



Foreign &
Commonwealth
Office

FRAMEWORK AGREEMENT

Section 1 – Form of Agreement

FRAMEWORK AGREEMENT FOR: THE CONFLICT STABILITY AND SECURITY FUND (Lots A/B/C)

REF NUMBER: CPG7982015

This **FRAMEWORK AGREEMENT** (the **Agreement**) dated **[insert date]** is made

BETWEEN: The Secretary of State for Foreign and Commonwealth Affairs at the Foreign and Commonwealth Office, King Charles Street, London SW1A 2AH (“the Authority”)

**AND: Whose registered office is situated at
[insert]
 (“the Supplier”)**

(Together “the Parties”)

FOR THE DELIVERY OF Her Majesty’s Government’s objectives contained within the National Security Strategies; and its work responding to crises, instability and insecurity across the globe.

WHEREAS:

- A. The Authority may require the Supplier to supply the services outlined in Section 4 hereof, as more particularly defined in the Statement of Services Requirement (Agreement)s of Call-off Contracts which may be placed from time to time (“the **Services**”) pursuant to the Agreement; and
- B. The Supplier has agreed to provide the Services on the terms and conditions set out in this Agreement and the related Call-off Contract.

IT IS HEREBY AGREED as follows::

1. Documents

This Agreement comprises the following documents:

Section 1	-	Form of Agreement
Section 2	-	Conditions of Agreement
Section 3	-	Schedule of Prices and Rates (Agreement)
Section 4	-	Statement of Services Requirement (Agreement)

All of which shall be read as one document.

The Framework Agreement constitutes the entire agreement between the Parties hereto, and supercedes all negotiations, representation or agreements between the Parties either written or oral preceding the Agreement other than expressly provided in Section 4, without prejudice to the Authority’s rights and remedies at law or otherwise.

2. Agreement Signature

If the original Form of Agreement is not returned to the Contract Officer duly completed, signed and dated on behalf of the Supplier within 30 days of the date of signature on behalf of the Authority, the Authority will be entitled, at its sole discretion to declare the Agreement void.

No payment will be made to the Supplier under any Call-off Contract until this Form of Agreement and the relevant Call-off Contract, are signed on behalf of the Supplier, and returned to the Contract Officer.

3. Commencement and Duration of Agreement

The Agreement shall commence on 7 December 2015 (“the start date”) and shall expire on 6 December 2018 (“the end date”) unless this Agreement is terminated earlier in accordance with its Terms and Conditions.

4. Time of the Essence

Time shall be of the essence as regards performance by the Supplier of its obligations under this Agreement and each Call-off Contract in existence from time to time.

5. Use of Agreement

Other Contracting Authorities (e.g. UK Government Departments and any other donors of development funding) can make use of the arrangements under this Agreement.

Signed for Supplier by:
(insert name and title)

Signed for Authority by:
[REDACTED]
Category Manger, CPG

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SECTION 2 - CONDITIONS OF AGREEMENT

BACKGROUND

This Framework Agreement sets out the award and ordering procedure the provision of Services and/or Goods that may be required by the Contracting Authorities (HMG). There will be no obligation for any Contracting Authority to place any Order or Orders under this Framework Agreement during its Term. Final delivery will depend on any Special Call-off instructions and the final Call-off Contract.

1. INTERPRETATION

1.1 In these Conditions, unless the context otherwise requires, the following provisions shall have the meanings given to them below:

"ADR Notice" means a notice served under Clause 47.4 (Dispute Resolution) requesting mediation.

"Agreement" means the Conflict, Stability and Security Fund Framework Agreement.

"Agreement Period" means the period of the duration of the Agreement in accordance with Condition 3.

"Affiliate" means in relation to a body corporate, any other entity which directly or indirectly controls, is controlled by, or is under direct or indirect common control with, that body corporate from time to time.

"Approval" and "Approved" refer to the written consent of the Authority's Representative.

"Authority" means the Secretary of State for Foreign and Commonwealth Affairs and includes the Authority's Representatives across HMG involved in delivering Conflict Stability and Security objectives. In this Agreement, the Authority is acting as part of the Crown.

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

"Authority's Premises" means land or buildings owned or occupied by the Authority where the Services are performed.

"Authority's Property" means any property, other than land and buildings, issued or made available to the Staff by the Authority in connection with the Call-off Contract.

"Authority's Representative" means the individual authorised to act on behalf of the Authority for the purposes of the Agreement and any Call-off Contract.

"Call-off Contract" means the legally binding (final) agreement (made pursuant to the provisions of the Framework Agreement) for the provision of Services and/or Goods made between a Contracting Authority and the Supplier comprising:

- (i) The completed Call-off Contract Form entered into between the Authority and the Supplier;
- (ii) The Call-off Terms and Conditions (including any special terms and conditions); and
- (iii) The Schedule of Requirements and commercial response.

"Call-off Contract Form" means the template form of contract to be entered into between the Authority and the Supplier in the form set out in Appendix C.

"Call-off Terms and Conditions" means the terms and conditions contained in this Framework Agreement and any special terms and conditions contained or referred to in the Call-off Contract Form;

"Commencement Date" means the date on which Call-off Contract is signed by the Authority.

"Commencement of Full Operations" means the point in time when the Supplier becomes responsible for the provision of the Services after the Setting up Operations following a completed Call-off Contract. In the event that the Supplier's responsibility for the provision of the Services is phased, the

Commencement of Full Operations means the commencement of each phase following the Setting Up Operations.

"Commercially Sensitive Information" means the subset of Confidential Information listed by the Supplier to the Authority

- (a) which is provided by the Supplier to the Authority in confidence for the period set out; and/or
- (b) that constitutes a trade secret.

"Condition" means a condition or clause within the Agreement or Call- Off Contract.

"Confidential Information" means Authority's Data and all information which has either been designated as confidential by either Party in writing (acting reasonably) or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, Personnel, customers and suppliers of either Party, [all personal data and sensitive personal data within the meaning of the Data Protection Act 1998] and the Commercially Sensitive Information.

"Contract" refers to Call-off Contract which includes the provisions under the Framework Agreement

"Contracting Authority" means any contracting authority as defined in Regulation 2 of the Public Contracts Regulations as amended

"Contract Period" means the period of the duration of the Call-off Contract

"Contract Price" means the price, exclusive of any applicable Value Added Tax, payable by the Authority to the Supplier, as set out in Attachment 3 - Schedule of Prices and Rates in any Call-off contract.

"Contract Year" means, in respect of the first Contract Year, a period of twelve calendar months commencing on expiry of the previous Contract Year.

"Crown Body" means any department, office or agency of the Crown.

"CSSF" means Conflict Stability and Security Fund

"Data Protection Legislation" means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

"Default" means any breach of the obligations of either Party (including but not limited to fundamental breach or breach of a fundamental item) or any default, act, omission, negligence or statement of either Party, its employees, contractors, agents or Sub-Contractors in connection with or in relation to the subject matter of this Agreement and/or any Call-off Contract and in respect of which such Party is liable to the other.

"Contract Effective Date" means the date when the Call-off contract legally commences.

"Equality Enactments" means the enactments defined in section 33(1) Equality Act 2006.

"Equipment" means all equipment, computer hardware or software, materials, , goods and vehicles,, plant and other items, consumables and associated services supplied, other than the Authority's Property; to be used by the Staff in the provision of the Services.

"Environmental Information Regulations" means the Environmental Information Regulations 2004, or the same as may be amended or updated from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations.

"FCO" means the Foreign and Commonwealth Office.

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

"Force Majeure" has the meaning set out in Condition 41 (Force Majeure).

"Framework" means the overarching agreement whereby the Authority seeks to appoint one of more Suppliers as a potential supplier of the Goods and/or Services as described in the Invitation to Tender.

"Framework Agreement" means the agreement between the Authority and each Supplier which sets out the terms governing contracts to be awarded during the Term and which incorporates:

- The Framework Terms and Conditions;
- The Invitation to Tender; and
- The Tender;

"Framework Terms and Conditions" means the terms and conditions set out in this agreement and all the Schedules to this agreement;

"Good Industry Practice" means at any time the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced provider of services similar to the Services seeking in good faith to comply with its contractual obligations and complying with all relevant laws.

"HO" means Home Office.

"Information" has the meaning given under section 84 of the FOIA.

"Intellectual Property Rights" means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or not), applications for any of the above rights, copyright, database rights, domain names, know how, trade or business names, moral rights or other similar rights or obligations whether registerable or not in any country including but not limited to the United Kingdom.

"Key Performance Indicators" means a set of quantifiable measures that the Authority and Supplier will use to measure the performance of the Services provided by the Supplier under the Contract.

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

"Lot" means the lot(s) set out in Section 4 of this Framework Agreement

"MoD" means Ministry of Defence

"Month" means calendar month.

"Original Estimate" means the Supplier's initial estimate of all variable prices under this Agreement and/or any Call-off Contract e.g. those which are not fixed.

"Parties" means the Authority and the Supplier as identified in Section 1 - Form of Contract.

"Person", where the context allows, includes a corporation or an unincorporated association.

"Personnel" means persons directly employed by the Authority.

"Premises" means land or buildings where the Services are performed.

"Price" means a price entered in Section 3 - Schedule of Prices and Rates, and/or Call-off contract.

"Proposal" means the Supplier's proposal submitted to the Authority to meet the Services as detailed in the Authority's tender documentation and any subsequent clarifications of the Call-off proposal.

"Rate" means a rate entered in Section 3 - Schedule of Prices and Rates of this agreement and/or Call-off Contract.

"Regulatory Bodies" means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement

and/or any Call-off Contract or any other affairs of the Authority and "Regulatory Body" shall be construed accordingly.

"Request for Information" shall have the meaning set out in the FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations as relevant.

"Setting Up Operations" means the period of time, or periods of time where phased, as detailed in Section 4 - Statement of Service Requirements, during which the Supplier is required to mobilise itself and its Staff in preparation for delivering the Service and for the Commencement of Full Operations.

"Services" means the services to be supplied as set out in any Service Requirements and Call-off requirements.

"Site" means the area within the Premises in which the Services are performed.

"Staff" means all persons used by the Supplier pursuant to this Agreement to undertake any of the Supplier's obligations under this Agreement and/or any Call-off Contracts issued from time to time, including the Supplier's employees, agents and Sub-contractors.

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

"Sub-contractor" means any third party employed by the Supplier in the provision of the Services.

"Successor Supplier" means the Authority or a replacement Supplier who takes over responsibility for all or part of the Services following expiry, termination or partial termination of the Contract.

"Supplier" means the Person named as the Supplier in Section 1 - Form of Agreement and person(s), partnerships or companies in any Call-off Contract .

"Supplier's Representative" means the individual authorised to act on behalf of the Supplier for the purposes of the Agreement or Call-off Contract.

"Termination Transfer" means the transfer of responsibility for the provision of the Services (or their equivalent or any part thereof) from the Supplier to the Authority and/or a Successor Supplier on or following the termination or expiry of this Agreement and/or any Call-off Contract or any part thereof.

"Termination Transfer Date" means the date of a Termination Transfer.

"Termination Transfer Employees" means the Staff employed immediately before the Termination Transfer Date by the Supplier or any of its sub-contractors and who are providing the Service(s) to be transferred on the Termination Transfer Date (and to be carried out in the same, equivalent or broadly similar way after the Termination Transfer Date) and whose names are included in the list of transferring staff provided by the Supplier,

less any person so listed whose employment with the Supplier or any of its sub-contractors ends prior to the Termination Transfer; and

less any person so listed whose employment does not transfer pursuant to the TUPE Regulations by virtue of Regulations 4(7) and 4(8) of the TUPE Regulations (employees objecting to employment transferring).

"the Crown" means any central government department of the United Kingdom, including the Devolved Administrations, and other bodies which are legally defined as being Crown Bodies.

"TUPE Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended).

"Variation" means a properly executed variation to the Contract in compliance with Condition 40 (Variation).

"Variation to Contract Form" means the form set out in Appendix A - Variation to Contract Form.

1.2 The interpretation and construction of the Contract shall be subject to the following provisions:

- a) a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as subsequently amended or re-enacted;
- b) the headings included in the Contract are for ease of reference only and shall not affect the interpretation or construction of the Contract;
- c) references to Conditions are references to Conditions in the Conditions of the Contract in which they appear, unless otherwise stated;
- d) where the context allows, the masculine includes the feminine and the neuter, and the singular includes the plural and vice versa;
- e) reference to a Condition is a reference to the whole of that Condition unless stated otherwise;
- f) any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or terms preceding those terms and the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation".

2. ENTIRE AGREEMENT

- 2.1 This Framework Agreement constitutes the entire agreement between the Parties relating to its subject matter. This Framework Agreement supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Condition shall not exclude liability in respect of any fraudulent misrepresentation.
- 2.2 In the event and to the extent only of any conflict between the provisions of the Call-off Terms and Conditions, and the Framework Agreement, then the application of the Clauses shall prevail in the following order:
 - Call-off Contract Form
 - Call-off Terms and Conditions and any special conditions contained in the Call-off Contract Form
 - Framework Agreement
 - Schedule of Prices and Rates
 - Schedule of Requirements

3. TERM OF FRAMEWORK AGREEMENT

- 3.1 The Framework Agreement shall take effect on the Agreement Commencement Date and (unless it is otherwise terminated in accordance with the terms of this Framework Agreement or it is otherwise lawfully terminated or extended) shall expire automatically on 6 December 2018 (the "Term").
- 3.2 The Authority shall notify the Supplier in writing of any proposal to extend the Framework. If no such notification is issued the Framework Agreement shall automatically expire after the initial Contract Period. The Authority reserves the right to review the Framework Agreement on an annual basis.
- 3.3 Clause 3.1 and 3.2 shall not apply to any Call-off Contract made under this Framework Agreement which is due to expire after the end of the Term which shall expire in accordance with the terms of that Call-off Contract.

