

DRAFT NPTA MODEL FRAMEWORK AGREEMENT
AND MODEL CALL-OFF CONTRACT FOR THE PROCUREMENT OF GOODS

NOTES: This document presents preliminary first drafts of a Model Framework Agreement for Procurement of Goods, and accompanying Model Call-Off Contracts and Order Forms for individual orders that would be placed under the Framework Agreement.

The draft Model Framework Agreement herein is generally inspired by the model framework instrument of the UK Office of Government Commerce (OGC), in particular since the UK OGC has been a leading pioneer in the use of framework agreements in public procurement¹. The draft Model Call-Off Contract is based on the draft General Conditions of Contract – Procurement of Goods (and accompanying Special Conditions of Contract) that is being prepared by NPTA, as part of its development of standard bidding documents (SBD's).

In line with the general NPTA objective of making available standard documents that are not very lengthy, these drafts are not as long or elaborate as the OGC model texts. However, in reviewing these preliminary first drafts, it may be considered whether the NPTA model framework instruments could be somewhat more detailed (because these are framework arrangements under which multiple individual transactions would be taking place) or whether the balance struck in the preliminary first draft between conciseness and completeness is more-or-less appropriate.

Additional issues that might be dealt with in an expanded version of the model documentation might include, for example: procedure for variation of the Framework Agreement (more relevant if a longer term for the Framework Agreement is envisaged); price adjustment procedure for longer-term Framework Agreements; procedure for variation and supplementation of the Framework Agreement; intellectual property rights; indemnification of the procuring entity; fraud and corruption; confidentiality.

It may also be noted that, as presently formulated, the draft framework arrangement does not bind suppliers to provide any particular quantity of goods during the term of the framework arrangement. The text might be elaborated to encompass the option of committing the engaged supplier(s) to a level of supply, subject to stipulated ceilings.

It is envisaged that such a draft Model Framework Agreement could be used for engaging one or more suppliers in a framework arrangement. Where more than one supplier is engaged, it is envisaged that the draft Framework Agreement would accommodate the possibility of holding a “mini-competition” at the time that a call-off order is placed under the Framework Agreement. As presently formulated, the draft Framework Agreement refers to price as being the possible subject of the mini-competition. That would enable the participating suppliers to improve their prices as compared to the prices indicated in the price matrices attached to the Framework Agreement. Consideration might be given to providing the possibility of encompassing criteria other than price in a mini-competition.

As presently formulated, the draft Framework Agreement contains a number of blank spaces into which the lead authority should insert information specific to each particular framework arrangement. Alternatively, an annexed “Special Conditions for the Framework Agreement” sheet could be provided as an annex for the purpose of specifying the information relevant to a particular framework arrangement. Such an approach patterned on the approach used in the draft NPTA SBD's is used in the enclosed draft General Conditions for Call-Off Contracts,

Once the key aspects of the approach and the content of these draft texts has been reviewed and discussed by NPTA, these documents could be finalized and draft supporting material could be prepared (e.g., model Instructions to Bidders for awarding participation in the framework arrangements through bidding proceedings, guidance notes for end users). Additional model framework instruments could be prepared, for example, for services, and for specialized sectors of procurement.

¹ See http://www.ogc.gov.uk/supplier_selection_and_award_contract.asp

DRATT MODEL FRAMEWORK AGREEMENT – PROCUREMENT OF GOODS

THIS AGREEMENT is made on the -----day of -----,[200]

BETWEEN:-

- (1) [] whose principal place of business is at [] (the "Authority")²; and
- (2) [] (Company Number: []) whose registered address is at []³ (the "Supplier").

IT IS AGREED as follows:-**1. INTERPRETATION**

- 1.1 Unless the context otherwise requires, the following words and expressions shall have the following meanings:-

"Approval"	means the prior written approval of the Authority
"Auditor"	means the Authority's internal auditor and/or the [National Audit Office or an auditor appointed by the Audit Commission as the context requires]
"Call-Off Contract"	means the legally binding agreement (made pursuant to the provisions of this Framework Agreement) for the provision of Goods made between a Procuring Entity and the Supplier comprising an Order Form and the Call-Off Contract.
"Call-Off Contract"	means the Call-Off Contract in Schedule 4
"Commencement Date"	means [insert date] ⁴
"Procuring Entities"	means the Authority and any other Procuring Entities described in the [...]
"Framework Agreement"	means this agreement and all Schedules to this agreement
["Guarantee"]	means the deed of guarantee in favour of the Authority entered into by the Guarantor on or about the date of this Framework Agreement (which is in the form set out in Schedule []) ⁵ or any guarantee acceptable to the Authority that replaces it from time to time]

² Insert name and address of the lead Authority, which is the entity setting up the framework arrangement.

³ Insert name, company number and registered address of the Supplier engaged in the framework arrangement. More than one supplier could sign such an agreement related to a particular framework arrangement.

⁴ To be inserted.

⁵ To be added to this model documentation, along the lines of the model performance guarantees contained in other draft NPTA SBDS's adjusted as may be needed for the framework context.

