authority. Such documentation must clearly show the Authority's Purchase Order number and date.
- 2.5 If the Contractor requires packaging to be returned, it will be returned at the Contractor's expense.

### **3. SUPPLY OF SERVICES**

- 3.1 The Contractor shall perform the Services in the manner and exercising that degree of skill, care, diligence, which would reasonably and ordinarily be expected from a skilled and experienced person engaged in providing the same or similar services as the Contractor in the same or similar circumstances as are relevant for the purposes of the Contract.
- 3.2 Where no delivery time is specified by the Authority the Services shall be provided within **[insert time period i.e. 10 working days]** of receipt of the order by the Contractor unless otherwise agreed between the parties.
- 3.3 The Contractor shall make good at its own expense any defects in the Service and/or workmanship which exist or may appear up to **[insert time period i.e. 6 months]** after completion of the Service.
- 3.4 Where applicable, the Contractor must provide the Authority with a copy of its insurance certificate under the Construction Industry Tax Deduction Scheme before commencing the Services.

### **4. SUBJECT MATTER OF THE CONTRACT AND CONTRACT PERIOD**

- 4.1 This Contract is for **[insert a description of the goods/services that are being provide under the Contract]**
- 4.2 The Contract period begins on **[insert start date]** and ends on **[insert end date]**

### **5. TITLE AND RISK**

- 5.1 The title and risk in any Goods shall pass to the Authority upon acceptance by the Authority, in accordance with [Condition 6 \(Acceptance\)](#).

### **6. ACCEPTANCE**

- 6.1 The Authority shall not be deemed to have accepted the goods until one of its officers has been afforded a reasonable opportunity to examine them.

### **7. PAYMENT**

- 7.1 The Authority may elect to pay for the Services by Contractor invoice via credit transfer or by Government Procurement Card.
- 7.2 The price that the Authority shall pay for the Goods and/or Service is as set out on the Purchase Order and unless otherwise stated incorporates all incidental costs (except for VAT) incurred by the Contractor in providing the Goods and/or Service including but not limited to administration, collection, transport, packaging and disposal. For the avoidance of doubt, unless otherwise stated, all prices are exclusive of VAT.

#### Payment against invoice

- 7.3 The Contractor shall submit an invoice within 28 days of supplying the Goods or Services to the satisfaction of the Authority. The invoice must show the amount of VAT payable, bear the Authority's relevant purchase order number and be sent to the invoicing address defined in the contract award letter.
- 7.4 The Authority shall pay the Contractor within 30 days of receipt of an undisputed invoice by payment direct to the Contractors bank account as a credit transfer.

### **8. WARRANTIES AND ACKNOWLEDGEMENTS**



## **Supply of Goods**

- 8.1 The Contractor warrants that the Goods which it is providing correspond to the description and/or sample given to the Authority by the Contractor and all other warranties, conditions or terms relating to the fitness for purpose, quality or condition of the Goods implied by statute or common law apply in relation to this Contract and may not be excluded.
- 8.2 The Contractor warrants that title to the Goods is free from all encumbrances and that the Contractor has the right to sell the same.

## **Supply of Services**

- 8.3 The Contractor warrants that the Services which it provides under the Contract correspond to the Authority's requirements and is consistent with the standards that are referred to in [Condition 3.1 \(Supply of Services\)](#) and any other standards which may be implied by statute or common law that apply to this Contract may not be excluded.

## **9. REMEDIES**

### **Supply of Goods**

- 9.1 If the Contractor does not deliver Goods on time the Authority may terminate the Contract and claim losses from the Contractor.
- 9.2 If the Contractor delivers faulty Goods to the Authority, the Authority may within a reasonable time period (at least 3 months from the date of delivery):
- (a) notify the Contractor of the defect in such Goods and
  - (b) may request the Contractor to replace, repair or reinstate the Goods within such time period as is reasonable in the circumstances (no less than 24 hours).
- 9.3 Where the Contractor fails to comply with a request made under [Condition 9.2\(b\) above \(Supply of Goods\)](#), the Authority shall be entitled to a full refund and may cancel any further deliveries due at the Contractor's expense.

### **Supply of Services**

- 9.4 If the Contractor provides defective Services the Authority may require that they put this right within a reasonable specified time. Where the Contractor fails to comply with such a request within the specified time the Authority may carry out the remedial measures itself or through another contractor and recover any costs incurred from the Contractor. Any costs and expenses incurred may be set off against any monies owing to the Contractor.

## **10. PREVENTION OF CORRUPTION**

- 10.1 The Authority may terminate this Contract and recover all its losses if the Contractor, their employees or anyone acting on the Contractor's behalf corruptly offers, gives or agrees to give to anyone any inducement or reward in respect of this or any other Authority contract (even if the Contractor does not know this has been done); or commits an offence under the Bribery Act 2010.

## **11. OFFICIAL SECRETS ACTS**

- 11.1 The Contractor shall take all reasonable steps to ensure that all persons employed by him or by any sub-contractor in connection with the Contract are aware of the Official Secrets Acts 1911 to 1989, and understand that these Acts apply to them during and after performance of any work under or in connection with the Contract.

## **12. CONFIDENTIALITY**

- 12.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOI Act, the content of this Contract is not Confidential Information. The Authority 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 FOI Act. Notwithstanding any other term of this Contract, the Contractor gives consent to the Authority to publish the Contract in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of the FOI Act redacted) including from time to time agreed changes to the Contract, to the general public.
- 12.2 The Authority may consult with the Contractor to inform its decision regarding any exemptions but the Authority shall have the final decision in its absolute discretion.