4. SCOPE OF FRAMEWORK AGREEMENT

- 4.1 This Framework Agreement governs the relationship between the Authority and the Supplier in respect of the provision of Services and/or Goods by the Supplier to the Contracting Authority and where the Services and/or Goods are divided into Lots, this Framework Agreement shall apply to each Lot and where the Supplier has been appointed to more than one Lot, this Framework Agreement shall apply to each Lot.
- 4.2 The Supplier acknowledges that there is no obligation for a Contracting Authority to purchase any Services and/or Goods from the Supplier during the Term.
- 4.3 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Contracting Authority in respect of the total quantities or values of the

Services and/or Goods to be ordered by it pursuant to this Framework Agreement and the Supplier acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such undertaking, statement, promise or representation.

5. COMMENCEMENT OF FULL OPERATIONS

5.1 The Authority shall authorise the Commencement of Full Operations on the date specified in the Call off Contract.

6. CONDITIONS AFFECTING PROVISION OF SERVICES

6.1 The Supplier shall be deemed to have satisfied himself as regards the nature and extent of the Services, the means of communication with and access to the Site, the supply of and conditions affecting labour, subject to all such matters being discoverable by the Supplier.

7. SUPPLIER'S STATUS

7.1 At all times during the Term, the Supplier shall be an independent Supplier and nothing in this Agreement and/or any Call-off Contract shall create a contract of employment, a relationship of agency or partnership or joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of this Agreement and/or any Call-off Contract accordingly:

- a) the Supplier shall not say or do anything that might lead any other Person to believe that the Supplier is acting as the agent of the Authority; and
- b) the Authority shall not incur any contractual liability to any other Person as a result of anything done by the Supplier in connection with the performance of the Contract.

8. WARRANTIES

8.1 The Supplier warrants, represents and undertakes for the duration of the Term that:

- a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Agreement and that the Agreement is executed by a duly authorised representative of the Supplier;
- b) as at the agreed start date of this Agreement and/or any Call-off Contract, all information, statements and representations contained in the Supplier's response to the ITT and any follow up information provided by the Supplier remain to the best of its knowledge, information and belief true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of this Agreement and/or any Call-off Contract; and that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render any such statement or representation to be false or misleading;
- c) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Agreement;
- d) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;
- e) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
- f) it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform the Supplier's obligations under this Agreement;
- g) it has and will continue to have all necessary rights in and to the Intellectual Property Rights in all materials used by the Supplier for the purpose of performing its obligations under this Agreement (including the provision of the Services required under each Call-off Contract) and/or delivered to the Authority;

- h) it has and will continue to have all necessary rights in and to the Supplier's Software or the Third Party Software and/or the Supplier's Background IPRs, or any other materials made available by the Supplier and/or the Sub-contractors to the Authority necessary to perform the Supplier's obligations under this Agreement and/or any Call-off Contract;
- i) in performing its obligations under this Agreement and/or any Call-off Contract, all Software used by or on behalf of the Supplier will:
 - 8.1.i.1 be currently supported versions of that Software; and
 - 8.1.i.2 perform in all material respects in accordance with its specification;
- j) the Supplier's system and assets used in the performance of the Services:
 - will be free of all encumbrances [any exceptions must be agreed in writing with the Authority]
 - will be Date Compliant; and
 - will be Euro Compliant.
- k) as detailed in this Agreement or at the request of the Authority, the Supplier will provide supporting documentation containing all necessary information and explanation required for the purpose of executing the Exit Plan and for suitably qualified employees of the Authority or of the Successor Supplier to be able to use the Software and receive the Services and to perform the Replacement Services on termination or expiry; and
- l) it shall, and its Staff shall, at all times comply with the Law in carrying out its obligations under this Agreement and/or any Call-off Contract.
- m) in the three 3 years prior to the date of this Agreement:
 - i it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - ii it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - iii it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfill its obligations under the Agreement.

9. AUTHORITY'S PROPERTY

- 9.1 All of the Authority's Property shall remain the property of the Authority and shall be used in the performance of the Supplier's obligations under this Agreement and for no other purpose without prior Approval.
- 9.2 The Supplier shall be liable for any loss of or damage to any of the Authority's Property unless the Supplier is able to demonstrate that such loss or damage was caused or contributed to by the act, neglect or Default of the Authority.
- 9.3 The Supplier shall not in any circumstances have a lien on any of the Authority's Property and shall take all steps necessary to ensure that the title of the Authority and the exclusion of any lien are brought to the attention of any third party dealing with any of the Authority's Property.
- 9.4 The Supplier shall be responsible for his own costs resulting from any failure of the Authority's Property, unless he can demonstrate that the Authority had caused undue delay in its replacement or repair.

9.5 The Supplier shall maintain all items of the Authority's Property in good and serviceable condition, fair wear and tear excepted, and in accordance with the manufacturer's recommendations.

9.6 The Supplier shall ensure the security of all the Authority's Property whilst in its possession, either on Site or elsewhere during the supply of the Services, in accordance with the Authority's reasonable security requirements as required from time to time.

10. EQUIPMENT

10.1 The Supplier shall provide all the Equipment necessary for the provision of the Services as requested.

10.2 The Supplier shall maintain all items of Equipment in good and serviceable condition and ensure that the technology used is kept up-to-date and refreshed from time to time, such as to ensure the highest quality Services are maintained at all times throughout the course of the Agreement.

10.3 All Equipment shall be at the risk of the Supplier and the Authority shall have no liability for any loss of or damage to any Equipment unless the Supplier is able to demonstrate that such loss or damage was caused or contributed to by any act, neglect or Default of the Authority.

10.4 All equipment purchased will adhere to the principle of Value for Money

11. STAFF

11.1 The Supplier warrants, represents and undertakes for the Term that all Staff are and will:

(a) be suitably skilled; experienced; qualified; in a suitable physical condition; and possess all appropriate qualifications, licenses, permits, skill and experience necessary so as to ensure that the Supplier complies with all the Supplier's obligations under this Agreement and/or any Call-off Contracts and that the Staff discharge their responsibilities safely and conforming with all relevant laws; and

(b) be vetted in accordance with Good Industry Practice, and the Staff Vetting Procedures.

11.2 The Supplier shall comply with the Staff Vetting Procedures in respect of all Suppliers' Staff employed or engaged in the provision of the Services. The Supplier confirms that all Staff employed or engaged by the Supplier by the agreed start date of this Agreement or any Call-off Contract were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures. The Supplier must allow sufficient time for vetting to be completed.

11.3 The Supplier shall provide training on a continuing basis for all Supplier's Staff employed or engaged in the provision of the Services;

11.4 The Supplier shall provide, at all times, the number of Staff required to fulfil his obligations under the Agreement and/or any Call-off Contract and shall promptly notify the Authority of any absence of such staff and provide suitably qualified replacements at the request of the Authority.

11.5 Unless given prior Approval, the Supplier shall make the Staff available for the entire period needed to fulfil their part in the provision of the Services, whilst they are employed or engaged by the Supplier.

11.6 Any and all Staff shall remain under the overall control of the Supplier at all times and shall not be deemed to be employees, agents, contractors of the Authority for any purpose.

11.7 Where the Parties have agreed to the appointment of the Key Staff as at the Call-off Commencement Date. The Supplier shall obtain the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed) before removing or replacing any member of the Key Staff.

11.8 The Supplier is responsible for all acts and omissions of the Staff and for the health, safety and security of such persons and their property. The provision of information by the Authority shall not in any respect relieve the Supplier from responsibility for its obligations under this Agreement and/or any Call-off Contract. Positive evaluation of proposals and award of this Agreement (any subsequent Amendments to the Agreement or Call-off Contracts awarded under the Agreement) is not an endorsement by the Authority of the Supplier's security arrangements.

12. CO-ORDINATION

12.1 The Supplier shall co-ordinate his activities in the provision of the Services with all Personnel and other Suppliers engaged by the Authority, as required by the Authority.

13. USE OF AUTHORITY'S PREMISES

- 13.1 Where the Services are performed on the Authority's Premises the Supplier shall have use of the Authority's Premises without charge as a licensee and shall vacate those premises on completion or earlier termination of the Contract.
- 13.2 The Supplier shall not use the Authority's Premises for any purpose or activity other than the provision of the Services unless given prior Approval.
- 13.3 Should the Supplier require modifications to the Authority's Premises, such modifications shall be subject to prior Approval and shall be carried out by the Authority at the Supplier's expense. The Authority shall undertake Approved modification work without undue delay. Ownership of such modifications shall rest with the Authority.
- 13.4 The Supplier shall not deliver any Equipment to the Authority's Premises outside normal working hours without prior Approval.
- 13.5 The Supplier shall maintain all Equipment and its place of storage within the Authority's Premises in a safe, serviceable and clean condition.
- 13.6 On the completion or earlier termination of the Agreement, and as agreed with the Authority, the Supplier shall at the Supplier's cost and expense, subject to the provisions of Condition 13.4 (Use of Authority's Premises), remove all Equipment and shall clear away from the Authority's Premises all waste arising from the performance of the Services and shall leave the Authority's Premises in a clean and tidy condition.
- 13.7 Whilst on the Authority's Premises, all Staff shall comply with such rules, regulations and other requirements as may be in force in respect of the conduct of Persons attending and working on the Authority's Premises.

14. RIGHT OF ACCESS TO AUTHORITY'S PREMISES AND THE PREMISES

- 14.1 Where the Services are to be performed on the Authority's Premises, the Authority shall grant to the Supplier reasonable access to the Site.
- 14.2 If the Authority gives the Supplier notice that a specifically named member of Staff shall not be admitted to the Authority's Premises, the Supplier shall ensure that that person shall not seek admission and shall not be admitted to the Authority's Premises.
- 14.3 The Supplier shall submit in writing to the Authority for Approval, before the Commencement of any Call-off Contract Period and as necessary from time to time:
- a) a list showing the name and address of every person whom the Supplier wishes to be admitted to the Premises and, where required by the Authority, every other person who is or may be involved in any other way in the performance of the Call-off Contract, the capacity in which each person is or may be so involved and any other particulars required by the Authority;
 - b) satisfactory evidence as to the identity of each such person; and
 - c) any other information about each such person, with any supporting evidence required by the Authority, including full details of birthplace and parentage of any such person who is not a citizen of the United Kingdom by birth, or born within the United Kingdom of parents who were citizens of the United Kingdom by birth.
- 14.4 Where Staff are required to have a pass for admission to the Authority's Premises, the Authority's Representative shall, subject to satisfactory completion of approval procedures, arrange for passes to be issued.
- 14.5 Staff who cannot produce a proper pass when required to do so by any appropriate Personnel or agent of the Authority, or who contravene any conditions on the basis of which a pass was issued, may be refused admission to the Authority's Premises or required to leave those Premises if already there.
- 14.6 The Supplier shall promptly return any pass if at any time the Authority's Representative so requires or if the person for whom it was issued ceases to be involved in the performance of the Call-off Contract. The Supplier shall promptly return all passes on completion or earlier termination of the Call-off Contract.

15. MANNER OF PERFORMING THE OBLIGATIONS

15.1 The Supplier shall perform all its obligations under this Agreement (including the provision of the Services required under each Call-off Contract) with all due care, skill, diligence, efficiency and economy; and in accordance with the Law and Good Industry Practice. Timely provision of the Services is of the essence of the Agreement.

15.2 The Supplier, shall upon the instruction of the Authority's Representative:

- a) remove from the Authority's Premises any materials which are not in accordance with Section 4 - Statement of Service Requirements of this Agreement and/or any Call-off Contract, and substitute proper and suitable materials; and
- b) remove and properly execute any work which is not in accordance with the Agreement and/or any Call-off Contract, irrespective of any previous testing or payment by the Authority. The Supplier shall at its own expense complete the re-executed work correctly in accordance with the Agreement and/or any Call-off Contract within such reasonable time as the Authority may specify.

15.3 The signing by the Authority's Representative of time sheets or other similar documents shall not be construed as implying the Supplier's compliance with the Agreement and/or any Call-off Contract.

16. STANDARDS

16.1 Materials and processes used in connection with the provision of the Services shall be in accordance with the standards set out in the Statement of Service Requirements and Good Industry Practice.

16.2 On the request of the Authority's Representative, the Supplier shall provide proof to the Authority's satisfaction that the materials and processes used, or proposed to be used, conform to those standards.

16.3 The introduction of new methods or systems which impinge on the provision of the Services shall be subject to prior Approval.

17. MONITORING OF CONTRACT PERFORMANCE

17.1 Prior to the Commencement Date the Authority shall agree in consultation with the Supplier the agreements for the purpose of monitoring of performance by the Supplier of its obligations under a Call-off Contract, based on the requirements detailed in any Call-off Contracts and KPI's.

17.2 These agreements will include without limitation:

- i. random inspections;
- ii. regular meetings;
- iii. the regular delivery of written management reports;
- iv. monthly report on Key Performance Indicators.

17.3 All such agreements will be carried out by the Supplier in a timely manner, as reasonably required by the Authority, and in line with Good Industry Practice.

17.4 The Supplier shall operate and maintain appropriate systems, processes and records to ensure that it can deliver timely and accurate Management Information (MI) to the Authority. The Supplier shall also supply such Management Information as may be required by a Contracting Body in accordance with the terms of a Call-off Contract.

17.5 The Supplier agrees to the extent requested by the Authority, to supply timely, full, accurate and complete data, in such format as the Authority may specify from time to time, in respect of the Services and Call-off Agreements, including an annual report of activity through this Framework to include:

- details of the Contracting Body
- name of the contract
- the day rate applied per grade of Supplier Staff
- total charges/spend per Call-off / PO
- start and end dates for the delivery of the Service

18. PROGRESS REPORTS

18.1 Where progress reports are required to be submitted under the Contract, the Supplier shall render those reports at such time and in such form as may be specified or as otherwise agreed between the Parties.

