

Crown Commercial Service

DEMAND MANAGEMENT AND RENEWABLES FRAMEWORK SCHEDULE 5

**TEMPLATE CALL OFF AGREEMENT (INCORPORATING THE NEC4 PROFESSIONAL SERVICES SHORT
CONTRACT JUNE 2017 (INCLUDING AMENDMENTS ISSUED JANUARY 2019 AND OCTOBER 2020)
AND CONTRACT DATA**

Date: 13th May 2024

FORM OF AGREEMENT

**Incorporating the NEC4 Professional Services Short Contract June 2017 incorporating
amendments January 2019 and October 2020**

Between

The Department for Energy Security and Net Zero ("DESNZ")

And

Fair Heat Limited

For the provision of

Updates to the voluntary Code of Practice 1 (2020) ('CP1')

THIS AGREEMENT is made the 13th day of May 2024

PARTIES:

1. **Department for Energy Security and Net Zero ("DESNZ")** acting as part of the Crown of [REDACTED] (the "**Client**"); and
2. **Fair Heat Limited**, which is a company incorporated in and in accordance with the laws of England (Company No. [REDACTED]) whose registered office address is at [REDACTED] (the "**Consultant**").

BACKGROUND

- (A) The Minister for the Cabinet Office (the "**Cabinet Office**") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, without separate legal personality (the "**Authority**"), established a framework for demand management and renewables for the benefit of public sector bodies.
- (B) The *Consultant* was appointed to the framework and executed the framework agreement (with reference number RM6314, Lot 4.2) which is dated 24th March 2023 (the "**Framework Agreement**"). In the Framework Agreement, the Consultant is identified as the "Supplier".
- (C) The *Consultant* has agreed to Provide the Services in accordance with this agreement and the Framework Agreement.

IT IS AGREED AS FOLLOWS:

1. The *Client* will pay the *Consultant* the amount due and carry out his duties in accordance with the *conditions of contract* identified in the Contract Data and the Contract Schedules.
2. The *Consultant* will Provide the Service in accordance with the *conditions of contract* identified in the Contract Data and the Contract Schedules.

This contract incorporates the conditions of contract in the form of the NEC4 Professional Services Short Contract June 2017 Edition incorporating amendments January 2019 and October 2020 and incorporating the additional conditions specified in the Client's Contract Data, which form this contract together with the documents referred to in it. References in the NEC4 Professional Services Short Contract June 2017 Edition incorporating amendments January 2019 and October 2020 to "the contract" are references to this contract.

3. This contract and the Framework Agreement is the entire agreement between the parties in relation to the *service* and supersedes and extinguishes all prior arrangements, understandings, agreements, statements, representations or warranties (whether written or oral) relating thereto.
4. Neither party has been given, nor entered into this contract in reliance on any arrangements, understandings, agreements, statements, representations or warranties other than those expressly set out in this agreement.
5. Nothing in clauses 4 or 5 shall exclude liability in respect of misrepresentations made fraudulently.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

nec4

Professional Service

Short Contract

A contract between

The Department for Energy Security and Net Zero (“DESNZ”)

and

Fair Heat Limited

for

Updates to the voluntary Code of Practice 1 (2020) ('CP1')

RM6314 Project Reference: prj_3303

Contract Forms

Contract Data

The *Consultant's* Offer

Price List

Scope

Notes about the contract are printed in boxes like this one. They are not part of the contract

Contract Data

The *Client's* Contract Data

The *Client* is

Name Department for Energy Security and Net Zero ("DESNZ")

Address for communications

Address for electronic communications

The service is Update CIBSE's voluntary Code of Practice 1 (2020) ('CP1') to bring it into alignment with the HNTAS regulatory technical specification.

The starting date is 20 May 2024

The completion date is 19 May 2025 with the option to extend by 3 months by giving one months notice.

The delay damages are £0 per day

The *law of the contract* is English

The *period for reply* is 2 weeks

The *defects date* is 52 weeks after Completion

The *assessment date* is the 1st of each month

The United Kingdom Housing Grants, Construction and Regeneration Act (1996) **does/does not** apply (delete as applicable)

The *Adjudicator* is:

Name Chartered Institute of Arbitrators

Address for communications

Address for electronic communications

Contract Data

The *Client's* Contract Data

The interest rate on late payments is % per complete week of delay

The *Client* provides this insurance

No insurance provided by the Client

Only enter details here if the *Client* is to provide insurance.

The *Consultant* provides the following insurance cover

INSURANCE AGAINST	MINIMUM AMOUNT OF COVER	PERIOD FOLLOWING COMPLETION OR EARLIER TERMINATION
Liability of the <i>Consultant</i> for claims made against it arising out of the <i>Consultant's</i> failure to use the skill and care normally used by professionals providing services similar to the service.	£1 Million in respect of each claim, without limit to the number of claims	6 years
Loss of or damage to property and liability for bodily injury to or death of a person (not an employee of the <i>Consultant</i>) arising from or in connection with the <i>Consultant</i> Providing the Service	£1 Million in respect of each event, without limit to the number of events	1 year
Liability for death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with the contract	£1 Million in respect of each event, without limit to the number of events	1 year

The *Consultant's* total liability to the *Client* which arises under or in connection with the contract is limited to

100% of Total Prices

The *Adjudicator nominating body* is:

Chartered Institute of Arbitrators

The *tribunal* is:

Arbitration

If the *tribunal* is arbitration, the arbitration procedure is

To be confirmed by both parties

Contract Data

The *Client's* Contract Data

The *conditions of contract* are the NEC4 Professional Service Short Contract June 2017 incorporating amendments January 2019 and October 2020 and the following additional conditions

Only enter details here if additional conditions are required

Option Z2 Identified and defined terms

applies

Option Z4 Admittance to Client's Premises

applies

Option Z5 Prevention of fraud and bribery

applies

Option Z6 Equality and Diversity

applies

Option Z7 Legislation and Official Secrets

applies

Option Z8 Conflict of Interest

applies

Option Z9 Publicity and Branding

applies

Option Z10 Freedom of information

applies

Option Z13 Confidentiality and Information Sharing

applies

Option Z14 Security Requirements

applies

Option Z16 Tax Compliance

applies

Option Z22 Fair payment

does not apply

Option Z26 Building Information Modelling

does not apply

Option Z42 The Housing Grants, Construction and Regeneration Act 1996

does not apply

Option Z44 Intellectual Property Rights

applies

Option Z45 HMRC Requirements

does not apply

Option Z46 MoD DEFCON Requirements

does not apply

Option Z47 Small and Medium Sized Enterprises (SMEs)

does not apply

Option Z48 Apprenticeships

does not apply

Option Z49 Change of Control

applies

Option Z50 Financial Standing

applies

Option Z51 Financial Distress

does not apply

Option Z52 Records, audit access and open book data

applies

Option Z100 Data Protection

does not apply

Option Z101 Cyber Essentials

does not apply

Other additional conditions

Dispute Resolution

(1) The Parties shall attempt in to negotiate a settlement to any dispute between them arising out of or in connection with the Contract.

(2) If the Parties cannot resolve the dispute pursuant to clause (1) of this Condition, the dispute may, by agreement between the Parties, be referred to mediation pursuant to clause (4) of this Condition.

(3) The performance of the Services shall not cease or be delayed by the reference of a dispute to mediation pursuant to clause (2) of this Condition.

(4) If the Parties agree to refer the dispute to mediation:

a. in order to determine the person who shall mediate the dispute (the “**Mediator**”) the Parties shall by agreement choose a neutral adviser or mediator from one of the dispute resolution providers listed by the Government Procurement Service on its website or in its printed guidance on dispute resolution within 30 days after agreeing to refer the dispute to mediation;

b. the Parties shall within 14 days of the appointment of the Mediator meet with them in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Government Procurement Service to provide guidance on a suitable procedure;

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

d. if the Parties reach agreement on the resolution of the dispute within 60 days of the Mediator being appointed, or such longer period as may be agreed between the Parties, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by both the Authority and the Contractor;

e. failing agreement within 60 days of the Mediator being appointed, or such longer period as may be agreed between the Parties, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.