- 12.3 The Contractor shall assist and cooperate with the Authority to enable the Authority to publish this Agreement.
- 12.4 **Condition 12.2 (Confidentiality)** shall not apply to the extent that:
- (a) such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations 2004 pursuant to Condition 19.1 (Disclosure of Information);
  - (b) such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - (c) such information was obtained from a third party without obligation of confidentiality;
  - (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
  - (e) it is independently developed without access to the other party's Confidential Information.
- 12.5 The Contractor may only disclose the Authority's Confidential Information to the persons it has employed or engaged who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such persons are aware of and shall comply with these obligations as to confidentiality.
- 12.6 The Contractor shall not, and shall procure that the persons it has employed or engaged do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Contract.
- 12.7 At the written request of the Authority, the Contractor shall procure that those persons it has employed or engaged identified in the Authority's notice sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 12.8 Nothing in this Contract shall prevent the Authority from disclosing the Contractor's Confidential Information:
- (a) to any Crown Body or Overseas Governments. All Crown Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body;
  - (b) to any consultant, contractor or other person engaged by the Authority or any person conducting a Gateway or other assurance review;
  - (c) for the purpose of the examination and certification of the Authority's accounts; or
  - (d) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
- 12.9 The Authority shall use all reasonable endeavours to ensure that any Crown Body, employee, third party or sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to **Condition 12.8 (Confidentiality)** is made aware of the Authority's obligations of confidentiality.
- 12.10 Nothing in this **Condition 12 (Confidentiality)** shall prevent either party from using any techniques, ideas or know-how gained during the performance of this 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 Intellectual Property Rights.
- 12.11 In the event that the Contractor fails to comply with this **Condition 12 (Confidentiality)**, the Authority reserves the right to terminate the Contract by notice in writing with immediate effect.
- 12.12 The provisions under this **Condition 12 (Confidentiality)** are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

### 13. **INTELLECTUAL PROPERTY RIGHTS.**

**[The Authority must decide whether IPR in the Deliverables is to be vested in/owned by the Authority or the Contractor.]**

**[Option 1: IPR Vests in Authority]**

- [13.1 Intellectual Property Rights in the Services and any Deliverables that are specifically developed or created for the Authority will be vested in the Authority (save that the Contractor will retain ownership of any Contractor Proprietary Materials which become imbedded in such Deliverables, which will be licensed in accordance with the provisions of **Condition 13.3 (Intellectual Property Rights)**). The Contractor agrees to (and will procure that its personnel acting as consultants will) assign and hereby assigns (including by way of future assignment in the case of copyrights) to the Authority with full title guarantee all of its worldwide rights, title and interest (whether present, future, vested or contingent) in and to such Intellectual Property Rights, including moral rights, for the full term thereof.

- 13.2 The Contractor will execute all such documents and undertake any and all such acts, including but not limited to obtaining assignments of Intellectual Property Rights from personnel of the Contractor to the Contractor as may from time to time be required in order to vest the rights assigned pursuant to [Condition 13.1 \(Intellectual Property Rights\)](#) above properly in the Authority.
- 13.3 Where the Deliverables contain any Contractor Proprietary Material, then the Authority will be granted a perpetual, non-exclusive, transferable, worldwide, royalty free licence in respect of such Contractor Proprietary Material, to the extent necessary to use such Deliverables (including for the purposes of their adaptation, modification and/or reproduction).
- 13.4 The Contractor warrants, represents and undertakes that its provision of Services and Deliverables under this Contract will not infringe any Intellectual Property Rights of which a third party is the proprietor and that the Contractor is free to grant the licence set out in [Condition 13.1 \(Intellectual Property Rights\)](#). The Contractor agrees to indemnify and hold harmless the Authority against any and all liability, loss, damage, costs and expenses (including legal costs) which the Authority may incur or suffer as a result of any claim of alleged or actual infringement of a third party's Intellectual Property Rights by reason of either its or the Contractor's possession or use in any manner of any Deliverables or Services.]

**[Option 2: IPR Vests in Contractor]**

- 13.1 Intellectual Property Rights in the Services and any Deliverables under this Contract shall be vested in and owned absolutely by the Contractor (save that the Authority will retain ownership of any Authority Proprietary Materials which become imbedded in such Deliverables).
- 13.2 The Contractor will grant the Authority a perpetual, non-exclusive, transferable, worldwide, royalty-free licence in respect of Intellectual Property Rights in the Services or any Deliverables under this Contract (including for the purposes of their adaptation, modification and/or reproduction).
- 13.3 The Contractor warrants, represents and undertakes that its provision of Services and Deliverables under this Contract will not infringe any Intellectual Property Rights of which a third party is the proprietor and that the Contractor is free to grant the licence set out in [Condition 13.2 \(Intellectual Property Rights\)](#). The Contractor agrees to indemnify and hold harmless the Authority against any and all liability, loss, damage, costs and expenses (including legal costs) which the Authority may incur or suffer as a result of any claim of alleged or actual infringement of a third party's Intellectual Property Rights by reason of either its or the Contractor's possession or use in any manner of any Deliverables or Services.]

**14. FORCE MAJEURE**

- 14.1 Neither Party shall be liable for failure to perform its obligations under the contract if such failure results from circumstances beyond that Party's reasonable control. Strike action by a Party's staff is not a Force Majeure event.

**15. ENVIRONMENTAL REQUIREMENTS**

- 15.1 In providing the Goods or Services the Contractor shall comply with the Department's environmental policy, which is to conserve energy, water and other resources, reduce waste and 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.
- 15.2 All written outputs, including reports, produced in connection with the Contract shall (unless otherwise specified) be produced on recycled paper containing at least 80% post consumer waste and used on both sides where appropriate.
- 15.3 Maximum use must be made of recycled materials in the manufacture of crates, pallets, boxes, cartons, cushioning and other forms of packaging.
- 15.4 Packaging must be capable of recovery for reuse or recycling.

**16. HEALTH, SAFETY AND SECURITY**

- 16.1 The Contractor shall ensure that all of the Contractor's staff who have access to or are employed on the Authority's premises comply with the Authority's health, safety and security procedures and instructions and complete any additional security clearance procedures required by the Authority when working at the Authority's premises.

**17. ASSIGNMENT**

- 17.1 The Contractor shall not sub-contract or transfer, assign, charge, or otherwise dispose of the Contract or any part of it without the prior written consent of the Authority.