“Goods”	means the <i>[insert description]</i> goods referred to in Schedule 1
“Goods Framework Lots”	means the lots advertised in [...] and referred to in Schedule 1
“Goods Framework Suppliers”	means the Supplier(s) appointed as Framework Agreement Supplier(s) under the Framework Agreement
"ITB"	means the invitation to bid issued by the Authority on [] ⁶
"Management Information"	means the management information specified in Schedule 6
"Month"	means a calendar month
"Order"	means an order for Goods served by any Procuring Entity on the Supplier in accordance with the Ordering Procedures
"Order Form"	means a document setting out details of an Order in the form set out in Schedule 4
"Ordering Procedures"	means the ordering and award procedures specified in Clause 5
"Other Procuring Entities"	means all Procuring Entities except the Authority
"Pricing Matrices"	means the pricing matrices set out in Schedule 3
“Supplier’s Lots”	means the lots which the Supplier has been appointed to under this Framework Agreement as set out in Schedule 1
“Goods”	means the goods referred to in Schedule 1
"Bid"	means the bid submitted by the Supplier to the Authority on [] ⁷
"Term"	means the period commencing on the Commencement Date and ending on <i>[insert date]</i> or on earlier termination of this Framework Agreement
"Year"	means a calendar year

⁶ To be inserted.

⁷ To be inserted.

PART ONE: FRAMEWORK AGREEMENT AND AWARD PROCEDURE**2. TERM OF FRAMEWORK AGREEMENT⁸**

The Framework Agreement shall take effect on the Commencement Date and (unless it is otherwise terminated in accordance with the terms of this Framework Agreement or it is otherwise lawfully terminated) shall terminate at the end of the Term.

3. SCOPE OF FRAMEWORK AGREEMENT

3.1 This Framework Agreement governs the relationship between the Authority and the Supplier in respect of the provision of the Goods by the Supplier to the Authority and to Other Procuring Entities.

3.2 The Authority and (subject to the following provisions of this Clause) other Procuring Entities may at their absolute discretion and from time to time order Goods from the Supplier in accordance with the Ordering Procedure during the Term. The Parties acknowledge and agree that the other Procuring Entities have the right to order Goods pursuant to this Framework Agreement provided that they comply at all times with all Laws (including, but not limited to, the Regulations and the Guidance) and the Ordering Procedure.

3.3 The Supplier acknowledges that there is no obligation for the Authority and for any Other Procuring Entity to purchase any Goods from the Supplier during the Term.

4. NON-EXCLUSIVITY

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

5. AWARD PROCEDURES⁹**Awards under the Framework Agreement**

5.1 If the Authority or any Other Procuring Entity decides to source Goods through the Framework Agreement then it may:-

5.1.1 award its Goods requirements in accordance with the terms laid down in this Framework Agreement without reopening competition; or

⁸ The term of the Framework Agreement should not exceed four years unless the Lead Authority can demonstrate exceptional circumstances, in particular, circumstances relating to the subject of the Framework Agreement. If it is decided to provide for a shorter term, consideration might be given to including a provision for the extension of the initial term.

⁹ NB. Guidance on the procedure for awarding Call-Off Contracts is set out in the Model ITB. The Lead Authority will need to take its own legal advice on award procedures. [The content of this provision would also depend on whether one or more suppliers are engaged in the Framework Agreement.]

- 5.1.2 award its Goods requirements following a mini-competition conducted in accordance with the requirements of the [Regulations].

Awards without re-opening Competition

- 5.2 [Where only one supplier is engaged in the Framework Agreement for the relevant lot], any Procuring Entity ordering Goods under the Framework Agreement without re-opening competition shall:-

- 5.2.1 identify the relevant Goods Framework Lot which its Goods requirements fall into;
- 5.2.2 place an Order with a Framework Supplier which:-
- (a) states the Goods requirements;
 - (b) identifies the Goods Framework Lot in which the award is made;
 - (c) states the price payable for the Goods requirements in accordance with the Price Matrix applicable for the relevant Goods Framework Lot; and
 - (d) incorporates the Call-Off Terms and Conditions.

Awards following Mini-[Price] Competitions

- 5.3 [Where more than one supplier is engaged for the relevant lot in the Framework Agreement], any Procuring Entity ordering Competed Goods under the Framework Agreement shall:-

- 5.3.1 identify the relevant Goods Framework Lot which its Goods requirements fall into;
- 5.3.2 identify the Goods Framework Suppliers capable of performing the Call-Off Contract for the Goods requirements;
- 5.3.3 invite bids by conducting a mini-competition for its requirements in accordance with the Regulations and Guidance and in particular:-
- (a) consult in writing the Goods Framework Suppliers capable of performing the Call-Off Contract as supplemented and refined and invite them within a specified time limit to submit a [bid][price quotation] in writing for each specific contract to be awarded;
 - (b) set a time limit for the receipt by it of the [bids]; and
 - (c) keep each [bid][price quotation] confidential until the expiry of the time limit for the receipt by it of tenders.
- 5.3.4 apply the Goods Award [price] Criteria to the Goods Framework Suppliers' compliant tenders submitted through the mini-competition as the basis of its decision to award a Call-Off Contract for its requirements; and

