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**FCDO Services**

**OFFICIAL**

# General Terms and Conditions

## September 2020

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### 1 DEFINITIONS

In the Agreement, unless the context otherwise requires, the following expressions have the following meanings:

- 1.1 "**Agreement**" means the agreement for the provision of Products, Services or a Project, as applicable, consisting of the Proposal, the Special Conditions, if any, and these General Terms and Conditions;
- 1.2 "**Assumptions**" means the assumptions (if any) made by the parties to the Agreement, in relation to the supply of the Products, Services or Project and the performance of the Agreement, which are set out in the relevant Proposal;
- 1.3 "**Change Request**" means a written request by either party for a change to the Products, Services or Project described in the relevant Proposal;
- 1.4 "**Claiming Party**" means the party affected by a Force Majeure Event;
- 1.5 "**Confidential Information**" means all correspondence, conversations, information or data (whether oral, visual, recorded in writing, in any other medium or by any other method) disclosed to or obtained by one party from the other or from a third party, including any information relating to a party's IPR, operations, processes, plans, intentions, price lists, pricing structures, know-how, design rights, trade secrets, software, market opportunities, customers, business affairs, personal and family affairs, the Agreement or information which the parties knew or ought reasonably to have known to be confidential (whether or not marked as confidential);
- 1.6 "**Customer**" means the person whose details are set out in the relevant Proposal who is purchasing Products, Services or a Project from FCDO Services;
- 1.7 "**Data Processing Agreement**" means the agreement between the Parties in the form set out in the Schedule;
- 1.8 "**Documentation**" means the documentation created by FCDO Services in connection with the Products, Services or Project supplied;
- 1.9 "**Environmental Information Regulations**" mean the Environmental Information Regulations 2004;
- 1.10 "**FCDO Services**" means FCDO Services an Executive Agency and Trading Fund of the Foreign, Commonwealth and Development Office whose head office is at Hanslope Park, Milton Keynes, MK19 7BH United Kingdom;
- 1.11 "**FOIA**" means the Freedom of Information Act 2000 and any subordinate legislation made under such Act from time to time;
- 1.12 "**Fees**" means the price payable to FCDO Services by the Customer for the Products, Services or Project as set out in the relevant Proposal;
- 1.13 "**Force Majeure Event**" means the occurrence after the date of this Agreement of events which result from circumstances beyond the reasonable control of the Claiming Party and which directly cause the Claiming Party to be unable to comply with all or a material part of its obligations (other than payment) under this Agreement including failures to obtain requested governmental visas, work permits or other authorisations or licences, strikes, lock-outs or other industrial disputes (whether involving the workforce of the party so prevented or of any other party including sub-contractors), nuclear accident or acts of God, war (declared or undeclared) or terrorist activity, insurrections, nuclear chemical or biological contamination, riot, civil commotion, malicious damage (excluding malicious damage involving the

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employees of the affected party or its sub-contractors), compliance with any new law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, or storm or default of suppliers or sub-contractors;

- 1.14 "**General Terms and Conditions**" means these terms and conditions forming part of the Agreement;
- 1.15 "**IPR**" means:
- (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trademarks, service marks, database rights, rights in internet domain names and website addresses and other rights in trade names, designs, know-how, trade secrets and other rights in Confidential Information;
  - (b) applications for registration, and the right to apply for, renew or extend registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
  - (c) all other rights having equivalent or similar effect in any country or jurisdiction;
- 1.16 "**Information**" has the meaning given under Section 84 of the Freedom of Information Act 2000;
- 1.17 "**Products**" means the products to be purchased by the Customer from FCDO Services as detailed in the relevant Proposal;
- 1.18 "**Project**" means a project to be performed by FCDO Services involving the supply of Products and/or Services to the Customer as detailed in the relevant Proposal;
- 1.19 "**Project Plan**" means the project plan for a Project annexed to the relevant Proposal;
- 1.20 "**Proposal**" means the proposal attached to the Special Conditions detailing the Products, Services and/or Project, as applicable, to be supplied by FCDO Services to the Customer;
- 1.21 "**Request for Information**" means a request for information or an apparent request under the FOIA or the Environmental Information Regulations;
- 1.22 "**Services**" means the services to be supplied by FCDO Services to the Customer as detailed in the relevant Proposal;
- 1.23 "**Special Conditions**" means the special conditions for the supply of Products, special conditions for the supply of Services or special conditions for a Project, as applicable, attached to the relevant Proposal;
- 1.24 "**Specification**" means the specification for Services annexed to the relevant Proposal;
- 1.25 "**Work Package**" means a clearly defined task within a Project as more particularly described in the Proposal.

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### 2 PURPOSE

- 2.1 These General Terms and Conditions set out the general terms which will govern trading between the Customer and FCDO Services where the Customer tasks FCDO Services to supply Products, Services or a Project.