## **18. SUB-CONTRACTING**

- 18.1 Nothing in the Contract shall be construed to create a partnership, joint venture, agency or employer/employee relationship between the parties.
- 18.2 In carrying out the Services the Contractor will be acting as principal and not as the agent to the Authority. Accordingly:
- (a) The Contractor will not (and will procure that its agents and servants do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the Authority, and
  - (b) Nothing in this Contract will impose any liability on the Authority in respect of any liability incurred by the Contractor to any other person but this will not be taken to exclude or limit any liability of the Authority to the Contractor that might arise by virtue of either a breach of this Contract or any negligence on the part of the Authority, its staff or agents.
- 18.3 Where the Contractor enters into a sub-contract for the provision of any part of the Services, the Contractor shall ensure that a term is included in the sub-contract which requires the Contractor to pay all sums due to the sub-contractor within a specified period, not exceeding 30 days from the date of receipt of a valid invoice as defined by the terms of that sub-contract.
- 18.4 The sub-contract shall also include a provision enabling the Authority to have the ability to directly enforce the benefit of the sub-contract under the Contracts (Rights of Third Parties) Act 1999, obligations in respect of security and secrecy, intellectual property and audit rights for the benefit of the Authority corresponding to those placed on the Contractor, but with such variations as the Authority reasonably considers necessary. The Contractor shall not include in any sub-contract any provision the effect of which would be to limit the ability of the Sub-contractor to contract directly with the Authority or a replacement provider of Services.
- 18.5 For the avoidance of doubt, in this Contract all persons engaged by the Services Provider and used under this Contract (whether permanent or temporary) will be used as part of the Services provision offered by the Service Provider. Any and all persons engaged by the Services Provider shall sign terms of engagement with the Service Provider and shall not be deemed to have an employment or co-employment relationship with the Authority. In respect of its staff and all other persons engaged by it to deliver the Services under the Contract, the Services Provider is responsible for ensuring the payment of remuneration, for making statutory deductions and for payment of all statutory contributions in respect of earnings related National Insurance and the administration of income tax (PAYE) which is applicable by law. All Parties shall adhere to all employment legislation.

## **19. DISCLOSURE OF INFORMATION**

- 19.1 To enable compliance with the Freedom of Information Act 2000 and the Environmental Information Regulations 2004, the Authority reserves the right to disclose information about this Contract pursuant to a valid request for information.
- 19.2 The Contractor shall not disclose any information relating to the Contract or the Authority's activities without the prior written consent of the Authority, which shall not be unreasonably withheld. Such consent shall not be required where the information is already in the public domain, is in the possession of the Contractor without restriction as to its disclosure, or is received from a third party who lawfully acquired it and is under no obligation restricting its disclosure.
- 19.3 The Authority is subject to the Data Protection Act 1998 and under the provisions of that Act it is a Data Controller and the Contractor is a Data Processor. To ensure that the Authority complies with its obligations under the Data protection Act 1998, the Contractor agrees:
- (a) to process Personal Data only in accordance with instructions from the Authority and only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;
  - (b) to take appropriate organisational steps to protect the Personal Data from unauthorised or unlawful access or use, accidental loss, destruction, damage, alteration or disclosure.
  - (c) to take reasonable steps to ensure the Contractor's Staff understand that the Personal Data is confidential and the importance of maintaining this confidentiality.
  - (d) to obtain the Authority's consent in writing before transferring Personal Data to any sub-contractors or anyone else involved in providing the Services.

## **20. DISCRIMINATION**

- 20.1 The Contractor shall not unlawfully discriminate either directly or indirectly on protected characteristics such as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age. The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of all relevant

legislation including the Equality Act 2010 or other relevant or equivalent legislation, as amended from time to time.

## **21. CONFLICT OF INTEREST**

- 21.1 The Contractor shall establish and maintain appropriate business standards, procedures and controls to ensure that no conflict of interest arises between Services undertaken for the Authority and that undertaken for other clients or the provision of Goods for the Authority and that undertaken for other clients. The Contractor shall avoid knowingly committing any acts which are likely to result in any allegation of impropriety against the Authority, including conflicts of interest which are likely to prejudice his independence and objectivity in performing the Contract, however this might arise.
- 21.2 The Contractor shall notify the Authority immediately of any circumstances it becomes aware of which give rise or potentially give rise to a conflict with the Contractor's provision of the Goods or Services and shall advise the Authority of how they intend to avoid such a conflict arising or remedy such situation.
- 21.3 Where a potential or actual conflict of interest arises, the Contractor shall subject to any obligations of confidentiality it may have to third parties provide all information and assistance reasonably necessary (at the Contractor's cost) that the Authority may request of the Contractor in order to avoid or resolve the conflict of interest and shall ensure that at all times they work together with the Authority with the aim of avoiding a conflict or remedy a conflict.
- 21.4 Where it considers further or extensive action is necessary to identify and/or manage a conflict of interest the Authority shall have the right to require that the Contractor puts in place "Ethical Walls" and will ensure and satisfy the Authority that all information relating to the Contract and to the Services and Deliverables completed pursuant to it (to include all working papers, draft reports in both tangible and intangible form) are not shared or made available to other employees, contractors or agents of the Contractor and that such matters are not discussed by the relevant staff with other employees, contractors or agents of the Contractor.
- 21.5 In the event of a failure to maintain the "Ethical Walls" as described in [Condition 21.4 \(Conflict of Interest\)](#) arising during the course of this Contract, the Authority reserves the right to immediately terminate the Contract on giving written notice to the Contractor and to pursue the Contractor for damages.
- 21.6 If the Contractor's staff breach this Conflict of Interest Condition, the Contractor undertakes to keep the Authority fully and effectively indemnified in respect of all costs, losses and liabilities arising from any wrongful disclosure or misuse of the Confidential Information by the Contractor's staff. This indemnity shall be without prejudice to any other rights or remedies, including injunctive or other equitable relief, which the Authority may be entitled to, but for the avoidance of doubt shall be subject to the limitations of liability (including without limitation the cap on liability) set out in this Contract.