- 5.3.5 place an Order with the successful Goods Framework Supplier which:-
- (a) states the requirements;
 - (b) identifies the Goods Framework Lot or Lots; and
 - (c) states the [lowest] price payable in accordance with the tender submitted by the successful Goods Framework Supplier;
- 5.4 The Supplier agrees that all [bids][price quotations] submitted by the Supplier in relation to a mini-competition held pursuant to this Clause shall remain open for acceptance for thirty (30) days (or such other period specified in the ITB issued by the relevant Procuring Entity in accordance with the Ordering Procedure).
- 5.5 Notwithstanding the fact that the Procuring Entity has followed the procedure set out above in this Clause, the Procuring Entity shall be entitled at all times to decline to make an award. Nothing in this Framework Agreement shall oblige any Procuring Entity to place any Order.

Responsibility for Awards

- 5.6 The Supplier acknowledges that each Procuring Entity is independently responsible for the conduct of its award of Call-Off Contracts under the Framework Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:-
- 5.6.1 the conduct of Other Procuring Entities in relation to the Framework Agreement; or
 - 5.6.2 the performance or non-performance of any Call-Off Contract between the Supplier and Other Procuring Entities entered into pursuant to the Framework Agreement.

Form of Order

- 5.7 Subject to Clauses 5.1 to 5.6 above, each Procuring Entity may place an Order with the Supplier by serving an order in writing in substantially the form set out in Schedule 4 or such similar or analogous form agreed with the Supplier including systems of ordering involving facsimile, electronic mail or other on-line solutions.
- 5.8 The Order constitutes an **offer** by the Procuring Entity to purchase the Goods subject to the terms and conditions of the Call-Off Contract.

Accepting and Declining Orders

- 5.9 Following receipt of an Order, the Supplier shall promptly and in any event within a reasonable period (taking into account all relevant circumstances in relation to the subject matter and nature of an Order) determined by the relevant Procuring Entity and notified to

the Supplier in writing at the same time as the submission of the Order (which in any event shall not exceed [three (3) Working Days]) acknowledge receipt of the Order and either:-¹⁰

5.9.1 notify the relevant Procuring Entity that it declines to accept the Order; or

5.9.2 notify the relevant Procuring Entity that it accepts the Order by signing and returning the Order Form.

5.10 If the Supplier:- **in case of mini-competition**

5.10.1 notifies the Procuring Entity that it declines to accept an Order; or

5.10.2 the time-limit referred to in Clause 5.9 has expired;

then the offer from the Procuring Entity to the Supplier shall lapse and the relevant Procuring Entity may offer that Order to the Goods Framework Supplier that submitted the next **most economically advantageous** tender in accordance with the relevant Award Criteria.

5.11 The Supplier in agreeing to accept such an Order pursuant to Clause 5.9 above shall enter a Call-Off Contract with the relevant Procuring Entity for the provision of Goods referred to in that Order. A Call-Off Contract shall be formed on the Procuring Entity's receipt of the signed Order Form provided by the Supplier (or such similar or analogous form agreed with the Supplier) pursuant to Clause 5.9.2.

¹⁰ Lead Authority to consider procedure for accepting and declining orders. If this procedure is not practical for your particular requirements, any alternative will require a legal review to ensure that a binding Call-Off Contract is formed.

PART TWO: SUPPLIER'S GENERAL FRAMEWORK OBLIGATIONS**6. CALL-OFF CONTRACT PERFORMANCE**

6.1 The Supplier shall perform all Call-Off Contracts entered into with the Authority or any Other Procuring Entity in accordance with:-

6.1.1 the requirements of this Framework Agreement; and

6.1.2 the terms and conditions of the respective Call-Off Contracts.

6.2 In the event of, and only to the extent of, any conflict between the terms and conditions of this Framework Agreement and the terms and conditions of a Call-Off Contract, the terms and conditions of this Framework Agreement shall prevail.

7. PRICES FOR GOODS

7.1 The prices offered by the Supplier for Call Off Contracts to Procuring Entities for Standard Goods shall be the prices listed in the Pricing Matrix for the relevant Supplier's Lot [and such prices shall be adjusted [annually] in accordance with the provisions of Schedule 2].¹¹

7.2 The prices offered by the Supplier for Call-Off Contracts to Procuring Entities for Goods in the case of a mini-competition shall be based on the prices set out in the Pricing Matrices and tendered in accordance with the requirements of the mini-competition held pursuant to Clause 5.

8. STATUTORY REQUIREMENTS

The Supplier shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of this Framework Agreement and any Call-Off Contract.

¹¹ Lead Authority to consider whether Framework Agreement should include reference to annual increase in prices. The relevance of including price revision provisions in the Framework Agreement would increase with the length of the term of the Agreement. Parameters might be established for any price revision based, for example, on percentage increases shown by third-party price indices tracking inflation.