(5) If the Parties:

- a. do not agree to refer the dispute to mediation;
 - b. fail to reach agreement as to who shall mediate the dispute pursuant to Condition 28(4)(a); or
 - c. fail to reach agreement in the structured negotiations within 60 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.

Contract Data

The *Client's* Contract Data

The *conditions of contract* are the NEC4 Professional Service Short Contract June 2017 incorporating amendments January 2019 and October 2020 and the following additional conditions

The additional conditions of contract are as detailed in the appended Standard Boilerplate Amendments – Appendix A.

Contract Data

The *Consultant's* Contract Data

The *Consultant* is

Name Fair Heat Limited

Address for communications

Address for electronic communications

The service is Update CIBSE's voluntary Code of Practice 1 (2020) ('CP1') to bring it into alignment with the HNTAS regulatory technical specification.

The starting date is 20 May 2024

The completion date is 19 May 2025

The delay damages are £0 per day

The *fee percentage* is 15 %

The *people rates* are

category of person	unit	rate
Mid-Level (Engineer)	Hour	
Lead (Design Manager)	Hour	

If the work is to be carried out on a time change basis the *Consultant* includes *people rates* for its own people as well as people provided by a subcontractor

The *key persons* are

Name	
Job	Mid-Level (Engineer)
Responsibilities	Executing structural changes to the CP1 document; updating CP1 language to align with HNTAS requirements; making changes to wording identified from HNTAS project; updating evidence requirements in line with HNTAS; and ensuring references are up to date.
Qualifications	MEng Engineering Science, Engineering Services SKILLCared Academically Qualified Person
Experience	Fairheat graduate programme, experience with Technical Quality

	Assurance for new build and operational projects.
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Name	
Job	Lead (Design Manager)
Responsibilities	Overall project lead, with lead on restructuring CP1 in line with HNTAS, and translating identified changes from HNTAS to CP1. Overall QA for proposed changes to CP1 document.
Qualifications	MEng
Experience	Five years' HN experience, including FairHeat graduate programme, Design technical QA, District Heating Stage 1 and 2 design, and HNTAS development

Name	
Job	Lead (Design Manager)
Responsibilities	Responsible for proposing wording changes to CP1 where it has been identified that there is a requirements for additional minimum requirements out of HNTAS, including presenting those to the CP1 Steering Group.
Qualifications	CEng, MCIBSE, MSc, BEng
Experience	17 years experience in heat network design and technical quality assurance.

The *Consultant's* Offer

The *Consultant* offers to Provide the Service in accordance with these *conditions of contract* for an amount to be determined in accordance with these *conditions of contract*.

The offered total of the prices is

**£118,374.74 with an option to
extend up to £142,049.69.**

**Enter the total of the Prices from the Price List. If all work is to be
carried out on a time charge basis, enter 'Not Applicable'**

Price List

1. "The contract does not provide for the *Consultant* to be paid on a mixture of time charge and Prices and one or the other must be selected. If the work is to be paid on a time charge basis, only expenses should be included. No other entries should be made in the Price List. If the *Consultant* is to be paid on a priced basis the entries in the first four columns are made by either the *Client* of the tenderer.
2. For each row:
 - If the *Consultant* is to be paid an amount for the item which is not adjusted if the quantity of work in the item changes, the tenderer enters the amount in the Price column only.
 - If the *Consultant* is to be paid an amount for the item of work and which is the rate for the work multiplied by the quantity completed, the tenderer enters the rate which is then multiplied by the expected quantity to produce the Price, which is also entered.
3. Costs incurred by the *Consultant* other than the listed expenses are included in the Rates and
4. Prices and the People Rates. If expenses are paid at cost, then 'at cost' should be entered into
5. the Rate column.

Delete or strike through unused rows.

ITEM NUMBER	DESCRIPTION	UNIT	EXPECTED QUANTITY	RATE	PRICE
1	Mid-Level (Engineer)	Hour			£60,000.00
2	Lead (Design Manager)	Hour			£42,934.56
3	Overhead, Profit & Fees Addition (15%)	%	1	15%	£15,440.18
The total of the Prices				£118,374.74	
EXPENSES					

The method and rules used to compile the Price List are:

In adherence to the DMR Framework Lot 4.2 Rate Card

Scope

6. The Scope should be a complete and precise statement of the *Client's* requirements. If it is incomplete or imprecise, there is a risk that the *Consultant* will interpret it differently from the *Client's* intention. Information provided by the *Consultant* should be listed in the Scope only if the *Client* is satisfied that it is required, is part of a complete statement of the *Client's* requirements and is consistent with other parts of the Scope.

1. Purpose of the Service

Provide a brief summary of why the service is being commissioned and what it will be used for.

The HNTAS project team requires the services of Fairheat to update the voluntary Code of Practice 1 (2020) ('CP1') published by CIBSE (Chartered Institution of Building Services Engineers), to ensure it is brought into alignment with the HNTAS regulatory technical specification. The HNTAS technical specification which includes references to CP1 is currently in development, with a first draft due to be ready in Spring 2024. Upcoming legislation, expected to come into force in 2025, will mandate heat network operator compliance with the technical specification.

2. Description of the service

Give a complete and precise description of what the *Consultant* is required to do.

Fairheat is required to deliver a short-term update to CP1 by March 2025, in readiness for HNTAS launch in summer 2025. This requires drafting an updated version of CP1 to ensure that;

- The document structure is aligned with that of the HNTAS technical specification.
- The language used is suitable for reference within the HNTAS regulatory technical specification.
- The evidence requirements are aligned to those within the HNTAS technical specification.
- All references to other standards are accurate and up to date.
- The minimum requirements are up to date and reflective of latest technical thinking.

The voluntary CP1 (2020) will be removed from the CIBSE website and replaced with the updated CP1 (2025) when it is published.

Scope

3. Existing information

List existing information which is relevant to the *service*. This can include documents which the *Consultant* is to further develop

As per the Specification and Supporting documentation (Appendix B)

4. Specifications and standards

List the specifications and standards that apply to the contract.

As per the Specification and Supporting documentation (Appendix B)

Scope

5. Constraints on how the *Consultant* provides the Service

State any constraints on sequence and timing of work and on method and conduct of work including the requirements for any work by the *Client*.

As per the Specification and Supporting documentation (Appendix B)

Scope

6. Requirements for the programme

State whether a programme is required and, if it is, what form it is to be in, what information is to be shown on it, when it is to be submitted and when it is to be updated

As per the Specification and Supporting documentation (Appendix B)

Scope

7. Information and other things provided by the *Client*

As per the Specification and Supporting documentation (Appendix B)

Appendix A

STANDARD

‘BOILERPLATE’

AMENDMENTS

NEC4 PSSC JUNE 2017 (including amendments issued JANUARY 2019)

CABINET OFFICE

Crown Commercial Service

The standardised 'boilerplate' amendments project addresses a need to simplify the inclusion of government-specific clauses to the NEC and JCT contracts. Centrally mandated government policies and some legislative requirements were being applied by a range of government departments, but as separate operations and with differing approaches. Scope was identified for a simple and standard set of terms which provide a unified front to implement policy and reduce the need for excessive additional drafting, creating a more efficient standardised approach. These terms would be applied across government construction contracts.

In order to bring about this situation, a cross-governmental review of construction contract amendments was undertaken by the Crown Commercial Service (CCS) and the Infrastructure and Projects Authority (IPA). Eighteen clauses were identified as those which would benefit most from the standardisation described above. These clauses were reviewed and redrafted to enhance their ease of comprehension, with the core wording translated to NEC and JCT terminology.

These twenty five clauses are replicated within the NEC and JCT boilerplate documents. This is the **NEC4 PSSC version**.

The clauses should be **unamended** save for those instances with an additional guidance note. Not all will be relevant to each project, and additional clauses may be required where not covered by this document. Those 'boilerplate' clauses not required can be removed and additional, project specific clauses may be added.

Process

The clauses are included in the contract by referring to them in the Contract Data Part 1 at Option Z. The template NEC4 PSC Agreement Client Contract Data contains options to apply or disapply each of the Boilerplate Amendments. The following segment indicates the modification which must be made to the base contract, as well as the steps needed to incorporate the Boilerplate Amendments.