## **22. LOSS OR DAMAGE**

- 22.1 The Contractor shall, without delay and at the Contractor's own expense, reinstate, replace or make good to the satisfaction of the Authority, or if the Authority agrees, compensate the Authority, for any loss or damage connected with the performance of the Contract, except to the extent that such loss or damage is caused by the neglect or default of the Authority. "Loss or damage" includes but is not limited to loss or damage to property, personal injury, sickness or death and loss of use suffered as a result of any loss or damage.

## **23. RECOVERY OF SUMS FROM CONTRACTOR**

- 23.1 Whenever under the Contract any sum or sums of money shall be recoverable from or payable by the Contractor to the Authority, that amount may be deducted from any sum then due, or which at any later time may become due, to the Contractor under the Contract or under any other contract with the Authority or with any department, agency or office of Her Majesty's Government.

## **24. TERMINATION**

- 24.1 If the Contractor fails to fulfil its obligations under the Contract, the Authority may terminate the Contract immediately by written notice and, in accordance with [Condition 23 \(Recovery Of Sums From Contractor\)](#) may recover from the Contractor any reasonable costs necessarily and properly incurred by the Authority as a consequence of termination.
- 24.2 Without prejudice to [Condition 23.1 \(Recovery Of Sums From Contractor\)](#), the Authority shall at any time have the right to terminate the Contract or reduce the quantity of Goods or Services to be provided by the Contractor by giving the Contractor one month's written notice. During the period of notice the Authority may direct the Contractor to perform all or any of the work under the Contract. Where the Authority has invoked either of these rights, the Contractor may claim reasonable costs which it has incurred necessarily and properly as a result of the termination or reduction provided that the claim shall not exceed the total cost of the Contract. The Contractor's claim for reasonable costs shall not include loss of profit and consequential losses.

24.3 Termination or reduction under this provision shall not affect the rights of the parties to the Contract that may have accrued up to the date of termination.

## **25. INSURANCE**

25.1 Where relevant and/or required by law, the Contractor shall put in place and maintain an adequate level of insurance cover in respect of all risks that may be incurred by him in the performance of this Contract.

## **26. NOTICES**

26.1 A Notice may be served by the Authority on the Contractor in the following ways:

- (a) By delivery to the Contractor's place of business or any other address to which the Parties have agreed previously and recorded in writing that a Notice can be sent; or
- (b) By sending it by facsimile to the Contractor; or
- (c) By ordinary first class post to the Contractor's last known place of business or registered office.

26.2 A notice shall be deemed served at the time of delivery, after four hours for a facsimile, or on the second working day after posting.

## **27. VARIATIONS TO THE CONTRACT**

27.1 The Parties may agree a variation to the Contract but this will not be effective until it has been recorded in writing and signed by the Contractor and a senior officer of the Authority requiring the Services and/or Goods. This Condition does not affect the Authority's sole right in [Condition 24.2 \(Termination\)](#) to reduce the quantity of Goods or Services which it requires under the Contract.

## **28. GENERAL**

28.1 These Conditions shall apply to the exclusion of all other terms and conditions including any terms and conditions which the Contractor may seek to apply under any purchase order, confirmation of order, invoice, delivery note or similar document.

28.2 The Contractor shall be deemed to have accepted the terms and conditions of the Contract by delivering the Goods and/or Service.

28.3 Time for delivery of Goods and/or provision of the Service shall be of the essence of the Contract.

28.4 If either Party does not enforce any one or more of the terms or conditions of this Contract this does not mean that the Party has given up the right at any time subsequently to enforce all terms and conditions of this Contract.

28.5 The Authority shall in no circumstances be liable for any claim, loss or damage whether arising in contract, tort (including negligence) or otherwise, for consequential, economic, special or other indirect loss and shall not be liable for any losses calculated by reference to profits, contracts, business, goodwill, income, production or accruals whether direct or indirect and whether or not arising out of any liability of the Contractor to any other person.

## **29. DISPUTE RESOLUTION**

29.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract before taking any legal action.

## **30. LAW**

30.1 The Contract shall be governed by and interpreted in accordance with the law of England and Wales and the Parties submit to the exclusive jurisdiction of the courts of England.

## **31. TRANSPARENCY**

31.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOI Act, the content of this Contract is not Confidential Information. The Authority 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 FOI Act. Notwithstanding any other term of this Contract, the Contractor gives consent to the Authority to publish the Contract in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of the FOI Act redacted) including from time to time agreed changes to the Contract, to the general public.

- (a) The Authority may consult with the Contractor to inform its decision regarding any exemptions but the Authority shall have the final decision in its absolute discretion.
- (b) The Contractor shall assist and cooperate with the Authority to enable the Authority to publish this Agreement.

## **32. DATA PROTECTION**

- 32.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor unless otherwise specified in the [Processing, Personal Data and Data Subjects Schedule at Annex 2.1](#). The only processing that the Processor is authorised to do is listed in the [Processing, Personal Data and Data Subjects Schedule at Annex 2.1](#) by the Controller and may not be determined by the Processor.
- 32.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 32.3 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.
- 32.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- (a) process that Personal Data only in accordance with the [Processing, Personal Data and Data Subjects Schedule at Annex 2.1](#), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
  - (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
    - (i) nature of the data to be protected;
    - (ii) harm that might result from a Data Loss Event;
    - (iii) state of technological development; and
    - (iv) cost of implementing any measures;
  - (c) ensure that:
    - (i) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular the [Processing, Personal Data and Data Subjects Schedule at Annex 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 condition;
      - (b) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
      - (c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
      - (d) have undergone adequate training in the use, care, protection and handling of Personal Data; and
  - (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

- (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) 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
  - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.
- 32.5 Subject to [Condition 32.6 \(Data Protection\)](#), the Processor shall notify the Controller immediately if it:
- (a) receives a Data Subject Request (or purported Data Subject Request);
  - (b) receives a request to rectify, block or erase any Personal Data;
  - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
  - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- or
- (f) becomes aware of a Data Loss Event.
- 32.6 The Processor's obligation to notify under [Condition 32.5 \(Data Protection\)](#) shall include the provision of further information to the Controller in phases, as details become available.
- 32.7 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 [Condition 32.5 \(Data Protection\)](#) (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 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.
- 32.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this condition. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the processing is not occasional;
  - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
  - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 32.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 32.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 32.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:



- (a) notify the Controller in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Controller;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this condition **[X]** 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.

