

**MODEL FCO INVITATION TO TENDER FOR CONSULTANCY CONTRACTS (MEDIUM FORM)
(ABOVE £15,000 AND BELOW £100,000)**



INVITATION TO TENDER

FOR

CONSULTANCY CONTRACT

[INSERT NAME OF CONTRACT]

COVERING LETTER

Date:

Dear Sir/Madam

CONTRACT NUMBER: [insert number]
CONTRACT FOR: [insert name]

You are invited to tender for the above contract. The Invitation to Tender consists of the following documents:

Letter of Acknowledgement

Part I - Tendering Instructions. This details the basis on which we are inviting you to tender and instructions which we require you to follow and acknowledge.

Part II - Form of Tender including Appendix A – D. This details what we require you to provide us with in response to this Invitation to Tender, which will be evaluated based on the details provided in Part I.

Part III - Draft contract document including Appendix A. Your response to Part II should be based on accepting this contract document and on meeting the requirements (or specification) as detailed in Section IV – Services Scope.

Please check the contents of the Invitation to Tender package when you receive it and then return the enclosed Acknowledgement Letter.

You are required to hold all information pertaining to this contract confidential and to limit the dissemination of information within your organisation on a need-to-know basis.

Your tender must be received by noon on **[insert]**, which date will be the Tender Date in the attached Invitation to Tender. It is our intention to complete our tender evaluation in such time that the contract for this work will be awarded by **[insert]**. This timetable is indicative only and the Foreign and Commonwealth Office reserves the right at its absolute discretion to amend any of the dates set out below, or elsewhere in this Invitation to Tender.

Yours faithfully

.....

LETTER OF ACKNOWLEDGEMENT

Foreign and Commonwealth Office
Procurement Policy Department
Room 1/116
Old Admiralty Building
London
SW1A 2PA

For the attention of: The Contracts Advisers

Date:

Dear Sir/Madam,

CONTRACT NUMBER: *[insert number]*
CONTRACT FOR: *[insert name]*

1. We acknowledge receipt of your Invitation to Tender package.
2. We have received all the documents listed in the Invitation to Tender without damage and in usable condition.
3. We have read the Invitation to Tender and will tender in accordance with the specified requirements.

or

We do not wish to tender and therefore return the whole Invitation to Tender package with this letter. [Tenderer to delete as appropriate]

Yours faithfully,

For and on behalf of:

.....
(Name)

.....
(Company)

PART I – TENDERING INSTRUCTIONS

1. INTRODUCTION

The Foreign and Commonwealth Office (“**FCO**”) wish to appoint a Contractor to provide *[insert]*. The appointment will be by a process of competitive tender.

1.1 The *[consultancy services]* for which the Tenderer is invited to tender for are *[insert high level details.]*.

1.2 The Contract will run for a period of *[insert]* years commencing *[insert]*.

2. BACKGROUND INFORMATION

[Enter concise details setting out why the consultancy services are needed, the volume required and how they fit in with FCO current systems and structures]

3. COMPLETION OF TENDER

3.1 A tender should comprise the following documents:

| | |
|----------------|--|
| Form of Tender | - Offer Letter |
| Appendix A | - Prices |
| Appendix B | - Additional information required by FCO |
| Appendix C | - Qualifications |
| Appendix D | - Other information you feel may support your tender |

The Tenderer is not required to submit any other documents

All questions set out in this Invitation to Tender should be answered as concisely as possible. Please provide all necessary information.

The FCO reserves the right to conduct investigations into the qualifications of a Tenderer prior to the time of award.

3.2 Form of Tender

Complete and sign the Form of Tender

3.3 Appendix A – Prices

Complete Appendix A by adding to the schedule the itemised prices you propose to charge.

Do not add VAT to any of your quoted prices.

This Appendix forms part of the offer made in the Form of Tender. It will also ultimately form a key element of the final contract, and be included in Section III - Price Schedule (Part III of the Invitation to Tender - Contract Document).

3.4 Appendix B – Additional Information Required

This Appendix forms part of the offer made in the Form of Tender.

Under Section II provide us with your proposal together with details of your ability to perform the services we require as detailed in the Services Scope. You should as a minimum cover the following subjects (see also 7.3):

- Your general approach and methodology to providing the consultancy services
- Your methodology including any appropriate resource and quality plan
- CV's of your proposed personnel
- Your proven industry experience of successfully fulfilling contracts of similar scope
- Your ability to work seamlessly with the FCO's procedures and systems
- Three appropriate reference clients with full contact details
- If requested by the FCO, and appropriate to the Tenderer's particular circumstances, confirmation is also required that you would be willing to provide the FCO with a Parent Company Guarantee
- **[insert any other information required and/or edit the above as required]**

3.5 Appendix C – Qualifications

- (a) The terms and conditions under which the FCO wishes to place a Contract are strictly in accordance with the Contract documents provided in Part III of the Invitation to Tender.
- (b) Any requirement that cannot be satisfied must be clearly identified. Qualifications should only be made if the Tenderer cannot comply with the requirements of the Contract.
- (c) In these instances the Tenderer should detail the qualification you are proposing and the reason for wishing to do so.
- (d) The FCO is looking for full compliance. The higher the level of compliance, the more favourably you will be evaluated. **If your tender is qualified we reserve the right to reject it in total.**

3.6 Appendix D – Other Information

The information required in the Invitation to Tender should not be considered to be exhaustive. The Tenderer should include here any other information that might legitimately support its Tender including full details of any subcontractors (see 9), if not previously fully detailed in Appendix B.

4. **GENERAL**

4.1 Contents of the Invitation to Tender

The Tender is to be made strictly in accordance with the requirements of this Invitation to Tender which together with any addenda that are issued by the FCO are referred to as the Invitation to Tender.

4.2 Return if not Tendering

If, after acknowledging receipt of this package the Tenderer decides not to submit a Tender, the Invitation to Tender package must be returned immediately.

4.3 Enquiries concerning the Tender

Any query in connection with your Tender or the Invitation to Tender shall be submitted in writing to:

[insert name]
[insert address]

[Alternatively, queries in connection with your Tender or the Invitation to Tender may be submitted by email to **[insert name]** at **[insert email address]**.]

Telephone enquiries will not be accepted, except in respect of relatively minor administrative matters.

Where relevant, the response by the FCO as well as the query will be notified to all Tenderers, without disclosing the name of the Tenderer who initiated the query. **On no account before the Tender Date is the Tenderer to contact or communicate with any other person involved in work concerning this Invitation to Tender. Failure to comply with this policy may result in disqualification.**

4.4 Independent Tender

By submission of a Tender, the Tenderer warrants that:

- (a) The prices in the Tender have been arrived at independently, without consultation, communication, agreement or understanding for the purpose of restricting competition, as to any matter relating to such prices, with any other Tenderer or with any competitor.
- (b) Unless otherwise required by law, the prices which have been quoted in the Tender have not knowingly been disclosed by the Tenderer, directly or indirectly, to any other Tenderer or competitor, nor will they be so disclosed.
- (c) No attempt has been made or will be made by the Tenderer to induce an other person or firm to submit or not to submit a Tender for the purpose of restricting competition.

4.5 Modification by the FCO

Any advice of a modification to the Invitation to Tender shall be issued at least seven days before the Tender Date and shall be issued as an addendum to, and shall be deemed to constitute part of, the Invitation to Tender. If necessary, the FCO will revise the Tender Date in order to comply with this requirement. **Except under exceptional circumstances no extension of time and date by which the Tender must be submitted will be granted.**

4. PREPARATION OF TENDER

5.1 Cost of Tender

The Tenderer is responsible for obtaining all information necessary for the preparing the Tender. The FCO will not be responsible for any costs or expenses incurred by the Tenderer in connection with the preparation or delivery or in the evaluation of the Tender.

5.2 Language of the Tender

The Tender and all accompanying documents are to be in English.

5.3 Validity Period of Tender

The Tender shall include all costs involved in the provision of the consultancy service specified in this Invitation to Tender and no other costs may be added by the Tenderer after the Tender has been submitted. Any item specified in this Invitation to Tender that is omitted by the Tenderer from the Tender, either intentionally or unintentionally, will be provided at no cost to the FCO, unless otherwise agreed by the FCO.