NEC4 Professional Services Short Contract

- In the Client's Contract Data entry reading "the conditions of contract are the NEC4 Professional Services Short Contract June 2017 Edition and the following additional conditions" insert:
- "The *additional conditions of contract* are as selected below and as detailed in the appended Standard Boilerplate Amendments."

- Append pages 8 to 53 of this Standard 'Boilerplate' Amendments document to the standard contract document as this Schedule of Amendments.
- Confirm in the Client's Contract Data which options apply or do not apply, or remove or strikethrough those clauses which do not apply to the current project .
- Add additional, project specific amendments in the normal way.

SUMMARY OF CLAUSES

The following descriptions are of all the clauses addressed by the Standard 'Boilerplate' Amendments project. It should be noted that some of the clauses differ from document to document.

1. Definitions

A list of additional definitions must be included as an amendment to help explain the meaning of subsequent Boilerplate clauses.

2. Admittance to Client's premises

This clause specifies additional provisions around how individual people may be admitted to the Client's premises, and the considerations which must be taken. This includes (but is not limited to) the provision of a list of employee names, obligations as to security passes, and the prevention of unauthorised access or taking of photographs.

3. Prevention of Fraud and Bribery

The Boilerplate clause expands the coverage of the standard contract Fraud and Bribery provisions. It introduces a 'Prohibited Act', also defined in the Boilerplate document, which must not be committed and which must be subject to suitable caution and management. The Consultant must hold subconsultants to the same standards, keep appropriate records of compliance, and immediately notify the Client of potential breaches and work with them to rectify the situation.

4. Equality and Diversity

This introduces an enforceable contractual obligation on the Consultant to comply with laws on equality and discrimination.

5. Official Secrets Act

Consultants are often required to abide by this Act due to the sensitive nature of some public sector projects. The Boilerplate clause saves Clients from drafting this themselves if required, creating an obligation to comply with this Act and, where appropriate, section 11 of the Atomic Energy Act 1946.

6. Conflicts of Interest

The Framework Agreement contains provisions for Consultants to avoid conflicts of interest and to notify them where they arise. This clause applies the same to the call-off contract and includes a right for the Client to terminate the contract if there is, or if the Client considers there to be, an actual conflict or a potential conflict of interest.

7. Publicity and Branding

Clients may not wish Consultants to publicise a project or make reference to a project in the Consultant's promotional material. This clause prevents the Consultant from doing so without the Client's consent.

8. Freedom of Information

As government departments are usually required to comply with Freedom of Information Act requests, extra clauses detailing how this obligation is to be respected must be included. The Boilerplate clause obliges the Consultant to work with the Client in satisfying these requests in certain ways. Among other considerations, this involves the retention and transferral of relevant information, communicating requests for information to the Client in a timely manner, and generally helping the Client in responding to the request.

9. Confidentiality and Information Sharing

Some public sector information is sensitive and cannot be shared, while at other times organisation must share details about its processes in the interest of transparency. As such, this clause provides obligations for both parties to safeguard confidential information,

exceptions where that obligation does not apply, and additional restrictions on the Consultant and further rights for the Client.

10. Security Requirements

This clause is a preface to a schedule requiring the Consultant to create and maintain a comprehensive Information Security Management System. This must be agreed with the Client, contain measures sufficient to ensure security on the project in question, and be regularly reviewed to reflect changes in good practice or project details. It must be tested appropriately and be fully compliant with ISO 27001, subject to audits as required. The schedule also indicates some of the steps to be taken in the event of a security breach.

11. Tax Compliance

With the inclusion of this clause, the Consultant is under an obligation to notify the Client of relevant Tax Non Compliance. The Consultant must provide more information if the Occasion of Tax Non Compliance occurs prior to the end of the defects correction period (NEC) / Rectification Period (JCT and PPC).

12. Fair Payment

This is a clause also aimed at improving how subconsultants are paid, similarly endorsed in the Government Construction Strategy 2016. Obligations are placed on the Consultant to assess and promptly pay subconsultants, and to ensure that these obligations are also included in their contracts with subconsultants.

13. Building Information Modelling (BIM)

Promoting and spreading the use of BIM techniques is a major government construction objective, as identified in the three main policy documents – the Government Construction Strategy 2016, Construction 2025, and the Construction Sector Deal. It has been mandated for all central government departments and is aimed at enhancing efficiency and reducing costs across the industry. This clause provides a mechanism for BIM Protocols to be applied as indicated in the Client's Information Requirements, as well as an option to incorporate a specific type of Protocol, namely the CIC (Construction Industry Council) BIM Protocol. This clause is not replicated in NEC4 PSC, which has overlapping mechanisms with the Boilerplate BIM Provision.

14. Intellectual Property Rights

This indicates that the Consultant provides to the Client an irrevocable, royalty free and non-exclusive licence to use the Intellectual Property of the Consultant. The Client may transfer these rights in a variety of circumstances, and the Consultant is subject to a number of additional obligations.

15. HMRC Requirements

This provision is applicable only to HMRC projects and contracts. It incorporates their special terms and conditions.

16. MOD DEFCONs

This provision is applicable only to Ministry of Defence projects and contracts. It incorporates their special terms and conditions.

17. Small and Medium Enterprises (SMEs)

Government policy dictates that SMEs should be encouraged and brought into public sector projects, as reinforced in the Government Construction Strategy 2016, Construction Sector Deal and Construction 2025. There is a general target for 33% of central government procurement spend going to SMEs by 2022. This Boilerplate clause requires Consultants to employ a certain amount of SMEs as subconsultants, and to respect a number of other obligations regarding reporting and how they manage these SMEs.

18. Apprenticeships

In a similar way to SMEs, there is an overarching government policy for public sector organisations to promote the creation and use of apprenticeship schemes, as per the Government Construction Strategy 2016, the Construction Sector Deal and Construction 2025. In particular, a 2015 Procurement Policy Note describes the steps that public sector organisations must take to ensure they are meeting the government's apprentice aims. This Boilerplate provides a way for Clients to ensure that Consultants do this by creating an obligation to employ certain amounts of apprentices. They must also provide further training opportunities and information about the Government Apprenticeship programme, and engage with the Client to review and discuss a number of measures relating to Apprenticeships.

19. Change of Control

The Framework Agreement contains provisions for alliance members to notify changes of control – for example through changes in voting rights, share capital or control of assets - where they arise. This clause applies the same to the call-off contract and includes a right for the Client to terminate the contract if there is a change of control.

20. Financial Standing

This clause replicates the clause in the Framework Agreement which allows for termination if there is a change in the Consultant's financial standing which affects or may affect the Consultant's ability to perform the contract.

21. Financial Distress

This clause is based in the schedule to the Framework Agreement and is a more detailed provision on changes to the Consultant's credit rating, requiring the Consultant to provide a satisfactory continuity plan for approval. It also allows for termination if the Consultant fails to notify a significant downgrade in its credit rating, or fails to produce or comply with an approved continuity plan.

22. Records, audit access and open book data

This clause requires the Consultant to maintain full and accurate records and accounts of the operation of the contract including the service and the amounts paid by the Client. The Consultant is required to provide access to these records to any Client or other government auditor.

23. Data Protection

With the advent of the General Data Protection Regulation (as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019), every construction project is required to include provisions within their contracts to ensure compliance. The Boilerplate

document includes a Schedule so these regulations can be complied with, with areas for the parties to fill in to reflect project specific data protection requirements.

24. Cyber Essentials

This clause provides a way to include the Government Cyber Essentials scheme into construction projects. This scheme provides for a number of controls which organisations should implement to reduce the risk of common internet based threats. The clause lists

obligations on the Consultant to provide proof of the required certification at certain stages of the project, and to apply the same obligations to its sub-consultants.

SCHEDULE OF AMENDMENTS TO NEC4 PROFESSIONAL SERVICES SHORT CONTRACT

OPTION Z2 - IDENTIFIED AND DEFINED TERMS

Insert new clause 11.3 additional defined terms.

11.3 (1) Auditor is:

- the *Client's* internal and external auditors;
- the *Client's* statutory or regulatory auditors;
- the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
- HM Treasury or the Cabinet Office;
- any party formally appointed by the *Client* to carry out audit or similar review functions; and
- successors or assigns of any of the above;

11.3 (2) Change of Control is a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;

11.3 (3) Client Confidential Information is all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and contractors of the *Client*, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential.