### 3 GENERAL

- 3.1 Any reference to a statute, statutory provision or statutory instrument includes a reference to that statute, statutory provision or statutory instrument together with all rules and regulations made under it and as from time to time amended, consolidated or re-enacted and in the case of FOIA and Environmental Information Regulations shall include any guidance and/or codes of practice issued by the relevant government department or statutory body.
- 3.2 Words importing the singular include the plural, words importing any gender include every gender, words importing persons include bodies corporate and unincorporated and (in each case) vice versa.
- 3.3 The terms "**including**", "**include**", "**in particular**" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 3.4 Clause headings shall not affect the interpretation of these General Terms and Conditions;
- 3.5 References to Clauses and Schedules are to the clauses of and schedules to these General Terms and Conditions unless the contrary is stated.
- 3.6 If there is any inconsistency between the provisions of the applicable Proposal, Special Conditions and the General Terms and Conditions, the terms shall prevail in the following order:
- (a) Proposal;
  - (b) Special Conditions;
  - (c) General Terms and Conditions.
- 3.7 The Agreement shall apply to the exclusion of all other terms, conditions or representations, whether oral or written, including any terms or conditions which the Customer may purport to apply under any purchase order, acceptance document or similar document. Except as expressly permitted by the Agreement, no addition to or modification of the Agreement shall be binding upon the parties unless made by a written instrument signed by a duly authorised representative of FCDO Services and the Customer.
- 3.8 All Proposals shall be deemed to be an offer by the Customer pursuant to the Agreement.
- 3.9 Acceptance of delivery of the Products, Services or Project shall be deemed conclusive evidence of the Customer's acceptance of the Agreement.

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### 4 FEES

- 4.1 The Customer shall pay the fees to FCDO Services as set out in the relevant Proposal. If any Assumptions prove to be incorrect, then FCDO Services may make an equitable adjustment to the fees to take account of any such inaccuracy.
- 4.2 FCDO Services shall invoice the Customer on a monthly basis in arrears to be paid within 30 days of the date of invoice unless otherwise set out in the relevant Proposal.
- 4.3 Subject to any Special Conditions stated in the relevant Proposal, FCDO Services may invoice the Customer for the Fees monthly at any time after the date of this Agreement or at any time after the date of:
- (a) delivery of the Products, unless the Products are to be collected by the Customer or the Customer wrongfully fails to take delivery of the Products, in which event FCDO Services shall be entitled to invoice the Customer for the price at any time after FCDO Services has notified the Customer that the Products are ready for collection or (as the case may be) FCDO Services has tendered delivery of the Products;
  - (b) performance of the Services;
  - (c) completion of the Project or at other times detailed in the Project Plan.
- 4.4 The Customer shall pay the Fees without deduction or set off (whether formally demanded or not) in UK sterling (or such other currency specified in the relevant Proposal).
- 4.5 Time for payment shall be of the essence.
- 4.6 The Fees are exclusive of shipping costs, insurance, value added tax, import duties, withholding tax, stamp duties, sales, use, consumption, transfer or other taxes or similar charges (if any). All such fees, charges, duties and taxes shall be paid by the Customer at the rates and in the manner for the time being prescribed by applicable law.
- 4.7 No payment shall be deemed to have been received until FCDO Services has received cleared funds.
- 4.8 If any sum payable under the Agreement is not paid by the due date for reasons not attributable to FCDO Services then:
- (a) FCDO Services shall be entitled to charge the Customer interest on the overdue amount, from the due date up to the date of actual payment, after as well as before judgement, at the rate of 8 per cent per annum above the base rate for the time being of the Bank of England. Such interest shall accrue on a daily basis and be compounded quarterly;
  - (b) FCDO Services may suspend the supply or further supply of the Products, Services or delivery of a Project under the Agreement until receipt by FCDO Services of all outstanding amounts in full; and
  - (c) if payment of all outstanding sums is not received by FCDO Services within 90 days of their due date, FCDO Services shall be entitled to terminate the Agreement with immediate effect.

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### 5 RELATIONSHIP BETWEEN THE PARTIES

- 5.1 Neither party shall have any right or power whatsoever to contract on behalf of the other party or bind the other in any way in relation to third parties, except as specifically authorised in writing by that party.
- 5.2 It is agreed that nothing contained in the Agreement shall be construed as or have effect as constituting the relationship of employer and employee or a partnership or joint venture between the Customer and FCDO Services, constitute any party the agent of the other party, nor authorise either party to make or enter into any commitments for or on behalf of the other party.

### 6 CHANGE REQUEST FOR SERVICES AND PROJECTS

- 6.1 Where either party ("**the Initiating Party**") wishes to make material changes to the Products, Specification or Project Plan, which may materially alter the manner in which the Products, Services or Project are provided, supplied or delivered, then the Initiating Party shall notify the other party of these proposed changes in writing ("**Change Request**").
- 6.2 The Change Request shall contain sufficient detail to enable the recipient of the Change Request to determine the full impact of the proposed change.
- 6.3 FCDO Services will produce a cost estimate for the implementation of the proposed change and a proposal as to how such costs will be met ("Cost Estimate").
- 6.4 The parties will negotiate any Change Request and the Cost Estimate in good faith but a change will only be implemented where both parties agree to it in writing.
- 6.5 Where the Customer is the Initiating Party, FCDO Services shall be entitled to make a reasonable charge for considering any Change Request.
- 6.6 Where FCDO Services is required to make any change to the Products, Services, Specification, Project or Project Plan which is necessary to comply with any change in legislation and/or regulation taking effect after the date of this Agreement, all costs of such change shall be met by the Customer or FCDO Services reserves the right to terminate the Agreement immediately by serving written notice on the Customer.
- 6.7 FCDO Services reserves the right to make any changes to the Products, Specification or Project Plan which are required to conform with any applicable regulatory and/or statutory or European Union requirements or, where the Products, Services or Project are to be supplied to FCDO Services' specification, which do not materially affect their quality or performance.
- 6.8 If any changes are made in accordance with this Clause 6 then FCDO Services shall make appropriate modifications to the Fees to reflect such changes as agreed. The provisions of the Agreement shall then apply to the Fees as so modified.

