

Date: 22nd February 2022

FORM OF AGREEMENT

Incorporating the NEC3 Professional Services Contract April 2013

Between

THE SECRETARY OF STATE FOR WORK AND PENSIONS

And

ATKINS LIMITED

For the provision of

a Heat Decarbonisation Study in FY21/22

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THIS AGREEMENT is made the 22nd day of February 2022

PARTIES:

1. **THE SECRETARY OF STATE FOR WORK AND PENSIONS** acting as part of the Crown (the "**Employer**"); and
2. **ATKINS LIMITED** which is a company incorporated in and in accordance with the laws of England and Wales (Company No. 00688424 whose registered office address is at Woodcote Grove, Ashley Road, Epsom, Surrey, KT18 5BW (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 Dynamic Purchasing System (DPS) for heat networks and electricity generation assets services for the benefit of public sector bodies.
- (B) The *Consultant* was appointed to the DPS and executed the DPS agreement (with reference number **RM3824**) which is dated 03 May 2017 (the "**DPS Agreement**"). In the DPS Agreement, the Consultant is identified as the "Supplier".
- (C) On the 21 September 2021 the *Employer*, acting as part of the Crown, and in the DPS Agreement is identified as a "Contracting Authority" invited the *Consultant* along with other dynamic purchasing system suppliers to tender for the *Employer's* requirements in accordance with the Call for Competition Procedure (as defined in the DPS Agreement).
- (D) On the 05 October 2021 the *Consultant* submitted a tender response and was subsequently selected by the *Employer* to provide the *services*.
- (E) The *Consultant* has agreed to Provide the Services in accordance with this agreement and the DPS Agreement.

IT IS AGREED AS FOLLOWS:

1. The *Employer* 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 Services in accordance with the *conditions of contract* identified in the Contract Data and the Contract Schedules.
3. This Call Off Contract is the entire agreement between the Parties in relation to the *services* 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 agreement in reliance on any arrangements, understandings, agreements, statements, representations or warranties other than those expressly set out in this agreement.
5. Nothing in clauses 3 or 4 shall exclude liability in respect of misrepresentations made fraudulently.

6. The Contract Schedules are:

1. Invitation to Tender for the Provision of a Heat Decarbonisation Study in FY21/22 dated 21st September 2021, as amended
2. Employer's Statement of Requirements
3. Consultant Proposal
4. Price List
5. List of Notified Sub-consultants
6. Personal Data and Data Subjects
7. Security Policy
8. *Employer's* Code of Conduct
9. Key Performance Indicators

Executed under hand

The Consultant

Signed by [NAME OF DIRECTOR] as an Authorised Signatory for and on behalf of Atkins Ltd

[SIGNATURE OF DIRECTOR]

Director

.....

The Employer

Signed by Nicola Oxley for and on behalf of The Secretary of State for Work and Pensions of Caxton House, Tothill Street, London, SW1H 9NA

Authorised signatory

Professional Services Contract

Contract Data

Part one – Data provided by the Employer

- 1 General**
- The *conditions of contract* are the core clauses and the clauses for main Option A, dispute resolution Option W2 and secondary Options X2, X10, X11, X18, X20, Y(UK)2 and Z of the NEC3 Professional Services Contract (April 2013).
 - The *Employer* is The Secretary of State for Work and Pensions, Caxton House, Tothill Street, London, SW1H 9NA.
 - The *Adjudicator* is the person agreed by the Parties from the list of *Adjudicators* published by the Royal Institution of Chartered Surveyors or nominated by the *Adjudicator nominating body* in the absence of agreement.
 - The *services* are as set out in the Employer's Statement of Requirements in Contract Schedule 2 and in the Consultant Proposal as set out in Contract Schedule 3.
 - The Scope is in as set out in the Employer's Statement of Requirements in Contract Schedule 2 to this agreement and in the Consultant Proposal as set out in Contract Schedule 3.
 - The *language of this contract* is English.
 - *The law of the contract* is the law of England and Wales and the Courts of the country selected above, shall have exclusive jurisdiction with regard to any dispute in connection with this contract and the Parties irrevocably agree to submit to the jurisdiction of those courts.
 - The *period for reply* is two weeks.
 - The *period for retention* is 6 years following Completion or earlier termination.
 - The *Adjudicator nominating body* is the *Royal Institution of Chartered Surveyors*.
 - The *tribunal* is arbitration.
 - The following matters will be included in the Risk Register

1. Covid-19

2 The Parties' main responsibilities

- The *Employer* provides access to the following persons, places and things:

a) access to DWP premises as necessary.

3 Time • The *starting date* is 21 October 2021.

• The *Consultant* submits revised programmes at intervals no longer than one week.

4 Quality • The quality policy statement and quality plan are provided within 2 weeks of the *starting date*.

• The *defects date* is 52 weeks after Completion of the whole of the *services*.

5 Payment • The *assessment interval* is monthly.

• The *currency of this contract* is the pound sterling (£).