All details of the Tender, including prices and rates, are to remain valid for acceptance for a period of a minimum of 60 days after the Tender Date, or any revision to the Tender Date.

5.4 Currency of Tender

Tender prices shall be in Sterling.

5.5 Understanding of Tender

Tenderers must acknowledge on submission of the Tender that they fully understand the requirements set out in this Invitation to Tender and, where so required, have made any necessary and relevant inspections of the FCO Sites for the purposes of meeting the FCO's requirements. The FCO will not accept any claim as to lack of specificity, adequacy or clarity of information concerning any aspect of the Invitation to Tender, the draft Contract, the consultancy services to be provided or any other relevant information or documentation. The Tender must address in full all of the requirements set out in this Invitation to Tender.

All pre-contract representations and forecasts provided by the FCO in connection with this Invitation to Tender are given in good faith but shall not be binding.

6 DELIVERY OF TENDER

6.1 Number of Copies

[Full details of the documents to be returned are given in this Invitation to Tender. These documents shall together comprise the "Tender".

[IF HARD COPIES ONLY]

[Please return the original (clearly marked ORIGINAL) plus **[two]** copies (clearly marked FIRST COPY, SECOND COPY etc.) to:

Procurement Policy Department
Foreign and Commonwealth Office
Room 1/116
Old Admiralty Building
London, SW1A 2PA

For the attention of: **[insert]**

Tender submissions must be delivered no later than noon on **[insert]** (this date being the "Tender Date"). Under no circumstances will any submissions be accepted after the Tender Date.]

[IF EMAIL COPIES]

[One (1) electronic, virus-checked copies of the Tender must be submitted via e-mail to the following electronic address **[insert]**. **[[insert]** hard copies of the Tender must be submitted to the following address:

Procurement Policy Department
Foreign and Commonwealth Office
Room 1/116
Old Admiralty Building
London, SW1A 2PA]

Please ensure that e-mails are clearly identified. Tender submissions must be delivered no later than noon on **[insert]** (this date being the “**Tender Date**”). Under no circumstances will any submissions be accepted after the Tender Date.]

6.2 Delivery

Hard copies of the Tender must be parcelled, sealed and correctly addressed to the address detailed in 6.1, bearing no other identifying marks which would identify the sender e.g. the Tenderer.

7. **TREATMENT OF TENDER**

7.1 Foreign and Commonwealth Office Discretion

The FCO does not undertake to accept the lowest Tender, or part, or all of any Tender, even if all the specific user requirements stated in the Invitation to Tender are met. The FCO reserves the right to reject any part, or all of any Tender or Tenders at its sole discretion as well as the right to annul the process and not award any contract.

The FCO reserves the right to evaluate separately the individual components of each Tender, such as any proposed subsystem, product or service, and to contract with the relevant Tenderer for any individual component(s).

The fact that a party has been invited to tender does not necessarily mean that the Tenderer has met or is capable of meeting all of the FCO's tendering requirements. The FCO may, as part of the evaluation process, require further information as appropriate to assess whether the Tenderer is capable of meeting the requirements. The Tender may therefore be rejected at a later stage should the Tenderer be unable to meet the FCO's requirements.

7.2 Tender not Returned

The FCO considers all Tenders submitted by the Tenderer in response to this Invitation to Tender as the proprietary material of the FCO. No part of the Tender including any associated documentation submitted will be returned to the Tenderer.

7.3 Evaluation Criteria

The FCO reserves the right to select the Tender which it deems to be in its best interests. The evaluation criteria will include the following:

Tender Response: Complete, accurate and timely response to the Invitation to Tender.

| | |
|-------------------------|---|
| Tenderer's Credentials: | Financial health and stability of the Tenderer and their subcontractors. Proven industry experience exhibited by the Tenderer's successful fulfilment of contracts of similar scope. References from customers, including both those provided by the Tenderer and those obtained directly by the FCO [including via reference visits where deemed appropriate]. |
| Price: | The total price of the consultancy service including any appropriate taxes. |
| [Personnel: | Credentials of personnel assigned to this project.] |
| Contract Changes: | Requested changes to the draft Contract and the ability of both parties to agree and execute a Contract prior to the required commencement date. |

[insert any other information required and/or edit the above as necessary in line with 3.3 and 3.4 etc]

No importance should be attached to the order in which these criteria are listed. The Tenderer shall provide the information referred to above in its Appendix B, Section II response to this Invitation to Tender.

7.4 Results of Tendering

When the decision on the results of the Invitation to Tender has been taken the Tenderer will be informed in writing whether the Tender has been successful. A debrief will then be offered for the unsuccessful Tenderers.

This Invitation to Tender represents a definition of specific requirements. It is not an offer to contract. Only the execution of a written contract will obligate the FCO in accordance with the terms and conditions contained in the Contract and a written Contract must be executed prior to the commencement of any consultancy services. The acknowledgement of receipt of any submitted Tender shall not constitute any actual or implied agreement between the FCO and the Tenderer.

8. COMPLIANCE WITH LAWS

8.1 By virtue of submitting a Tender, the Tenderer represents and warrants that the proposed products, materials and services conform to and comply with all applicable regulations, laws and codes.

The Tenderer shall indemnify the FCO for any breach or alleged breach of such representation or warranty.

9. SUBCONTRACTORS

Where necessary or required, the Tenderer is encouraged to team up with other providers to best provide the requirements detailed in this Invitation to Tender. In the event that such teaming is undertaken, the Tender must be submitted by one party, acting as prime contractor.

The Tenderer must identify and fully explain all third-party and/or subcontractor agreements and set them out in Appendix D, along with the following details: (a) the

Tenderer must describe the business relationship(s) which exists between the Tenderer and the third parties, so that the FCO can effectively judge the potential risk or benefit of such relationship(s); and (b) the Tenderer must specifically define any direct or consequential obligation of the FCO to any third party, relative to provision of consultancy services under the Tender and the eventual Contract.

The Tenderer selected under this Invitation to Tender, will be responsible for the work product of all subcontractors, including the timeliness, accuracy, professionalism, and cost thereof.

10. CONFIDENTIALITY

The Tenderer agrees to keep confidential all information, whether written or oral, concerning the business and affairs of the FCO, which you have received or obtained as a result of the information supplied in this Invitation to Tender, or in discussion relating to it, except any such information which is in the public domain. This condition shall apply equally to any sub-contractor consulted by you and it shall be your responsibility to ensure that any sub-contractor abides by the terms of this Invitation to Tender. In addition, it is your responsibility to identify any information contained in your Tender that is confidential.

11. FREEDOM OF INFORMATION

The FCO is committed to open government and to meeting its responsibilities under the Freedom of Information Act 2000. Accordingly, all information submitted to the FCO may need to be disclosed by the FCO in response to a request under the Act. This means that, amongst other things, the following may be subject to disclosure unless an exemption applies

- information in any tender submitted to us;
- information in any contract to which we are party;
- information about costs, including invoices submitted to us;
- correspondence and other papers generated in any dealing with the private sector.

If you consider any of the information included within your tender should not be available for disclosure, please

- (a) identify it specifically; and
- (b) explain the grounds for exemption from disclosure and the time period applicable to that sensitivity. All decisions regarding disclosure information will be made the sole discretion of the FCO. The Tenderer should be aware that, even where the Tenderer has indicated that information is commercially sensitive, the FCO may be required to disclose it under the Act if a request is received. Please also note that the receipt of any material marked "confidential" or equivalent by the FCO should not be taken to mean that the FCO accepts any duty of confidence by virtue of that marking. If a request is received, we may also be required to disclose details of unsuccessful tenders.

12. ENVIRONMENTAL REQUIREMENTS

12.1 Compliance with Environmental Requirements

The Tenderer shall include details of how it will meet the environmental requirements of this Invitation to Tender and Contract together with submissions regarding the FCO's

environmental policy as set out in Condition 21 of the Contract. The Tenderer should include submissions about the major environmental aspects of the Contract and how the Tenderer proposes to minimise adverse affects.