PART THREE: SUPPLIER'S INFORMATION OBLIGATIONS**9. PROVISION OF MANAGEMENT INFORMATION**

- 9.1 The Supplier shall submit Management Information to the Authority in the form set out in Schedule 5 throughout the Term on the last day of every Month and thereafter in respect of any Call-Off Contract entered into with any Procuring Entity.

10. RECORDS AND AUDIT ACCESS

- 10.1 The Supplier shall keep and maintain until [six (6) years]¹² after the date of termination or expiry of the Term (whichever is the earlier) of this Framework Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Framework Agreement including the Goods provided under it, the Call-Off Contracts entered into with Procuring Entities and the amounts paid by each Procuring Entity.
- 10.2 The Supplier shall keep the records and accounts referred to in Clause 10.1 above in accordance with good accountancy practice.
- 10.3 The Supplier shall afford the Authority (or relevant Procuring Entity) and/or the Auditor such access to such records and accounts as may be required from time to time.

¹² Lead Authority to consider the appropriate length of time for Suppliers to maintain records in relation to the subject matter of the Framework Agreement.

PART FOUR: FRAMEWORK AGREEMENT TERMINATION AND SUSPENSION**11. TERMINATION****Termination on Default**

11.1 The Authority may terminate the Framework Agreement by serving written notice on the Supplier with effect from the date specified in such notice:-

11.1.1 where the Supplier commits a Material Default and:-

- (a) the Supplier has not remedied the Material Default to the satisfaction of the Authority within [twenty (20)] Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Material Default and requesting it to be remedied; or
- (b) the Material Default is not, in the reasonable opinion of the Authority, capable of remedy; or

11.1.2 where any Procuring Entity terminates a Call-Off Contract awarded to the Supplier under this Framework Agreement as a consequence of default by the Supplier.

Termination on Financial Standing

11.2 The Authority may terminate the Framework Agreement by serving notice on the Supplier in writing with effect from the date specified in such notice where (in the reasonable opinion of the Authority), there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which adversely impacts on the Supplier's ability to supply Goods under this Framework Agreement.

Termination on Insolvency and Change of Control

11.3 The Authority may terminate this Framework Agreement on grounds of the insolvency of the Supplier.

Termination by the Authority

11.4 The Authority shall have the right to terminate this Framework Agreement, or to terminate the provision of any part of the Framework Agreement at any time by giving [three Months'] written notice to the Supplier [and all other Goods Framework Suppliers.] [The Parties acknowledge that if the Authority exercises its rights under Clause shall exercise its equivalent rights under all agreements with the Goods Framework Suppliers.]¹³

¹³ Lead Authority to consider whether termination by Authority, at will, of appointment of one Supplier should lead to termination with all Suppliers and the appropriate timescales for termination.

12. CONSEQUENCES OF TERMINATION AND EXPIRY

- 12.1 Notwithstanding the service of a notice to terminate the Framework Agreement, the Supplier shall continue to fulfil its obligations under the Framework Agreement until the date of expiry or termination of the Framework Agreement or such other date as required under this Clause.
- 12.2 Termination or expiry of the Framework Agreement shall not cause any Call-Off Contracts to terminate automatically. For the avoidance of doubt, all Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.
- 12.3 The provisions of Clauses [10, 13, 14 and 22] shall survive the termination or expiry of the Framework Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

PART FIVE: INSURANCE AND LIABILITY**13. LIABILITY¹⁴****13.1** [Neither Party excludes or limits its liability for:-

13.1.1 death or personal injury caused by its negligence, or that of its Staff;

13.1.2 fraud or fraudulent misrepresentation by it or its Staff; or

13.1.3 breach of any obligations as to title implied by Section [... of the Sale of Goods Act].

13.2 Subject to Clause 13.1 each Party's total aggregate liability in connection with this Framework Agreement in each twelve (12) Month period during the Term (whether in contract, tort including negligence, breach of statutory duty or howsoever arising) shall be limited to **[insert sum]**. For the avoidance of doubt, the Parties acknowledge and agree that this Clause shall not limit either Party's liability under any Call-Off Contract and that each Party's liability in relation to a Call-Off Contract shall be as set out in the Call-Off Contract.

13.3 Subject to Clause 13.2 the Supplier shall indemnify and keep indemnified the Authority in full from and against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the Framework Agreement including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused directly or indirectly by any act or omission of the Supplier. This Clause shall not apply to the extent that the Supplier is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or Default, or the negligence or Default of its Staff or sub-contractors, or by any circumstances within its or their control.]

14. INSURANCE

14.1 [The Supplier shall effect and maintain policies of insurance to provide a level of cover sufficient for all risks which may be incurred by the Supplier under this Framework Agreement including death or personal injury, or loss of or damage to property.

14.2 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities arising under the Framework Agreement.