11.3 (4) Client Data is the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and

- which are supplied to the *Consultant* by or on behalf of the *Client*,
- which the *Consultant* is required to generate, process, store or transmit pursuant to this contract or
- which are any Personal Data for which the *Client* is the Data Controller to the extent that such Personal Data is held or processed by the Consultant.

11.3 (5) Client's Premises are premises owned, occupied or leased by the Client and the site of any works to which the service relates.

11.3 (6) Commercially Sensitive Information is the information agreed between the Parties (if any) comprising the information of a commercially sensitive nature relating to the *Consultant*, the charges for the service, its IPR or its business or which the *Consultant* has indicated to the *Client* that, if disclosed by the *Client*, would cause the *Consultant* significant commercial disadvantage or material financial loss.

11.3 (7) Confidential Information is the Client's Confidential Information and/or the Consultant's Confidential Information.

11.3 (8) Contracting Body is any Contracting Body as defined in Regulation 5(2) of the Public Contracts (Works, Service and Supply) (Amendment) Regulations 2000 other than the Client.

11.3 (9) Consultant's Confidential Information is any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and consultants of the *Consultant*, including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, including the Commercially Sensitive Information.

11.3 (10) Crown Body is any department, office or agency of the Crown.

11.3 (11) DASVOIT is the Disclosure of Tax Avoidance Schemes: VAT and other indirect taxes contained in the Finance (No.2) Act 2017.

11.3 (12) Data Controller has the meaning given to it in the Data Protection Legislation.

11.3 (13) Data Protection Legislation is (i) the GDPR, (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy, which, pending a decision from the competent authorities of the EU on the adequacy of the UK data protection regime will include the requirements set out or referenced in Part Three, Title VII, Article 71(1) of the Withdrawal Agreement signed by the UK and the EU in December 2019;

11.3 (14) DOTAS is the Disclosure of Tax avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

11.3 (15) Environmental Information Regulations is the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner in relation to such regulations.

11.3 (16) FOIA is 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.

11.3 (17) General Anti-Abuse Rule is

- the legislation in Part 5 of the Finance Act 2013 (as amended) and
- any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements and to avoid national insurance contributions.

11.3 (18) Halifax Abuse Principle is the principle explained in the CJEU Case C-255/02 Halifax and others.

11.3 (19) Intellectual Property Rights or "IPRs" is

- copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information,
- applications for registration, and the right to apply for registration, for any of the rights listed in the first bullet point that are capable of being registered in any country or jurisdiction,
- all other rights having equivalent or similar effect in any country or jurisdiction and
- all or any goodwill relating or attached thereto.

11.3 (20) Law is any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the *Consultant* is bound to comply under the *law of the contract*.

11.3(21) An Occasion of Tax Non-Compliance is

- where any tax return of the *Consultant* submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of
- a Relevant Tax Authority successfully challenging the *Consultant* under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle or

- the failure of an avoidance scheme which the *Consultant* was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DAVOIT, DOTAS or VADR or any equivalent or similar regime and

where any tax return of the *Consultant* submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the date of this contract or to a civil penalty for fraud or evasion.

11.3 (22) Personal Data has the meaning given to it in the Data Protection Legislation.

11.3 (23) Prohibited Act is

- to directly or indirectly offer, promise or give any person working for or engaged by the *Client* or other Contracting Body or any other public body a financial or other advantage to
 - induce that person to perform improperly a relevant function or activity or
 - reward that person for improper performance of a relevant function or activity,
- to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this contract,
- committing any offence
 - under the Bribery Act 2010 (or any legislation repealed or revoked by such Act),
 - under legislation or common law concerning fraudulent acts or
 - defrauding, attempting to defraud or conspiring to defraud the *Client* or
- any activity, practice or conduct which would constitute one of the offences listed above if such activity, practice or conduct had been carried out in the UK.

11.3 (24) Request for Information is a request for information or an apparent request under the Code of Practice on Access to government Information, FOIA or the Environmental Information Regulations.

11.3 (25) Relevant Requirements are all applicable Laws relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

11.3 (26) Relevant Tax Authority is HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the *Consultant* is established.

11.3 (27) Security Policy means the *Client's* security policy attached as Appendix 1 to Contract Schedule J (Security Provisions) as may be updated from time to time.

11.3 (28) VADR is the VAT disclosure regime under Schedule 11A of the Value Added Tax Act 1994 (VATA 1994) (as amended by Schedule 1 of the Finance (No. 2) Act 2005).

OPTION Z 4 - ADMITTANCE TO CLIENT'S PREMISES

Insert new clause 18:

18.1 The *Consultant* submits to the *Client* details of people who are to be employed by it and its subcontractors in Providing the Service. The details include a list of names and addresses, the capabilities in which they are employed, and other information required by the *Client*.

18.2 The *Client* may instruct the *Consultant* to take measures to prevent unauthorised persons being admitted to the *Client's* Premises.

18.3 Employees of the *Consultant* and its subcontractors are to carry a *Client's* pass and comply with all conduct requirements from the *Client* whilst they are on the parts of the *Client's* Premises identified in the Scope.

18.4 The *Consultant* submits to the *Client* for acceptance a list of the names of the people for whom passes are required. On acceptance, the *Client* issues the passes to the *Consultant*. Each pass is returned to the *Client* when the person no longer requires access to that part of the *Client's* Premises or after the *Client* has given notice that the person is not to be admitted to the *Client's* Premises.

18.5 The *Consultant* does not take photographs of the *Client's* Premises or of work carried out in connection with the service unless it has obtained the acceptance of the *Client*.

18.6 The *Consultant* takes the measures needed to prevent its and its subcontractors' people taking, publishing or otherwise circulating such photographs.

OPTION Z5 - PREVENTION OF FRAUD AND BRIBERY

Insert new clauses:

17.4.1 The *Consultant* represents and warrants that neither it, nor to the best of its knowledge any of its people, have at any time prior to the date of this contract

- committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act or
- been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

17.4.2 During the carrying out of the *service* the *Consultant* does not

- commit a Prohibited Act and
- do or suffer anything to be done which would cause the *Client* or any of the *Client's* employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

• 17.4.3 In Providing the Service the *Consultant*

- establishes, maintains and enforces, and requires that its subcontractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act,
- keeps appropriate records of its compliance with this contract and make such records available to the *Client* on request and
- provides and maintains and where appropriate enforces an anti-bribery policy (which shall be disclosed to the *Client* on request) to prevent it and any *Consultant's* people or any person acting on the *Consultant's* behalf from committing a Prohibited Act.

• 17.4.4 The *Consultant* immediately notifies the *Client* in writing if it becomes aware of any breach of clause 17.4.1, or has reason to believe that it has or any of its people or subcontractors have

- been subject to an investigation or prosecution which relates to an alleged Prohibited Act,
- been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act or
- received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this contract or otherwise suspects that any person or party directly or indirectly connected with this contract has committed or attempted to commit a Prohibited Act.

• 17.4.5 If the *Consultant* makes a notification to the *Client* pursuant to clause 17.4.4, the *Consultant* responds promptly to the *Client's* enquiries, co-operates with any investigation, and allows the *Client* to audit any books, records and/or any other relevant documentation in accordance with this contract.

• 17.4.6 If the *Consultant* breaches clause 17.4.3, the *Client* may by notice require the *Consultant* to remove from carrying out the *service* any person whose acts or omissions have caused the *Consultant's* breach.

Option Z6 - Equality and diversity

Insert new clauses:

25.1 The *Consultant* performs its obligations under this contract in accordance with

- all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and

- any other requirements and instructions which the *Client* reasonably imposes in connection with any equality obligations imposed on the *Client* at any time under applicable equality Law;

25.2 The Consultant takes all necessary steps, and informs the Client of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

Option Z7 – Legislation and Official Secrets

Insert new clauses:

20.4 The *Consultant* complies with Law in the carrying out of the *service*.

20.5 The Official Secrets Acts 1911 to 1989, section 182 of the Finance Act 1989 and, where appropriate, the provisions of section 11 of the Atomic Energy Act 1946 apply to this contract.