12.2 Green Claims Code

The Tenderer must ensure that any environmental claim it makes relating to its Tender is fully in accordance with the Green Claims Code. The Code is available on the Department for Environment, Food & Rural Affairs (DEFRA) website <http://www.sustainable-development.gov.uk/sdig/improving/partf/gcc/index.htm> and from:

DEFRA Publications
Admail 6000
London
SW1A 2XX
Tel 0845 8955 6000
Fax 020 8957 5012
Email defra@iforcegroup.com

PART II – FORM OF TENDER

To: The Secretary of State for Foreign and Commonwealth Affairs
Foreign and Commonwealth Office
Whitehall
London
SW1A 2PA

Date:

Dear Sir/Madam,

CONTRACT NUMBER: *[insert number]*
CONTRACT FOR: *[insert name]*

1. I/We have read the information provided in your Invitation to Tender and subject to and upon the terms and conditions contained in Part III – Contract Documents I/we offer to execute all the work described in the said contract documents in such manner as may from time to time during the Contract Period be ordered.
2. Terms and Conditions. I/We agree that this tender and any contract which may result therefrom shall be based upon the documents listed below.

The contract documents as shown in Part III of the Invitation to Tender, subject to the following alterations:

- (a) In Section III – Price Schedule shall be inserted the information shown in Appendix A of our tender.
 - (b) In other sections of the contract information provided in Appendix B – Additional Information for Inclusion in the Contract will be included.
 - (c) Any qualifications set out by us in Appendix C – Qualifications shall also apply, although we understand that making qualifications may result in you disregarding our tender in total.
3. In Appendix D – Other Information we included information that may be useful to you, and relevant to this Tender.
 4. The prices quoted in this Tender are valid for a minimum of 60 days after the Tender Date, and we confirm that the terms of the Tender will remain binding upon us and may be accepted by you at any time before the expiry of that period.
 5. I/We note that the contract shall commence on the date after acceptance and the period within which orders may be placed shall commence on *[insert date]*. I/We would be able to commence work on that day.
 6. I/We agree to bear all cost incurred by me/us in connection with the preparation and submission of this Tender and to bear any further costs incurred by me/us prior to the award of any contract.
 7. I/We agree that any other terms or conditions of contract or any general reservation which may be printed on any correspondence emanating from me/us in connection with this tender or with any contract resulting from this tender, shall not be applicable to this tender or to the contract.

FCO Invitation to Tender for Consultancy Contract
Version 1.0 16/12/04

Dated this Day of 200

Signed

In the capacity of

Duly authorised to sign Tenders for and on behalf of

.....
(IN BLOCK CAPITALS)

Registered Address

.....

*delete as applicable

APPENDIX A TO THE FORM OF TENDER

PRICES

Pricing options to include the following, as appropriate:

Fixed Price

Schedule of Payments based on one or a combination of:

- Milestones
- Dates
- Acceptance

All inclusive fully itemised pricing to be provided, including, as appropriate any expenses therein.

AND/OR

Time & Materials

Rate Card:

| Name | Grade | Role | No. of days | Daily Rate |
|-------------|--------------|-------------|--------------------|-------------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

'Original Estimate' to include but not be limited to:

- a resource profile
- a fixed date to start
- a fixed date to complete
- a set of deliverables

Expenses Regime:

Any applicable expenses regime must be detailed, even if none is applicable or to be paid.

Expenses should not normally be paid for work undertaken at the normal or main place of work e.g. FCO Main Building. Details of who is paying for any applicable travel fares, travel time, subsistence, leave or leave relief, vacations etc should be provided as appropriate together with appropriate rates e.g. FCO travel and subsistence regime to apply to all overseas travel undertaken under this Contract.

APPENDIX B TO THE FORM OF TENDER

ADDITIONAL INFORMATION

Section I

Information required for inclusion in the Contract:

Name of Tenderer
Name of Tenderer's Representative
Tenderer's Address
Tenderer's Telephone no.
Tenderer's Facsimile no.
Tenderer's E-Mail address

Name of Tenderer's Representative

Section II

Tenderer's proposal and additional information about its ability to perform the consultancy services as detailed in Part III, Section IV – Services Scope.

APPENDIX C TO THE FORM OF TENDER

QUALIFICATIONS

Tenderer should only submit details under this heading if it is unable to comply with any of the Terms and Conditions specified in the Contract Documents.

(See Part I, 3.6 & 9)

APPENDIX D TO THE FORM OF TENDER

OTHER INFORMATION

PART III – CONTRACT DOCUMENT



CONTRACT NUMBER

.....

BETWEEN

FOREIGN AND COMMONWEALTH OFFICE

AND

[INSERT]

FOR

[INSERT]

SECTION I – FORM OF CONTRACT

CONTRACT NUMBER:

CONTRACT FOR:

This Contract is made on..... 200..... between:

The Secretary of State for Foreign and Commonwealth Affairs of the Foreign and Commonwealth Office, London, SW1A 2AH (hereinafter referred to as the “**Authority**”)

And

..... having its registered office at
..... (hereinafter referred to as the “**Contractor**”).

It is hereby agreed as follows:

The Contract shall incorporate:

- | | | |
|-------------|---|-------------------|
| Section I | - | Form of Contract |
| Section II | - | Terms of Contract |
| Section III | - | Price Schedule |
| Section IV | - | Services Scope |

All of which shall be read as one document.

The Contract constitutes the entire agreement between the parties hereto, and supersedes all negotiations, representation or agreements either written or oral preceding the Contract, without prejudice to the Authority’s rights and remedies at law or otherwise.

Signed for Contractor by:

Signed for Authority by:

.....

.....

.....
(Name and Title)

.....
(Name and Title)

Date:

Date:

SECTION II – TERMS OF CONTRACT

1. DEFINITIONS
2. DURATION
3. REPRESENTATIVES
4. SERVICES
5. CHARGES
6. INSPECTION
7. AUDIT
8. AUTHORITY POLICIES
9. DISCRIMINATION
10. SECRECY
11. CONFIDENTIALITY
12. INTELLECTUAL PROPERTY RIGHTS
13. PUBLICITY
14. CONTRACTOR WARRANTIES
15. CONTRACTOR'S PERSONNEL
16. RECOVERY OF SUMS DUE
17. LIMITATION OF LIABILITY
18. INSURANCE
19. TERMINATION
20. LOSS OF DATA
21. ENVIRONMENTAL REQUIREMENTS
22. CORRUPT GIFTS AND PAYMENT OF COMMISSION
23. DATA PROTECTION
24. FREEDOM OF INFORMATION
25. HEALTH AND SAFETY HAZARDS
26. DAMAGE TO PLANT, TACKLE AND TOOLS
27. NOTICES

- 28. THIRD PARTIES
 - 29. WAIVER
 - 30. SEVERABILITY
 - 31. ASSIGNMENT
 - 32. VARIATION
 - 33. FORCE MAJEURE
 - 34. CONFLICT OF INTEREST
 - 35. AUTHORITY'S PROPERTY
 - 36. RESPONSIBILITY FOR EQUIPMENT
 - 37. EVALUATION
 - 38. CONTRACTOR'S STATUS
 - 39. DISPUTE RESOLUTION
 - 40. LAW
- APPENDIX A – PERMITTED SUB-CONTRACTORS

SECTION II – TERMS OF CONTRACT

1. DEFINITIONS

1.1. The expressions set out below shall have the following meanings:

“Authority’s Data” means all information, text, drawings, diagrams, images or sounds which are embodied in any electronic or tangible medium, and which are supplied or in respect of which access is granted to the Contractor by the Authority under this Contract, or which the Contractor is required to generate under the Contract;

“Authority’s Property” means any physical property, other than land and buildings, issued or made available to the Contractor or paid for by the Authority in connection with the Contract

“Authority Proprietary Material” means all Intellectual Property Rights which were created or used by the Authority prior to the Commencement Date or which are created independently of the delivery of the Services and Deliverables;

“Authority’s Representative” means the person appointed by the Authority and listed in Clause 3.2 or otherwise notified in writing by the Authority to the Contractor from time to time;

“Change Control Procedures” means the change control procedures specified in Section IV – Services Scope;

“Charges” means the charges for the Services set out in Section III;

“Commencement Date” means the date of this Contract or the actual date of commencement of the Services, whichever is the earliest;

“Completion Date” means *[insert]*;

“Confidential Information” means information, the disclosure of which would constitute an actionable breach of confidence, which has either been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including commercially sensitive information, information which relates to the business, affairs, properties, assets, trading practices, products/services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998 including the Authority’s Data;

“Contract” means the contract between the Authority and the Contractor consisting of Section I - Form of Contract; Section II - Articles of Contract; Section III - Price Schedule; Section IV - Services Scope;

“Contractor Proprietary Material” means all Intellectual Property Rights which were created or used by the Contractor prior to the Commencement Date or which are created independently of the delivery of the Services and Deliverables;

“Contractor’s Representative” means the person appointed by the Contractor and listed in Clause 3.1 or otherwise notified in writing by the Contractor to the Authority from time to time;

“Default” means any breach of the obligations of either party (including but not limited to fundamental breach or breach of a fundamental term) 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 Contract and in respect of which such party is liable to the other;

“Deliverables” means any and all literature, manuals, reports, research papers, data, flow charts, drawings, designs, diagrams, tables, software or other information or goods or materials (in whatever form and on whatever media) developed, designed or otherwise provided during the course of this Contract, to be provided as part of the Services;

“Environmental Information Regulations” means the Environmental Information Regulations 2004;

“Equipment” means any equipment, material, goods, vehicles and associated services financed by and purchased on behalf of, or provided by, the Authority, necessarily required for use in providing the Services. Equipment may only be used in providing the Services. Unauthorised personal use is not permitted. The Equipment shall be the property of the Authority and shall remain the property of the FCO on completion of the Contract.