14.3 The Supplier shall produce to the Authority, on request, copies of all insurance policies referred to in this Clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

¹⁴Lead Authority to consider liability and insurance provisions with regards to the nature of the particular risks involved at Framework Agreement level, as opposed to Call Off level. Are they appropriate in the circumstances for the particular goods contemplated?

- 14.4 If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by the Framework Agreement then the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 14.5 The Supplier shall maintain the insurances referred to in Clause 14.1 and Clause 14.2 for a minimum of [... years]¹⁵ following the expiration or earlier termination of the Framework Agreement.]
15. **[GUARANTEE]**
- 15.1 Before the Commencement Date, the Supplier shall procure that the Guarantor shall execute and deliver to the Authority the Guarantee.]¹⁶

¹⁵ Lead Authority to consider duration that any insurance needs to be maintained and appropriate levels of insurance given the subject matter of the Framework Agreement. The Lead Authority should take appropriate professional advice.

¹⁶ Lead Authority to consider necessity of a guarantee in relation to the Framework Agreement Supplier.

PART SIX: OTHER PROVISIONS**16. TRANSFER AND SUB-CONTRACTING**

16.1 The Framework Agreement is personal to the Supplier and the Supplier shall not assign, novate or otherwise dispose of the Framework Agreement or any part thereof without the previous consent in writing of the Authority. The Supplier shall not be entitled to sub-contract any of its rights or obligations under this Framework Agreement.

16.2 The Authority shall be entitled to:-

16.2.1 assign, novate or otherwise dispose of its rights and obligations under the Framework Agreement or any part thereof to any Other Procuring Entity; or

16.2.2 novate the Framework Agreement to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Authority;

provided that such assignment, novation or disposals shall not increase the burden of the Supplier's obligations under the Framework Agreement.

17. RIGHTS OF THIRD PARTIES

Save as provided in Clauses 3, and 5 and the rights specified in the Framework Agreement for the benefit of Procuring Entities, a person who is not party to this Framework Agreement ("**Third Party**") has no right to enforce any term of this Framework Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act. If the Parties rescind this Framework Agreement or vary any of its terms in accordance with the relevant provisions of this Framework Agreement, such rescission or variation will not require the consent of any Third Party.

18. SEVERABILITY

18.1 If any provision of the Framework Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Framework Agreement had been executed with the invalid provision eliminated.

18.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Framework Agreement, the Authority and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

19. NOTICES

19.1 Except as otherwise expressly provided within this Framework Agreement, no notice or other communication from one Party to the other shall have any validity under the Framework Agreement unless made in writing by or on behalf of the Party sending the communication.

19.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in Clause 36.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

19.3 For the purposes of Clause 36.2, the address of each Party shall be:¹⁷

19.3.1 For the Authority:-

[REDACTED]

Address:

For the attention of:

Tel:

Fax:

Email:

19.3.2 For the Supplier:-

[REDACTED]¹⁸

Address:

For the attention of:

Tel:

Fax:

Email:

19.4 Either Party may change its address for service by serving a notice in accordance with this Clause.

20. COMPLAINTS HANDLING AND RESOLUTION

20.1 [The Supplier shall notify the Authority of any Complaint made by Other Procuring Entities within [two (2)] Working Days of becoming aware of that Complaint and such notice shall contain full details of the Supplier's plans to resolve such Complaint.

20.2 Without prejudice to any rights and remedies that a complainant may have at Law, including under the Framework Agreement or a Call-Off Contract, and without prejudice to any obligation of the Supplier to take remedial action under the provisions of the Framework Agreement or a Call-Off Contract, the Supplier shall use its best endeavours to

¹⁷ To be inserted.

¹⁸ Insert role.

resolve the Complaint within [ten (10)] Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.

- 20.3 Within [two (2)] Working Days of a request by the Authority, the Supplier shall provide full details of a Complaint to the Authority, including details of steps taken to its resolution.]¹⁹

21. DISPUTE RESOLUTION

- 21.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Framework Agreement within [twenty (20)]²⁰ Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to [those persons identified in Clause 36 above.]

- 21.2 If the dispute cannot be resolved by the Parties pursuant to Clause 38.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 38.5 unless:-

21.2.1 the Authority considers that the dispute is not suitable for resolution by mediation; or

21.2.2 the Supplier does not agree to mediation.

- 21.3 The obligations of the Parties under the Framework Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Supplier and its employees, personnel and associates shall comply fully with the requirements of the Framework Agreement at all times.

- 21.4 The procedure for mediation and consequential provisions relating to mediation are as follows:-

21.4.1 a neutral adviser or mediator ("**the Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other to appoint a Mediator or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to []²¹ to appoint a Mediator;

21.4.2 the Parties shall within [ten (10)] Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from []²² to provide guidance on a suitable procedure;

21.4.3 unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;

¹⁹ Lead Authority to consider whether it wants to have an active role in complaints handling.

²¹ To be inserted.

²² To be inserted.