20.6 The *Consultant* notifies its employees and subcontractors of their duties under these Acts.

Option Z8 – Conflicts of interest

Insert new clauses:

26.1. The Consultant takes appropriate steps to ensure that neither the Consultant nor any of its personnel are placed in a position where (in the reasonable opinion of the Client) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Consultant or its personnel and the duties owed to the Client under this contract.

26.2. The Consultant promptly notifies and provides full particulars to the Client if such conflict referred to in clause 26.1 arises or may reasonably be foreseen as arising.

26.3. The Client may terminate the Consultant's obligation to Provide the Service immediately under reason R2 and/or to take such other steps the Client deems necessary where, in the reasonable opinion of the Client, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Consultant and the duties owed to the Client under this contract.

Option Z9 – Publicity and Branding

Insert new clauses:

27.1 The Consultant does not

- make any press announcements or publicise this contract in any way
- use the Client's name or brand in any promotion or marketing or announcement of the contract without approval of the Client.

27.2. The Client is entitled to publicise the contract in accordance with any legal obligation upon the Client, including any examination of the contract by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

Option Z10 - Freedom of information

Insert new clauses:

22.1 The *Consultant* acknowledges that unless the *Client* has notified the *Consultant* that the *Client* is exempt from the provisions of the FOIA, the *Client* is subject to the requirements of the Code of Practice on Government Information, the FOIA and the Environmental Information Regulations. The *Consultant* cooperates with and assists the *Client* so as to enable the *Client* to comply with its information disclosure obligations.

22.2 The *Consultant*

- transfers to the *Client* all Requests for Information that it receives as soon as practicable and in any event within two working days of receiving a Request for Information,
 - provides the *Client* with a copy of all information in its possession, or power in the form that the *Client* requires within five working days (or such other period as the *Client* may specify) of the *Client's* request,
 - provides all necessary assistance as reasonably requested by the *Client* to enable the *Client* to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations and
 - procures that its Subcontractors do likewise.
- 22.3 The *Client* is responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.
- 22.4 The *Consultant* does not respond directly to a Request for Information unless authorised to do so by the *Client*.
- 22.5 The *Consultant* acknowledges that the *Client* may, acting in accordance with Cabinet Office Freedom of Information Code of Practice, be obliged to disclose information without consulting or obtaining consent from the *Consultant* or despite the *Consultant* having expressed negative views when consulted.
- 22.6 The *Consultant* ensures that all information is retained for disclosure throughout the *period for retention* and permits the *Client* to inspect such records as and when reasonably requested from time to time.

Option Z13 – Confidentiality and Information Sharing

Insert a new clause

- 23.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this contract, each Party shall
 - treat the other Party's Confidential Information as confidential and safeguard it accordingly,
 - not disclose the other Party's Confidential Information to any other person without prior written consent,

- immediately notify the other Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information and
- notify the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may be a criminal offence under the Bribery Act 2010.

23.2 The clause above shall not apply to the extent that

- such disclosure is a requirement of the Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause Z10 (Freedom of Information),
 - such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner,
 - such information was obtained from a third party without obligation of confidentiality,
 - such information was already in the public domain at the time of disclosure otherwise than by a breach of this contract or
 - it is independently developed without access to the other party's Confidential Information.
- 23.3 The *Consultant* may only disclose the Client Confidential Information to the people who are directly involved in Providing the Service and who need to know the information, and shall ensure that such people are aware of and shall comply with these obligations as to confidentiality. The *Consultant* shall not, and shall procure that the *Consultant's* people do not, use any of the Client Confidential Information received otherwise than for the purposes of this contract.
- 23.4 The *Consultant* may only disclose the Client Confidential Information to *Consultant's* people who need to know the information, and shall ensure that such people are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any default, act or omission of any *Consultant's* people causes or contributes (or could cause or contribute) to the *Consultant* breaching its obligations as to confidentiality under or in connection with this contract, the *Consultant* shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any *Consultant's* people, the *Consultant* shall provide such evidence to the *Client* as the *Client* may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the *Consultant* is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from *Consultant's* people, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with *Consultant's* people in connection with obligations as to confidentiality.
- 23.5 At the written request of the *Client*, the *Consultant* shall procure that those members of the *Consultant's* people identified in the *Client's* request signs a confidentiality undertaking prior to commencing any work in accordance with this contract.
- 23.6 Nothing in this contract shall prevent the *Client* from disclosing the *Consultant's* Confidential Information

- to any Crown Body or any other Contracting Bodies. All Crown Bodies or Contracting Bodies receiving such Confidential Information shall be entitled to further disclose the Consultant's Confidential Information to other Crown Bodies or other Contracting Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Body,
- to a professional adviser, contractor, consultant, supplier or other person engaged by the *Client* or any Crown Body (including any benchmarking organisation) for any purpose connected with this contract, or any person conducting an Office of Government Commerce Gateway Review.
- for the purpose of the examination and certification of the *Client's* accounts,
- for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Client* has used its resources,
- for the purpose of the exercise of its rights under this contract or
- to a proposed successor body of the *Client* in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this contract,

and for the purposes of the foregoing, disclosure of the Consultant's Confidential Information shall be on a confidential basis and subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the *Client* under this clause 23.6.

23.7 The *Client* shall use all reasonable endeavours to ensure that any government department, Contracting Body, people, third party or subcontractor to whom the Consultant's Confidential Information is disclosed pursuant to the above clause is made aware of the *Client's* obligations of confidentiality.

23.8 Nothing in this clause 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 use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.

23.9 The *Client* may disclose the Consultant Confidential Information

- to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement,
- to the extent that the *Client* (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions.

Option Z14 – Security Requirements

The *Consultant* complies with, and procures the compliance of the *Consultant's* people, with the Security Policy and the Security Management Plan produced by the *Consultant* and the *Consultant* shall ensure that the Security Management Plan fully complies with the Security Policy and Contract Schedule.

Option Z16 – Tax Compliance

Insert new clauses:

- 24.1 The *Consultant* represents and warrants that at the date of this contract, it has notified the *Client* in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance.
- 24.2 If, at any point prior to the *defects date*, an Occasion of Tax Non-Compliance occurs, the *Consultant* shall
 - notify the *Client* in writing of such fact within 5 days of its occurrence and
 - promptly provide to the *Client*
 - details of the steps which the *Consultant* is taking to address the Occasions of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant and
 - such other information in relation to the Occasion of Tax Non-Compliance as the *Client* may reasonably require.

~~OPTION Z22 – FAIR PAYMENT~~

~~Insert a new clause:~~

~~53.1 The *Consultant* assesses the amount due to a subcontractor without taking into account the amount certified by the *Client*.~~

~~53.2 The *Consultant* includes in the contract with each subcontractor~~

- ~~a period for payment of the amount due to the subcontractor not greater than 5 days after the final date for payment in this contract. The amount due includes, but is not limited to, payment for work which the subcontractor has completed from the previous assessment date up to the current assessment date in this contract,~~
- ~~a provision requiring the subcontractor to include in each subsubcontract the same requirement (including this requirement to flow down, except that the period for payment is to be not greater than 9 days after the final date for payment in this contract and~~
- ~~a provision requiring the subcontractor to assess the amount due to a subsubcontractor without taking into account the amount paid by the *Consultant*.~~
 - ~~—~~
 - ~~—~~

~~OPTION Z26 – BUILDING INFORMATION MODELLING (BIM)~~

~~|~~

~~20A.1 A BIM Protocol applies/does not apply [delete as appropriate]~~

~~20.A.2 If a BIM Protocol applies the following is added to the Client's Contract Data~~

~~the information execution plan is~~

~~20A.3 In this clause 20A the following defined terms apply:~~

The Information Execution Plan is the ~~information execution plan~~ or is the latest Information Execution Plan accepted by the ~~Client~~. The latest Information Execution Plan accepted by the ~~Client~~ supersedes the previous Information Execution Plan.

Project Information is information provided by the ~~Consultant~~ which is used to create or change the Information Model.

The Information Model is the electronic integration of Project Information and similar information provided by the ~~Client~~ and other Information Providers and is the form stated in the Information Model Requirements.

The Information Model Requirements are the requirements identified in the Scope for creating or changing the Information Model.