18.2 The submission and receipt of progress reports shall not prejudice the rights of either Party under the Contract.

19. RE-TENDERING AND HANDOVER

19.1 Within 30 days of being so requested by the Authority's Representative the Supplier shall provide:

- (a) and thereafter keep updated and accessible to the Authority, in a fully indexed and catalogued format, all the information reasonably necessary to enable the Authority to issue tender documents for the future provision of the Services and for a third party to prepare an informed, non-qualified offer for those Services and not be disadvantaged in any procurement process compared to the Supplier (if the Supplier is invited to participate). This information shall include, but not be limited to, details of Staff as referred to in Condition 19.2 (Re-tendering and handover), a description of the Services and the methods used by the Supplier to provide the Services, details as to key terms of any third party contracts and licences, copies of third party contracts and licences which are to be transferred to the Authority or a Successor Supplier and details of ongoing and threatened disputes in relation to the provision of the Services. This information shall be updated on a continuing basis.
- (b) a draft exit plan to be agreed with the Authority that shall set out each Party's obligations in detail in order to ensure a smooth and efficient transfer of the Services to the Authority for a Successor Supplier. The Parties shall review and update the exit plan annually and as soon as reasonably practicable in the event of a material change in any aspect of the Services which could reasonably be expected to impact upon the exit plan in order to ensure that the exit plan remains relevant.

19.2 Where, in the opinion of the Authority's Representative, the TUPE Regulations are likely to apply on the termination or expiration of the Contract, the information to be provided by the Supplier under Condition 19.1 (Re-tendering and handover) shall include, as applicable, accurate information relating to the Staff who would be transferred under the same terms of employment under the TUPE Regulations, including in particular:-

- a) the number of Staff who would be transferred, but with no obligation on the Supplier to specify their names;
- b) in respect of each of those members of Staff their age, job title, sex, salary, benefits entitlement, length of service, contractual notice period, hours of work, overtime hours and rates, any other factors affecting redundancy entitlement and any outstanding claims arising from their employment;
- c) the general terms and conditions of employment applicable to those members of Staff, including probationary periods, retirement age, periods of notice, current pay agreements, pension arrangements, working hours, entitlement to annual leave, sick leave, maternity and special leave, terms of mobility, any loan or leasing schemes, any relevant collective agreements, facility time arrangements and additional employment benefits;
- d) all disciplinary, performance and grievance action taken in relation to or by each individual member of Staff within the previous two years;
- e) information of any court or tribunal case, claim or action brought by each member of Staff within the previous two years or that the Supplier has reasonable grounds to believe a member of Staff may bring against the Supplier;
- f) all long term absences; and
- g) details of any arrangements or collective agreements with trade unions or organisation of body of employees including elected representatives.

19.3 The Authority shall take all necessary precautions to ensure that the information referred to in Condition 19.2 (Re-tendering and handover) is given only to service providers who have qualified to tender for the future provision of the Services. The Authority shall require that such service providers shall treat that information in confidence; that they shall not communicate it except to such persons within their

organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Authority; and that they shall not use it for any other purpose.

- 19.4 The Supplier shall indemnify the Authority and a Successor Supplier against any claim made against the Authority and/or a Successor Supplier at any time by any person in respect of any liability incurred by the Authority and/or a Successor Supplier arising from any deficiency or inaccuracy in information which the Supplier is required to provide under Condition 19.1 (Re-tendering and handover) and 19.2 (Re-tendering and handover).
- 19.5 The Supplier shall not –
- a) at any time during the Contract Period, move any persons in his employment into the undertaking or relevant part of an undertaking which provides the Services, who do not meet the standards of skill and experience, or who are in excess of the number, required for the purposes of the Contract; or
 - b) make any substantial change in the terms and conditions of employment of any Staff which is inconsistent with the Supplier's established employment and remuneration policies.
- 19.6 Where, in the opinion of the Authority's Representative, any change or proposed change in the Staff in the undertaking or relevant part of an undertaking, or any change in the terms and conditions of employment of such Staff, would be in breach of Condition 19.5 (Re-tendering and handover), the Authority shall have the right to make representations to the Supplier against the change or proposed change, and –
- a) where, in the opinion of the Authority's Representative, the Supplier has acted in breach of Condition 19.5 (Re-tendering and handover), the Authority shall have the right to give notice to the Supplier requiring him to remedy the breach within 30 days; and
 - b) if the Supplier has not remedied the breach to the satisfaction of the Authority's Representative by the end of the period of 30 days, the Authority shall have the right to terminate the Contract by reason of the Default of the Supplier, in accordance with Condition 43 (Termination on Default).
- 19.7 The Supplier shall allow access to the Site, in the presence of the Authority's Representative, to any person representing any service provider whom the Authority has selected to tender for the future provision of the Services.
- 19.8 For the purpose of access to the Site in accordance with Condition 19.7(Re-tendering and handover), where the Site is on the Supplier's premises, the Authority shall give the Supplier 7 days' notice of a proposed visit together with a list showing the names of all persons who will be attending those premises.
- 19.9 All persons who attend the Supplier's premises for the purposes of Condition 19.7 (Re-tendering and handover) shall comply with the Supplier's security procedures, subject to such compliance not being in conflict with the objective of the visit.
- 19.10 The Supplier shall co-operate fully with the Authority during the handover arising from the completion or earlier termination of the Contract. This co-operation, during the Setting up Operations period of the new Supplier, shall extend to allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.
- 19.11 Within 10 working days of being so requested by the Authority's Representative, the Supplier shall transfer to the Authority, or any Person designated by the Authority, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the Authority.
- 19.12 During the period following the earlier of:
- (a) the provision of notice of termination to the Supplier; or
 - (b) the public announcement of a re-tendering of the Services,
- the Supplier shall not without the prior written agreement of the Authority's Representative vary the terms and conditions of employment or engagement of any Staff, employ or engage any person who

would become a Termination Transferring Employee, change the role or responsibilities of any person so that he/she becomes involved in the provision of the Services, terminate (or give notice to terminate) the employment or engagement of any of the Staff; nor reduce or vary the involvement of any Staff in the provision of the Services, nor make any public statements about Call-off Contracts without Authority Approval..

- 19.13 No later than one (1) month prior to the Termination Transfer Date, the Supplier shall compile a draft list for approval by the Authority of the Staff whom it considers will transfer to the Authority or a Successor Supplier as a result of the TUPE Regulations. The draft list shall be finalised by the Parties prior to the Termination Transfer Date.
- 19.14 At the Termination Transfer Date, the Authority and the Supplier accept that in the event that the Services or substantially similar services are to be provided by the Authority and/or a Successor Supplier then this may constitute a transfer to which the TUPE Regulations apply. In the event that the Authority's Representative determines that the TUPE Regulations apply in relation to the Termination Transfer and/or the final list of Termination Transfer Employees, the Termination Transfer Employees shall transfer to the Authority and/or the Successor Supplier on the Termination Transfer Date.
- 19.15 The Authority will, or shall procure that the Successor Supplier will, in good time before the Termination Transfer Date provide to the Supplier all such information as is necessary for the Supplier or its sub-Suppliers and the Authority or Successor Supplier to discharge their duties under Regulation 13 of the TUPE Regulations.
- 19.16 If any contract of employment or engagement of any person, other than a Termination Transfer Employee, is, as a result of the commencement of the provision of the Services by the Authority or Successor Supplier deemed or alleged to have been effected between the Authority or Successor Supplier and such person, as a result of the TUPE Regulations, then:
- (a) the Authority or Successor Supplier may, within 1 month of becoming aware of the application of the TUPE Regulations to any such contract, terminate that contract; and
 - (b) if any such contract is terminated the Supplier will indemnify the Authority and/or Successor Supplier against:
 - (i) all salary and benefits due to that person in respect of their employment between the Termination Transfer Date and the date of termination of employment; and
 - (ii) all liabilities, damages, costs (including reasonable legal costs), claims, awards and expenses arising in relation to such person out of the termination of such person's employment.

20. PAYMENT AND VALUE ADDED TAX, UNITED KINGDOM INCOME TAX AND NATIONAL INSURANCE CONTRIBUTIONS; AND TAX COMPLIANCE

- 20.1 In consideration of the provision of the Services in accordance with the terms of the Contract the Authority shall pay the Contract Price, calculated in accordance with Attachment 3 - Schedule of Prices and Rates in the Call-off Contract and referencing any Pricing Schedule in Section 3 of this Agreement.
- 20.2 The Supplier shall submit an invoice to the Authority in respect of the Services provided by the Supplier. All such invoices shall be denominated in Sterling unless agreed otherwise by the Authority. Expenses (if any) arising in foreign currency shall be reimbursed at the exchange rate stated in the London Financial Times "Guide to World Currencies" on the Friday immediately preceding the date on which the purchase was made or services acquired by the Supplier or, if this took place on a Friday, at the rate so stated on that day or as agreed with the Authority.
- a) Unless otherwise expressly provided in Section 3 of this Agreement and/or any Call-off Contract, invoices should be submitted monthly in arrears to Corporate Service Centre, PO Box 6108, Milton Keynes, Buckinghamshire, MK10 1PX, and in accordance with the remainder of condition 20.
 - b) The Authority shall unless otherwise expressly provided in Section 3 of this Agreement and/or any Call-off Contract, make payments due by direct credit through the UK Bank Clearing

Systems (BACS). All invoices must contain details of the bank account to which payments are to be made.

- c) Invoices should include a form of letterhead, the Purchase Order number, bear a signature referencenumber and be dated. Each invoice should state the period the services were provided using “from” and “to” dates. The final invoice presented in connection with this Agreement and/or any Call-off Contract should be endorsed “Final Invoice”.
 - d) All invoices should correspond with the budget lines identified in each Call-off Contract or as agreed with the Authority.
 - e) The Authority may request proof of payment in respect of any item and shall be entitled to refuse to meet a claim if this cannot be provided.
 - f) Any invoice not presented in accordance with the above may be rejected and in any event shall be liable to query and delay in payment. The Authority reserves the right not to pay any amount due in respect of an invoice received by the Authority more than 90 days after the day of the Supplier becoming entitled to invoice for the payment to which it relates.
- 20.3 Unless otherwise stated in the Call-off Contract, payment will be made within 30 days of receipt and agreement of a valid invoice, submitted monthly in arrears and submitted for Services undertaken under the Statement of Service Requirements completed to the satisfaction of the Authority. For the avoidance of doubt, all costs and expenses for Services performed by the Supplier and not agreed to by the Authority will be borne by the Supplier and not included in any invoice. The sums due under this Agreement and/or any Call-off Contract will be calculated on either a fixed price basis or a variable basis and the provisions of Condition 20 (Payment and Value Added Tax) will apply.
- 20.4 The Authority shall pay Value Added Tax on the Call-off Contract Price at the rate and in the manner prescribed by law provided that the Supplier shall provide the Authority with a Value Added Tax invoice to enable, where possible, the Authority to reclaim or obtain a refund of the Value Added Tax from HM Revenue & Customs and such invoice shall be provided by the Supplier in the format and within the timescales as will enable the Authority to comply with the law or obtain such refund. The Authority shall pay Value Added Tax on the Call-off Contract Price at the rate and in the manner prescribed by law provided that the Supplier shall provide the Authority with a Value Added Tax invoice to enable, where possible, the Authority to reclaim or obtain a refund of the Value Added Tax from HM Customs and Excise and such invoice shall be provided by the Supplier in the format and within the timescales as will enable the Authority to comply with the law or obtain such refund. For the purposes of the goods and Services delivered under this Agreement, the Authority will only expect to pay VAT for Services delivered in the UK, and for all Services and goods delivered under Call-off Contract outside of the UK/EU, the Authority expects the invoices to all be zero rated for VAT, except where local VAT is unavoidable and cannot be reclaimed by the Supplier.
- 20.5 The Authority may reduce payment in respect of any Services which the Supplier has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Authority.
- 20.6 If the Authority, acting in good faith, has a dispute in respect of any invoice, the Authority shall be entitled to withhold payment of the disputed amount, provided that it has notified the Supplier of the disputed amount and the nature of the dispute prior to the due date for payment of the invoice, and has paid any undisputed portion of the invoice to the Supplier. The parties will negotiate in good faith to resolve the dispute, and, failing resolution within five working days after receipt by the Supplier of the Authority’s notification, the dispute will be referred to dispute resolution in accordance with Condition 47 (Dispute Resolution). In the event of such dispute, the Supplier shall continue to perform all its obligations under this Agreement and/or any Call-off Contract notwithstanding any withholding or reduction in payment by the Authority. Electronic payment will be the means of payment for Call-off Contracts, primarily through Purchase Orders.
- 20.7 Should the Authority determine after paying for a particular service that the service has not been completed satisfactorily, the Authority may recover, or withhold from further payments due under the Call-off Contract in question and/or any other Call-off Contract in existence, an amount not exceeding that previously charged for that service until the unsatisfactory service is remedied to its satisfaction.

- 20.8 Where the Supplier is liable to be taxed in the UK in respect of consideration received under any call down contract issued under this Agreement, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.
- 20.9 Where the Supplier is liable to National Insurance Contributions (NICs) in respect of consideration received under any call-down contract issued under this Agreement, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.
- 20.10 The Supplier will ensure Tax Compliance, particularly relating to occasions of Disclosure of Tax Avoidance Schemes (DOTAS) in line with the General Anti-Abuse Rule (GAAR).

21. PAYMENT/THIRD PARTY RIGHTS IN RELATION TO SUB-CONTRACTORS

- 21.1 If, having obtained the Authority's consent, the Supplier sub-contracts any of its obligations under this Agreement (including the provision of any part of the Services required), the Supplier 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.
- 21.2 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 Supplier, but with such variations as the Authority reasonably considers necessary. The Supplier 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.