“FOI Act” 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 in relation to such legislation;

“Intellectual Property Rights” means any patents, trade marks, design rights (registered or unregistered), applications for any of the foregoing, copyright, (including future copyright), database right, know-how, trade names, brand names, logos and business names and any other similar or equivalent rights arising or subsisting in any country in the world;

“Information” means all records and information obtained, created, collected or held by the Contractor in relation to this Contract, and which has the meaning given under section 84 of the Freedom of Information Act 2000;

“Party” means a party to this Contract;

“Premises” means any premises of the Authority at which the Contractor performs the Services;

“Requests for Information” shall have the meaning set out in the FOI Act or any apparent request for information under the FOI Act, the Environmental Information Regulations or the Code of Practice on Access to Government Information (2nd Edition) as the same may be amended or replaced from time to time;

“Services” means the consultancy services to be performed by the Contractor under this Contract as specified in Section IV – Services Scope including, where applicable, the provision of Deliverables; and

“Sub-Contract” means any contract or proposed contract between the Contractor and any third party in respect of any material part of this Contract. The terms "Sub-Contractor" and "Sub-Contracting" shall be similarly construed.

“Working Day” means a day other than a bank holiday, a Saturday or a Sunday in England or Wales.

1.2. As used in this Contract:

1.2.1. the masculine includes the feminine and the neuter; and

1.2.2. the singular includes the plural and vice versa.

- 1.3. 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 amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.
- 1.4. A reference to any document other than as specified in Clause 1.3 shall be construed as a reference to the document as at the date of execution of this Contract.
- 1.5. Each party shall comply with any express obligation in this Contract to comply with any document statute, enactment, order, regulation or other similar instrument that is referenced in this Contract.
- 1.6. Headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.
- 1.7. In the event and to the extent only of any conflict between the Clauses together with the Price Schedule or the Services Scope, the Clauses shall prevail.
- 1.8. Except as otherwise expressly provided in this Contract, all remedies available to the Contractor or to the Authority under this Contract are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy.

2. DURATION

The terms and conditions of the Contract shall commence on the Commencement Date and expire on the Completion Date.

3. REPRESENTATIVES

- 3.1. The Contractor's Representative means the following person who shall be the agent of the Contractor for all purposes in connection with the Contract:

Name

Telephone Number

Facsimile Number

Address

E-Mail Address

- 3.2. The Authority's Representative means the following person who shall be the agent of the Authority for all purposes in connection with the Contract:

Name

Telephone Number

Facsimile Number

Address

E-Mail Address

4. SERVICES

- 4.1. In consideration of the payment of the Charges, the Contractor shall perform the Services and provide the Deliverables from the Commencement Date.
- 4.2. The Services shall only be varied by application of the Change Control Procedure.

5. CHARGES

- 5.1. In consideration of the performance of the Services in accordance with the terms of this Contract, the Authority shall pay the Charges set out in the Price Schedule.
- 5.2. Unless otherwise stated in the Price Schedule, payment will be made within 30 days of receipt and agreement of invoices, submitted monthly in arrears for work under a Services Scope completed to the satisfaction of the Authority. For the avoidance of doubt, all costs and expenses for services performed by the Contractor and not agreed to by the Authority will be borne by the Contractor and not included in any invoice. The sums due under this Contract may be calculated on either a fixed price basis or a time and materials basis and the provisions of Clauses 5.3 and 5.4 will apply.
- 5.3. Where the parties have agreed in the Price Schedule 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 Price Schedule which may relate to the achievement of specific predefined milestones, dates or acceptance and shall be inclusive of all Contractor costs.
- 5.4. Where the parties have agreed in the Price Schedule that the Services will be provided on a time and materials basis then:
 - 5.4.1. the Services shall be provided in accordance with the rate card set out in the Price Schedule;
 - 5.4.2. the Parties shall agree an original estimate 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 Price Schedule ("**Original Estimate**");
 - 5.4.3. the Contractor shall attach to each invoice records of the time spent and materially used in providing the Services, together with all supporting documentation including but not limited to any relevant timesheets, receipts (if applicable), a list of Services to which the invoice relates and a reference to the Contract and Price Schedule details, as well as any other information as reasonably requested by the Authority from time to time; and
 - 5.4.4. the Contractor must notify the Authority as soon as it becomes apparent that the cost to complete the Services is likely to be in excess of the Original Estimate, and shall only proceed with and be paid for work in excess of the Original Estimate with the prior written consent of the Authority.
- 5.5. Payment by the Authority shall be without prejudice to any clauses or rights which the Authority may have against the Contractor and shall not constitute any

admission by the Authority as to the performance of the Contractor of its obligations hereunder.

- 5.6. Value Added Tax, where applicable, will be shown separately on all invoices as a strictly net extra charge. All other taxes, imposts and expenses will be borne by the Contractor and must not be included in any invoice.
- 5.7. The Contractor will submit invoices to the Authority denominated in Sterling, save where otherwise agreed.
- 5.8. 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 Contractor 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 Contractor. The parties will negotiate in good faith to resolve the dispute, and, failing resolution within five working days after receipt by the Contractor of the Authority's notification, the dispute will be referred to dispute resolution in accordance with Clause 39.
- 5.9. In the event that the United Kingdom joins the Euro Monetary Union (and conversion between Sterling and Euro has been fixed), the Authority may, at any time thereafter, be entitled to require the Contractor at no additional charge to the Authority to convert the charges relating to the Services from Sterling into Euros (in accordance with EC Regulation 1103/97).
- 5.10. Payments which are not received by the Contractor when due will be considered overdue and remain payable by the Authority together with interest for late payment from the date payable both at the rate of 2% per annum above the base rate for the time being of the Bank of England. This interest will accrue daily and be payable on demand.

6. INSPECTION

The Services shall be subject to inspection at all times by the Authority's Representative and shall be done to a standard considered reasonable by it. The Contractor warrants that it has the experience and capability to execute the Services in a manner satisfactory to the Authority and in accordance with the conditions of this Contract.

7. AUDIT

The Authority shall have the right upon giving reasonable notice to the Contractor to audit and take copies of extracts from all books, accounts, records and original documents relating to the Contract. The Contractor shall preserve such books, accounts, records and documents for two years after the termination of the Contract.

8. AUTHORITY POLICIES

- 8.1. Where the Services or part of it is to be performed within the Foreign and Commonwealth Office, or any other Government establishment, the Contractor must comply with any applicable policies, rules and regulations as to conduct, etiquette and working conditions or practices.
- 8.2. Any land or Premises (including temporary buildings) made available to the Contractor by the Authority in connection with this Contract shall be made available to the Contractor free of charge and shall be used by the Contractor solely for the purpose of performing this Contract. The Contractor shall have the use of such land

or Premises as licensee and shall vacate the same upon the termination or expiry of this Contract or at such earlier date as the Authority may determine.

- 8.3. The Authority shall be responsible for maintaining the security of such land or Premises in accordance with its standard security requirements. The Contractor shall comply with all reasonable security requirements of the Authority while on the Premises, and shall procure that all of its employees, agents and subcontractors shall likewise comply with such requirements. The Authority shall provide the Contractor upon request with copies of its written security procedures and shall afford the Contractor upon request with an opportunity to inspect its relevant physical security arrangements as applicable.