Information Providers are the people or organisations who contribute to the Information Model and are identified in the Information Model Requirements.

20A.4 The ~~Consultant~~ collaborates with other Information Providers as stated in the Information Model Requirements.

20A.5 The ~~Consultant~~ and the ~~Client~~ give an early warning by notifying the other as soon as either becomes aware of any matter which could adversely affect the creation or use of the Information Model.

20A.6 If an Information Execution Plan is not identified in the Contract Data, the ~~Consultant~~ submits a first Information Execution Plan to the ~~Client~~ for acceptance within the period stated in the Contract Data.

20A.7 Within two weeks of the ~~Consultant~~ submitting an Information Execution Plan for acceptance, the ~~Client~~ notifies the ~~consultant~~ of the acceptance of the Information Execution Plan or the reasons for not accepting it. A reason for not accepting an Information Execution Plan is that

- ————— it does not comply with the Information Model Requirements or
- ————— it does not allow the ~~Consultant~~ to Provide the Services.

If the ~~Client~~ does not notify acceptance or non-acceptance within the time allowed, the ~~Consultant~~ may notify the ~~Client~~ of that failure. If the failure continues for a further one week after the ~~Consultant's~~ notification, it is treated as acceptance by the ~~Client~~ of the Information Execution Plan.

20A.8 The ~~Consultant~~ submits a revised Information Execution Plan to the ~~Client~~ for acceptance

- — within the ~~period for reply~~ after the ~~Client~~ has instructed it to and
- — when the ~~Consultant~~ chooses to.

~~20A.9 The *Consultant* provides the Project Information in the form stated in the Information Model Requirements and in accordance with the accepted Information Execution Plan.~~

~~20A.10 If the Information Execution Plan is altered by a compensation event, the *Consultant* includes the alterations to the Information Execution Plan in the quotation for the compensation event.~~

~~20A.11 The *Client* owns the Information Model and the *Consultant's* rights over Project Information except as stated otherwise in the Information Model Requirements. The *Consultant* obtains from a Subconsultant equivalent rights for the *Client* over information prepared by the Subconsultant. The *Consultant* provides to the *Client* the documents which transfer these rights to the *Client*.~~

~~20A.12 The following are *Client's* risks~~

- ~~● A fault or error in the Information Model other than a Defect in the Project Information.~~
- ~~● A fault in information provided by Information Providers other than the *Consultant*.~~

~~20A.13 The *Consultant* is not liable for a fault or error in the Project Information unless it failed to provide the Project Information using the skill and care normally used by professionals providing information similar to the Project Information.~~

~~OPTION Z42 - THE HOUSING GRANTS, CONSTRUCTION AND REGENERATION ACT 1996~~

~~Add an additional clause 1.10~~

~~If clause 1 applies then notwithstanding that this contract relates to the carrying out of construction operations other than in England or Wales or Scotland, the Act is deemed to apply to this contract.
[Guidance: for services carried out in Northern Ireland]~~

Option Z44 - Intellectual Property Rights

Delete clause 70 and insert the following clause

In this clause 70 only:

“Document” means all designs, drawings, specifications, software, electronic data, photographs, plans, surveys, reports, and all other documents and/or information prepared by or on behalf of the *Consultant* in relation to this contract.

70.1 The Intellectual Property Rights in all Documents prepared by or on behalf of the *Consultant* in relation to this contract and the work executed from them remains the property of the *Consultant*. The *Consultant* hereby grants to the *Client* an irrevocable, royalty free, non-exclusive licence to use and reproduce the Documents for any and all purposes connected with the construction, use, alterations or demolition of the *service*. Such licence entitles the *Client* to grant sub-licences to third parties in the same terms as this licence

provided always that the *Consultant* shall not be liable to any licensee for any use of the Documents or the Intellectual Property Rights in the Documents for purposes other than those for which the same were originally prepared by or on behalf of the *Consultant*.

70.2 The *Client* may assign novate or otherwise transfer its rights and obligations under the licence granted pursuant to clause 70.1 to a Crown Body or to anybody (including any private sector body) which performs or carries on any functions and/or activities that previously had been performed and/or carried on by the *Client*.

70.3 In the event that the *Consultant* does not own the copyright or any Intellectual Property Rights in any Document the *Consultant* uses all reasonable endeavours to procure the right to grant such rights to the *Client* to use any such copyright or Intellectual Property Rights from any third party owner of the copyright or Intellectual Property Rights. In the event that the *Consultant* is unable to procure the right to grant to the *Client* in accordance with the foregoing the *Consultant* procures that the third party grants a direct licence to the *Client* on industry acceptable terms.

70.4 The *Consultant* waives any moral right to be identified as author of the Documents in accordance with section 77, Copyright Designs and Patents Acts 1988 and any right not to have the Documents subjected to derogatory treatment in accordance with section 8 of that Act as against the *Client* or any licensee or assignee of the *Client*.

70.5 In the event that any act unauthorised by the *Client* infringes a moral right of the *Consultant* in relation to the Documents the *Consultant* undertakes, if the *Client* so requests and at the *Client's* expense, to institute proceedings for infringement of the moral rights.

70.6 The *Consultant* warrants to the *Client* that it has not granted and shall not (unless authorised by the *Client*) grant any rights to any third party to use or otherwise exploit the Documents.

70.7 The *Consultant* supplies copies of the Documents to the *Client* and to the *Client's* other contractors and consultants for no additional fee to the extent necessary to enable them to discharge their respective functions in relation to this contract or related service.

70.8 After the termination or conclusion of the *Consultant's* employment hereunder, the *Consultant* supplies the *Client* with copies and/or computer discs of such of the Documents as the *Client* may from time to time request and the *Client* pays the *Consultant's* reasonable costs for producing such copies or discs.

70.9 In carrying out the service the *Consultant* does not infringe any Intellectual Property Rights of any third party. The *Consultant* indemnifies the *Client* against claims, proceedings, compensation and costs arising from an infringement or alleged infringement of the Intellectual Property Rights of any third party.

OPTION Z45 – HMRC REQUIREMENTS

Insert a new clause 18B

~~This clause is to incorporate HMRC special terms and conditions in the form of HMRC Call-Off Schedule 23 (HMRC Terms) [Guidance: Client to reference Call-Off Schedule 23 (HMRC Terms)].~~

OPTION Z46 – MOD DEFCON REQUIREMENTS

Insert a new clause 18B

This clause is to incorporate MoD special terms and conditions in the form of DEFCONs and DEFORMs as detailed at <https://www.gov.uk/guidance/knowledge-in-defence-kid>

OPTION Z47 – SMALL AND MEDIUM SIZED ENTERPRISES (SMES)

Insert new clause:

21.4

~~The *Consultant* is required to take all reasonable steps to engage SMEs as Subcontractors and to seek to ensure that no less than the SME percentage of Subcontractors stated in the Contract Data are SMEs or that a similar proportion of the Defined Cost is undertaken by SMEs.~~

~~The *Consultant* is required to report to the *Client* in its regular contract management monthly reporting cycle the numbers of SMEs engaged as Subcontractors and the value of the Defined Cost that has been undertaken by SMEs.~~

~~Where available, the *Consultant* is required to tender its Subcontracts using the same online electronic portal as was provided by the *Client* for the purposes of tendering this contract.~~

~~The *Consultant* is to ensure that the terms and conditions used to engage Subcontractors are no less favourable than those of this contract. A reason for the *Client* not accepting subcontract documents proposed by the *Consultant* is that they are unduly disadvantageous to the Subcontractor.~~

OPTION Z48 – APPRENTICESHIPS

Insert new clause:

21.5

~~The *Consultant* takes all reasonable steps to employ apprentices, and reports to the *Client* the numbers of apprentices employed and the wider skills training provided, during the delivery of the service.~~

~~The *Consultant* takes all reasonable steps to ensure that no less than a percentage of its people (agreed between the Parties) are on formal apprenticeship programmes or that a similar proportion of hours worked in Providing the Service, (which may include support staff and subcontractors) are provided by people on formal apprenticeship programmes.~~

~~The *Consultant* makes available to its people and subcontractors working on the contract, information about the Government's Apprenticeship programme and wider skills opportunities.~~