22. CHARGES

- 22.1 Where the Parties have agreed in the Schedule of Prices and Rates that the Services will be provided on a fixed price basis, then the fixed price shall be paid according to the schedule of payments as detailed in the Schedule of Prices and Rates which may relate to the achievement of specific predefined milestones, dates or acceptance and shall be inclusive of all Supplier costs.
- 22.2 Where the parties have agreed in the Schedule of Prices and Rates that the Services will be provided on a time and materials basis, then:
- a) the Services shall be provided in accordance with the rate card set out in the Schedule of Prices and Rates;
 - b) the Parties shall agree a maximum price which shall include but not be limited to a resource profile, a fixed date to start and to complete and a set of deliverables, further details of which shall be agreed by the Parties in the Schedule of Prices and Rates;
 - c) the Supplier shall attach to each invoice records of the time spent and materials used in providing the Services, together with all supporting documentation including but not limited to all relevant timesheets, receipts (if applicable), a list of Services to which the invoice relates and a reference to the Contract and Schedule of Prices and Rates details, as well as any other information as reasonably requested by the Authority from time to time; and
 - d) the Supplier must notify the Authority immediately if it becomes apparent that the cost to complete the Services will be in excess of the maximum price, and shall only proceed with and be paid for Services in excess of the maximum price with the prior written consent of the Authority.
- 22.3 In the event that the Contract Period is extended beyond the period specified in Condition 3.1 (Contract Period) and a contract price adjustment has been agreed in Section 3 - Schedule of Prices and Rates, then the Supplier will be required to provide the Authority with justification and evidence for any increase.
- 22.4 Any fees payable are deemed to cover the cost of salary, overseas inducements, leave allowances, bonuses, profit, taxes, insurances, superannuation, non-working days and all other costs including,

but not limited to, clothing, passports, visas and vaccinations, overheads and expenses of whatsoever nature that may be incurred except those otherwise specifically provided for in this Agreement and/or any Call-off Contract.

23. RECOVERY OF SUMS DUE TO THE AUTHORITY

- 23.1 Wherever any sum of money is payable to the Authority by the Supplier as a sum specifically ascertained under or in respect of the Contract (including any Key Performance Indicator related or other rebate or any sum which the Supplier is liable to pay to the Authority in respect of any breach of this Agreement and/or any Call-off Contract), the Authority may unilaterally deduct that sum from any sum then due or which at any later time becomes due to the Supplier under this Agreement and/or any Call-off Contract or under any other contract with the Authority or with any other department, office or agency of the Crown.
- 23.2 The Authority shall give at least 21 days' notice to the Supplier of its intention to make a deduction under Condition 23.1, (Recovery of Sums due to the Authority) giving particulars of the sum to be recovered and the contract under which the payment arises from which the deduction is to be made.
- 23.3 Any overpayment by the Authority to the Supplier, whether of the Contract Price or of Value Added Tax, shall be a sum of money recoverable from the Supplier.
- 23.4 The rights of the Parties in respect of set-off are fully set out in this Condition and no other right relating to set-off shall be implied as a term of the Agreement.

24. INTELLECTUAL PROPERTY RIGHTS - ASSIGNMENT AND INDEMNITY

- 24.1 Unless otherwise agreed at Call-offstage, 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 Supplier will retain ownership of any Supplier Proprietary Materials which become imbedded in such Deliverables, which will be licensed in accordance with the provisions of condition 24 (Intellectual Property Rights). The Supplier 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.
- 24.2 The Supplier 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 Supplier to the Supplier as may from time to time be required in order to vest the rights assigned pursuant to condition 24.3 (Intellectual Property Rights).
- 24.3 Where the Deliverables contain any Supplier Proprietary Material, then the Authority will hereby be granted a perpetual, non-exclusive, transferable, worldwide, royalty free licence in respect of such Supplier Proprietary Material, to the extent necessary to use such Deliverables (including for the purposes of their adaptation, modification and/or reproduction).
- 24.4 The Supplier warrants, represents and undertakes that its provision of Services and Deliverables under this Agreement and/or any Call-off Contract will not infringe any Intellectual Property Rights of which a third party is the proprietor and that the Supplier is free to grant the licence set out in condition 24 (Intellectual Property Rights). The Supplier 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 Supplier's possession or use in any manner of any Deliverables or Services.

25. SECURITY

- 25.1 The Supplier shall take all measures necessary to comply with the provisions of any enactment relating to security which may be applicable to the Supplier in the performance of the Services.
- 25.2 The Supplier shall take all reasonable measures, by the display of notices or other appropriate means, to ensure that Staff have notice that all provisions referred to in Condition 25.1 (Security) will apply to them and will continue to apply to them, if so applicable, after the expiry or earlier termination of the Contract.

- 25.7 Whilst on the Authority's Premises, Staff shall comply with all security measures implemented by the Authority in respect of Personnel and other Persons attending those Premises. The Authority shall provide copies of its written security procedures to the Supplier on request.
- 25.8 The Authority shall have the right to carry out any search of Staff or of vehicles used by the Supplier at the Authority's Premises.
- 25.9 The Supplier shall co-operate with any investigation relating to security which is carried out by the Authority or by any person who is responsible to the Authority for security matters and when required by the Authority's Representative -
- a) shall make any Staff identified by the Authority's Representative available to be interviewed by the Authority's Representative, or by a person who is responsible to the Authority for security matters, for the purposes of the investigation. Staff shall have the right to be accompanied by the Supplier's Representative and to be advised or represented by any other person whose attendance at the interview is acceptable to both the Authority's Representative and the Supplier's Representative; and
 - b) shall provide all documents, records or other material of any kind which may reasonably be required by the Authority or by a person who is responsible to the Authority for security matters, for the purposes of the investigation, so long as the provision of that material does not prevent the Supplier from performing the Services. The Authority shall have the right to retain any such material for use in connection with the investigation and, so far as possible, shall provide the Supplier with a copy of any material retained.
- 25.10 The Supplier shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions available [from an industry accepted anti-virus software vendor] to check for and delete Malicious Software from the ICT Environment.
- 25.11 Notwithstanding clause 25.10 if Malicious Software is found, the parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.
- 25.12 Any cost arising out of the actions of the parties taken in compliance with the provisions of clause 25.11 shall be borne by the parties as follows:
- (a) by the Supplier where the Malicious Software originates from the Supplier's Software, the Third Party Software or the Authority Data (whilst the Authority Data was under the control of the Supplier); and
 - (b) by the Authority if the Malicious Software originates from the Authority Software or the Authority Data (whilst Authority Data was under the control of the Authority).

26. TRANSPARENCY

- 26.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement and/or any Call-off 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 FOIA. Notwithstanding any other term of this Agreement and/or any Call-off Contract, the Supplier hereby 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 FOIA redacted) including from time to time agreed changes to the Contract, to the general public.
- 26.1.1 The Authority may consult with the Supplier to inform its decision regarding any exemptions but the Authority shall have the final decision in its absolute discretion.
- 26.1.2 The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Agreement.

27. CONFIDENTIALITY

- 27.1 Without prejudice to Condition 28 (Publicity), except to the extent set out in this Condition or where disclosure is expressly permitted elsewhere in this Agreement and/or any Call-off Contract each Party shall:
- a) treat the other Party's Confidential, and Commercially Sensitive, Information as confidential and safeguard it accordingly; and
 - b) not disclose the other Party's Confidential, and Commercially Sensitive, Information to any other person without the owner's prior written consent.
- 27.2 Condition 27.1 (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 pursuant to Condition 30 (Data Protection Act and Freedom of Information Act);
 - 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 Agreement and/or any Call-off Contract; or
 - e) it is independently developed without access to the other Party's Confidential and or Commercially Sensitive, Information.
- 27.3 The Supplier may only disclose the Authority's Confidential Information to its Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff sign the Confidentiality Undertaking at Appendix B and are aware of and shall comply with these obligations as to confidentiality.
- 27.4 The Supplier shall not, and shall procure that its Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Agreement and/or any Call-off Contract.
- 27.5 Nothing in this Agreement and/or any Call-off Contract shall prevent the Authority from disclosing the Supplier's Confidential Information:
- a) to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities 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 or any Contracting Authority;
 - b) to any consultant, Supplier or other person engaged by the Authority or any person conducting an Office of Government Commerce gateway 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.
- 27.6 The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-contractor to whom the Supplier's Confidential, and Commercially Sensitive Information is disclosed pursuant to Condition 27.6 (Confidentiality) is made aware of the Authority's obligations of confidentiality.
- 27.7 Nothing in this Condition 27.6 (Confidentiality) shall prevent either Party from using any techniques, ideas or know-how gained during the performance of this Agreement and/or any Call-off 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.
- 27.8 The provisions under this Condition 27 (Confidentiality) are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

27.9 The Supplier must not contravene the Official Secrets Act 1911 to 1989. The Supplier must familiarise itself with these Acts and take all reasonable steps to ensure that its sub-contractors and its and their employees and agents are familiar with them and that these Persons comply with them.

27.10 In the event that the Supplier fails to comply with this Condition, the Authority reserves the right to terminate the Contract by notice in writing with immediate effect.

28. PUBLICITY

28.1 The Supplier shall not make any public statement relating to the existence or performance of the Contract without prior Approval of the Authority, which shall not be unreasonably withheld.

29. RIGHT OF AUDIT

29.1 The Supplier shall keep secure and maintain until six years after the final payment of all sums due under the Contract, or such other period as may be agreed between the Parties, full and accurate records of the Services, all expenditure reimbursed by the Authority and all payments made by the Authority.

29.2 The Supplier shall grant to the Authority, or its authorised agents, such access to those records as they may reasonably require in order to check the Supplier's compliance with this Agreement and/or any Call-off Contract.

29.3 For the purposes of the examination and certification of the Authority's accounts, or any examination under section 6(1) of the National Audit Act 1983 or annual re-enactment thereof as to the economy, efficiency and effectiveness with which the Authority has used its resources, the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Supplier and may require the Supplier to provide such oral or written explanations as he may reasonably require for those purposes. The Supplier shall give all reasonable assistance to the Comptroller and Auditor General for those purposes.

29.4 Condition 29.3 (Right of Audit) applies only in respect of documents relating to this Agreement and/or any Call-off Contract and only for the purpose of the auditing of the Authority. It does not constitute an agreement under section 6(3)(d) of the National Audit Act 1983 such as to make the Supplier the subject of auditing under that Act.

29.5 Except where an audit is imposed on the Authority by a Regulatory Body (in which case the Authority may carry out the audit required without prejudice to its other rights) the Authority may conduct an audit:

- a) to review the integrity, confidentiality and security of the Authority Data;
- b) to review the Supplier's compliance with the Data Protection Act 1998, the Freedom of Information Act 2000 in accordance with Condition 30 (Data Protection Act and Freedom of Information Act) and any other legislation applicable to the Services.

29.6 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:

- a) all information requested by the Authority within the permitted scope of the audit;
- b) reasonable access to any Sites controlled by the Supplier and to any equipment used (whether exclusively or non-exclusively) in the performance by the Supplier of its obligations under this Agreement and/or any Call-off Contract;
- c) access to the Supplier's system; and
- d) access to the Supplier's Staff.

30. DATA PROTECTION ACT AND FREEDOM OF INFORMATION ACT

Authority Data

30.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.

- 30.2 The Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under this Agreement and/or any Call-off Contract or as otherwise expressly authorised in writing by the Authority.
- 30.3 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall supply that Authority Data to the Authority as requested by the Authority in the format(s) specified by the Authority.
- 30.4 Upon receipt or creation by the Supplier of any Authority Data and during any collection, processing, storage and transmission by the Supplier of any Authority Data, the Supplier shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.
- 30.5 The Supplier shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site. The Supplier shall ensure that such back-ups are available to the Authority at all times upon request, with delivery times as specified by the Authority.
- 30.6 The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy.
- 30.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Authority may:
- a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data and the Supplier shall do so as soon as practicable but within no later than a month following written request from the Authority; and or.
 - b) itself restore or procure the restoration of Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so. If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.

Data Protection

- 30.8 With respect to the parties' rights and obligations under this Agreement and/or any Call-off Contract, the parties agree that the Authority is the Data Controller and that the Supplier is the Data Processor. "Data Controller", "Data Processor", "Data Subject" and "Personal Data" shall have the meaning as set out in the Data Protection Act 1998. "Process" shall also have the meaning given to it under the Data Protection Legislation but, for the purposes of this Agreement and/or any Call-off Contract, it shall include both manual and automatic processing.
- 30.9 The Supplier shall:
- a) process the Personal Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature as set out in this Agreement and/or any Call-off Contract or as otherwise notified by the Authority to the Supplier during the Term);
 - b) process the Personal Data 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;
 - c) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
 - d) take reasonable steps to ensure the reliability of any Staff who have access to the Personal Data;
 - e) obtain prior written consent from the Authority in order to transfer the Personal Data to any Sub-contractors or Affiliates for the provision of the Services;
 - f) ensure that all Supplier's Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this

Condition 30.9 (Data Protection);

- g) ensure that none of Supplier's Staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority;
 - h) notify the Authority (within two Working Days) if it receives:
 - i. a request from a Data Subject to have access to that person's Personal Data; or
 - ii. a complaint or request relating to the Authority's obligations under the Data Protection Legislation;
 - i) provide the Authority with full cooperation and assistance in relation to any complaint or request made, including by:
 - i. providing the Authority with full details of the complaint or request;
 - ii. complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Authority's instructions;
 - iii. providing the Authority with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Authority); and
 - iv. providing the Authority with any information requested by the Authority;
 - j) permit the Authority or the Authority's Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with Condition 29 (Right of Audit), the Supplier's data Processing activities (and/or those of its agents, subsidiaries and Sub-Suppliers) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Supplier is in full compliance with its obligations under this Agreement and/or any Call-off Contract;
 - k) provide a written description of the technical and organisational methods employed by the Supplier for processing Personal Data (within the timescales required by the Authority); and
 - l) not Process Personal Data outside the European Economic Area without the prior written consent of the Authority and, where the Authority consents to a transfer, to comply with:
 - i. the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
 - ii. any reasonable instructions notified to it by the Authority.
- 30.10 The Supplier shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Agreement and/or any Call-off Contract in such a way as to cause the Authority to breach any of its applicable obligations under the Data Protection Legislation.
- 30.11 The Supplier shall process such personal data only at Sites specifically agreed in writing, in advance, with the Authority.
- 30.12 If the Supplier fails to comply with any provision of this Condition 30 (Data Protection Act and Freedom of Information Act) then the Authority may summarily terminate the Contract by notice in writing to the Supplier provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Authority.
- 30.13 The decision of the Authority upon matters arising under this Condition shall be final.
- 30.14 The Supplier shall indemnify and keep the Authority fully against any financial penalties arising from or in connection with any breach by the Supplier or its Staff of any of the provisions of this Condition 30 (Data Protection Act and Freedom of Information Act), or any misuse, loss or unauthorised use or disclosure by the Supplier or its Staff of any Personal Data or sensitive personal data (as defined by the Data Protection Act 1998) relating to any person, where such misuse arises in connection with the Supplier's provision of the Services or the performance of its obligations under this Agreement and/or any Call-off Contract.