9. DISCRIMINATION

The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976, the Sex Discrimination Act 1975, the Disability Discrimination Act 1997 or the Fair Employment and Treatment (Northern Ireland) Order 1998, relating to discrimination in employment. The Contractor shall adhere to the current relevant codes of practice or recommendations published by the Equal Opportunities Commission, the Commission for Racial Equality, the Department for Education and Skills and the Ethnic Minority Employment Task Force. The Contractor shall take all reasonable steps to secure the observance of these provisions and codes of conduct by all servant's, employees or agents of the Contractor and all suppliers and sub-contractors employed in the execution of this Contract.

10. SECRECY

- 10.1. The Contractor:
- 10.1.1. must not pass on any information obtained during or in connection with the performance of the Contract, except where necessary for the performance of the Contract or where authorised;
 - 10.1.2. must not contravene the Official Secrets Acts 1911 to 1989;
 - 10.1.3. must familiarise itself with these Acts and take all reasonable steps to ensure that its suppliers and its and their employees and agents are familiar with them; and
 - 10.1.4. must take all reasonable steps to ensure that these people comply with sub-clauses 10.1.1 and 10.1.2 above.

11. CONFIDENTIALITY

- 11.1. Each Party:-
- 11.1.1. shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
 - 11.1.2. shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of this Contract.

- 11.2. The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from the Authority under or in connection with the Contract:-
- 11.2.1. is given only to such of the Contractor's staff and professional advisors or consultants engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for the performance of the Contract;
- 11.2.2. is treated as confidential and not disclosed (without the prior approval of the Authority's Representatives) or used by any of the Contractor's staff or such professional advisers or consultants' otherwise than for the purposes of the Contract.
- 11.3. Where it is considered necessary in the opinion of the Authority, the Contractor shall ensure that staff of the Contractor or such professional advisers or consultants sign a confidentiality undertaking before commencing work in connection with the Contract.
- 11.4. The Contractor shall not use any Confidential Information received otherwise than for the purposes of the Contract.
- 11.5. The provisions of Clauses 11.1 to 11.4 shall not apply to any Confidential Information received by one Party from the other:-
- 11.5.1. which is or becomes public knowledge (otherwise than by breach of this Condition);
- 11.5.2. which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- 11.5.3. which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- 11.5.4. which is independently developed without access to the Confidential Information; or
- 11.5.5. which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOI Act, the Code of Practice on Access to Government Information (2nd Edition) or the Environmental Information Regulations.
- 11.6. Nothing in this Clause 11 shall prevent the Authority:
- 11.6.1. disclosing any Confidential Information for the purpose of:-
- (i) the examination and certification of the Authority's accounts; or
- (ii) 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; or
- 11.6.2. disclosing any Confidential Information obtained from the Contractor:-

- (i) to any other department, office or agency of the Crown; or
 - (iii) to any person engaged in providing any services to the Authority for any purpose relating to or ancillary to the Contract;
- 11.6.3. provided that in disclosing information under sub-Clause (b)(i) or (ii) the Authority discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
- 11.7. Nothing in this Clause 11 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.
- 11.8. In the event that the Contractor fails to comply with this Clause 11, the Authority reserves the right to terminate the Contract by notice in writing with immediate effect.
- 11.9. The provisions under this Clause 11 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

12. INTELLECTUAL PROPERTY RIGHTS

[Authority must decide whether IPR in Deliverables is to be vested in/owned by the Authority or the Contractor. Option 1: IPR Vests in Authority]

- 12.1. [Intellectual Property Rights in the Services and any Deliverables that are specifically developed or created for the Authority will be vested in the Authority (save that the Contractor will retain ownership of any Contractor Proprietary Materials which become imbedded in such Deliverables, which will be licensed in accordance with the provisions of Clause 12.4.
- 12.2. The Contractor agrees to (and will procure that its personnel acting as contractors will) assign and hereby assigns 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.
- 12.3. The Contractor will execute all such documents and undertake any and all such acts, including but not limited to obtaining assignments of Intellectual Property Rights from personnel of the Contractor to the Contractor) as may from time to time be required in order to vest the rights assigned pursuant to Clause 12.1 above properly in the Authority.
- 12.4. The Authority will be granted a perpetual, non-exclusive, transferable, worldwide, royalty free licence in respect of Intellectual Property Rights subsisting in any Contractor Proprietary Material which is embedded in the Deliverables, to the extent necessary to use such Deliverables (including for the purposes of their adaptation, modification and/or reproduction) for the purposes of providing services to the Authority.
- 12.5. The Contractor warrants, represents and undertakes that its provision of the Services and Deliverables under this Contract will not infringe any Intellectual Property Rights of which a third party is the proprietor and that the Contractor is free

to grant the licence set out in Clause 12.4. The Contractor agrees to indemnify and hold harmless the Authority against any and all liability, loss, damage, costs and expenses (including legal costs) which the Authority may incur or suffer as a result of any claim of alleged or actual infringement of a third party's Intellectual Property Rights by reason of either its or the Contractor's possession or use in any manner of any Deliverables or the Services.]

[12.1 Option 2: IPR Vests in Contractor]

- 12.1 Intellectual Property Rights in the Services and any Deliverables under this Contract shall be vested in and owned absolutely by the Contractor (save that the Authority will retain ownership of any Authority Proprietary Materials which become imbedded in such Deliverables).
- 12.2 The Contractor will grant the Authority a royalty free, perpetual, non-exclusive licence together with the right to sub-license others to use, modify and maintain any Intellectual Property Rights created howsoever by the Contractor under this Contract, such licence to survive termination or expiry of this Contract.
- 12.3 The Contractor warrants, represents and undertakes that its provision of the Services and Deliverables under this Contract will not infringe any Intellectual Property Rights of which a third party is the proprietor and that the Contractor is free to grant the licence set out in Clause 12.2. The Contractor agrees to indemnify and hold harmless the Authority against any and all liability, loss, damage, costs and expenses (including legal costs) which the Authority may incur or suffer as a result of any claim of alleged or actual infringement of a third party's Intellectual Property Rights by reason of either its or the Contractor's possession or use in any manner of any Deliverables or the Services.]

13. PUBLICITY

- 13.1. Except with the written consent of the other party neither party shall make any press announcements or publicize this Contract in any way.
- 13.2. Both parties shall take all reasonable steps to ensure the observance of the provisions of Clause 13.1 by all their servants, employees, agents, and contractors. The Contractor shall take all reasonable steps to ensure the observance of the provisions of Clause 13.1 by its Sub-Contractors.
- 13.3. Notwithstanding the provisions of Clause 13.1, the Authority shall be entitled to publicize this Contract in accordance with any legal obligation upon the Authority, including any examination of this Contract by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

14. CONTRACTOR WARRANTIES

- 14.1. The Contractor warrants and represents that, throughout the term of this Contract:
 - 14.1.1. the Contractor has full capacity and authority and all necessary consents to enter into and to perform this Contract and that this Contract is executed by a duly authorised representative of the Contractor;
 - 14.1.2. all components of the Services shall operate in accordance with the technical specifications and the standards in the Services Scope;
 - 14.1.3. the Contractor has the full capacity and authority to perform the Services;

- 14.1.4. the Services and Deliverables shall be supplied and rendered with all due skill, care and diligence by appropriately experienced, qualified and trained personnel;
- 14.1.5. the Contractor shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Clause 14) in accordance with its own established internal procedures;
- 14.1.6. the Contractor shall comply with all applicable laws in its provision of the Services; and
- 14.1.7. except as expressly stated in this Contract, all warranties and conditions, whether express or implied by statute, common-law or otherwise (including but not limited to fitness for purpose) are hereby excluded to the extent permitted by law.