- 21.4.4 if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- 21.4.5 failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Framework Agreement without the prior written consent of both Parties; and
- 21.4.6 if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to [the courts] **[arbitration ... [insert reference to applicable arbitration rules and forum].**

22. LAW AND JURISDICTION

Subject to the provisions of Clause 20 and Clause 21, the Authority and the Supplier accept the exclusive jurisdiction of the [Guyana] courts and agree that the Framework Agreement is to be governed by and construed according to the law of Guyana.

SIGNED by or on behalf of the Parties on the date which first appears in the Framework Agreement

SIGNED by)
)
 for and on behalf of the Authority)
)

SIGNED by)
)
 for and on behalf of the Supplier)

(Director/Company Secretary or other
 authorized signatory)

SCHEDULE 1

PART A

THE GOODS²³

[DESCRIPTION OF GOODS TO BE INSERTED]

PART B

GOODS FRAMEWORK LOTS

[DESCRIPTION OF LOTS TO BE INSERTED]

PART C

SUPPLIER'S LOTS

[DESCRIPTION OF SUPPLIER'S LOTS TO BE INSERTED]

²³ Authority to complete.

SCHEDULE 2**PRICING MATRICES**

**[INSERT RELEVANT PRICING MATRICES SUBMITTED IN SUPPLIER'S TENDER
FOR THE GOODS FOR EACH OF THE SUPPLIER'S LOTS]²⁴**

SCHEDULE 3**ORDER FORM****Framework Agreement****FROM**

Customer	
Delivery Address	
Invoice Address	
Contact Ref:	Ref: Phone: e-mail:
Order Number	<i>To be quoted on all correspondence relating to this Order:</i>
Order Date	

TO

Supplier:	[insert Supplier's name]
For the attention of:	
E-mail	
Telephone number	
Address	

²⁴ Lead Authority to complete table with price adjustment mechanism to take into account indexation (if appropriate).

1. ORDER REQUIREMENTS
(1.1) Goods Required:
Quantity, Unit of Measure (UOM), Description, Price per UOM
(1.2) Delivery Date:
(1.3) Location at which the Goods are to be delivered;
(1.4) Discounts (if appropriate)

BY SIGNING AND RETURNING THIS ORDER FORM THE SUPPLIER AGREES to enter a legally binding contract with the Customer to provide to the Customer the Goods specified in this Order Form (together with where completed and applicable, the mini-competition order (additional requirements) set out in section 2 of this Order Form) incorporating the rights and obligations in the Call-Off Terms and Conditions set out in the Framework Agreement entered into by the Supplier and the Authority on [] 200[].

For and on behalf of the Supplier:

Name and Title	
Signature	
Date	

For and on behalf of the Customer:

Name and Title	
Signature	
Date	

DRAFT

SCHEDULE 4

General Conditions for Call-Off Contracts – Goods (GCCC)

A. General provisions

1. Definitions and application

1.1 This Contract lists below the terms that have the following interpretation:

- (a) **“Contract”** means the written agreement entered into between the Procuring Entity and the Supplier, consisting of the Order Form (signed by the Parties) and the General Conditions for Call-Off Contracts (supplemented by the Special Conditions for Call-Off Contracts), including all attachments and appendices thereto and all the documents referenced therein;
- (b) **“Contract Price”** means the price payable to the Supplier under the Contract for complete and proper performance of his contractual obligations;

“Framework Agreement” means the framework agreement for the provision of goods referred to in the SCC between the Authority and the Supplier referred to in the SCC

- (c) **“Goods”** means the item(s) referred to in the **Order Form**;
- (d) **«GCC»** - means the General Conditions of Contract contained in this Section;
- (e) **“SCC»** - means the Special Conditions of Contract;
- (f) **“Procuring Entity”** – means the Procuring entity carrying out the procurement of Goods, specified in the **Order Form**;
- (g) **“Supplier”** – means an individual or legal entity, or a combination of any abovementioned forms which operate under the existing agreement as a joint venture and supply the Goods and Services under the Contract, pursuant to the Framework Agreement referred in the SCC;
- (h) **“Day”** –means calendar day.

“Order” – means the order submitted by the Procuring entity to the Supplier in accordance with the Framework Agreement

1.2 The General Conditions for Call-Off Contracts shall apply in the procurement of goods; the specific amendment, addition and alteration shall be indicated in the Special Conditions of Contract.

1.3 Warrant requirements are as may be specified in the special conditions of contract.

2. Contract Documents

- 2.1 Subject to the order of precedence set forth in the Contract Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory. The contract shall be read as a whole.

3. Performance Security

- 3.1 If required by the SCC, during seven (7) days of receipt of notification of award, or such other period as may be specified in the notification, the successful Bidder shall furnish the Procuring Entity with the performance security the amount and form of which are indicated in the SCC.

4. Packing

- 4.1 The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to final destination specified in the Contract, and as may be required by the Order, subject to the SCC

5. Delivery, Transportation

- 5.1 The Supplier must deliver the Goods within the periods and to the Destination point indicated in the Order and shall provide the documentation indicated in the SCC. Subject to the SCC, transportation of the Goods to the place specified by the Procuring Entity in the Order shall be carried out and paid by the Supplier, and related costs shall be included in the Contract Price, subject to any INCOTERM stipulated in the Order (subject to the SCC).