Freedom of Information

- 30.15 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and associated codes of practice and shall assist and cooperate with the Authority to enable the Authority to comply with its Information disclosure obligations.
- 30.16 The Supplier shall:
- a) transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
 - b) provide the Authority with a copy of all Information in its possession, or power in the form that the Authority requires within five Working Days (or such other period as the Authority may specify) of the Authority's request; and
 - c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 30.17 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement and/or any Call-off Contract or any other contract whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the Code of Practice on Access to Government Information and associated codes of practice, FOIA or the Environmental Information Regulations.
- 30.18 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 30.19 The Supplier acknowledges that (notwithstanding the provisions of Condition 30 (Data Protection Act and Freedom of Information Act)) the Authority may, acting in accordance with the Department of Constitutional Affairs' 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 Supplier or the Services:
- a) in certain circumstances without consulting the Supplier; or
 - b) following consultation with the Supplier and having taken their views into account,
- provided always that where Condition 30.19(a) (Data Protection Act and Freedom of Information Act) applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 30.20 The Supplier shall ensure that all Information is retained for disclosure in accordance with clauses 30.21 and 30.22 and shall permit the Authority to inspect such records as requested from time to time.
- 30.21 The Supplier shall, during this Agreement and/or any Call-off Contract and for a period of at least seven years following the expiry or termination of this Agreement and/or any Call-off Contract, retain and maintain all Information:
- (a) in accordance with the exercise of the degree of care that would be expected from a leading company within the relevant industry or business sector;
 - (b) in chronological order;
 - (c) in a form that is capable of audit;
 - (d) at its own expense.

31. LIABILITY, INDEMNITY AND INSURANCE

- 31.1 Neither Party excludes or limits liability to the other Party for:
- a) death or personal injury caused by its negligence; or
 - b) fraud; or

- c) fraudulent misrepresentation; or
 - d) any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982; or
 - (e) breach of Condition 27 (Confidentiality); or
 - (f) breach of Condition 24 (Intellectual Property Rights – assignment and indemnity); or
 - (g) breach of Condition 30 (Data Protection Act and Freedom of Information Act)
- 31.2 Subject to Conditions 31.3 and 31.4 (Liability, Indemnity and Insurance), the Supplier shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, actions, damages, costs, legal costs expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services; the performance or non-performance by the Supplier of its obligations under the Agreement and/or any Call-off Contract; the presence of the Supplier or any Staff on the Premises; or be related to breach of warranty or representation, contract or statutory duty; including without limitation, in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused directly or indirectly by any act or omission of the Supplier or their subcontractors.
- 31.3 The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or willful misconduct of the Authority or by breach by the Authority of its obligations under the Contract.
- 31.4 Subject always to Condition 31.1 (Liability, Indemnity and Insurance), the annual aggregate liability of either Party for all Defaults resulting in direct loss including, but not limited to, direct loss of or damage to the property of the other under or in connection with the Contract, and all liability arising under clause 31.2, and for all Defaults under each Contract shall in no event exceed twice the value of the Financial Limit (such term as defined in the Call-off Contract) of the relevant Call -Off Contract.
- 31.5 Subject always to Condition 31.1 (Liability, Indemnity and Insurance) and 31.6 (Liability, Indemnity and Insurance); in no event shall either Party be liable to the other for any:
- a) loss of profits, business, revenue or goodwill; and/or
 - b) indirect or consequential loss or damage of any nature and howsoever caused, even if the losses were reasonably foreseeable or the Party has been advised of the possibility of such losses occurring.
- 31.6 The Supplier shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Supplier.
- 31.7 The Supplier shall effect and maintain, and shall procure that their Sub-contractors (to the extent that the same are commercially available) effect and maintain, with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's and/or their Sub-contractors performance of their obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.
- 31.8 Without limitation to Condition 31.7 (Liability, Indemnity and Insurance) the Supplier shall effect and maintain and shall procure that all agents, professional consultants and Sub-contractors effect and maintain, employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force. The Supplier shall also effect and maintain, and shall ensure that all agents, professional consultants and Sub-contractors involved in the supply of the Services effect and maintain, appropriate professional indemnity insurance cover during the Contract Period and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.
- 31.9 The Supplier shall give the Authority, on request, copies of all insurance policies referred to in this Condition or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

- 31.10 If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by the provisions of the Contract the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 31.11 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract. It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability referred to in Condition 31.7 (Liability, Indemnity and Insurance) and/or 31.8 (Liability, Indemnity and Insurance).
- 31.12 The parties expressly agree that neither party shall be entitled to an order for specific performance to enforce any provision hereunder.
- 31.13 The parties expressly agree that should any limitation or provision contained in this Clause 31 (Liability, Indemnity and Insurance) be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.
- 31.14 If the Supplier is a joint venture then each of the joint venture parties shall have joint and several liability in respect of the Supplier's obligations under this Agreement and each Call-off Contract.

32. CORRUPT GIFTS AND PAYMENTS OF COMMISSION

- 32.1 The Supplier and the Supplier's Staff shall not do (and warrants that in entering the Agreement and/or any Call-off Contract it has not done, nor any of its Staff has done) any of the following:
- a) offer, give or agree to give to any person in the employment of the Crown any gift or consideration as an inducement or reward for doing or refraining from doing any act in relation to the obtaining or performance of this Agreement and/or any Call-off Contract or any other contract with the Crown, or for showing or refraining from showing favour or disfavour to any Person in connection to any Contract; nor
 - b) enter into this Agreement and/or any Call-off Contract if any commission has been paid by or to, or agreed to be paid by or to the Supplier or Supplier's Staff or on their behalf Supplier or to their knowledge in connection with this Agreement and/or any Call-off Contract or any other contract with the Crown, unless particulars of such commission and the terms of any agreement for the payment of it have been disclosed to the Authority in writing before the Contract is made.

The Supplier undertakes that neither the Supplier nor the Supplier's Staff shall attempt or commit any fraud, deception, financial or procedural wrongdoing in relation to the performance by the Supplier of its obligations under this Agreement and/or any Call-off Contract and shall immediately notify the Authority of any circumstances giving rise to a suspicion that such wrongful activity may occur or has occurred.

- 32.2 If the Supplier or any of his employees, servants, agents or sub-contractors, or any person acting on his or their behalf, does any of the acts mentioned in Condition 32.1 (Corrupt Gifts and Payments of Commission) or commits any offence under the Bribery Act 2010, with or without the knowledge of the Supplier, in relation to this Agreement and/or any Call-off Contract or any other contract with the Crown, the Authority shall be entitled:
- a) to terminate the Contract with immediate effect by written notice to the Supplier and recover from the Supplier the amount of any loss resulting from the termination;
 - b) to recover from the Supplier the amount or value of any such gift, consideration or commission; and
 - c) to recover from the Supplier any other loss sustained as a result of any breach of this Condition, whether or not the Contract has been terminated.
- 32.3 Exercising its rights or remedies under this Condition the Authority shall:-
- a) act proportionately in the light of the gravity and circumstances of the particular breach; and
 - b) give all due consideration, where appropriate, to the use of remedies other than termination of the Contract.

33. DISCRIMINATION

- 33.1 The Supplier 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 and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the provisions of all relevant legislation including the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- 33.2 The Supplier shall adhere to the current relevant codes of practice or recommendations published by the Equality and Human Rights Commission. The Supplier shall take all reasonable steps to secure the observance of these provisions and codes of conduct by all Suppliers, employees or agents of the Supplier and all suppliers and Sub-Suppliers employed in the execution of this Agreement and/or any Call-off Contract.
- 33.3 The Supplier will comply with any request by the Authority to assist the Authority in meeting its obligations under the Equality Act 2010 and to allow the Authority to assess the Supplier's compliance with its obligations under the Equality Act 2010.
- 33.4 Where any investigation is concluded or proceedings are brought under the Equality Act 2010 which arise directly or indirectly out of any act or omission of the Supplier, its agents or sub contractors, or Staff, and where there is a finding against the Supplier in such investigation or proceedings, the Supplier will indemnify the Authority with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Authority may have been ordered or required to pay to a third party.

34. HEALTH AND SAFETY

- 34.1 The Supplier shall notify the Authority of any health and safety hazards which may arise in connection with the performance of the Services.
- 34.2 The Authority shall notify the Supplier of any health and safety hazards which may exist or arise at the Authority's Premises and which may affect the Supplier in the performance of the Services.
- 34.3 The Supplier shall inform all Staff engaged in the provision of Services at the Authority's Premises of all known health and safety hazards and shall instruct those Staff in connection with any necessary safety measures.
- 34.4 Whilst on the Authority's Premises, the Supplier shall comply with any health and safety measures implemented by the Authority in respect of Personnel and other Persons working on those Premises.
- 34.5 The Supplier shall notify the Authority's Representative immediately in the event of any incident occurring in the performance of the Services on the Authority's Premises where that incident causes any personal injury or any damage to property which could give rise to personal injury.
- 34.6 The Supplier shall take all measures necessary to comply with the requirements of the Health and Safety at Work Act 1974 and The Construction (Design and Management) Regulations 1994 and any other Acts, orders, regulations and Codes of Practice relating to health and safety, which may apply to Staff in the performance of the Services.
- 34.7 The Supplier shall take all reasonable steps to protect the environment in relation to the performance of the Services under this Agreement and/or any Call-off Contract and shall comply with all applicable environmental laws, regulations and Authority practice.

35. RESPONSIBILITY FOR EQUIPMENT

- 35.1 The Supplier shall be required to remove all plant, tackle and tools which it brings to the Premises on termination or expiry of the Call-off Contract, or at any time at the request of the Authority. The Supplier shall ensure that all such plant, tackle and tools shall meet minimum safety standards required by law.

36. TRANSFER AND SUB-CONTRACTING

- 36.1 The Supplier shall not assign (or cause to be assigned or transferred, whether actually or as the result of takeover, merger or other change of identity), sub-contract or in any other way dispose of the Agreement and/or any Call-off Contract or any part of those (whether by trust device or otherwise) without prior Approval of the authority .

36.2 Notwithstanding Condition 36.1 (Transfer and Sub-Contracting), the Supplier may assign to a third party ("the Assignee") the right to receive payment of the Call-of Contract Price or any part thereof due to the Supplier under the Call-of Contract in question (including any interest to which the Authority is liable under the Late Payments of Commercial Debts (Interest) Act 1998). Any assignment under this Condition 36.2 (Transfer and Sub-Contracting) shall be subject to:

- a) deduction of any sums in respect of which the Authority exercises its right of recovery under Condition 23 (Recovery of Sums Due to the Authority); and
- b) all related rights of the Authority under the Agreement and/or any Call-off Contract in relation to the recovery of sums due but unpaid.
- c) The Authority receiving notification under the remainder of this condition:

In the event that the Supplier assigns the right to receive the Call-off Contract Price under this condition the Supplier shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.

The Supplier shall notify the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment.

36.3 On giving notice to the Supplier of not less than 30 days, the Authority shall be entitled to assign any or all of its rights under the Contract to any Contracting Authority, provided that such assignment shall not materially increase the burden of the Supplier's obligations under the Agreement and Contract.

36.4 The Supplier shall procure that its sub-contractors comply at all times with obligations no less onerous than those of the Supplier under this Agreement and/or any Call-off Contract and shall demonstrate such compliance to the Authority on the Authority's reasonable request.

36.5 The Supplier shall be responsible for the acts and omissions of his sub-contractors as though they were his own.

36.6 The Supplier shall not use the services of self-employed individuals without prior Approval.

36.7 Where the Supplier enters into a sub-contract for the provision of any part of the Services, the Supplier shall ensure that a term is included in the sub-contract which requires the Supplier 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.

37. SERVICE OF NOTICES AND COMMUNICATIONS

37.1 Except as otherwise expressly provided within this Agreement and/or any Call-off Contract, no communication from one Party to the other shall have any validity under this Agreement and/or any Call-off Contract unless made in writing by or on behalf of the Party concerned.

37.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter, or by facsimile transmission or electronic mail. Such letters shall be addressed to the other Party in the manner referred to in Condition 37.3 (Service of Notices and Communications). If the other Party does not acknowledge receipt of any such letter, facsimile transmission or item of electronic mail, and, in the case of a letter, the relevant letter is not returned as undelivered, the notice or communication shall be deemed to have been given 3 Working Days after the day on which the letter was posted.

37.3 For the purposes of Condition 37.2 (Service of Notices and Communications), the address of each Party shall be:

- a) The Authority's Representative:
- b) The Deputy for the Authority's Representative:
- c) The Supplier's Representative:

37.4 Either Party may change its address for service by notice given in accordance with this Condition 37 (Service of Notices and Communications).

38. SEVERABILITY

38.1 If any provision of this Agreement and/or any Call-off Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of

the provisions of this Agreement and/or any Call-off Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

39. WAIVER

- 39.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise any right or remedy to which it is entitled under the Contract, shall not constitute a waiver and shall not diminish the obligations established by the Contract. A waiver of any breach shall not constitute a waiver of any other or subsequent breach.
- 39.2 No waiver of any provision of the Contract shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Condition 37 (Service of Notices and Communications).