15. CONTRACTOR'S PERSONNEL

- 15.1. The Authority reserves the right under this Contract to refuse to admit to any premises occupied by or on behalf of the Authority any person employed or engaged by the Contractor, or by a Sub-Contractor, whose admission would be, in the opinion of the Authority, undesirable.
- 15.2. If and when directed by the Authority, the Contractor shall provide a list of the names and addresses of all persons who it is expected may require admission in connection with the performance of this Contract to any premises occupied by or on behalf of the Authority, specifying the capacities in which they are concerned with this Contract and giving such other particulars as the Authority may reasonably require.
- 15.3. If and when directed by the Authority, the Contractor shall secure that any person employed or engaged by the Contractor or by a Sub-Contractor, who is specified in the direction or is one of a class of persons who may be so specified, shall sign a statement that he understands that the Official Secrets Acts 1911 to 1989 apply to him both during the term of and after the expiry or termination of this Contract.
- 15.4. The Contractor's representatives, engaged within the boundaries of a Government establishment, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at that establishment and when outside that establishment.
- 15.5. If the Contractor shall fail to comply with Clause 15.2 and if the Authority (whose decision shall be final and conclusive) shall decide that such failure is prejudicial to the interests of the Authority and if the Contractor does not comply with the provisions of Clause 15.2 within a reasonable time of written notice so to do then the Authority may terminate this Contract in accordance with Clause 19 provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.
- 15.6. The decision of the Authority as to whether any person is to be refused admission to any premises occupied by or on behalf of the Authority and as to whether the Contractor has failed to comply with Clause 15.2 shall be final and conclusive.

16. RECOVERY OF SUMS DUE

Any sum which is recoverable from or payable by the Contractor may be deducted from or reduced by any sum or sums then due or which may thereafter become due to the Contractor under or in respect of the Contract or any other contract with the Authority or any other government department or the Crown.

17. LIMITATION OF LIABILITY

- 17.1. Neither party excludes or limits liability to the other party for:
- 17.1.1. death or personal injury;
 - 17.1.2. any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;
 - 17.1.3. fraudulent misrepresentation;
 - 17.1.4. breach of Clause 11 (Confidentiality);
 - 17.1.5. breach of Clause 12 (Intellectual Property Rights); and
 - 17.1.6. breach of Clause 35 (Data Protection).
- 17.2. Subject always to Clause 17.1, the liability of each party for Defaults shall be subject to the financial limits set out in this Clause 17.2 as follows:
- 17.2.1. the aggregate liability for all Defaults resulting in direct loss of or damage to the tangible property of the other shall in no event exceed [*insert*] pounds (£*insert*) and
 - 17.2.2. the aggregate liability for all Defaults arising in each year of this Contract (except any liability to which Clause 17.2.1 applies) shall in no event exceed the greater of [*insert*] pounds (£*insert*) or [*insert*] per cent [*insert*]%) of the aggregate total of the Charges paid and payable in the year of this Contract in which the Default arises.
- 17.3. Subject always to Clause 17.1, in no event shall either party be liable to the other for:
- 17.3.1. indirect, special or consequential loss or damage of any nature and howsoever caused, even if the losses were reasonably foreseeable or the party has been advised of the possibility of such losses occurring; and/or
 - 17.3.2. any direct or indirect loss of profits, business, revenue, goodwill or anticipated savings.
- 17.4. The provisions of Clause 17.3 shall not be taken as limiting the right of either party to claim from the other party for:
- 17.4.1. additional operational and administrative costs and expenses; and/or
 - 17.4.2. any costs or expenses rendered nugatory,
 - 17.4.3. resulting directly from the Default of the other party.

- 17.5. The parties expressly agree that neither party shall be entitled to an order for specific performance to enforce any provision hereunder.
- 17.6. The parties expressly agree that should any limitation or provision contained in this Clause 17 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.

18. INSURANCE

- 18.1. The Contractor must have in force and will require any sub-contractor to have in force:
- 18.1.1. employer's liability compulsory insurance in the sum of not less than **[£5,000,000]** or as notified by the Authority from time to time;
 - 18.1.2. public liability insurance for such sum and range of cover as the Contractor deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under this Contract in the sum of not less than **[£500,000]** for any one incident and unlimited in total, unless otherwise agreed by the Authority in writing;
 - 18.1.3. [professional indemnity insurance in the sum of not less than **[£insert]** or as notified by the Authority from time to time;
 - 18.1.4. property insurance in the sum of not less than **[£insert]** or as notified by the Authority from time to time;
 - 18.1.5. product liability insurance in the sum of not less than **[£insert]** or as notified by the Authority from time to time;
 - 18.1.6. fraud insurance in the sum of not less than **[£insert]** or as notified by the Authority from time to time. **[insert as appropriate]**
- 18.2 The policy or policies of insurance referred to in Clause 18.1, and the copy of the certificate of insurance that the Contractor is required to display in the workplace under the Employers' Liability (Compulsory Insurance) Regulations, will be shown to the Authority whenever it requests, together with satisfactory evidence of payment of premiums.

19. TERMINATION

- 19.1. The Authority may terminate the Contract by written notice having immediate effect if:
- 19.1.1. the Contractor 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
 - 19.1.2. where the Contractor is an individual or a firm, the Contractor or any partner in the firm becomes bankrupt or has a receiving order or administration order made against it; or makes any compromise or arrangement 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 within the United Kingdom; or

- 19.1.3. where the Contractor is a company, the Contractor passes a resolution or the Court makes an order that the Contractor be wound up otherwise than for the purpose of solvent reconstruction or amalgamation; or a receiver, manager or administrator is appointed on behalf of a creditor in respect of the Contractor's business or any part of it; or the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction within the United Kingdom.
- 19.2. The Authority may terminate the Contract, or terminate the provision of any part of the Services, by written notice to the Contractor with immediate effect if the Contractor is in default of any obligation under the Contract and:
 - 19.2.1. the Contractor 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
 - 19.2.2. the default is not capable of remedy; or
 - 19.2.3. the default is a fundamental breach of the contract.
- 19.3. The Authority will have the right to terminate the Contract, or to terminate the provision of any part of the Services, at any time by giving [*insert*] months' written notice to the Contractor. Termination under this provision will not affect the rights of the parties that have accrued up to the date of termination.
- 19.4. If the Authority terminates the Contract under Clause 19.2 or terminates the provision of any part of the Services under that Clause, and then makes other arrangements for the provision of the Services, the Authority will be entitled to recover from the Contractor the cost of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Term. Where the Contract is terminated under Clause 19.2 no further payments will be payable by the Authority to the Contractor until the Authority has established the final cost of making those other arrangements.
- 19.5. If the Authority terminates the Contract, or terminates the provision of any part of the Services, under Condition 19.3, the Authority will reimburse the Contractor in respect of any loss, not including loss of profit, actually and reasonably incurred by the Contractor as a result of the termination, provided that the Contractor immediately uses its best endeavours, 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, to reduce equipment and labour costs as appropriate, and to do any other thing reasonably required to mitigate such loss.
- 19.6. For the purposes of Clause 19.5 the Contractor will submit within 20 working days after service of the termination notice, a fully itemised and costed list, with supporting evidence, of all losses incurred by the Contractor 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.
- 19.7. The Authority will not be liable under Clause 19.5 to pay any sum which, when added to any sums paid or due to the Contractor under the Contract, exceeds the

total such that would have been payable to the Contractor if the provision of the Services had been completed in accordance with the Contract.

- 19.8. The termination or expiry of this Contract will not prejudice or affect any right of action or remedy which has accrued or may thereafter accrue to either party.
- 19.9. In the event of termination of this Contract, the provisions of Clauses 7, 10 to 13, 17, 19.4 to 19.8, 23, 24, 33, 34, 35, 37, 38, 39, 40 and this Clause 19.9 will survive termination.

20. LOSS OF DATA

- 20.1. The Contractor acknowledges that the Authority's Data is the property of the Authority and the Authority hereby reserves all Intellectual Property Rights which may subsist in the Authority's Data. The Contractor shall not delete or remove any copyright notices contained within or relating to the Authority's Data.
- 20.2. The Contractor and the Authority shall each take reasonable precautions (having regard to the nature of their other respective obligations under this Contract) to preserve the integrity of the Authority's Data and to prevent any corruption or loss of the Authority's Data.
- 20.3. If specified in the Services Scope, the Authority shall ensure that a back-up copy of the Authority's Data is made no less frequently than as stated in the Services Scope, and that such copy is recorded on media from which the Authority's Data can be re-loaded in the event of any corruption or loss of the Authority's Data.
- 20.4. In the event that the Authority's Data is corrupted or lost as a result of any Default by the Contractor the Authority shall have the option, in addition to any other remedies that may be available to it either under this Contract or otherwise, to elect either of the following remedies:
- 20.4.1. the Authority may require the Contractor at its own expense to restore or procure the restoration of the Authority's Data using the back-up copy referred to in Clause 20.3; or
- 20.4.2. the Authority may itself restore or procure restoration of the Authority's Data using the back-up copy referred to in Clause 20.3, and shall be repaid by the Contractor any reasonable expenses so incurred.