~~The *Consultant* provides any further skills training opportunities that are appropriate for its people engaged in Providing the Service.~~

~~The *Consultant* provides a report detailing the following measures in its regular contract management monthly reporting cycle and is prepared to discuss apprenticeships at its regular meetings with the *Client*~~

- ~~• the number of people during the reporting period employed on the contract, including support staff and subcontractors,~~
- ~~• the number of apprentices and number of new starts on apprenticeships directly initiated through this contract,~~
- ~~• the percentage of all people taking part in an apprenticeship programme,~~
- ~~• if applicable, an explanation from the *Consultant* as to why it is not managing to meet the specified percentage target,~~
- ~~• actions being taken to improve the take up of apprenticeships and~~
- ~~• other training/skills development being undertaken by people in relation to this contract, including:~~
 - ~~(a) work experience placements for 14 to 16 year olds,~~
 - ~~(b) work experience /work trial placements for other ages,~~
 - ~~(c) student sandwich/gap year placements,~~
 - ~~(d) graduate placements,~~
 - ~~(e) vocational training,~~
 - ~~(f) basic skills training and~~
 - ~~(g) on-site training provision/ facilities.~~

Option Z49 – Change of Control

Insert new clauses:

19.1 The *Consultant* notifies the *Client* immediately in writing and as soon as the *Consultant* is aware (or ought reasonably to be aware) that it is anticipating, undergoing, undergoes or has undergone a Change of Control and provided such notification does not contravene any Law. The *Consultant* ensures that any notification sets out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.

90.7 The *Client* may terminate the *Consultant's* obligation to Provide the Service (which shall take effect as termination under reason R2) within six months from

- being notified in writing that a Change of Control is anticipated or is in contemplation or

- has occurred; or
- where no notification has been made, the date that the *Client* becomes aware that a Change of Control is anticipated or is in contemplation or has occurred, but shall not be permitted to terminate where an approval was granted prior to the Change of Control.

Option Z50 – Financial Standing

90.8 The *Client* may terminate the *Consultant's* obligation to Provide the Service (which shall take effect as termination under reason R2) where in the reasonable opinion of the *Client* there is a material detrimental change in the financial standing and/or the credit rating of the *Consultant* which:

- adversely impacts on the *Consultant's* ability to perform its obligations under this contract; or
- could reasonably be expected to have an adverse impact on the *Consultant's* ability to perform its obligations under this contract.

~~OPTION Z51 – FINANCIAL DISTRESS~~

~~The *Consultant* complies with the provisions of Schedule [Guidance: insert schedule ref here] (Financial Distress) in relation to the assessment of the financial standing of the *Consultant* and the consequences of a change to that financial standing.~~

Option Z52 – Records, Audit Access and Open Book Data

Insert new clauses:

28.1 The *Consultant* keeps and maintains for the period of the *Consultant's* liability under this contract full and accurate records and accounts of the operation of this contract including the service provided under it, any subcontracts and the amounts paid by the *Client*.

28.2 The *Consultant*

- keeps the records and accounts referred to in clause 28.1 in accordance with Law
- affords any Auditor access to the records and accounts referred to in clause 28.1 at the *Consultant's* premises and/or provides records and accounts (including copies of the *Consultant's* published accounts) or copies of the same, as may be required by any Auditor from time to time during the *Consultant* Providing the Service and the liability period under the contract in order that the Auditor may carry out an inspection to assess compliance by the *Consultant* and/or its subcontractors of any of the *Consultant's* obligations under this contract including in order to:
 - verify the accuracy of any amounts payable by the *Client* under this contract (and proposed or actual variations to them in accordance with this contract)
 - verify the costs of the *Consultant* (including the costs of all subcontractors and any third party suppliers) in connection with Providing the Service
 - identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the *Client* has no obligation to inform the *Consultant* of the purpose or objective of its investigations
 - obtain such information as is necessary to fulfil the *Client's* obligations to supply information for parliamentary, ministerial, judicial or administrative purposes

- including the supply of information to the Comptroller and Auditor General
- enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Client* has used its resources
 - subject to the *Consultant's* rights in respect of Consultant's Confidential Information, the *Consultant* provides the Auditor on demand with all reasonable co-operation and assistance in respect of
 - all reasonable information requested by the *Client* within the scope of the audit
 - reasonable access to sites controlled by the *Consultant* and to any *Consultant's* equipment used to Provide the Service
 - access to the *Consultant's* personnel.

28.3 The Parties bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 28, unless the audit reveals a default by the *Consultant* in which case the *Consultant* reimburses the *Client* for the *Client's* reasonable costs incurred in relation to the audit.

28.4 This clause does not constitute a requirement or agreement for the purposes of section 6(3)(d) of the National Audit Act 1983 for the examination, certification or inspection of the accounts of the *Consultant* and the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the *Consultant* is not a function exercisable under this contract.

OPTION Z100 – GDPR

~~Insert new clause Z100 as follows:~~

~~The *Client* and the *Consultant* shall comply with the provisions of schedule [Guidance: insert schedule ref here]~~

OPTION Z101 – CYBER ESSENTIALS

~~Insert new clause Z101 as follows:~~

~~The *Client* and the *Consultant* shall comply with the provisions of schedule [Guidance: insert schedule ref here]~~

ANNEX A: SCHEDULE OF PROCESSING, PERSONAL DATA

AND DATA SUBJECTS SCHEDULE A PROCESSING,

PERSONAL DATA AND DATA SUBJECTS

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

1. The contact details of the Controller's Data Protection Officer are: DESNZ Data Protection Officer, Department for Energy Security and Net Zero, 1 Victoria Street, London, SW1H 0ET
2. The contact details of the Supplier Data Protection Officer are: Lauren Benn, Unit 101 Trowbray House, 108 Weston Street, London, SE1 3QB Email: lauren.benn@fairheat.com, Telephone: 07936 962353
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor	<p>The Parties are Independent Controllers of Personal Data The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of:</p> <ul style="list-style-type: none"> • Business contact details of Supplier Personnel for which the Supplier is the Controller, • Business contact details of any directors, officers, employees, agents, consultants and contractors of Relevant Authority (excluding the Supplier Personnel) engaged in the performance of the Relevant Authority's duties under the Contract) for which the Relevant Authority is the Controller, • Other Personal Data may be managed and provided by one Party who is Controller to the other Party who will separately determine the nature and purposes of its Processing the Personal Data on receipt e.g. where (1) the Supplier has professional or regulatory obligations in respect of Personal Data received, (2) a standardised service is such that the Relevant Authority cannot dictate the way in which Personal Data is processed by the Supplier, or (3) where the Supplier comes to the transaction with Personal Data for which it is already Controller for use by the Relevant Authority
Subject matter of the processing	Processing will take place from Contract Commencement for the duration of the Call Off Contract plus a 6 year retention period. The Contract will end as per the date detailed in the Order Form but may be extended for up to two months.
Duration of the processing	The nature of processing will include the storage and use of names and business contact details of staff of both the Buyer and the Supplier as necessary to deliver the services and to undertake contract and performance management. The Order Form itself will include the names and business contact details of staff of both the Buyer and the Supplier involved in managing the Contract.

Nature and purposes of the processing	The nature of processing will include the storage and use of names and business contact details of staff of both the Buyer and the Supplier as necessary to deliver the services and to undertake contract and performance management. The Order Form itself will include the names and business contact details of staff of both the Buyer and the Supplier involved in managing the Contract.
Type of Personal Data being processed	Names, business telephone numbers and email addresses, office location and position of staff of both the Buyer and the Supplier as necessary to deliver the services and to undertake contract and performance management. The Order Form itself will include the names and business contact details of staff of both the Buyer and the Supplier involved in managing the Contract.
Categories of Data Subject	<p>Staff of the Buyer and the Supplier, including where those employees are named within the Order Form itself or involved within contract management.</p> <p>The Supplier will provide the Buyer with a complete and uncorrupted version of the Personal Data in electronic form (or such other format as reasonably required by the Authority) and erase from any computers, storage devices and storage media that are to be retained by the Supplier after the expiry of the Contract. The Supplier will certify to the Buyer that it has completed such deletion.</p> <p>Where Personal Data is contained within the Contract documentation, this will be retained in line with the Buyer's privacy notice.</p>

APPENDIX A – SECURITY POLICY

<https://www.gov.uk/government/publications/security-policy-framework>

Appendix B: Specification

Heat Network Technical Assurance Scheme (HNTAS): CP1 Update Provider Brief

Project Overview

Summary

The Department of Energy Security & Net Zero requires the services of an organisation to update the voluntary Code of Practice 1 (2020) ('CP1') published by CIBSE (Chartered Institution of Building Services Engineers), to ensure it is brought into alignment with the HNTAS regulatory technical specification. The HNTAS technical specification is currently in development, with a first draft due to be ready in Spring 2024. Upcoming legislation, expected to come into force in 2025, will mandate heat network operator compliance with the technical specification.