### 7 CONFIDENTIALITY

- 7.1 No party will disclose, and each party will take all proper steps to keep confidential, all Confidential Information of the other which is disclosed to or obtained by it under or as a result of the Agreement and will not divulge it to any third party or employee except for the purposes of carrying out their obligations under the Agreement. A party in receipt of the other's Confidential Information ("**Recipient**") must ensure that its employees and relevant third parties are aware of the confidential nature of the Confidential Information and comply with the provisions of this Clause 7 as if named as a party to the Agreement. No party shall use for its own or another's commercial advantage any Confidential Information relating to the other party.

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- 7.2 If the Recipient loses any material or item containing Confidential Information of the other party, the Recipient must promptly notify the other party of the loss and all the circumstances surrounding it.
- 7.3 The obligations of confidentiality under this Clause 7 do not apply to any information or material which the Recipient can prove:
- (a) was already known to it before it received it from the disclosing party;
  - (b) was subsequently disclosed to it lawfully by a third party who did not obtain it (whether directly or indirectly) from the disclosing party;
  - (c) was in the public domain at the time of receiving it or has subsequently entered into the public domain other than by reason of breach of this Clause 7 or of any obligation of confidence owed by the recipient or by any of its sub-contractors or sub-licensees to the disclosing party;
  - (d) was required to be disclosed by law, order of a court of competent jurisdiction or a governmental or regulatory body.
- 7.4 The obligations of confidentiality imposed by this Clause 7 will remain in full force and effect notwithstanding termination of the Agreement for any reason.
- 7.5 FCDO Services may at any time disclose its appointment by the Customer to third parties and the general nature of the Products, Services or Project provided, with no reference to Fees, as a reference in the reasonable conduct of its business.
- 7.6 Nothing in the Agreement shall prevent FCDO Services from using outside of the Agreement any general knowledge, experience or skill which was in FCDO Services' possession prior to the Agreement or which is independently developed or acquired otherwise than in the supply of the Products, Services or Project.

## 8 LIMITATION OF LIABILITY AND INDEMNITY

- 8.1 FCDO Services shall not be liable to the Customer because of any representation or any warranty (express or implied), condition or other term, or any duty at common law, or under the express terms of the Agreement, for:
- (a) any loss of profit, business, contracts, opportunity, goodwill, revenues, anticipated savings, or similar loss; and/or
  - (b) any indirect, special or consequential loss or damage (whether for loss of profit or otherwise); and/or
  - (c) any loss or damage caused to goods in transit as title and risk vests with the Customer during carriage;

whether caused by the negligence, breach of contract, tort, breach of statutory duty of FCDO Services or otherwise arising out of or in connection with the Agreement.

- 8.2 Any other liability of FCDO Services to the Customer in contract, tort (including negligence), breach of statutory duty or otherwise arising out of or in connection with the Agreement in any period of twelve (12) months, shall be limited to a sum equal to fifty percent (50%) of the aggregate Fees actually paid by the Customer to FCDO Services pursuant to the Agreement or the relevant Work Package (if applicable) in such twelve month period.



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- 8.3 The Customer warrants that the Assumptions are valid, correct and accurate and the Customer shall be responsible for and shall defend, indemnify and hold harmless FCDO Services, from and against all claims, losses, damages, costs (including legal costs), expenses and liabilities of every kind or nature in respect of personal injury, illness or death or damage to or loss of the personal property of any officer, employee, consultant, agent, sub-contractor or representative of the Customer and any other third party, arising out of or in connection with the Assumptions proving to be inaccurate or incorrect.
- 8.4 The Customer accepts that the indemnity set out in Clause 8.3 above is reasonable in respect of the Products, Services or Project provided and that it will insure against such liability and warrants that it will maintain adequate insurance to cover any resulting liability.
- 8.5 Nothing in the Agreement will operate or be construed to operate so as to exclude or restrict the liability of FCDO Services to the Customer for fraud or for death or personal injury caused by the negligence of FCDO Services or for any matter which it would be illegal for the FCDO Services to exclude or attempt to exclude its liability.
- 8.6 Subject to Clause 8.5, FCDO Services shall have no liability under the Agreement unless all Fees due to FCDO Services under the Agreement have been received in full by FCDO Services.

### 9 **FORCE MAJEURE**

- 9.1 Neither party shall have any liability or be deemed to be in breach of the Agreement for any Force Majeure Event.
- 9.2 The Claiming Party shall promptly notify the other party in writing of the circumstances of the Force Majeure Event and when the Force Majeure Event ceases.
- 9.3 Without prejudice to Clause 9.4, if a Claiming Party is prevented from performing its obligations for a continuous period in excess of 90 days, FCDO Services may terminate the Agreement immediately by serving written notice on the Customer, in which case neither party has any liability to the other except as regards rights and liabilities which have already accrued, which will continue to subsist or are expressed to continue beyond the termination of the Agreement.
- 9.4 FCDO Services shall have the right to terminate the Agreement at any time by serving written notice on the Customer during a period of Force Majeure if, in the reasonable opinion of FCDO Services, it is no longer economically viable for FCDO Services to continue providing the Products, Services or a Project.
- 9.5 Notwithstanding the occurrence of a Force Majeure Event, payment is to be provided for all Products, Services or Projects already supplied by FCDO Services to the Customer including Services and/or Products provided as part of a Project.