32.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.

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

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

32.15 Where the Parties include two or more Joint Controllers as identified in the Processing, Personal Data and Data Subjects Schedule at [Annex B.1](#) in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in the [Schedule at Annex B.2](#) in replacement of Conditions 32.1 - 32.14 (for the Personal Data under Joint Control)

**See Annex B.2 Joint Controller Agreement as this could replace above Conditions 32.2 to 32.14.**

## 1. What we expect from our Suppliers

1.1 In September 2017, HM Government published a Supplier Code of Conduct ("the Code") setting out the standards and behaviours expected of suppliers who work with government.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/646497/2017-09-13\\_Official\\_Sensitive\\_Supplier\\_Code\\_of\\_Conduct\\_September\\_2017.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/646497/2017-09-13_Official_Sensitive_Supplier_Code_of_Conduct_September_2017.pdf)

1.2 The FCO (henceforth known as "the Authority") expects its Suppliers and its Suppliers' Subcontractors to meet the standards set out in the Code. In addition, the FCO expects its Suppliers and its Suppliers' Subcontractors to comply with the standards set out in this Schedule.

1.3 The Supplier acknowledges that the Authority may have additional requirements in relation to corporate social responsibility. The Supplier and the Suppliers' Subcontractors shall comply with such corporate social responsibility requirements as the Authority may notify to the Supplier from time to time.

## 2. Equality and Accessibility

2.1 Without prejudice to the generality of its rights and obligations under each Contract, the Supplier shall support the Authority in fulfilling its public sector equality duty under S149 of the Equality Act 2010 by ensuring, so far as reasonably practicable, that it (the Supplier) fulfils its obligations under each Contract in way that has due regard to the need to:

2.1.1 eliminate discrimination, harassment or victimisation and any other conducted that is prohibited under the 2010 Act; and

2.1.2 advance equality of opportunity and foster good relations between those who share a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.

## 3. Modern Slavery, Child Labour and Inhumane Treatment

The "Modern Slavery Helpline" refers to the point of contact for reporting suspicion, seeking help or advice and information on the subject of modern slavery available online at <https://www.modernslaveryhelpline.org/report> or by telephone on 08000 121 700.

3.1 The Supplier:

3.1.1 shall not use, or allow its Subcontractors to use, forced, bonded or involuntary prison labour;

3.1.2 shall not require any Supplier staff or Subcontractor staff to lodge deposits or identify papers with the Employer or deny Supplier staff freedom to leave their employer after reasonable notice;

3.1.3 warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world.

3.1.4 warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offenses anywhere around the world.

3.1.5 shall make reasonable enquires to ensure that its officers, employees and Subcontractors have not been convicted of slavery or human trafficking offences anywhere around the world.

3.1.6 shall have and maintain throughout the term of each Contract its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and shall include in its contracts with its subcontractors anti-slavery and human trafficking provisions;

3.1.7 shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under a Contract;

3.1.8 shall prepare and deliver to the FCO at the commencement of each Contract and updated on a frequency defined by the Authority, a slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business;

3.1.9 shall not use, or allow its employees or Subcontractors to use, physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Subcontractors;

3.1.10 shall not use, or allow its Subcontractors to use, child or slave labour;

3.1.11 shall report the discovery or suspicion of any slavery or trafficking by it or its Subcontractors to the Authority and Modern Slavery Helpline.

## 4. Income Security

4.1 The Supplier shall:

- 4.1.1 ensure that that all wages and benefits paid for a standard working week meet, at a minimum, national legal standards in the country of employment;
- 4.1.2 ensure that all workers are provided with written and understandable information about their terms and conditions of employment, and in particular in respect of wages, before they enter employment, and about the particulars of their wages for the pay period concerned each time that they are paid;
- 4.1.3 not make deductions from wages as a disciplinary measure except
  - (a) where permitted by law; and
  - (b) upon express permission of the worker concerned.”
- 4.1.4 record all disciplinary measures taken against Supplier Staff throughout the term of each contract; and
- 4.1.5 ensure that Supplier Staff are engaged under a recognised employment relationship established through national law and practice.

## **5. Working Hours**

- 5.1 The Supplier shall:
  - 5.1.1 ensure that the working hours of Supplier staff comply with national laws, and any collective agreements;
  - 5.1.2 ensure that the working hours of Supplier staff, excluding overtime, are defined by contract, and do not exceed 48 hours per week unless the individual has lawfully agreed so in writing;
  - 5.1.3 ensure that overtime is used responsibly, taking into account:
    - (a) the extent;
    - (b) frequency; and
    - (c) hours workedby reference to individuals and the Supplier staff as a whole;
- 5.2 The total hours worked by an individual in any seven-day period shall not exceed 60 hours, unless the criteria set out in paragraph 5.3 are satisfied.
- 5.3 Working hours may exceed 60 hours in any seven-day period only where all of the following are met:
  - 5.3.1 this is allowed by national law;
  - 5.3.2 this is expressly authorised by a collective agreement freely negotiated with a workers’ organisation representing a significant portion of the workforce;
  - 5.3.3 appropriate safeguards are taken to protect the workers’ health and safety; and
  - 5.3.4 the employer can demonstrate that exceptional circumstances apply.
- 5.4 All Supplier Staff shall be provided with at least one (1) day off in every seven (7) day period or, where allowed by national law, two (2) days off in every fourteen (14) day period.