Background

The Energy Act 2023 has now passed into law. The Act appoints Ofgem as Regulator of the heat networks sector and grants Ofgem powers to authorise individual heat networks to operate. Ofgem will grant authorisation to a heat network, provided that the network meets certain authorisation conditions. The Energy Act includes compliance with minimum technical standards, as one of these conditions. Authorisation will only be given to heat networks which meet certain technical requirements (e.g. on flow temperature stability, heat network losses, etc).

As with other market framework measures, mandatory minimum technical standards will start to come into force in 2025. All heat networks will be in scope of these requirements. Initially, existing networks will be subject to less stringent levels of minimum standards than new networks, to ensure requirements are achievable.

To enable heat suppliers to demonstrate compliance, a Heat Network Technical Assurance Scheme (HNTAS) is being set up. Under HNTAS, assessors will carry out assessments to ascertain if heat networks will achieve minimum technical requirements (validation) OR have achieved minimum technical requirements (verification). We intend for assessors to undertake Gateway Assessments for heat suppliers, with 3rd party certification at certain key points. For new networks, certificates will be required before they are granted authorisation to operate. For existing networks, certificates will be required to retain their authorisation to operate.

The HNTAS minimum technical standards are in development and are broadly based on CP1 (2020), the existing and widely approved industry code of practice. As with CP1, the HNTAS technical specification covers a range of elements of heat networks - from energy centres to district & communal distribution networks, to consumer connections - across the lifecycle of a heat network - from feasibility & design to operation, maintenance and so on. Development of HNTAS standards has involved a great deal of engagement with industry; workshops have been held with 5 technical sub-working groups, each holding 5 meetings and comprised of c.15 industry experts. A first draft of the HNTAS technical specification is expected in March 2024.

Why this work is necessary

To enable a successful launch of HNTAS, it is important that the voluntary CP1 (2020) is updated to bring it into alignment with the HNTAS regulatory technical specification. This is important because:

1. CP1 (2020) is already widely recognised and adopted by many heat network designers, developers and operators. If CP1 is not updated to mirror upcoming technical standards mandated by legislation, it is probable that some confusion will arise as to whether CP1 or the new technical standards should be adhered to, and what the difference is between the two. DESNZ is conscious of avoiding a situation in which some heat network operators may follow outdated CP1 standards currently in circulation and, as a result, unintentionally fail to comply with the regulatory standards they have a legal duty to follow.
2. Heat network operators are more likely to be receptive to new standards if they are held within a publication that is already widely recognised and has sector buy-in. Therefore, DESNZ ought to make best use of the sector wide recognition of the CIBSE CP1 brand to promote compliance with technical standards regulation. CIBSE's reputation has been established through their work as expert authors and steering committee facilitators and stringent quality assurance processes including peer review and public consultation.

In the short term, an update to CP1 (2020) needs to be carried out during 2024 so that the updated version of CP1 is ready for publication in March 2025. It is important that the updated CP1 is published ahead of the launch of HNTAS to give the sector as much time as possible to prepare for upcoming standards, before they are legally obligated to comply when legislation is introduced, and so that CP1 can be appropriately referenced within the technical specification.

Following this, it is anticipated that longer term updates will be required from 2025 onwards to address any emerging gaps between CP1 (2025) and the technical specification to ensure that the code of practice remains relevant by adapting to a changing industry landscape. However, work involved in future updates is outside the scope of this project brief.

Project Details

Requirements

Deliver a short-term update to CP1 by March 2025, in readiness for HNTAS launch in summer 2025. This requires drafting an updated version to CP1 to ensure that;

- a. The document structure is aligned with that of the HNTAS technical specification.
- b. The language used is suitable for reference within the HNTAS regulatory technical specification.
- c. The evidence requirements are aligned to those within the HNTAS technical specification.
- d. All references to other standards are accurate and up to date.
- e. The minimum requirements are up to date and reflective of latest technical thinking.

Working Arrangements

DESNZ welcomes hybrid working. The DESNZ project team operate a hybrid scheme, enjoying the benefits of both remote work and working from DESNZ office locations in London & Birmingham. The DESNZ project team use Microsoft Teams to facilitate online meetings.

It is expected that most of the work outlined in this brief will be completed remotely. However, the supplier's team must be able to travel to DESNZ's London office at 3 Whitehall Place, SW1A 2EG for

face-to-face meetings and workshops, should the need arise. Travel expenses will not be reimbursed.

The supplier's team must be available during the Heat Network Policy team's core working hours; Monday to Friday, 9am-5pm.

The supplier team must conduct regular update meetings for the Heat Network Policy team and other DESNZ stakeholders to provide progress updates. These sessions will take place via MS Teams, or on occasion face to face. The supplier must provide secretarial support for all meetings, including for example, compiling & circulating agendas, minutes, actions and updates.

The CP1 Update project will require the supplier project team to work closely and effectively with partners at CIBSE. Peer review, final editing and publishing activities are not in the scope of this project brief. However, the supplier project team who are selected to carry out the update to CP1 will be required to liaise with CIBSE to support these activities, in particular final proof reading. We anticipate that any new diagrams will be drafted by the supplier but then re-drawn by CIBSE for publication.

Supplier Project Team

Security Clearance

Members of the supplier project team must have Baseline Personnel Security Standard (BPPS) as a minimum. Suppliers who do not currently have this will not be excluded from the process but will be expected have at least this clearance level upon contract start.

Resourcing

The supplier project team must submit a proposed resourcing model along with rationale, to show the expected effort required to carry out the delivery activities set out in the milestones table on the next page. The resourcing model should show how the required effort is spread across supplier project team members, and across delivery activities.

Example resourcing proposal that is indicative of the resourcing we expect will be required to deliver this project:

- *Full time effort from a mid-level team member*
- *Regular input from a technical lead team member and a senior team member*
- *Occasional support from director level*
- *It's anticipated that with this resourcing configuration, the project could run for 20 weeks from commencement of planning activity in the delivery stage.*

Delivery activity	Effort required (hours)			
	Mid-level	Technical Lead	Senior-level	Director
Planning	5	12	6	6.5
Drafting Part A	3	5	1	2
Drafting Part B	20	9	5	0
Drafting Annexes	8	6	0.5	2.5
Working Groups	4	7	2.5	3
Consultation	3	4	1	1.5
Editing	5	4	1.5	2.5

Knowledge & Skills

The supplier project team must demonstrate the following ability and experience

- Heat Networks sector experience
- A detailed understanding of CIBSE's CP1
- Familiarity with DESNZ's Heat Network Transformation Program, specifically the HNTAS workstream
- Proven ability to create clear, high quality written content on energy systems
- Industry connections / recognition to enable effective consultation with relevant stakeholders

Budget

Responses with proposed costs above £120,000 excluding VAT will not be considered.

Intellectual Property Rights

All Intellectual Property Rights (IPR) and outputs of this project will belong to DESNZ.

Contract Duration

May 2024 to May 2025

Milestones

Stage	Activity	Due
Delivery	Planning	May 2024
	Drafting*	June – October 2024
	Consultation opens*	June 2024
	Consultation closes	August 2024
	CP1 first draft circulated for review	October 2024
	CP1 final draft issued to CIBSE	December 2024
	CP1 update published	March 2025

To meet later delivery milestones, it is likely that drafting, and consultation activities will need to be run concurrently; for example – draft section 1 and begin consultation and drafting of section 2 to take place while section 1 consultation is open. The supplier project team will need to account for this at planning stage and ensure sufficient staffing to manage these activities together.