### 10 **ASSIGNMENT**

- 10.1 The Customer may not assign, transfer, sub-contract or charge any of its rights and obligations in respect of the Agreement.

### 11 **TERMINATION**

- 11.1 Without prejudice to any rights that have accrued under the Agreement or any of its rights or remedies, FCDO Services may terminate the Agreement without liability to the Customer immediately (or following such notice period as it sees fit), if:
- (a) the Customer fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than 30 days; or

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- (b) the Customer repeatedly breaches any of the terms of the Agreement in such a manner as to reasonably justify the opinion of FCDO Services that the Customer's conduct is inconsistent with it having the intention or ability to give effect to the terms of the Agreement; or
- (c) the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or
- (d) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of the Customer; or
- (f) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer; or
- (g) a floating charge holder over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver; or
- (h) a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer; or
- (i) the Customer, being an individual, is the subject of a bankruptcy petition or order; or
- (j) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- (k) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 11.1(c) to Clause 11.1(j) (inclusive); or
- (l) the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (m) the Customer, being an individual, dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or
- (n) or if FCDO Services has reasonable grounds for suspecting that the Customer is about to undergo any of the events specified in this Clause 11.1; or
- (o) there is a change of control of the Customer.

11.2 Each party is entitled to terminate the Agreement immediately by giving written notice to the other if the Customer commits an irremediable material breach of the Agreement or any other material breach of the Agreement and fails to remedy that breach within 30 days of being required to do so.

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- 11.3 If any of the provisions or part of a provision of the Agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of the provisions or provision will not be prejudiced unless the substantive purpose of the Agreement is then frustrated, in which case either party may terminate the Agreement forthwith on written notice.
- 11.4 FCDO Services may terminate the Agreement in accordance with Clause 4.8(c), Clause 6.6, Clause 9.3 and Clause 9.4.
- 11.5 The termination of the Agreement for any reason is without prejudice to any rights or obligations which have already accrued before the date of termination and will not affect the coming into force or the continuation in force of any of its provisions which expressly or by implication are intended to come into force or to continue in force on or after termination.
- 11.6 In the event of termination of the Agreement, the Customer and FCDO Services shall use reasonable endeavours to cooperate in order to ensure the smooth transition or hand over of services. This shall include as a minimum a jointly fashioned exit plan.

### 12 DISPUTE ESCALATION

- 12.1 The parties shall use their best efforts to negotiate in good faith and settle amicably any dispute that may arise out of or relate to the Agreement (or its construction, validity or termination) (a "**Dispute**"). If a Dispute cannot be settled through negotiations by appropriate representatives of each of the parties, either party may give to the other a notice in writing (a "**Dispute Notice**"). Within 7 days of the Dispute Notice being given, the parties shall each refer the Dispute to the senior representatives nominated by the chief executive officer or similar of each party, who shall meet in order to attempt in good faith to resolve the Dispute. If the Dispute is not settled by agreement in writing between the parties within 14 days of the Dispute Notice or such other period as agreed between the parties, it shall be resolved in accordance with Clause 13.

### 13 GOVERNING LAW AND DISPUTE RESOLUTION

- 13.1 The Agreement and these General Terms and Conditions are governed by and shall be construed in accordance with the laws of England and Wales and any dispute arising out of or in connection with it shall be subject to the exclusive jurisdiction of the courts of England and Wales.
- 13.2 Clause 13.1 shall be binding upon any party who acquires rights under the Agreement by operation of law or otherwise. Any such party who intends to commence legal proceedings in relation to a dispute arising out of or in connection with the Agreement shall, as a precondition of commencing such proceedings, give prior written notice to all the parties to the Agreement that it agrees to be bound by Clause 13.1.
- 13.3 If the dispute cannot be resolved by the Parties pursuant to clause 12 the dispute shall be referred to mediation pursuant to the procedure set out in clause 13.5 unless:
- (a) The Customer considers that the dispute is not suitable for resolution by mediation; or
  - (b) FCDO Services does not agree to mediation.
- 13.4 The performance of the Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and FCDO Services (or employee, agent, supplier or sub-contractor) shall comply fully with the requirements of the Agreement at all times.
- 13.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

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- (a) A neutral adviser or mediator (“the Mediator”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the [specify relevant mediation provider] to appoint a Mediator.
- (b) The Parties shall within 10 Working Days of the appointment of the Mediator to meet with them in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.
- (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- (d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- (e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Agreement without the prior written consent of both Parties.
- (f) If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts

### 14 MISCELLANEOUS

- 14.1 FCDO Services and the Customer each warrants that it has the requisite power and authority to enter into and perform its obligations under the Agreement and that the representative, which signs the Agreement, is duly authorised to sign on its behalf.
- 14.2 FCDO Services shall be entitled to assume that the Customer contact identified in the relevant Proposal or any other client contact identified (whether formally or informally) by the Customer from time to time has the authority to represent and make any decisions on behalf of the Customer in respect of the Agreement (including decisions relating to the extension or renewal of the Agreement).
- 14.3 FCDO Services may perform any or all of its obligations under the Agreement through agents or sub-contractors.
- 14.4 Any typographical, clerical or other error or omission in any sales literature, price list, contract proposal, Proposal or invoice issued by FCDO Services shall be subject to correction without any liability on the part of FCDO Services.
- 14.5 Subject to the specific limitations set out in the Agreement, no remedy conferred by any provision of the Agreement is intended to be exclusive of any other remedy except as expressly provided for in the Agreement and each and every remedy shall be cumulative and shall be in addition to every other remedy given thereunder or existing at law or in equity by statute or otherwise.
- 14.6 FCDO Services shall retain the IPR in all Products, Services and Documentation supplied to the Customer in connection with the supply of the Products, Services, Projects or otherwise. Subject to:

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- (a) the Customer's compliance with its obligations of payment under the Agreement;
- (b) Clause 14.7; and
- (c) the Customer executing (or otherwise accepting such further licence agreements and other documentation as may be provided by or on behalf of FCDO Service);

FCDO Services shall (or procure that its licensors shall) grant the Customer a non-exclusive, non-transferable revocable licence to use the Documentation and/or Products in support of the Customer's operations in the locations specified in the relevant Proposal for the term specified in the relevant Proposal only and for the purpose of the Customer's own internal business usage only. All rights not expressly granted by FCDO Services herein are reserved. The Customer shall not use the Documentation and/or Products for any purpose other than as expressly permitted under the Agreement and shall not re-supply, or engage in any business involving the supply of, access to, or use of the Documentation and/or Products.

- 14.7 The Customer's right to use any software supplied under the Agreement will be governed by separate licence terms. Nothing in the Agreement shall create any rights by way of licence or otherwise to any software supplied by FCDO Services to the Customer under the Agreement and the Customer agrees not to challenge FCDO Services (or FCDO Services' licensors) ownership of such software.
- 14.8 Any notices served by the parties may be delivered by hand or sent by first class or equivalent, pre-paid, recorded delivery or equivalent post marked for the attention of the other party's relevant contact specified in the relevant Proposal. Notices may be sent by fax provided they are also delivered by hand or sent by post in accordance with the provisions of this Clause 14.8. Notice is not validly served if sent by e-mail. All notices under this Clause 14.8 will be deemed duly served:
- (a) in the case of a notice delivered by hand, at the time of delivery;
  - (b) in the case of a notice sent to from within the United Kingdom by first class, pre-paid, recorded delivery, 2 clear business days after the date of dispatch;
  - (c) in the case of a notice sent from outside the United Kingdom by recorded delivery airmail, 7 business days (being business days in the place to which the notice is dispatched) after the date of dispatch;
  - (d) in the case of a fax transmission, if sent during normal business hours of FCDO Services at the time of transmission and if sent outside normal business hours of FCDO Services then on the following business day.
- 14.9 Each party confirms that it has not relied upon any representation not recorded in the Agreement inducing it to enter into the Agreement.
- 14.10 No term of the Agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to it.
- 14.11 Where the Agreement terminates or expires for any reason and FCDO Services performs any further Services, Project work or supplies any Products to the Customer ("**Further Services**") then, in the absence of any further written agreement between the parties, the terms of the Agreement will apply to the Further Services.
- 14.12 No delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any terms of the Agreement will be deemed to be a waiver of any other right or of any later breach.

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14.13 This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes any prior agreement, understanding or arrangement between the parties, whether oral or in writing.

### 15 FREEDOM OF INFORMATION

15.1 The Customer acknowledges that FCDO Services is subject to the requirements of the FOIA and the Environmental Information Regulations and therefore agrees that it shall assist and co-operate fully with FCDO Services to enable FCDO Services to comply with its Information disclosure obligations.

15.2 If the Customer is also subject to the requirements of the FOIA and the Environmental Information Regulations this Clause 15 may be read as if the roles were reversed.

15.3 In accordance with Clause 15.1, the Customer shall and shall procure that its sub-contractors or agents shall:

- (a) transfer to FCDO Services all Requests for Information that it receives in relation to the subject matter of the Agreement as soon as practicable and in any event within 2 working days of receiving a Request for Information;
- (b) provide FCDO Services with a copy of all Information in its possession or power in the manner and form that FCDO Services requests as soon as practicable and in any event within 5 working days (or such other period as FCDO Services may specify) of FCDO Services' request; and
- (c) provide all necessary assistance as reasonably requested by FCDO Services to enable FCDO Services to respond to the Request for Information within the time for compliance set out in Section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

15.4 FCDO Services shall be responsible for determining in its sole and absolute discretion and notwithstanding any other provision in the Agreement or any other agreement, whether the Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

15.5 The Customer agrees that it or its staff, sub-contractors or agents shall not respond directly to a Request for Information unless expressly authorised to do so by FCDO Services.

15.6 The Customer acknowledges that (notwithstanding the provisions of this Clause 15) FCDO Services may, acting in accordance with the Secretary of State's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Customer or the Products, Services or Project:-

- (a) in certain circumstances without consulting the Customer; or
- (b) following consultation with the Customer and having taken their views into account;

provided always that where Clause 15.5(a) applies FCDO Services shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Customer advanced notice, or failing that, to draw the disclosure to the Customer's attention after any such disclosure.

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### 16 SECURITY

- 16.1 The Customer shall, and shall procure that its sub-contractors, employees, agents and relevant third parties as may be necessary bring the provisions relating to secrecy and security, which are included in the Agreement and the relevant Proposal into operation and to such extent as FCDO Services may direct.
- 16.2 The Customer shall be responsible for ensuring that its employees or any relevant persons connected with the Customer as may be deemed necessary by FCDO Services are security cleared to the level required by FCDO Services.