40. VARIATION

- 40.1 The Agreement and/or any Call-off Contract shall not be varied unless such variation is made in writing by means of a Variation to Contract Form as set out at Appendix A - Variation to Contract Form. The Authority shall have no liability in respect of work performed outside the Services set out in Section 4 of this Agreement and/or the Statement of Requirements contained in any Call-off Contract.
- 40.2 In the event of an emergency, the Authority shall have the right to vary the Agreement and/or any Call-off Contract by oral instructions given by the Authority's Representative, which shall be confirmed by the issue of a Variation to Contract Form within 7 days.
- 40.3 The Authority shall have the right to vary the Services at any time, subject to the Variation being related in nature to the Services being provided, and no such Variation shall vitiate the Agreement and/or any Contract. The procedure under Condition 40.5 (Variation), for the Supplier to submit more than one quotation to the Authority, shall then be applied.
- 40.4 The Supplier may request a Variation provided that:
- a) the Supplier shall notify the Authority's Representative in writing of any additional or changed requirement which it considers should give rise to a Variation within seven days of such occurrence first becoming known to the Supplier;
 - b) any proposed Variation shall be fully supported by more than one quotation as detailed in Condition 40.5 (Variation).
- 40.5 The Supplier, within 14 days of being so requested by the Authority's Representative or where requesting a Variation pursuant to Condition 40.4 (Variation), shall submit more than one quotation (from a variety of suitable potential suppliers) to the Authority, such quotations to contain at least the following information:
- a) a description of the work together with the reason for the proposed Variation;
 - b) the price, if any, showing where applicable the Prices and Rates used; and
 - c) details of the impact, if any, on other aspects of the Contract.
- 40.6 The price for any Variation shall, unless otherwise agreed between the Parties, be based on the Prices and Rates.
- 40.7 The Authority shall either Approve or reject any Variation proposed by the Supplier.
- 40.8 In the event that the Supplier disputes any decision by the Authority to reject a proposed Variation or contends that a proposed Variation is outstanding or continues to be required, the Supplier shall update the information contained in his quotation for the proposed Variation every Month and shall send the updated information to the Authority.

41. FORCE MAJEURE

- 41.1 For the purposes of this Agreement and/or any Call-off Contract the expression "Force Majeure" shall mean any cause affecting the performance by a Party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and against which an experienced Supplier could not reasonably have been expected to take precautions, including (but

without limiting the generality thereof) governmental regulations, fire, flood, or any disaster affecting a third party for which a substitute third party is not reasonably available. Any act, event, omission, happening or non-happening will only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected Party, its Suppliers, agents or employees.

- 41.2 For the avoidance of doubt, both parties agree that any acts, events, omissions, happenings or non-happenings resulting from the adoption of the euro by the United Kingdom government shall not be considered to constitute Force Majeure under this Agreement and/or any Call-off Contract.
- 41.3 Neither Party shall in any circumstances be liable to the other for any loss of any kind whatsoever including but not limited to any damages or abatement of Charges whether directly or indirectly caused to or incurred by the other Party by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform, or resume performance of, such obligations hereunder for the duration of such Force Majeure event.
- 41.4 If either of the parties shall become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify the other by the most expeditious method then available, specifying the nature of the Force Majeure event, and shall inform the other of the period which it is estimated that such failure or delay shall continue.
- 41.5 From the date of receipt of notice given in accordance with condition 41.4 the Authority may, at its sole discretion, either suspend or terminate this Agreement and/or any Call-off Contract for up to a period of six months ("the Suspension Period").
- 41.6 If by the end of the Suspension Period the parties have not agreed a further period of suspension or re-instatement of the Agreement and/or any Call-off Contract in question, this Agreement and/or any Call-off Contract in question shall terminate automatically.
- 41.7 It is expressly agreed that any failure by the Supplier to perform or any delay by the Supplier in performing its obligations under this Agreement and/or any Call-off Contract which results from any failure or delay in the performance of its obligations by any person, firm or company with which the Supplier shall have entered into any contract, supply agreement or sub-contract or otherwise shall be regarded as a failure or delay due to Force Majeure only in the event that such person firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply agreement or sub-contract or otherwise as a result of circumstances of Force Majeure.
- 41.8 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay shall be any event qualifying for Force Majeure hereunder.

42. TERMINATION ON INSOLVENCY OR CHANGE OF CONTROL

- 42.1 The Authority may terminate the Agreement and/or any Call-off Contract by written notice having immediate effect if:
- a) the Supplier undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, impacting adversely and materially on the performance of the Contract; or
 - b) where the Supplier is an individual or a firm, the Supplier or any partner in the firm becomes bankrupt or has a receiving order or administration order made against him; or makes any compromise or agreement with or for the benefit of his creditors; or appears unable to pay a debt within the meaning of section 268 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction in respect of the Supplier; or
 - c) where the Supplier is a company, the Supplier passes a resolution or the Court makes an order that the Supplier be wound up otherwise than for the purpose of solvent reconstruction or amalgamation; or a receiver, manager or administrator is appointed (whether out of court or otherwise) (or an application or petition is made in respect of the appointment of any of the foregoing) on behalf of a creditor in respect of the Supplier's business or any part of it; or the Supplier is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (on the basis that the words "proved to the satisfaction of the court" are deemed omitted from

Sections 123(1)(e) and 123(2) of the 1986 Act); or any similar event occurs under the law of any other jurisdiction in respect of the Supplier.

- 42.2 The Authority may only exercise its right under Condition 42.1(a) (Termination on Insolvency or Change of Control) within 6 Months after a change of control occurs and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs. The Supplier shall notify the Authority immediately when any change of control occurs.

43. TERMINATION ON DEFAULT

- 43.1 The Authority may terminate the Agreement and/or any Call-off Contract, or terminate the provision of any part of the Services, by written notice to the Supplier with immediate effect if:

- (a) the Supplier is in Default of any obligation under the Contract and:
 - i. the Supplier has not remedied the Default to the satisfaction of the Authority within 30 days after service of written notice specifying the Default and requiring it to be remedied; or
 - ii. the Default is not capable of remedy; or
 - iii. the Default is a fundamental breach of the Contract; or
- (b) the Supplier or any member of the Staff has committed an offence under the Prevention of Corruption Acts 1889 to 1916 or the Anti-Terrorism Crime and Security Act 2001 or in breach of Condition 32 of this Agreement; or
- (c) the Supplier is an individual or a partnership and at any time:
 - (i) becomes bankrupt; or
 - (ii) is the subject of a receiving order or administration order; or
 - (iii) makes any composition or arrangement with or for the benefit of the Supplier's creditors; or
 - (iv) makes any conveyance or assignment for the benefit of the Supplier's creditors; or
 - (v) the warranty given by the supplier pursuant to Condition 20 is materially untrue; or
 - (vi) the supplier commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non Compliance as required by Condition 20; or
 - (vii) the supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority, are acceptable.
- (d) the Supplier is a company and:
 - (i) an order is made or a resolution is passed for the winding up of the Supplier; or
 - (ii) a receiver or administrator is appointed in respect of the whole or any part of the undertaking of the Supplier.
- (e) the Supplier is a partnership or a company and there is a Change in Control. "Change in Control" means that the person(s) (including corporate bodies) directly or indirectly in Control of the Supplier at the time this Agreement is entered into cease to be in Control. "Control" means the power of a person to secure that the affairs of the Supplier are conducted in accordance with the wishes of that person.

- 43.2 Where this Agreement and/or any Call-off Contract is terminated in accordance with this Condition, the Supplier shall without prejudice to the Authority's other remedies, take any steps necessary to terminate the provision of the Services in a timely and orderly manner but shall not be entitled to any further payment in relation to this Agreement and/or any Call-off Contract already entered into.

- 43.3 Where this Agreement and/or any Call-off Contract is terminated pursuant to Clause 43.1(b) the Supplier shall pay the Authority within 30 days of notification such amount as the Authority shall have determined as the amount of any loss to the Authority resulting from such termination together with the amount or value of any gift, consideration or commission concerned.

44. TERMINATION FOR CONVENIENCE

44.1 The Authority shall have the right to terminate the Agreement and/or any Call-off Contract, or to terminate the provision of any part of the Services, at any time by giving 1 Months' written notice to the Supplier. The Authority may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Supplier during the period of extension. Termination under this provision shall not affect the rights of the Parties that have accrued up to the date of termination.

44.2 The rights to terminate set out in Conditions 42 (Termination on Insolvency or Change of Control), 43 (Termination on Default) and 44 (Termination for Convenience) are the only circumstances in which this Agreement and/or any Call-off Contract may be terminated. Furthermore, in circumstances where the Authority is entitled to terminate this Agreement and/or any Call-off Contract, it may also terminate this Agreement and/or any Call-off Contract in part.

45. CONSEQUENCES OF TERMINATION

45.1 If the Authority terminates the Contract under Condition 43 (Termination on Default), or terminates the provision of any part of the Services under that Condition, and then makes other arrangements for the provision of the Services, the Authority shall be entitled to recover from the Supplier the cost of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period. Where the Contract is terminated under Condition 43 (Termination on Default), no further payments shall be payable by the Authority until the Authority has established the final cost of making those other arrangements.

45.2 If the Authority terminates the Contract, or terminates the provision of any part of the Services, under Condition 44 (Termination for Convenience), the Authority shall reimburse the Supplier in respect of any loss, not including loss of profit, actually and reasonably incurred by the Supplier as a result of the termination, provided that the Supplier takes immediate and reasonable steps, consistent with the obligation to provide the Services during the period of notice, to terminate all contracts with sub-contractors on the best available terms, to cancel all capital and recurring cost commitments, and to reduce Equipment and labour costs as appropriate.

45.3 For the purposes of Condition 45.2 (Consequences of Termination), the Supplier shall submit to the Authority's Representative, within 20 Working Days after service of the notice, a fully itemised and costed list, with supporting evidence, of all losses incurred by the Supplier as a result of the termination of the Contract, or the termination of any part of the Services, to be updated only in respect of ongoing costs each week until the Contract is terminated.

45.4 The Authority shall not be liable under Condition 45.2 (Consequences of Termination) to pay any sum which, when added to any sums paid or due to the Supplier under the Contract, exceeds the total sum that would have been payable to the Supplier if the provision of the Services had been completed in accordance with the Contract.

46. TRANSFER OF UNDERTAKING

46.1 STAFF TRANSFERS

46.1 If required, the Parties recognise that the Acquired Rights Directive (2001/23/EC) ("ARD") in the form of its resulting implementations by EU Member States, or other employment transfer laws ("ETL") in non-EU Member States, will apply in the jurisdictions covered by the award of this Framework Agreement.

47. DISPUTE RESOLUTION

47.1 The Parties shall attempt in good faith to negotiate a settlement to any claim or dispute between them arising out of or in connection with the Contract by use of the following escalation procedure:

AUTHORITY

SUPPLIER

Role:

47.2 If the dispute cannot be resolved by the Parties pursuant to Condition 47.1 (Dispute Resolution), the dispute may, by agreement between the Parties, be referred to mediation pursuant to Condition 47.4 (Dispute Resolution).

- 47.3 The performance of the Services shall not cease or be delayed by the reference of a dispute to mediation pursuant to Condition 47.2 (Dispute Resolution).
- 47.4 The procedure for mediation and consequential provisions relating to mediation are as follows:
- a) If the dispute or difference is not resolved pursuant to the escalation procedure set out above, either Party may (within fourteen (14) days of the last meeting pursuant to the escalation procedure), before resorting to litigation, propose to the other in writing that the dispute be settled by mediation in accordance with the Centre for Effective Dispute Resolution (“CEDR”) Model Mediation Procedure (the “Model Procedure”).
 - b) To initiate mediation, a Party must give notice in writing (an “ADR Notice”) to the other Party requesting mediation in accordance with the Model Procedure. A copy of the ADR Notice should be sent to CEDR.
 - c) If there is any point on the conduct of the mediation (including as to the nomination of the mediator) upon which the Parties cannot agree within fourteen (14) days from the date of the ADR Notice, CEDR will, at the request of any Party, decide that point for the Parties, having consulted with them.
 - d) Mediation will commence no later than twenty-eight (28) days after the date of the ADR Notice.

48. LAW AND JURISDICTION

- 48.1 This Agreement and/or any Call-off Contract will be governed by and construed in accordance with English law and the Supplier hereby irrevocably submits to the jurisdiction of the English courts. The submission to such jurisdiction will not (and will not be construed so as to) limit the right of the Authority to take proceedings against the Supplier in any other court of competent jurisdiction, nor will the taking of proceedings by the Authority in any one or more jurisdictions preclude the taking of proceedings by the Authority in any other jurisdiction, whether concurrently or not.

49. RIGHTS OF THIRD PARTIES

- 49.1 Except where it is expressly provided otherwise, no person who is not a Party to this Agreement shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

50. COMPLIANCE WITH ENVIRONMENTAL REQUIREMENTS

- 50.1 The Supplier shall provide the goods and/or Services required under the Contract in accordance with applicable laws and the Authority’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.
- 50.2 The Authority is committed to promoting a low carbon, high growth, global economy. The Supplier shall work with the Authority regarding any environmental or sustainability issues as the Authority considers relevant, comply with contractual obligations and carry out any reasonable request to ensure the protection of the environment, society and the economy and promotion of sustainable development and sustainable procurement throughout the Term.
- 50.3 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.
- 50.4 Nothing in this Condition 50 (Compliance with Environmental Requirements) shall relieve the obligations of the Supplier to comply with its statutory duties and Good Industry Practice.

51. CONFLICT OF INTEREST

- 51.1 The Supplier 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. The Supplier 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 his obligations under this Agreement and/or any Call-off Contract, howsoever arising.

- 51.2 The Supplier shall notify the Authority immediately of any circumstances of which it becomes aware which give rise or potentially give rise to a conflict with his obligations under this Agreement (including the provision of the Services required under each Call-off Contract) and shall advise the Authority of how they intend to avoid such a conflict arising or remedy such situation. The Supplier shall subject to any obligations of confidentiality it may have to third parties provide all information and assistance reasonably necessary (at the Supplier's cost) that the Authority may request of the Supplier in order to avoid or resolve a conflict of interest and shall ensure that at all times they work together with the Authority with the aim of avoiding a conflict or remedy a conflict.
- 51.3 Pursuant to 51.2 (Conflict of Interest), the Authority shall have the right to require that the Supplier 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 Supplier and that such matters are not discussed by the relevant staff with other employees, contractors or agents of the Supplier.
- 51.4 In the event of a failure to maintain the "Ethical Walls" as described above arising during the course of any Call-off Contract, the Authority reserves the right to immediately terminate the Contract on giving written notice to the Supplier and to pursue the Supplier for damages.
- 51.5 To the extent that any of the Supplier's staff breach this Conflict of Interest Condition, the Supplier 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 Supplier'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 Agreement.