6. Payment

- 6.1 The payment to the Supplier for the Goods delivered shall be made in accordance with the Contract in the form and within the periods specified in the SCC.
- 6.2 If the Procuring Entity does not pay the Supplier the sum due within the periods specified in the Contract, in that case the Procuring Entity shall pay the Supplier [interest at the rate specified or determined pursuant to the Special Conditions of Contract].

7. Prices

- 7.1 Prices established by the Supplier in the Contract for goods delivered shall not vary from the prices quoted by the Supplier in his bid in accordance with the Framework Agreement..

8. Assignment

- 8.1 The Supplier shall not assign, in whole or in part, his obligations under the Contract to the third party for the execution without the Procuring Entity's prior written consent.

9. Delays in the Supplier's Performance and liquidated damages

- 9.1 Delivery of the Goods shall be carried out by the Supplier, in accordance with the schedule indicated by the Procuring Entity in the **Order, subject to the SCC.**

- 9.2 Except for provided under GCCC Clause 13, the delay in the Supplier's performance of his delivery obligations shall render the Supplier liable for payment of liquidated damages in the amount specified in the SCC, unless an extension of time is agreed upon by the parties without application of liquidated damages. Once the maximum deduction specified in the SCC is reached, the Procuring Entity may consider termination of the Contract, in accordance with Clause 10 of the GCCC.

10. Termination

- 10.1 The Procuring Entity, without detriment to any other sanctions of infringement of the provisions of Contract, by written notice ~~of default~~ sent to the Supplier, may terminate this Contract in whole or in part:
- (a) if the Supplier fails to deliver the portion or all of the Goods within the periods provided for in the Contract, or within an extension period of that Contract, or to perform any of his obligations under the Contract;
 - (b) if bankruptcy procedures are applied to the Supplier, or it is declared insolvent.
 - (c) if the Supplier, in the Procuring Entity's opinion, has engaged in corrupt, fraudulent, collusive or coercive practices when entering into or executing the Contract;
 - (d) If the Procuring Entity deems that continued implementation of the contract would no longer be expedient from the standpoint of the public interest
- 10.2 The notice of termination shall specify the reason of termination, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.
- 10.3 Notwithstanding clauses 9 and 10.1, the Supplier shall not forfeit his performance security, and shall not be liable for payment of liquidated damages, or termination for default, if delay in executing the Contract or failure to perform obligations under the Contract is the result of an event of force majeure. When force majeure arises, the Supplier shall promptly notify the Procuring Entity in writing of such circumstance and its causes.
- 10.4 When the contract is terminated in accordance with clause 10.1(d), the Goods that are complete and ready for shipment within twenty-eight (28) days after the Supplier's receipt of notice of termination shall be accepted by the Procuring Entity at the Contract terms and prices. For the remaining Goods, the Procuring Entity may elect:
- (a) to have any portion completed and delivered at the Contract terms and prices; and/or
 - (b) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Related Services and for materials and parts previously procured by the Supplier.
- 10.5 The procuring entity may terminate the contract by giving written notice to the Supplier with immediate effect if the Framework Agreement is terminated for any reason whatsoever.

11. Settlement of Disputes

- 11.1 If any dispute or disagreement arises between the Procuring Entity and the Supplier for the Contract or in connection with it, the parties shall make every effort to resolve the dispute or disagreement amicably by mutual consultation.
- 11.2 If during twenty one (21) days, the parties failed to resolve their dispute or disagreement by mutual consultation; either the Procuring Entity or the Supplier may send the other party the notice of intent to commence arbitration, if an arbitration is incorporated in the Contract in the Special Conditions of Contract or otherwise agreed by the parties, or in the Court of General Jurisdiction if no arbitration is envisaged, and no arbitration or litigation in respect of that matter may be commenced unless such notice is given.
- 11.3 Notwithstanding any reference to dispute settlement herein, the parties shall continue to perform their obligations under the Contract, unless they agree otherwise.

12. Applicable Law

- 12.1 The Contract shall be interpreted in accordance with the laws of Guyana.

13. Formal Communication between the Procuring Entity and the Supplier

- 13.1 Any notice given by one party to the other pursuant to the Contract shall be in force if it is done in writing and sent at the address of other party **SCC**. Additional stipulations on forms of communication may be indicated in the **SCC**.
- 13.2 A notice shall be effective when delivered or on the specified date, whichever is later.

14. Taxes and Duties

- 14.1 The Supplier shall be fully responsible for all taxes, duties, license taxes, etc., levied in accordance with the legislation of Guyana, and subject to the application of INCOTERMS in accordance with the **[Order] [SCC]**.

Special Conditions of Contract (SCC)

The following Special Conditions of Contract shall supplement the General Conditions for Call-Off Contracts (GCCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCCC.