21. ENVIRONMENTAL REQUIREMENTS

- 21.1. The Contractor shall provide the Services and Deliverables required under the Contract in accordance with the Authority's environmental policy, which includes conserving energy, water and other resources, reducing waste and phasing out the use of ozone depleting substances and minimising the release of greenhouse gases, Volatile Organic Compounds and other substances damaging to health and the environment.
- 21.2. All written outputs, including reports, produced in connection with the Contract shall (unless otherwise specified) be produced on recycled paper containing at least 80% post consumer waste and used on both sides where appropriate.

22. CORRUPT GIFTS AND PAYMENT OF COMMISSION

- 22.1. The Contractor shall neither:

- 22.1.1. offer or give or agree to give any person employed, engaged or otherwise contracted to provide goods or services, by the Crown, any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not done any act in relation to the obtaining or performance of this Contract or any other agreement with the Crown or for showing or forbearing to show favour or disfavour to any person in relation to this Contract; nor
- 22.1.2. enter into this Contract if in connection with it commission has been paid or agreed to be paid by the Contractor or on the Contractor's behalf or to the Contractor's knowledge to any person employed, engaged or otherwise contracted to provide goods or services, by the Crown, unless before this Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Authority.
- 22.2. In the event of any breach of this Clause 22 by the Contractor or by anyone employed by the Contractor or acting on the Contractor's behalf (whether with or without the knowledge of the Contractor) or the commission of any offence by the Contractor or by anyone employed by the Contractor or acting on behalf of the Contractor under the Prevention of Corruption Acts, 1889 to 1916 in relation to this or any other contract with the Crown, the Authority may summarily terminate this Contract by notice in writing to the Contractor. 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 and provided always that the Authority may recover from the Contractor the amount or value of any such gift, consideration or commission.
- 22.3. The decision of the Authority shall be final and conclusive in any dispute, difference or question arising in respect of:
 - 22.3.1. the interpretation of this Clause (except so far as the same may relate to the amount recoverable from the Contractor under Clause 22.2 in respect of any loss resulting from such termination of this Contract); or
 - 22.3.2. the right of the Authority under this Clause 22 to terminate this Contract; or
 - 22.3.3. the amount or value of any such gift, consideration or commission.

23. DATA PROTECTION

- 23.1. Each party shall comply with its respective obligations under the provisions of the Data Protection Act 1984 and the Data Protection Act 1998.
- 23.2. Where the Contractor or any of its Sub-Contractors, as part of the Services under this Contract, processes personal data as a data processor on behalf of the Authority, the Contractor shall, and shall procure its Sub-Contractors to:
 - 23.2.1. act only on instructions from the Authority as data controller; and
 - 23.2.2. comply with the Authority's instructions in relation to the processing of personal data as such instructions are given and varied from time to time by the Authority; and

- 23.2.3. at all times take all appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
- 23.3. The Authority may from time to time serve on the Contractor an information notice requiring the Contractor, within such time and in such form as is specified in the information notice, to furnish to the Authority such information as the Authority may reasonably require relating to:
- 23.3.1. compliance by the Contractor or by its sub-contractors within the Contractor's obligations to the Authority under this contract in connection with the processing of personal data; and/or
- 23.3.2. the rights of data subjects, including but not limited to subject access rights,
- and the Contractor must comply with such notice.

24. FREEDOM OF INFORMATION

- 24.1. The Contractor acknowledges that the Authority is subject to the requirements of the Code of Practice on Access to Government Information (2nd Edition), the FOI Act and the Environmental Information Regulations and shall assist and cooperate with the Authority (at the Contractor's expense) to enable the Authority to comply with these Information disclosure requirements.
- 24.2. The Contractor shall and shall procure that its sub-contractors shall:
- 24.2.1 transfer the Request for Information to the other Party as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
- 24.2.2 (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 requesting that Information; and
- 24.2.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOI Act.
- 24.3. The Authority shall be responsible for determining at its absolute discretion whether:-
- 24.3.1 the Information is exempt from disclosure under the Code of Practice on Access to Government Information (2nd Edition), the FOI Act and the Environmental Information Regulations;
- 24.3.2 the Information is to be disclosed in response to a Request for Information, and in no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 24.4. The Contractor acknowledges that the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000, be obliged

under the Code of Practice on Access to Government Information (2nd Edition), the FOI Act, or the Environmental Information Regulations to disclose Information:-

24.4.1. without consulting with the Contractor, or

24.4.2. following consultation with the Contractor and having taken its views into account.

24.5 The Contractor shall ensure that all information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

24.6 The Contractor acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information.

25. HEALTH AND SAFETY HAZARDS

25.1. The Contractor shall notify the Authority of any health and safety hazards which may arise in connection with the performance of this Contract.

25.2. The Authority shall notify the Contractor of any health and safety hazards of which it is aware and which may exist or arise at the Premises and which may affect the Contractor. The Contractor shall draw these hazards to the attention of its employees and Sub-Contractors or any persons engaged by the Contractor in the performance of this Contract at the Premises.

25.3. The Contractor shall inform all persons engaged in the performance of this Contract at the Premises of all such hazards and shall instruct such persons in connection with any necessary associated safety measures.

25.4. Both parties shall comply with their respective obligations under The Construction (Design and Management) Regulations 1994.

26. DAMAGE TO PLANT, TACKLE AND TOOLS

26.1. All plant, tackle and tools at the Premises provided by or on behalf of the Contractor shall stand at the risk and be in the sole charge of the Contractor.

26.2. The Contractor shall be required to remove all such plant, tackle and tools which it brings to the Premises on termination or expiry of this Contract, or at any time at the request of the Authority.

26.3. The Contractor shall ensure that all such plant, tackle and tools shall meet minimum safety standards required by law.

27. NOTICES

Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by fax or other means of telecommunication resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the Party's representative as specified in Clause 3, or to such other address as the party may by notice to the other have submitted therefore, will be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

28. THIRD PARTIES

This Contract is enforceable by the original Parties to it and by their successors in title and permitted assignees. No provision of this Contract will be enforceable by any person who is not a Party to it pursuant to the Contracts (Rights of Third Parties) Act 1999, but this does not affect any right or remedy of a third party which exists or is available independently of that Act.

29. WAIVER

- 29.1. The failure of either party to insist upon strict performance of any provision of this Contract, or the failure of either party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Contract.
- 29.2. A waiver of any Default shall not constitute a waiver of any subsequent Default.
- 29.3. No waiver of any of the provisions of this Contract shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing in accordance with the provisions of Clause 27.

30. SEVERABILITY

If any provision of this 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 hereof shall continue in full force and effect as if this 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 this Contract, the Authority and the Contractor shall immediately commence good faith negotiations to remedy such invalidity.

31. ASSIGNMENT

The Contractor must not assign, sub-contract or transfer the Contract or any part share or interest in it without the Authority's prior written permission. A list of approved sub-contractors as at the Commencement Date is detailed in [**Appendix A**] to this Contract.

32. VARIATION

The Contract will not be varied unless such variation is agreed by the duly authorized representatives of the parties. The Authority shall have the right to order any variations to the Services that are within the capability and resources of the Contractor. Any increase or decrease in the cost of the Services resulting from such order shall be determined by the Authority in conjunction with the Contractor.

33. FORCE MAJEURE

- 33.1. For the purposes of this 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 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 contractors, agents or employees.

- 33.2. 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 Contract.
- 33.3. 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.
- 33.4. 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 and shall inform the other of the period which it is estimated that such failure or delay shall continue.
- 33.5. It is expressly agreed that any failure by the Contractor to perform or any delay by the Contractor in performing its obligations under this Contract which results from any failure or delay in the performance of its obligations by any person, firm or company with which the Contractor shall have entered into any contract, supply arrangement 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 arrangement or sub-contract or otherwise as a result of circumstances of Force Majeure.
- 33.6. 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.