### 17 DATA PROTECTION

- 17.1 When in the provision of Services or Products to, or the performance of any Project for, the Customer pursuant to the Agreement, FCDO Services is required to process Personal Data on the Customer's behalf, the Customer shall be the Data Controller and FCDO Services the Data Processor in respect of all such Personal Data unless the Customer is itself, in relation to any such Personal Data, the Data Processor on behalf of a third party Data Controller, in which case FCDO Services shall be a Sub-processor in respect of that Personal Data.
- 17.2 It shall be a prerequisite to any such processing that the parties to the Agreement enter into a Data Processing Agreement between them in the form set out in the Schedule.
- 17.3 The failure of the Customer to execute a Data Processing Agreement pursuant to Clause 17.2 where required by FCDO Services shall be, unless it is agreed by both parties that the Services or the Project can and shall continue to be provided without the processing of Personal Data, a material breach of the Agreement.
- 17.4 For the purposes of this **Clause 17** the terms "**Data Controller**", "**Data Processor**", "**Personal Data**", "**process**", "**processing**" and "**Sub-processor**" shall have the meanings set out in the Schedule.

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## SCHEDULE

### DATA PROCESSING AGREEMENT

*(This Data Processing Agreement is to be entered into by FCDO Services and the Customer, as defined in the Agreement, for whom FCDO Services processes Personal Data in the course of providing Services or Products or of performing a Project under the Agreement)*

#### 1. Definitions and Interpretation

1.1 In this Data Processing Agreement, the following definitions shall apply, unless the context does not so admit:

<b>Customer:</b>	means the party to this Data Processing Agreement, other than FCDO Services and as defined in the Agreement;
<b>Agreement:</b>	means the agreement for the provision of Services, Products or a Project, as applicable, by FCDO Services to the Customer pursuant to which this Data Processing Agreement has been entered into;
<b>Data Controller:</b>	has the meaning set out in the GDPR;
<b>Data Loss Event:</b>	any event that results, or may result, in unauthorised access to Personal Data held by FCDO Services under this Data Processing Agreement, and/or actual or potential loss and/or corruption or destruction of Personal Data in breach of this Data Processing Agreement, including any Personal Data Breach;
<b>Data Processor:</b>	has the meaning set out in the GDPR;
<b>Data Protection Impact Assessment:</b>	means an assessment undertaken pursuant to Article 35 of the GDPR;
<b>Data Protection Legislation:</b>	means <ul style="list-style-type: none"><li>• EU Directive 95/46/EC</li><li>• EU Directive 2016/680 (“LED”)</li><li>• Regulation (EU) 2016/679 (“GDPR”)</li><li>• The Data Protection Act 2018 (“DPR”)</li></ul> together with all applicable laws and regulations relating to processing of Personal Data, including where applicable the guidance and codes of practice issued by the Information Commissioner or any government department or statutory body;
<b>Data Protection Officer:</b>	has the meaning set out in the GDPR;
<b>Data Subject:</b>	has the meaning set out in the GDPR;
<b>Data Subject Access Request:</b>	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;
<b>FCDO Services:</b>	means the Party to this Data Processing Agreement other than the Customer and as defined in the Agreement;



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<b>Law:</b>	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 a Party is bound to comply;
<b>Party:</b>	means a party to this Data Processing Agreement;
<b>Personal Data:</b>	has the meaning set out in GDPR and relates only to personal data, or any part of such personal data, provided by the Customer to FCDO Services pursuant to the Agreement;
<b>Personal Data Breach:</b>	has the meaning set out in the GDPR;
<b>processing</b>	has the meaning set out in the GDPR and “process” and “Data Processing” shall be read accordingly;
<b>Product:</b>	means the products to be purchased by the Customer from FCDO Services as detailed in the Agreement,
<b>Project:</b>	means a project to be performed by FCDO Services involving the supply of Products and/or Services to the Customer as detailed in the Agreement;
<b>Protective Measures:</b>	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>Purposes:</b>	means those purposes of the Agreement, including the provision and functionality of the Services, the Product or the Project in relation to which the processing of Personal Data, as summarised in the Annex to this Data Processing Agreement, is integral or otherwise necessary;
<b>Security Requirements:</b>	means the security requirements as set out or amended and notified to the Customer from time to time by FCDO Services in writing to be met (a) in respect of Customer support staff having remote access to FCDO Services’ servers and to the sites or locations from which such remote access is made;
<b>Service Beneficiary:</b>	subject to FCDO Services’ express agreement, which it may give or withhold at its absolute discretion, a person identified in the Agreement as one to whom the Services, Products or Project will be provided or made available through or on behalf of the Customer;
<b>Services:</b>	means the services to be supplied by FCDO Services to the Customer as detailed in the Agreement;

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**Sub-processor:** any third party appointed by the Customer (acting as the Data Processor) or FCDO Services to process Personal Data for the purposes of or in connection with the Agreement;

1.2 The following rules of interpretation apply in this Data Processing Agreement:

- (a) reference to any statute or statutory provision (including any EU Directive or Regulation) is a reference to that statute or statutory provision as from time to time amended, extended or re-enacted and, in respect of any EU Directive or Regulation, while such Directive or Regulation as amended, extended or re-enacted holds force in the jurisdiction to whose laws this Data Processing Agreement is subject;
- (b) words importing the singular include the plural, words importing any gender include every gender, words importing persons include bodies corporate and unincorporated and (in each case) vice versa;
- (c) clause headings shall not affect the interpretation of the provisions of this Data Processing Agreement;
- (d) any phrase introduced by the terms "including", "include", "in particular" or any similar expression will be construed as illustrative and the words following any of those terms will not limit the sense of the words preceding those terms; the words "in writing" and "written" mean "in documented form" whether electronic or hard copy, unless otherwise stated; and
- (e) all references to a Party or the Parties include their permitted successors and assignees.