GCC Clause No.	<i>Special Conditions of Contract</i>
1	Definitions add framework specific formulation
1.1 (f)	The Procuring Entity is _____
1.1 (g)	(full name, legal address, phone, fax and e-mail of Procuring Entity)
1.1(c)	The Supplier is _____
1.1(c)	(indicate full name, legal address, phone, fax and e-mail of Supplier)
1.1(c)	The Subject of procurement _____
1.1(c)	(brief description of subject)
1.3	[... describe any applicable warranty requirements]
3.1	[The amount and form of Performance Security (it should not exceed ten (10) percent of the Contract price)
3.1	_____]
3.1	[A performance security is not required]
4.1	Packing
4.1	_____
4.1	(specify packing methods, or delete if not applicable)
5.1	Delivery, Transportation
5.1	The applicable INCOTERM is [... specify the applicable INCOTERM]
5.1	The following documentation is to be provided by the Supplier to the Procuring Entity:
5.1	(1) Copies of Supplier's invoice indicating a description, quantity, unit price of the Goods and sum total;
5.1	(2) shipping order, railway receipt or truck receipt;
5.1	(3) Warranty certificate of Manufacturer or Supplier;
5.1	(4) Inspection certificate issued by the authorized inspection service, and the supplier's factory inspection report (if any);
5.1	(5) Certificate of origin;
5.1	(6) Certificate of conformity
5.1	[The above list may be modified or supplemented to reflect the particular circumstances]

	<i>and nature of the procurement, such as a Manufacturer's Authorization in accordance with Annex 12].</i>
6.1	Payment Form _____ and periods of payment _____
9.2	Liquidated Damages Applicable rate: _____ for untimely execution of order. Maximum deduction: _____. (Applicable rate should not exceed half (0.5) percent per week, and the maximum amount should not exceed five (5) percent of the Contract Price)
11.2	Settlement of Disputes Disputes arising out of or in connection with the Contract shall be settled by Arbitration, in accordance with the [... specify arbitration rules, arbitral institution (if applicable), number of arbitrators, and location of proceedings]; or in the court of general jurisdiction, in accordance with the laws of Guyana. (delete unnecessary)

SCHEDULE 5**MANAGEMENT INFORMATION REQUIREMENTS²⁵****Monthly invoiced costs**

Supplier:

Framework Title

Framework Ref

Year:

Level 1	Jan	Feb	March	April	May	June	July	August	Sept	Oct	Nov	Dec	Total
---------	-----	-----	-------	-------	-----	------	------	--------	------	-----	-----	-----	-------

Total monthly invoiced cost of all
 [Supplies/Services/Supplies and
 Services] supplied under the
 Framework (excl VAT)

0	0	0	0	0	0	0	0	0	0	0	0	0	0
---	---	---	---	---	---	---	---	---	---	---	---	---	---

Level 2	Jan	Feb	March	April	May	June	July	August	Sept	Oct	Nov	Dec	Total
---------	-----	-----	-------	-------	-----	------	------	--------	------	-----	-----	-----	-------

Monthly invoiced cost of all
 [Supplies/Services/Supplies and
 Services] supplied to each
 Contracting Body under the
 Framework (excl VAT)

Customer 1

0

Customer 2

0

Customer 3

0

Customer 4

0

Customer 5

0

Customer 6

0

²⁵ Lead Authority to consider format required

Monthly invoiced cost by
 [Service/Product/Service and Product] by
 individual Contracting Body

Month/Year

Nov-07

Service/Product	UNSPSC Code	Product Code	Customer 1	Customer 2	Customer 3	Customer 4	Customer 5	Customer 6	Total Value of Product or Service
Service line 1 - Cleaning									0
Service line 2 - Reception									0
Service line 3 - Post Room									0
Service line 4									0
Service line 5									0
Service line 6									0
Total Monthly Invoiced Value			0	0	0	0	0	0	0
Product 1									0
Product 2									0
Product 3									0
Product 4									0
Product 5									0
Product 6									0
Product 7									0
Product 8									0
Product 9									0
Product 10									0
Product 11									0
Product 12									0
Total Monthly Invoiced Value			0	0	0	0	0	0	0

Monthly Product volumes

Supplier:

Framework Title

Framework Ref

Month/Year:

Product Description	UNSPSC Code	Product Code	Unit of Measure	Quantity Customer 1	Quantity Customer 2	Quantity Customer 3	Quantity Customer 4	Quantity Customer 5	Quantity Customer 6	Total Monthly Volume
Product 1										0
Product 2										0
Product 3										0
Product 4										0
Product 5										0
Product 6										0
Product 7										0
Product 8										0
Product 9										0
Product 10										0
Product 11										0
Product 12										0

New Products Added

Total Product volumes

Supplier:

Framework Title

Framework Ref

Year:

Product Description	UNSPSC Code	Product Code	Unit of Measure	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	Total Volume
Product 1																0
Product 2																0
Product 3																0
Product 4																0
Product 5																0
Product 6																0
Product 7																0
Product 8																0
Product 9																0
Product 10																0
Product 11																0
Product 12																0

New Products Added

DRAFT