34. CONFLICT OF INTEREST

- 34.1 The Contractor shall establish and maintain appropriate business standards, procedures and controls to ensure that no conflict of interest arises between Services undertaken for the Authority and that undertaken for other clients. The Contractor shall avoid knowingly committing any acts which are likely to result in any allegation of impropriety against the Authority, including conflicts of interest which are likely to prejudice his independence and objectivity in performing the Contract, howsoever arising.
- 34.2 The Contractor shall notify the Authority immediately of any circumstances of which it becomes aware which give rise or potentially give rise to a conflict with the Services and shall advise the Authority of how they intend to avoid such a conflict arising or remedy such situation. The Contractor shall subject to any obligations of confidentiality it may have to third parties provide all information and assistance reasonably necessary (at the Contractor's cost) that the Authority may request of the Contractor in order to avoid or resolve 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.

- 34.3 Pursuant to 34.2, the Authority shall have the right to require that the Contractor puts in place "Ethical Walls" and will ensure and satisfy the Authority that all information relating to the Contract and to the Services and Deliverables completed pursuant to it (to include all working papers, draft reports in both tangible and intangible form) are not shared or made available to other employees, contractors or agents of the Contractor and that such matters are not discussed by the relevant staff with other employees, contractors or agents of the Contractor.
- 34.4 In the event of a failure to maintain the "Ethical Walls" as described above arising during the course of this Contract, the Authority reserves the right to immediately terminate the Contract on giving written notice to the Contractor and to pursue the Contractor for damages.
- 34.5 To the extent that any of the Contractor's staff breach this Conflict of Interest clause, the Contractor undertakes to keep the Authority fully and effectively indemnified in respect of all costs, losses and liabilities arising from any wrongful disclosure or misuse of the Confidential Information by the Contractor's staff. This indemnity shall be without prejudice to any other rights or remedies, including injunctive or other equitable relief, which the Authority may be entitled to, but for the avoidance of doubt shall be subject to the limitations of liability (including without limitation the cap on liability) set out in this Contract.

35. AUTHORITY'S PROPERTY

- 35.1. All Authority's Property shall remain the property of the Authority and shall be used in the performance of the Contract and for no other purpose without prior approval from the Authority.
- 35.2. The Contractor shall be liable for any loss of or damage to any Authority's Property unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the act, neglect or default of the Authority.
- 35.3. The Contractor shall not in any circumstances have a lien on any 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 Authority's Property.
- 35.4. The Contractor 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.
- 35.5. The Contractor shall maintain all items of Authority's Property in good and serviceable condition, fair wear and tear, in accordance with the manufacturer's recommendations.

36. RESPONSIBILITY FOR EQUIPMENT

- 36.1 The Contractor shall use all reasonable endeavours to ensure that Equipment is kept and treated in a proper and workmanlike manner and shall maintain an inventory of the Equipment throughout the Contract. At the conclusion of the Contract, the Contractor shall apply for instructions from the Authority for the disposal of the Equipment and shall arrange disposal in accordance with such instructions. At such time the Equipment shall be in good condition after making due allowance for fair wear and tear. Equipment lost or damaged must be reported at the time of such loss or damage and the reasons immediately explained in writing to the Authority. Where it is concluded that such loss has occurred as a result of the Contractor's breach of contract or negligence, the Contractor shall be responsible for the costs of

reinstatement and the amount of such costs shall be repaid to the Authority or deducted from sums otherwise due to be paid to the Contractor at the discretion of the Authority.

- 36.2 From the time of purchase to the time of disposal of Equipment the Contractor shall indemnify and keep indemnified the Authority in respect of any and all claims in respect of the use or operation of the Equipment including but not limited to any claims by or on behalf of third parties.

37 EVALUATION

The Authority may undertake post project evaluation of the impact and cost-effectiveness of contracts, projects or programmes, which it funds. The Contractor shall, if required, assist the Authority in connection with the Contract and shall give all reasonable cooperation to the evaluators appointed by the Authority.

38 CONTRACTOR'S STATUS

- 38.1 Nothing in the Contract shall be construed to create a partnership, joint venture, agency or employer/employee relationship between the parties.
- 38.2 In carrying out the Services the Contractor will be acting as principal and not as the agent to the Authority. Accordingly:
- 38.2.1 the Contractor will not (and will procure that its agents and servants do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the Authority, and
- 38.2.2 nothing in this Contract will impose any liability on the Authority in respect of any liability incurred by the Contractor to any other person but this will not be taken to exclude or limit any liability of the Authority to the Contractor that might arise by virtue of either a breach of this Contract or any negligence on the part of the Authority, its staff or agents.
- 38.3 For the avoidance of doubt, the Contractor shall:
- 38.3.1 ensure that it, its employees, sub-contractors and any other person engaged by them have adequate and appropriate medical insurance cover before commencing work overseas under this Contract. It is not the responsibility of the British Embassy, High Commission or local FCO office to meet the costs of the medical care nor to make arrangements for the evacuation or care of the Consultants' personnel in a medical emergency, although they will endeavour to provide UK citizens with assistance. The Consultants shall ensure that their personnel are aware of the procedures to be followed should a medical emergency arise whilst such personnel are overseas
- 38.3.2 be personally responsible for the payment of any income tax, earnings related National Insurance contributions applicable to the Contractor and the Contractor's employees sub-contractors and any other person engaged by them, and where applicable the payments of VAT and any other statutory instrument for which the Contractor may be held liable.

39 DISPUTE RESOLUTION

- 39.1 The parties will attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract.
- 39.2 If the dispute cannot be resolved by the parties pursuant to Condition 39.1 the dispute may, by agreement between the parties, be referred to mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing (the "**ADR Notice**") to the other party to the notice requesting a mediation. A copy of the ADR Notice should be sent to CEDR. The mediation will start no later than 14 days after the date of the ADR Notice.
- 39.3 The performance of the Services will not cease or be delayed by the reference of a dispute to mediation pursuant to Condition 39.2.

40 LAW

This Contract will be governed by and construed in accordance with English law and the Contractor 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 Contractor 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.

APPENDIX A – Permitted Sub-Contractors

[insert]

SECTION III – PRICE SCHEDULE

[To be completed according to specific contract – See also Part I, 3.3 and Part II, Appendix A]

SECTION IV – Services Scope

[To be completed according to specific contract. The Services Scope should include the majority of the following headings (examples of both can be provided by the Contracts Team, PPD

- Background;
- Aims, objectives and expected benefits, (broken down if necessary into discrete work packages that will help with monitoring progress and allow liaison with a number of departments, if required work packages can also be used as stages against which interim payments can be made);
- Scope of Services and Deliverables required;
- Any constraints
- The report. In many cases a report will be the key deliverable produced by the Contractor. The report must be clear and readable as it will normally be copied widely to others around the FCO, including many not associated directly with the Review. Points to consider are:
 - ~ Executive Summary; one or two pages of results
 - ~ An appraisal of the present situation. (Introduction and Background): why the Contractor was commissioned; previous work on the subject
 - ~ Terms of Reference, objectives, duration of study
 - ~ A description of the work carried out (working methods, how the Contractor were tasked with the study and how they set about it)
 - ~ Findings (what was turned up by the review; anything unexpected that was found; any effect on the duration or objectives of the study)
 - ~ Identification of potential improvements with costs and benefits (recommendations: what the Contractor proposes and why)
 - ~ Impact of change (how the changes will affect the organisation or department)
 - ~ Implementation (analysis of how the review can be presented and sold to the Office; why these changes should be considered): an implementation plan if needed.
 - ~ Resource Implications: cost of implementation, any savings identified, how easily recommendations can be implemented
 - ~ Conclusion: Contractor round up on review
- Administrative management
 - ~ To whom the report is to be delivered and the timescale
 - ~ The number of copies of the report required
 - ~ the essential requirements for the conduct of the study i.e. Who leads it, the participation of FCO staff, day-to-day liaison arrangements, requirements for follow-up action

- Schedules
 - ~ Timescale and key milestones
 - ~ Dates for any interim written reports and what they should cover
 - ~ Form and timing of progress reports/meetings
- Change Control Procedure
- Expenses Regime – this should link up as appropriate to the Prices as detailed in Part II, Appendix A and must cover any arrangements therein particular in respect of persons travelling or working overseas.]