52. FLEXIBLE OPERATIONS

- 52.1 The Supplier accepts that the Authority has made it clear throughout the procurement which led to this Agreement that the nature of this Agreement and/or any Call-off Contract is such that flexibility will be key to successfully delivering the Services detailed in the Statement of Service Requirements. The Supplier therefore accepts that given the environment concerned, they will from time to time be asked by the Authority to increase and possibly reduce Staff depending on the security situation/requirements therein.
- 52.2 Whilst increases or decreases in the Supplier's Staff levels as detailed in Section 3 - Schedule of Prices and rates and Section 4 - Statement of Service Requirements will be covered by means of the variation procedure detailed in Condition 40 (Variation), where particular circumstances e.g. changing security situation or other developments, necessitate the removal or scaling back of the Supplier's Staff, the Supplier agrees to make every effort to mitigate any costs incurred by the Authority therein. The Authority's Representative and Supplier's Representative will discuss and agree a remedy to any such issues or situations arising which is reasonable and acceptable to both Parties.
- 52.3 Within its anticipated manpower provision, the Supplier will exercise rigorous attention to making the most effective use of the Staff to meet the requirements specified in the Statement of Services Requirements to minimise periods of Staff inactivity other than when on standby for imminent deployments.
- 52.4 The Supplier acknowledges that as part of the Services it provides under this Agreement and/or any Call-off Contract, that it is essential for its Staff to work co-operatively with other Authority Suppliers and Personnel at all times throughout the period of this Agreement and/or any Call-off Contract.

53. NON EXCLUSIVITY

53.1 The Supplier acknowledges that, in entering this Framework Agreement, no form of exclusivity or volume guarantee has been granted by the Authority for services and/or Goods from the Supplier and that the Contracting Authority is at all times entitled to enter into other contracts and agreements with other Suppliers for the provision of any of the services and/or goods.

Awards under the Framework Agreement

54. AWARD PROCEDURES

Direct Awards

- 54.1 Where a Framework Agreement allows for a Contracting Authority to award without re-opening competition (a direct award) a Contracting Authority shall, when ordering Services and/or goods:-
- 54.1.1 Identify the relevant Services and/or goods;
- 54.1.2 (Where there is more than one Supplier) select the Supplier in accordance with the method set out in the Invitation to Tender, or where the Invitation to Tender does not specify a selection method, identify the Supplier who:
- offers best value for money (Quality / Cost balance) for those Services and/or goods on the basis of the price(s) and technical expertise submitted by the Supplier in its Framework Agreement Tender and who is able to fulfil the Order within the time specified;
 - Fulfills specific security requirements
- 54.1.3 (Subject to 54.2 below) serving a completed Call-off Contract Form to the successful Supplier which:-
- (a) States the requirements;
 - (b) Identifies the Services and/or goods;
 - (c) States the price payable in accordance with the Tender submitted by the successful Supplier; and
 - (d) Incorporates Call-off Terms and Conditions.

Mini Competition

- 54.2 Where there is more than one Supplier appointed under the Framework (or under the relevant Lot) and the Invitation to Tender so specifies, a Contracting Authority shall,:
- 54.2.1 Identify the Suppliers capable of performing the Call-off Contract for the Contracting Authority's requirements;
- 54.2.2 Supplement and refine the Call-off Terms and Conditions only to the extent permitted by and in accordance with the requirements of the Regulations and Guidance where applicable;
- 54.2.3 Invite tenders by conducting a mini-competition for its requirements in accordance with the Invitation to Tender, the Regulations and Guidance and in particular:
- (a) Confirm prior to the mini-competition whether or not the Contracting Authority intends to follow this with an electronic auction or use the mini-competition alone. Should this be the case the Contracting Authority shall provide all Suppliers with full details prior to the e-auction including but not limited to how the e-auction is to be conducted and the outcome of the mini-competition;
 - (b) Consult in writing all the Suppliers capable of performing the Call-off Contract and invite them within a specified time limit to submit a tender in writing for each specific contract to be awarded;
 - (c) Set a time limit for the receipt by it of the tenders; and
 - (d) Keep each tender confidential until the expiry of the time limit for the receipt by it of tenders.
- 54.2.4 Apply the Call-off Award Criteria in the ITT, including where relevant in any pricing the consideration of any and all additional cost(s) to the Contracting Authority to the Suppliers' compliant tenders submitted through the mini-competition as the basis of its decision to award a Call-off Contract for its requirements.
- 54.2.5 Serve a completed Call-off Contract Form to the successful Supplier which:-

- (a) States the requirements;
- (b) Identifies the Services and/or goods;
- (c) States the price payable in accordance with the Tender submitted by the successful Supplier; and
- (d) Incorporates Call-off Terms and Conditions as modified by the competed services requirements.

54.3 The Supplier agrees that all tenders submitted by the Supplier in relation to a mini-competition held pursuant to Clause 54.2 shall remain open for acceptance for 3 months (or such other period specified in the invitation issued by the Contracting Authority in accordance with the Ordering Procedure).

54.4 Notwithstanding the fact that a Contracting Authority has followed the procedure set out above in this Clause 54, a Contracting Authority shall be entitled at all times to decline to make an award. Nothing in this Framework Agreement shall oblige the Authority or any Contracting Authority to place any Call-off Contract.

Accepting or declining Call-off Contracts

54.5 Following receipt of a Call-off Contract Form, the Supplier shall, within the period set out in the Call-off Contract Form, either notify the Authority that it declines to enter into the Call-off Contract or notify the Authority that it wishes to enter into the Call-off Contract by executing and returning the Call-off Contract Form.

54.5 A Call-off Contract shall be formed on the Contracting Authority's receipt of the signed Call-off Contract.

55 CALL-OFF CONTRACT PERFORMANCE

55.1 The Supplier shall perform all Call-off Contracts entered into with a Contracting Authority in accordance with:-

55.1.1 The requirements of this Framework Agreement; and

55.1.2 Any special Call-off Terms and Conditions applied to respective Call-off Contracts.

Appendix A

VARIATION TO CONTRACT FORM [See Condition 40]

[To be completed according to specific contract or agreement and where relevant]

AGREEMENT NUMBER: [insert]
AGREEMENT TITLE: [insert]
VARIATION NUMBER: [insert]

BETWEEN The Secretary of State for Foreign and Commonwealth Affairs (hereinafter called '*the Authority*') and [INSERT SUPPLIER NAME] (hereinafter called '*the Contractor*')

1. The Agreement is varied as follows:
 - In consideration of [insert] the Parties agree to [insert]
2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
3. The Agreement, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

SIGNED by the Parties in duplicate:

For the Authority

For the Contractor

By:

By:

Full Name:

Full Name:

Title:

Title:

Date:

Date:

SIGNED by the Parties in duplicate:

CONFIDENTIALITY UNDERTAKING [See Condition 27.5]

(To be signed by persons employed in providing the services before being given access to Government information).

This Confidentiality Undertaking is made as a Deed by me, [insert full name] to the Secretary of State for Foreign and Commonwealth Affairs (the "FCO") in connection with a contract between [insert Supplier name] and the FCO for the provision of [insert contract description]

I am employed by [insert Supplier name] I have been informed that I may be required to work for my employer in providing services to the Secretary of State for Foreign and Commonwealth Affairs.

I understand that information in the possession of the FCO or obtained from the FCO must be treated as confidential, [and my access to this information will be subject to my achieving and retaining the necessary security clearance].

I hereby give a formal undertaking, as a solemn promise to my employer and to the FCO, that:

- 1. I will not communicate any of that information, or any other knowledge I acquire about the FCO in the course of my work, to anyone who is not authorised to receive it in connection with that work; and
- 2. I will not make use of any of that information or knowledge for any purpose apart from that work;

I acknowledge that this applies to all information that is not already a matter of public knowledge and that it applies to both written and oral information.

I also acknowledge that this undertaking will continue to apply at all times in the future, even when the work has finished and when I have left my employment.

I have also been informed that I will be bound by the provisions of the Official Secrets Acts 1911 to 1989. I am aware that under those provisions it is a criminal offence to disclose information that has been given to me or my employer by the FCO. I am aware that serious consequences (including criminal sanctions) may follow any breach of those provisions.

EXECUTED by:

Surname: _____

Forenames: _____

Date of Signature: _____

In the presence of (a) (Witness) _____



Foreign & Commonwealth Office

CALL-OFF CONTRACT

Framework Agreement with: [Name of Lead Supplier(s)]

Framework Agreement for: **THE CONFLICT STABILITY AND SECURITY FUND**

Call-off Contract For: [Call-off Contract Title]

Call-off Contract Purchase Order Number or reference number:

I refer to the following:

1. The above mentioned Framework Agreement

2. Your proposal of [insert date]

and I confirm that FCO requires you to provide the Services as stated in the attached Statement of Requirement and, under the Terms and Conditions of the Framework Agreement which shall apply to this Call-off Contract as if expressly incorporated herein.

3. Commencement and Duration of the Services

3.1 The Supplier shall start the Services no later than [] ("the Start Date") and Services shall be completed by [] ("the End Date") unless the Call-off Contract is terminated or extended in accordance with the Terms and Conditions of the Framework Agreement and by contract variation.

4. Recipient

4.1 Authority requires the Supplier to provide the Services to the [] ("the Recipient").

5. Financial Limit

5.1 Payments under this Call-off Contract shall not, exceed £[] ("the Financial Limit") and is exclusive of any government tax, if applicable as detailed in the Framework Agreement and the Statement of Requirements and schedule of Prices and Rates.

6. Milestone Payment Basis

6.1 Where the applicable payment mechanism is "Milestone Payment", payments will be made on satisfactory performance of the services, at the payment points defined as per schedule of payments. At each payment point set criteria will be defined as part of the payments. Payment will be made if the criteria are met to the satisfaction of the Authority when the relevant milestone is achieved in its final form by the Supplier or following completion of the Services, as the case may be, indicating both the amount or amounts due at the time and cumulatively. Payments pursuant to clause 15 are subject to the satisfaction of the Project

Officer in relation to the performance by the Supplier of its obligations under the Call-off Contract and to verification by the Project Officer that all prior payments made to the Supplier under this Call-off Contract were properly due.

7. Officials

7.1 The Authority Project/Contract Officer is:

8. Key Personnel

8.1 The following of the Staff cannot be substituted by the Supplier without the Calling-Off body's prior written consent:

Title	Name

9. Reports

9.1 The Supplier shall submit project reports in accordance with the Terms of Reference/Scope of Work at Attachment 2 **[OR Detail here if these are not explicit in the attachment]**

10. Duty of Care

10.1 Unless otherwise agreed, all Staff (as defined in Section 2 of the Agreement) engaged in connection with the performance of this Call-off Contract will come under the duty of care of the Supplier. The Supplier will be responsible for all security arrangements and Her Majesty's Government accepts no responsibility for the health, safety and security of individuals or property.

10.2 Unless otherwise agreed, the Supplier will be responsible for taking out insurance in respect of death or personal injury, damage to or loss of property, and will indemnify and keep indemnified the call-off Authority in respect of:

- Any loss, damage or claim, howsoever arising out of, or relating to negligence by the Supplier, the Staff, or by any person employed or otherwise engaged by the Supplier, in connection with the performance of the Call-off Contract;
- Any claim, howsoever arising, by the Staff or any person employed or otherwise engaged by the Supplier, in connection with their performance under this Call-off Contract.

10.3 The Supplier will ensure that such insurance arrangements as are made in respect of the Staff, or any person employed or otherwise engaged by the Supplier are reasonable and prudent in all circumstances, including in respect of death, injury or disablement, and emergency medical expenses.

10.4 The costs of any insurance specifically taken out by the Supplier to support the performance of this Call-off Contract in relation to Duty of Care may be included as part of the management costs of the project, and must be separately identified in all financial reporting relating to the project.

10.5 Where the Call-off Authority is providing any specific security arrangements for Suppliers in relation to the Call-off Contract, these will be detailed in the Terms of Reference/Statement

of Requirements.

11. Call-off Contract Signature

11.1 If the original Form of Call-off Contract is not returned to the Contract/Project Officer (as identified at clause 7 above) duly completed, signed and dated on behalf of the Supplier within 10 working days of the date of signature on behalf of the Authority, the Authority will be entitled, at its sole discretion, to declare this Call-off Contract void.

For and on behalf of
The Secretary of State for
Foreign and Commonwealth Affairs

Name:
Position:
Signature:
Date:

For and on behalf of XXXXX

Name:
Position:
Signature:
Date

Appendix D: Draft Call-off ITT

**(DRAFT) INVITATION
TO
TENDER
INSTRUCTIONS
(Call-off Competition)**

Dear Sir/Madam

You are invited to submit a tender to the Secretary of State for Foreign and Commonwealth Affairs or his representatives in the Foreign and Commonwealth Office (FCO), hereinafter referred to as the "Authority", for the provision of :

xxxxxxxxxxxxx

These requirements will be tendered in accordance with the following attachments (*may vary dependant on requirements*):

Attachment 1: Instructions / Information on Tendering Procedures;

Attachment 2: Statement of Requirements/Terms of Reference;

Attachment 3: Pricing Model;

Attachment 4: Call-off Contract

If you have any questions about the tendering procedure or the information provided, please use the BRAVO Solution messaging function.

I look forward to your response.

Yours Faithfully

xxxxxxxxxxxxx

1. INDICATIVE TIMETABLE

Set out below is an INDICATIVE procurement timetable. This is intended as a guide and, whilst the Authority does not intend to depart from the timetable, it reserves the right to do so at any time.

Date or Target Date	Activity
Activity	Date
Launch of Tenders	
Final Clarifications deadline	
Submission of Tenders	
Final Evaluation	

The Authority reserves the right to amend the enclosed tender documents at any time prior to the deadline for receipt of tenders. Any such amendment will be numbered, dated and issued via the portal. In the event of amendments, the Authority may at its discretion extend the deadline for receipt of tenders.