### Obligations of FCDO Services

2.1 The Customer and FCDO Services acknowledge that for the purposes of the Data Protection Legislation, the Customer is:

- (a) in relation to Personal Data generated by it, the Data Controller; and
- (b) in relation to Personal Data generated by a Customer or Service Beneficiary, the Data Processor; and

FCDO Services is:

- (c) in relation to (a) above, the Data Processor; or
- (d) in relation to (b) above, a Sub-processor.

2.2 FCDO Services shall process the Personal Data in compliance with the Data Protection Legislation and, subject to such compliance, only in accordance with the Customer's written instructions from time to time pursuant to and for the Purposes and shall not process the Personal Data for any purpose other than a purpose authorised by the Customer.

2.3 FCDO Services shall notify the Customer immediately if it considers at any time that any of the Customer's instructions infringe the Data Protection Legislation.

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2.4 FCDO Services shall:

- (a) at the request of the Customer, provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment by the Customer prior to the commencement of any processing;
- (b) ensure that access to the Personal Data is limited to those employees or other personnel who need access to the Personal Data to meet FCDO Services' obligations under the Agreement or this Data Processing Agreement and for the performance of their duties;
- (c) ensure that such employees or other personnel:
  - (i) have undergone adequate training in the use, care, protection and handling of Personal Data; and
  - (ii) are subject to appropriate confidentiality undertakings with FCDO Services and 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 save as permitted by this Data Processing Agreement;
- (d) effect and maintain all reasonable Protective Measures to prevent any Data Loss Event or Personal Data Breach and upon written request from the Customer, provide the Customer with a detailed written description of such Protective Measures in place;
- (e) keep accurate and up-to-date records relating to FCDO Services' processing of Personal Data, and shall make available to the Customer on request such information as is reasonably necessary to demonstrate compliance with the obligations set out in this Data Processing Agreement;
- (f) always subject to full compliance with the relevant Security Requirements (as determined by FCDO Services acting reasonably but otherwise in its sole discretion), permit the Customer and/or its accredited advisors (at the expense of the Customer) to have access to any of FCDO Services' premises, personnel, IT systems, information security policies, business continuity plan, equipment, materials and relevant records as may be reasonably required by the Customer upon reasonable notice at any time for the purposes of conducting an audit in order to verify FCDO Services' compliance with this Data Processing Agreement subject to a maximum of one visit per annum;
- (g) at the Customer's expense, and subject to the relevant Security Requirements provide the Customer and/or its accredited advisors with all reasonable co-operation, access and assistance in relation to each such audit;
- (h) notify the Customer as soon as practicable where FCDO Services has received as a result of FCDO Services' acts or omissions or purported acts or omissions a complaint, notice or other communication from a Data Subject, which relates directly or indirectly to the processing of the Personal Data or to the Customer's or the Service Beneficiary's compliance with the Data Protection Legislation and provide the Customer with full co-operation and assistance in relation to any such complaint, notice or communication.
- (i) where the Customer or any Service Beneficiary is required to deal or comply with any enquiry, notice or investigation by the Information Commissioner relating to FCDO Services' processing of Personal Data pursuant to the Agreement, co-operate with the Customer to enable the Customer or Service Beneficiary to reasonably comply with its obligations in connection therewith;

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- (j) restore or recreate in a timely manner all Personal Data, which is the subject of a Data Loss Event in breach by FCDO Services or any of FCDO Services' personnel of this Data Processing Agreement.
- (k) only keep the Personal Data provided by the Customer or otherwise obtained in connection with the Agreement for as long as is necessary in order to comply with its contractual obligations thereunder to the Customer or as otherwise required by Law;
- (l) notify the Customer in writing of any notices or correspondence received by it relating to the processing of any Personal Data pursuant to or supplied for the Purposes, including any Data Subject Access Requests, requests from Data Subjects for rectification or erasure of Personal Data, complaints or objections.
- (m) promptly notify the Customer in writing if any Personal Data has been processed or disclosed in breach of this Data Processing Agreement;
- (n) promptly notify the Customer if FCDO Services suspects or becomes aware of any actual, threatened or potential Data Loss Event or Personal Data Breach and shall ensure all such notices include full and complete details relating to such breach, in particular:
  - (i) the nature and facts of such event or breach including the categories and number of Personal Data records and, if applicable, Data Subjects concerned;
  - (ii) the contact details of the Data Protection Officer or other representative duly appointed by FCDO Services from whom the Customer can obtain further information relating to such event or breach;
  - (iii) in so far as they are reasonably apparent, the likely consequences or potential consequences of such event or breach; and
  - (iv) the measures taken or proposed to be taken by FCDO Services to address such event or breach and to mitigate any possible adverse effects and the proposed implementation dates for such measures.
- (o) unless prohibited by Law, on request at any time and on the expiry or termination of the Agreement at the Customer's option and expense (i) return all Personal Data and copies of it in such format as the Customer may reasonably require, (ii) securely dispose of the Personal Data, (iii) amend the Personal Data, or (iv) transfer the Personal Data provided such transfer is in accordance with the Data Protection Legislation and otherwise in accordance with the terms of this Data Processing Agreement.