## **6. Sustainability**

- 6.1 The Supplier shall meet the applicable Government Buying Standards applicable to Deliverables which can be found online at: <https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>

# Scope

This Code forms part of FCO's standard contractual terms and conditions for spend through FCO Programmes *[Insert reference to CSSF/PF Frameworks as appropriate]*. Full compliance with the Code is required of all Suppliers. An annual verification via a signed declaration, to be found at Annex A15, is mandatory for all Suppliers.

The FCO will monitor compliance with the Code based on the Compliance Levels set out herein and communicated with Suppliers at the Invitation to Tender stage of any procurement exercise.

## 1. Value for Money and Governance

Value for Money is an essential requirement of all FCO commissioned work. All Suppliers must seek to maximise 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.

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

## Specific requirements include:

- ✓ Provision of relevant VfM and governance policies and a description of how these are put into practice to meet FCO requirements (e.g. codes on fraud and corruption, due diligence);
- ✓ A transparent, open book approach, which enables scrutiny of value for money choices, applies pricing structures that align payments to results and reflects an appropriate balance of performance risk;
- ✓ Processes for timely identification and resolution of issues and for sharing lessons learned.

## 2. Ethical Behaviour

FCO Suppliers and their Sub-Contractors act on behalf of government and interact with citizens, public sector/third sector organisations and the private sector. These interactions must therefore meet the highest standards of ethical and professional behaviour that upholds the reputation of government.

Arrangements and relationships entered into, whether with or on behalf of FCO, must be free from bias, conflict of interest or the undue influence of others. Particular care must be taken by staff who are directly involved in the management of a programme, procurement, contract or relationship with FCO, where key stages may be susceptible to undue influence. In addition, Suppliers and their Sub-Contractors must not attempt to influence an FCO member of staff to manipulate programme monitoring and management to cover up poor performance.

Suppliers and their Sub-Contractors must declare to FCO any instances where it is intended that any direct or delivery chain staff members will work on FCO funded business where those staff members have any known conflict of interest or where those staff members have been employed by FCO or the Crown in the preceding two years. Suppliers and their Sub-Contractors must provide proof of compliance with the HMG approval requirements under the Business Appointment Rules.

Suppliers and their Sub-Contractors must have the following policies and procedures in place:

- ✓ Recruitment policy (which must address circumstances where there may be potential or actual conflict of interest);
- ✓ Ongoing conflict of interest, mitigation and management;
- ✓ Refresher ethical training and staff updates (including awareness of modern day slavery and human rights abuses);
- ✓ A workforce whistleblowing policy;
- ✓ Procedures setting out how, staff involved in FCO or DFID funded business, can immediately report all suspicions or allegations of aid diversion, fraud, money laundering or counter terrorism finance to the FCO's counter fraud team at [afcu@fco.gov.uk](mailto:afcu@fco.gov.uk).

### 3. Transparency and Delivery Chain Management

FCO requires full delivery chain transparency from all Suppliers. All delivery chain partners must adhere to wider HMG policy initiatives including the support 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.

FCO Suppliers must engage their delivery chain supply partners in a manner that is consistent with FCO's treatment of its Suppliers. This includes, but is not limited to: pricing; application of delivery chain risk management processes; and taking a zero tolerance approach to tax evasion, corruption, bribery and fraud in subsequent service delivery or in partnership agreements.

## Specific requirements for Suppliers include:

- ✓ Provide assurance to FCO that the policies and practices of their delivery chain supply partners and affiliates are aligned to this Code;
- ✓ Maintaining and sharing with FCO up-to-date and accurate records of all downstream partners in receipt of FCO funds and/or FCO 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 aware of the FCO fraud mail box ([AFCU@fco.gov.uk](mailto:AFCU@fco.gov.uk)) found on FCO's external website and of the circumstances in which this should be used;
- ✓ Publication of FCO funding data in accordance with the International Aid Transparency Initiative (IATI)<sup>4</sup>
- ✓ Suppliers shall adhere to HMG prompt payment policy and shall not use restrictive exclusivity agreements with sub-partners.

### 4. Environmental Issues

FCO Suppliers must be committed to high environmental standards, recognising that FCO's activities may change the way people use and rely on the environment, or may affect or be affected by environmental conditions. Suppliers 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 FCO.

## 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 Codes, both directly and within the delivery chain such as conventions, standards or certification bodies (eg the Extractive Industries Transparency Initiative<sup>5</sup>).

### 5. Terrorism and Security

FCO Suppliers must implement due diligence processes to provide assurance that UK Government funding is not used in any way that contravenes the provisions of applicable terrorism legislation.

## Specific requirements:

- ✓ FCO suppliers must safeguard the integrity and security of their IT and mobile communications systems in line with the HMG Cyber Essentials Scheme<sup>6</sup>. Award of the Cyber Essentials or Cyber Essential Plus badges would provide organisational evidence of meeting the UK Government-endorsed standard;

- ✓ All FCO Suppliers partners who manage aid programmes with a digital element must adhere to the global Principles for Digital Development<sup>7</sup>, which sets out best practice in technology-enabled programmes
- ✓ Ensure that FCO funding is not linked to terrorist offences, terrorist activities or financing

## 6. Social Responsibility and Human Rights

Social responsibility and respect for human rights are central to FCO's expectations of its Suppliers. We will ensure that robust procedures are adopted and maintained to eliminate the risk of poor human rights practices within the complex delivery chain environments funded by FCO. These include unethical and illegal employment practices, such as modern day slavery, forced and child labour and other forms of exploitative and unethical treatment of workers. FCO will expect a particular emphasis on 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:

- ✓ All Supply Partners must be fully signed up to the UN Global Compact<sup>8</sup>;
- ✓ Practices in line with the International Labour Organisation (ILO) 138<sup>9</sup> and the Ethical Trading Initiative (ETI) Base Code<sup>10</sup> are encouraged;
- ✓ Policies to embed good practice in line with the UN Global Compact Guiding Principles 1 & 2 on business and human rights, as detailed in Annex 2;
- ✓ A Statement of Compliance outlining how the organisation's business activities help to develop local markets and institutions and contribute to social and environmental sustainability, whilst complying with international principles on 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;

## Compliance with the Code and contractual checking mechanisms (Programme including ODA)

## Annex A.1

All Suppliers are required to adhere to the principles of the Code and to submit an annual declaration as set out at Annex 5.2.2. [The declaration should be submitted prior to contract award and thereafter on an annual basis to [xxx@fco.gov.uk](mailto:xxx@fco.gov.uk)] [The declaration should be submitted via the Bravo eSourcing Portal following the award of the Framework Agreement and thereafter annually on the anniversary of the date of award].