By issuing this invitation the Authority is not bound in any way and does not have to accept the lowest or any tender and reserves the right not to award any contract or to accept the whole or any specified part of the tender

2. AUTHORITY NAMED CONTACT

The Authority's named contact point for the procurement is:

Name: xxxxx

Email: [xxxxxx](#)

All contact with the Authority relating to this ITT must be made through the Bravo portal or other specified route. In relation to this ITT, the Tenderer **must not** (at any time during the Tender period) make contact with any other employee, agent, supplier, Development Partner, Recipient or any other person who is in any way connected with this ITT, unless instructed otherwise by the Authority. Tenderers who do not comply with this requirement may, be disqualified. If the Authority considers any question or request for clarification to be of material significance, both the query and the response will be communicated, in a suitably anonymous form, to all bidders invited to tender.

3. FORMAT OF YOUR TENDER

All questions MUST BE answered in English.

Failure to provide the required information or make a satisfactory response to any question, or supply attachments referred to in responses, within the specified timescale, may mean that a bid is rejected at the absolute discretion of the Authority.

Bidders must be explicit and comprehensive in their responses to this ITT as this will be the single source of information on which responses will be scored and ranked. Bidders are advised neither to make any 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.

Page and text limits: Where a word or page limit is provided your response should not exceed the limit. Any words/pages over the limit will not be evaluated. Tables and diagrams are included in the page numbers – but graphics and images will not be included in the page limit. A page is one side of A4, with the smallest font size being limited to 10pt.

Document formats: The supported formats for attachment uploads are Microsoft Word (version 97 – 2007), Microsoft Excel (version 97-2007), Microsoft PowerPoint (version 97-2007) and PDF.

Incomplete Tenders: Tenders may be rejected if information requested is not provided in the tender submission.

This ITT is split into 2 main parts:

- Part A - General and Technical
- Part B – Commercial

Parts A & B should be uploaded through the Bravo Portal/other route as separate documents or as otherwise directed. No publicity material is required. All prices must be for the duration of the Call-down Contract and priced in Sterling. Please note that Government Policy places the burden of exchange rate fluctuations on the supplier, who will be expected to absorb the impact of these within and across their contracts.

Your Commercial Tender should be structured to include relevant narrative for **Financial Methodology and planning**: explaining the rationale of the Commercial Tender and how it offers best value in the long term and should clearly link costs to the activities and outputs detailed in the Statement of Requirements (as provided in Part A - General and Technical Tender). Pricing details should include a fees and expenses basis to demonstrate the cost breakdown of payments. See Attachment 3.

4. CONDITIONS OF TENDER AND REJECTION OF NON-COMPLIANT TENDERS

This ITT Pack is designed to help you produce a Tender that is acceptable to FCO and to ensure that Tenders are given equal consideration. It is essential, therefore, that you provide information in the format requested. The ITT instructions should be read in conjunction with the Terms of Reference and any Additional Information Documents provided.

The instructions contained in this ITT Pack constitute the Conditions of Tender. Participation in the Tender process confirms that the Tenderer accepts these Conditions of Tender. Non-compliant Tenders may be rejected by FCO.

The Tenderer must ensure that each and every employee, sub-contractor, consortium member and any other person / organisation the Tenderer involves in their response to this ITT, abides by the Conditions of Tender. The Tenderer shall be responsible for any breach of the Conditions of Tender by anyone they have involved in their response to this ITT.

5. CONFLICT OF INTEREST

Tenderers must disclose in their Tender any circumstances, including personal, financial and business activities that will, or might, give rise to a conflict of interest by taking part in this competition or if awarded the Call-down Contract. This also applies to any sub-contractor proposed by the Tenderer. Where Tenderers identify any potential conflicts they should state how they intend to avoid such conflicts. FCO reserves the right to reject any Tender which, in FCO's opinion, gives rise, or could potentially give rise to, a Conflict of Interest.

6. DISCLOSURES

The Tenderer must disclose:

- a) If they or any of the Tenderer's sub-contractors
 - are or have been the subject of any proceedings or other arrangements relating to bankruptcy, insolvency or financial standing.
 - has been convicted of any offence concerning professional misconduct.
 - has not fulfilled any obligations relating to the payment of social security contributions.
- b) If they or any of the Tenderer's sub-contractors have been convicted of, or are the subject of any proceedings, relating to:
 - participation in criminal organisation.
 - corruption including the offence of bribery.
 - fraud including theft, and not fulfilling any obligations relating to payment of taxes.
 - money laundering.

Disclosure extends to any company in the same group of the Tenderer (including but not limited to parent, subsidiary and sister companies, and companies with common shareholders whether direct or indirect and parties with whom the Tenderer is associated in respect of this Tender).

Where any misconduct or complaint is disclosed, it will be assessed by FCO as to whether the Tenderer should be excluded from this ITT. Mandatory exclusion for certain categories under the requirements of the Public Contracts Regulations will be applied where appropriate. FCO may seek additional information from the Tenderer or other competent authorities where FCO deems it necessary in order to make a decision on eligibility.

7. CONSORTIA AND SUB-CONTRACTING

Consortia and Sub-contracting are allowed under this ITT. Details should be provided to the Authority of companies that will make up the Consortia, or are being used as sub-contractors. The Authority will be expecting to work with a single Operating Manager, who will take full responsibility for the contract as a whole.

Where the Tender is submitted by the Tenderers in conjunction with one or more associates then, in the absence of a Joint venture agreement, the 'Associate' shall be deemed to be a sub-contractor to the Tenderer and shall not be a party to the Contract.

8. Confidentiality

All material issued in connection with this ITT shall remain the property of FCO and shall be used only for the purpose of this procurement exercise. All information provided shall be either returned to FCO or securely destroyed by unsuccessful Tenderer's at the conclusion of the procurement exercise. The confidentiality of the Framework Agreement shall be reflected in this call down contract.

9. Right to Cancel, Clarify or Vary the Process

FCO shall not be committed to any course of action as a result of:

- issuing this ITT or any invitation to participate in this procurement exercise;
- communicating with a Tenderer or a Tenderer's representatives in respect of this procurement exercise; or
- any other communication between FCO (whether directly or by its agents or representatives) and any other party.

By taking part in this competitive exercise, Tenderers accept that FCO shall not be bound to accept any Tender and reserves the right not to conclude a Contract for some or all of the services for which Tenders are invited.

FCO reserves the right to explore other options if this ITT does not provide what FCO considers to be the best value option available. FCO reserves the right to amend, add to or withdraw all or any part of this ITT at any time during the procurement exercise.

10. Costs of the ITT

Tenderers will remain responsible for all costs and expenses incurred by them, their staff, and their advisors or by any third party acting under their instructions in connection with this ITT. This will be regardless of whether such costs arise as a result of any direct or indirect amendments made to this ITT by FCO at any time. For the avoidance of doubt, FCO shall have no liability whatsoever to respondents for the costs of any amendments, changes, discussions or communications.

Scoring Methodology and Evaluation Criteria

11. Technical Evaluation

The Technical Evaluation places emphasis on the degree of confidence the Evaluation Team have in the Tender content and the Tenderer's capability to deliver the programme outputs effectively. A higher degree of confidence is gained where:

- A deep understanding of key issues is clearly demonstrated. Merely providing general statements of information and a can-do attitude will not generate high scores. The proposal

should include clear links to performance outcomes and where appropriate should highlight where it continues to add value beyond the life of the Call-off Contract.

- Strong examples demonstrate the proposed methodology has been applied successfully in similar environments relevant to this ITT.
- Evidence of working in similar/same environments and within the thematic will be important.
- Staff that provide the right level of skills and experience, with assured availability at the right time and with the right number of days.

12. Commercial Evaluation

Tenderers should aim to demonstrate within the Commercial Tender that their overall Tender offers the best mix of quality and effectiveness for the least outlay over the period of using the goods or services required. The Commercial Tender should therefore be clear on whole life costs over the duration of the Call-down Contract, including (but not limited to) cost elements such as: capital, maintenance, management, operating costs.

The Commercial Evaluator will review overall balance provided by all sections of the Commercial Tender.

13. Scoring Methodology

The Evaluation Team may apply the following scoring methodology, although other models may be used:

Score Key Assessment	Score	Interpretation
Good	4	Satisfies the requirement with additional benefits. Above average demonstration by the Tenderer of the understanding and evidence to deliver a solution for the required supplies/services. Response identifies some tailoring and factors that will offer potential added value.
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 most requirements with minor reservations. Some minor reservations of the Tenderer's understanding and methodology, and/or staffing and experience, with limited supporting evidence or information.
Serious Reservations	1	Major reservations of the Tenderer's understanding and proposed methodology, with lack of information and little or no evidence to support the response, with minimal tailoring.
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. The Authority reserves the right to disqualify the Tenderer.

The above scoring methodology will be applied to each of the Sub Criteria detailed in the ITT. The Total Score for each Sub Criteria will comprise of the score awarded (0 to 4) converted against the weighted % of each Sub Criteria. If a supplier does not score above 60% of the technical score they may be disqualified from the tender process

(The award Criteria for all Lots will have a split variation between Commercial Criteria and Technical. E.g. 80% Technical and 20% Commercial. Evaluation criteria will be stated below.)

EVALUATION CRITERIA	SCORE

15 WARRANTY AND DISCLAIMER

You are advised that nothing herein or in any other communication made between Authority, or its agents and any other party, or any part thereof, shall be taken as constituting a contract, agreement or representation between Authority and any other party (save for a formal award of contract made in writing by or on behalf of Authority) nor shall they be taken as constituting a contract, agreement or representation that a contract shall be offered in accordance herewith or at all.

Att. 2 Statement of Requirements

(Will vary on requirement. See Framework ITT for notes.)

Att. 3 – Schedule of Prices and Rates

(Will vary on requirement. However, the Authority will expect to see Unit breakdowns for staff, expenses and other operational costs and will provide a template sheet for completion. See Framework ITT Commercial Model for notes.)

Att. 4 Call-off Contract**CALL-OFF CONTRACT**

Framework Agreement with: [Name of Lead Supplier(s)]

Framework Agreement for: **THE CONFLICT STABILITY AND SECURITY FUND**

Framework Agreement Number:

Call-off Contract For: [Call-off Contract Title]

Call-off Contract Purchase Order Number:

I refer to the following:

1. The above mentioned Framework Agreement

2. Your proposal of [insert date]

and I confirm that FCO requires you to provide the Services as stated in the attached Statement of Requirement and, under the Terms and Conditions of the Framework Agreement which shall apply to this Call-off Contract as if expressly incorporated herein.

3. Commencement and Duration of the Services

3.1 The Supplier shall start the Services no later than [] ("the Start Date") and Services shall be completed by [] ("the End Date") unless the Call-off Contract is terminated or extended in accordance with the Terms and Conditions of the Framework Agreement and by contract variation.

4. Recipient

4.1 Authority requires the Supplier to provide the Services to the [] ("the Recipient").

5. Financial Limit

5.1 Payments under this Call-off Contract shall not, exceed £[] ("the Financial Limit") and is exclusive of any government tax, if applicable as detailed in the Framework Agreement and the Statement of Requirements and schedule of Prices and Rates.

6. Milestone Payment Basis

6.1 Where the applicable payment mechanism is "Milestone Payment", payments will be made on satisfactory performance of the services, at the payment points defined as per schedule of payments. At each payment point set criteria will be defined as part of the payments. Payment will be made if the criteria are met to the satisfaction of the Authority when the relevant milestone is achieved in its final form by the Supplier or following completion of the Services, as the case may be, indicating both the amount or amounts due at the time and cumulatively. Payments pursuant to clause 15 are subject to the satisfaction of the Project Officer in relation to the performance by the Supplier of its obligations under the Call-off Contract and to verification by the Project Officer that all prior payments made to the Supplier under this Call-off Contract were properly due.

7. Officials

7.1 The Authority Project/Contract Officer is:

8. Key Personnel

- 8.1 The following of the Staff cannot be substituted by the Supplier without the Calling-Off body's prior written consent:

Title	Name

9. Reports

- 9.1 The Supplier shall submit project reports in accordance with the Terms of Reference/Scope of Work at Attachment 2 **[OR Detail here if these are not explicit in the attachment]**

10. Duty of Care

- 10.1 Unless otherwise agreed, all Staff (as defined in Section 2 of the Agreement) engaged in connection with the performance of this Call-off Contract will come under the duty of care of the Supplier. The Supplier will be responsible for all security arrangements and Her Majesty's Government accepts no responsibility for the health, safety and security of individuals or property.
- 10.2 Unless otherwise agreed, the Supplier will be responsible for taking out insurance in respect of death or personal injury, damage to or loss of property, and will indemnify and keep indemnified the call-off Authority in respect of:
- Any loss, damage or claim, howsoever arising out of, or relating to negligence by the Supplier, the Staff, or by any person employed or otherwise engaged by the Supplier, in connection with the performance of the Call-off Contract;
 - Any claim, howsoever arising, by the Staff or any person employed or otherwise engaged by the Supplier, in connection with their performance under this Call-off Contract.
- 10.3 The Supplier will ensure that such insurance arrangements as are made in respect of the Staff, or any person employed or otherwise engaged by the Supplier are reasonable and prudent in all circumstances, including in respect of death, injury or disablement, and emergency medical expenses.
- 10.4 The costs of any insurance specifically taken out by the Supplier to support the performance of this Call-off Contract in relation to Duty of Care may be included as part of the management costs of the project, and must be separately identified in all financial reporting relating to the project.
- 10.5 Where the Call-off Authority is providing any specific security arrangements for Suppliers in relation to the Call-off Contract, these will be detailed in the Terms of Reference/Statement of Requirements.

11. Call-off Contract Signature

- 11.1 If the original Form of Call-off Contract is not returned to the Contract/Project Officer (as identified at clause 7 above) duly completed, signed and dated on behalf of the Supplier within 10 working days of the date of signature on behalf of the Authority, the Authority will be entitled, at its sole discretion, to declare this Call-off Contract void.

For and on behalf of
The Secretary of State for
Foreign and Commonwealth Affairs

Name:

Position:

Signature:

Date:

For and on behalf of XXXXX

Name:

Position:

Signature:

Date

Section 3 – Schedule of Prices and Rates (Agreement)

(Will vary on requirement. However, the Authority will expect to see Unit breakdowns for staff, expenses and other operational costs and will provide a template sheet for completion. See Framework ITT Commercial Model for notes.)

Section 4 – Statement of Requirements (Agreement)

(See Framework ITT)