### 3. Obligations of the Customer

3.1 The Customer acknowledges and agrees, and shall procure that each Service Beneficiary acknowledges and agrees, that to the extent that the Customer or Service Beneficiary accesses the Services, Product or Project from outside of the UK, in order to carry out the Services, or provide the Product or the Project and/or perform FCDO Services' other obligations under the Agreement Personal Data may be, or may be caused to be, transferred or stored outside the EEA or the country where the Customer or the Service Beneficiary is located.

3.2 The Customer shall:

- (a) pass to FCDO Services for processing only such Personal Data, and then only to the extent and in such a manner:
  - (i) as is necessary for the Purposes and in accordance with the Data Protection Legislation; and

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- (ii) where the Customer is acting as Data Processor, only with the express written consent of the Data Controller;
- (b) in passing any such Personal Data to FCDO Services comply with the requirement for fair, lawful (and, as applicable, transparent) data processing as required by the Data Protection Legislation, in respect of notices to, and (where required) appropriate consent to pass their Personal Data to FCDO Services for the Purposes, from all Data Subjects as well as the Customer's relevant third parties including Service Beneficiaries;
- (c) in connection with the Purposes, take all appropriate Protective Measures against any potential or actual Data Loss Event or Personal Data Breach the result of the acts or omissions of the Customer or within the Customer's control;
- (d) provide FCDO Services with such information and assistance (at no cost to FCDO Services) as FCDO Services may require in order to undertake a, or a further, Data Protection Impact Assessment where FCDO Services reasonably considers (in its sole discretion) that the type of processing required is likely to result in a high risk to the rights and freedoms of Data Subjects.
- (e) ensure that any Personal Data passed to FCDO Services is accurate and up-to-date.
- (f) promptly provide such information and assistance as FCDO Services or the Information Commissioner or any other data protection supervisory authority may reasonably require in relation to:
  - (i) any Data Subject Access Request or any request from any Data Subject for rectification or erasure of Personal Data, or any complaint, objection to processing, or other correspondence; or
  - (ii) any approval of the Information Commissioner or other data protection supervisory authority to any processing of Personal Data, or any request, notice investigation by such supervisory authority;
- (g) not by any act (including any instruction) or omission, cause FCDO Services to be in breach of the Data Protection Legislation.
- (h) notify FCDO Services as soon as practicable where the Customer has received a complaint, notice or communication from a Data Subject as a result of the Customer's acts or omissions, which relates directly or indirectly to the processing of the Personal Data by FCDO Services or to FCDO Services' compliance with the Data Protection Legislation and provide FCDO Services (at the Customer's expense) with full co-operation and assistance in relation to any such complaint, notice or communication.
- (i) where FCDO Services is required to deal or comply with any enquiry, notice or investigation by the Information Commissioner relating to FCDO Services' processing of Personal Data pursuant to the Agreement, co-operate with and assist FCDO Services where required to enable FCDO Services to fully comply with its obligations in connection therewith.

#### 4. Sub-processors

- 4.1 With the written agreement of the Customer, the Customer having, where necessary, obtained the written agreement of each relevant Service Beneficiary, FCDO Services may appoint a Sub-processor provided that:

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- (j) FCDO Services shall be responsible for the acts or omissions of the Sub-processor as if the act or omission was that of FCDO Services;
- (ii) the Sub-processor's contract with FCDO Services, in so far as it relates to processing of the Personal Data, is on written terms that are materially the same as those set out in this Data Processing Agreement;
- (iii) FCDO Services provides the Customer with such information regarding the Sub-processor as the Customer or Customer Service Beneficiary may reasonably require.

#### 4 Indemnities

Subject to the limitations of liability set out the Agreement, which shall apply to this indemnity and this Data Processing Agreement as if expressly set out and repeated mutatis mutandis herein, each Party ("**Indemnifying Party**") shall indemnify and keep indemnified the other Party ("**Indemnified Party**") from and against any loss, cost, claim, proceedings, penalty, fine or expense (including legal and other professional advisors costs and expenses) suffered or incurred by the other Party which arises out of or in connection with any failure by the Indemnifying Party (in the case of the Customer, whether the result of its own acts or omissions or those of any Service Beneficiary) to comply with its obligations under this Data Processing Agreement or otherwise under the Data Protection Legislation.

#### 5 Term

For the avoidance of doubt, but without prejudice to any accrued rights or obligations of either Party, this Data Processing Agreement shall expire or terminate on expiry or termination for any reason of the Agreement.

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### ANNEX

#### Description of Personal Data to be processed under the Agreement

Description	Details
Title and commencement date	<i>[This should be the formal name plus familiar name (if any) of the agreement to which this description of personal data applies together with the commencement date of the agreement]</i>
Subject matter of the processing	<i>[This should be a high level, short description of what the processing is about i.e. its subject matter]</i>
Duration of the processing	<i>[Clearly set out the duration of the processing including dates]</i>
Nature and purposes of the processing	<i>[Please be as specific as possible, but make sure that you cover all intended purposes.</i>  <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>  <i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc.]</i>
Type of Personal Data	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.]</i>
Categories of Data Subject	<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>
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	<i>[Describe how long the data is to be retained for, how it is to be returned or destroyed]</i>
Authorised sub-processors	<i>[Provide details of any agreed sub-processors of data and identify which elements of the data described in this schedule are to be performed by the sub-processor(s). Enter "none" if appropriate.]</i>