In addition to submitting the annual declaration as set out at Annex 5.2.2 Suppliers may be subject to enhanced compliance checking procedures as follows:

Compliance Level 1 (CL1) – For projects considered high-value and/or high-risk the highest level of compliance is required. Suppliers on CL1 will be required to submit evidence demonstrating compliance with the Code at the frequency set out in the table below and will be subject to

Compliance Level 2 (CL2) – For

Compliance Level 3 (CL3) - <sup>1</sup>

The Compliance Level will be determined on a project-by-project basis based on a number of factors including risk and value and will be communicated with Suppliers as part of the Invitation to Tender documentation.

The table below sets out the evidence that Suppliers are required to make available when requested by the FCO to demonstrate compliance with the Code. Suppliers required to adhere to CL1 or CL2 shall provide the evidence at the frequency determined below for those contracts to which it applies to the specified Contract Manager. The FCO reserves the right to request the documentation from time-to-time and to conduct spot checks on the evidence provided.

[Need to include wording for Framework Agreements specifically]

No.	Code Principle	Evidence Required	Frequency	CL1	CL2	CL3
i.	Declaration of compliance with the FCO Supplier Code of Conduct	Declaration set out at Annex 1B provided.	Annually	X	X	X
ii.	Declaration of sign up to the UN Global Compact	Certificate/Confirmation of membership	Annually	X	X	X
<b>1. Value for Money (VfM) and Governance</b>						
a.	Economic and governance policies in practice	Relevant organisation policies, including detailed annual financial breakdown related to the contract	Annually	X	X	0
b.	VfM being maximized over the life of a contract.	Relevant documentation to include: - Confirmation of annual profit level fluctuations since contract award; - Evidence of timely resolution of identified issues;	Annually	X	X	0

		- Evidence of lessons learned				
c.	Tax declaration (HMRC format)	- 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	X	X	0
<b>2. Ethical Behaviour</b>						
a.	Adherence to conflict of interest management procedures	Relevant organisation policies, including recruitment policy which must address circumstances where there may be potential or actual conflict of interest	Annually	X	X	0
b.	Ethical training and staff updates	Copy of training programme; Training logs; Relevant communication to staff	Annually	X	X	0
c.	A workforce whistleblowing policy	Relevant organisation policy and evidence of continuous staff awareness maintained.	Annually	X	X	0
d.	Staff involved in FCO funded programmes are aware of how to report all suspicions or allegations of aid diversion, fraud, money laundering or counter terrorism to the FCO.	Relevant organization policy and evidence of regular communication to staff.	Annually	X	X	0
e.	Declaration of direct or delivery chain staff members proposed to work on FCO funded programmes if employed by FCO or the Crown in the preceding two years.	Proof of compliance with the HMG approval requirements under the business appointments rules.	Annually (and when a new member of staff who this applies to joins the project team)	X	X	0
<b>3. Transparency and Delivery Chain Management</b>						
a.	IATI compliance for Suppliers and delivery chain partners	Proof of compliance with IATI	Annually	X	0	0
b.	Provision of up-to-date and accurate records of all downstream supply partners provided within the required frequencies, including annual contractual spend on MSME's, women owned businesses and apprenticeships in place	Record of all downstream supply partners	Annually	X	0	0



c.	Policies and practices for the management of delivery chain partners and affiliates aligned to the FCO Supplier Code of Conduct	Verification that policies and practices for the management and governance of delivery chain supply partners is in place	Annually	X	0	0
d.	Tax evasion, bribery, corruption and fraud compliance	Statement of assurance that there has been no change to previous statements	Annually	X	X	0
e.	HMG prompt payment policy adhered to by all delivery chain partners	Confirmation of adherence to HMG prompt payment policy	Annually	X	0	0
<b>4. Environmental Issues</b>						
a.	Processes in place to identify environmental risks (e.g. by maintaining a risk register) ensuring legislative requirements are met and context specific environmental issues addressed	Documentation demonstrating how environmental risks are identified (e.g. risk register) with formal context specific environmental safeguarding policies in place	Annually	X	0	0
b.	Annual environmental performance reports	Published reports	Annually	X	0	0
<b>5. Terrorism and Security</b>						
a.	Reporting of terrorist offences or offences linked to terrorist activities or financing	Status declaration	Annually	X	X	0
b.	Confirmation that no engaged employees or deliver chain personnel appears on the Home Office Prescribed Terrorist Organization List.	Appropriate certification or documentation	Annually	X	X	0
c.	Data is managed in accordance with DFID security policy and all systems are in accordance with the HMG cyber essentials scheme	Appropriate certification or documentation	Annually	X	X	0
d.	Adherence to best practice global principles for digital development	Appropriate certification or documentation	Annually	X	0	0
<b>6. Social Responsibility and Human Rights</b>						
a.	Compliance with key legislation on international principles on labour and ethical employment	Confirmation of UN Global Compact Membership; Internal documentation demonstrating best practice and compliance	Annually	X	X	0

b.	Membership of the International Labour Organisation or Ethical Trading Initiative	Membership Number	Annually	X	0	0
c.	Principles of UN Global Compact cascaded to employees and delivery chain partners	Internal policies or communication demonstrating communication to staff and delivery chain partners showing appropriate level of commitment to the UN Compact	Annually	X	0	0

## **Contractual Annual Compliance Declaration (Programme including ODA)**

**Annex A.2**

Prior to contract award and thereafter on an annual basis, the supply partner is required to submit a compliance declaration in connection with the management of any FCO Contracts 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.

**[Insert Template]**

**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 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

#### In the Workforce

- 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

## Processing, Personal Data and Data Subjects Schedule

## Annex B.1

This Schedule shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

1. The contact details of the Controller's Data Protection Officer are: [DN: insert "contact details"]
2. The contact details of the Processor's Data Protection Officer are: [DN: insert "contact details"]
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor	<p><i>The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor in accordance with Condition 14.1.</i></p> <p><i>Guidance: You may need to vary this section where (in the rare case) the Customer and Contractor have a different relationship. For example where the Parties are Joint Controller of some Personal Data:</i></p> <p><i>"Notwithstanding Condition 14.1 the Parties acknowledge that they are also Joint Controllers for the purposes of the Data Protection Legislation in respect of:</i></p> <p><i>[Insert the scope of Personal Data which the purposes and means of the processing is determined by the both Parties]</i></p> <p><i>In respect of Personal Data under Joint Control, condition 14.1-14.15 will not apply and the Parties agree to put in place a Joint Controller Agreement as outlined in Annex 4.2 instead."</i></p>
Subject matter of the processing	<p><i>[This should be a high level, short description of what the processing is about i.e. its subject matter of the contract.</i></p> <p><i>Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to members of the public. ]</i></p>
Duration of the processing	<p><i>[Clearly set out the duration of the processing including dates]</i></p>
Nature and purposes of the processing	<p><i>[Please be as specific as possible, but make sure that you cover all intended purposes.</i></p> <p><i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i></p>
Type of Personal Data being Processed	<p><i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i></p>
Categories of Data Subject	<p><i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i></p>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<p><i>[Describe how long the data will be retained for, how it be returned or destroyed]</i></p>

Description	<i>Details</i>
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Guidance: INSERT only where Joint Controller applies in Annex 4.1 Processing, Personal Data and Data Subjects

1. In this Annex the Parties must outline each party's responsibilities for:
  - providing information to data subjects under Article 13 and 14 of the GDPR.
  - responding to data subject requests under Articles 15-22 of the GDPR
  - notifying the Information Commissioner (and data subjects) where necessary about data breaches
  - maintaining records of processing under Article 30 of the GDPR
  - carrying out any required Data Protection Impact Assessment
  - The agreement must include a statement as to who is the point of contact for data subjects.
2. Do you need to incorporate Conditions equivalent to those specified in Condition 32.2 - 32.14 (Data Protection)?
3. Do you need to include an additional Condition apportioning liability between the parties arising out of data protection; of data that is jointly controlled?
4. Where there is a Joint Control relationship, but no controller to processor relationship under the contract, this completed Annex B.2 Joint Controller Agreement should be used instead of Condition 32.2 - 32.14 (Data Protection).

OPTIONAL refer need to DSC if in doubt

#### ATTACHMENT 5 - CERTIFICATE OF BONA FIDE TENDERING

1. I declare that this is a bona fide tender, intended to be competitive and that I have not fixed or adjusted the amount of the tender by or under or in accordance with any agreement or arrangement with any other person ('person' includes any persons, anybody or association, corporate or incorporate; and) except as disclosed on this Certificate under 7 below.
2. I declare that the Company is not aware of any connection with a member of the Authority's staff which could affect the outcome of the bidding process.
3. I declare that I have not done and I undertake that I will not do at any time any of the following:-
  - a) communicate to any person, including the addressee calling for the tender, the amount or approximate amount of the proposed tender;
  - b) enter into any agreement or arrangement with any other person or body that he or it shall refrain from tendering or as to the amount of any tender to be submitted;
  - c) enter into any agreement or arrangement with any other person or body that we will refrain from tendering on a future occasion;
  - d) offer or pay or agree to pay any sum of money or valuable consideration directly or indirectly to any person for doing or causing to be done in relation to any other tender for the said work any act of the kind described above;
  - e) canvass or solicit the Authority staff.
4. I understand that any instances of illegal cartels or market sharing arrangements suspected by the Authority will be referred to the Office of Fair Trading for investigation.
5. I understand that any misrepresentations may also be the subject of criminal investigation or used as a basis for civil action.
6. In this Certificate "agreement" or "arrangement" includes any transaction private or open, or collusion, formal or informal, and whether or not legally binding.
7. Disclosure: \_\_\_\_



Signed: \_\_\_\_\_ Name: \_\_\_\_\_ Title:

On behalf of: \_\_\_\_\_ Date: / / 2019

To: The Secretary of State for Foreign & Commonwealth Affairs

Date: / /2019

**ATTACHMENT 6 – DECLARATION BY TENDERER**

1. I have examined the documents inclusive enclosed under cover of your Invitation to Tender letter and have taken account of subsequent Amendments.
2. I hereby offer to enter into a Contract with the Secretary of State for Foreign & Commonwealth Affairs, as represented by the British Embassy Manila, upon the Conditions in the proposed Contract documents set out in the RFP Attachment 4.
3. I warrant that I have all the requisite corporate authority to sign this tender.
4. I understand that the Authority is not bound to accept the lowest or any tender. I also understand the Authority has the right to accept only part of a Tender unless I have expressly stipulated otherwise.
5. This Tender shall remain open for acceptance by the Authority for a period of 3 months after the due date for return of tenders specified in your Request for Quotation.
6. We acknowledge that the information set out in the Request for Quotation is confidential to the Authority and contains documentation which is subject to Crown copyright. We undertake not to copy or disseminate this information or documentation and if required by the Authority to return all such information and documentation in its possession to the Authority or else certify its destruction.

Signed: .....

Date: .....

Name: .....

In the capacity of: .....

Duly authorised to sign Tenders on behalf of: (Name of Company) .....