• The *interest rate* is, 3% per annum above the Bank of England base rate in force from time to time.

8 Indemnity, insurance and liability • The amounts of insurance and the periods for which the *Consultant* maintains insurance are

event	cover	Period
failure of the <i>Consultant</i> to use the skill and care normally used by professionals providing services similar to the <i>services</i>	£2,000,000 in respect of each claim in respect of any one claim, and in the aggregate per annum.	from the <i>starting date</i> until 6 years following completion of the whole of the <i>services</i> or earlier termination
death of or bodily injury to a person (not an employee of the <i>Consultant</i>) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i>	As required under DPS Schedule 14 (Annex 1 - Part A)	from the <i>starting date</i> until all notified Defects have been corrected or earlier termination

death of or bodily injury to employees of the *Consultant* arising out of and in the course of their employment in connection with this contract

As required under DPS Schedule 14 (Annex 1 - Part C)

from the *starting date* until all notified Defects have been corrected or earlier termination

Optional Statements

If the *Employer* has decided the *completion date* for the whole of the *services*

- The *completion date* for the *services* is 31st March 2022.

If the *Employer* has identified work which is to meet a *stated condition by a key date*

- The *key dates* and *conditions* to be met are

1: Production of 25 Property Level Reports and summary Programme Level Report meeting the satisfaction of the Employer. The following terms are defined within the Employer's Statement of Requirements:

- "Property Level Report"
- "Programme Level Report"

- 1: 24th December 2021

2: Production of the remaining Property Level Reports and summary Programme Level Report meeting the satisfaction of the Employer. The following terms are defined within the Employer's Statement of Requirements:

- "Property Level Report"
- "Programme Level Report"

2: 25th February 2022

3: Provision of a weekly update each week during the term of the contract to confirm which site visits have been completed in the relevant week.

3: By noon each Friday up until 25th February 2022

4: Completion of Deliverable 2, as defined in the Employer's Statement of Requirements, to the reasonable satisfaction of the Employer.

4: By 31st March 2022

If the period in which payments are made is not three weeks and Y(UK)2 is not used

- Not applicable

If Y(UK)2 is used and the final date for payment is not 14 days after the date when payment is due

- The period for payment is 30 days after the date when payment is due.

If the *Employer* states any expenses

- The *Employer* does not state any expenses.

If the *tribunal* is arbitration

- The *arbitration procedure* is the London Court of International Arbitration Rules.
- The number of arbitrators shall be agreed by the Parties before the commencement of arbitration proceedings.
- The place where arbitration is to be held will be agreed by the Parties before the commencement of arbitration proceedings.
- The language to be used in the arbitration proceedings shall be English.
- If the Parties cannot agree the identity of the arbitrator then the nominating body shall be Chartered Institute of Arbitrators.

If Option A is used:

- The *Consultant* prepares forecasts of the total *expenses* at intervals no longer than 4 weeks.

Option X2 Option X2 is used:

- *The law of the project* is the law of England and Wales.

Option X10 Option X10 is used

- The *Employer's Agent* is
- Name: Sodexo Limited (company number 00842846)
- Address: One Southampton Row, Holborn, London WC1B 5HA

The authority of the *Employer's Agent* is as set out in clause Z51.

Option X18 Option X18 is used:

- The *Consultant's* liability to the *Employer* for indirect or consequential loss is limited to £2,000,000.
- The *Consultant's* liability to the *Employer* for Defects that are not found until after the *defects date* is limited to £2,000,000 for each and every claim.
- The *end of liability* date is 6 years after Completion of the whole of the *services*.

Option X20 Option X20 is used:

- The *incentive schedule* for Key Performance Indicators (**KPIs**) is in Contract Schedule 9.
- A report detailing performance against each KPI is provided at intervals of 1 month.
- The Parties shall meet within 5 Working Days following each KPI performance report being provided at a monthly performance meeting. Without prejudice to the Improvement Plan Process set out below, actions and associated timescales will be agreed to share best practice and/or agree how improvements to performance will be implemented.
- The performance of the Consultant in the preceding month is classified as 'Good', 'Poor' or 'Requiring Improvement' in accordance with Contract Schedule 9.
- Without prejudice to any other right or remedy of the *Employer*, where the performance of the *Consultant* in three or more consecutive months is classified as 'Poor' the *Consultant* shall be deemed to have substantially failed to comply with his obligations and such default shall be deemed not to be capable of being put right. Accordingly, the *Employer* shall have the right to terminate the *Consultant's* obligation to Provide the Services upon written notice.
- Where X20 is used, the amount due under clause 50 is adjusted to account for the application of the *incentive schedule*.
- If the *Consultant* fails to meet a KPI in respect of which there is a Fee Impact (as set out in Contract Schedule 9) service credits shall accrue as set out in Contract Schedule 9. Subject to Clause X18 (Limitation of Liability), the *Employer* sets off and/or withholds the value of the service credits which have accrued under this paragraph from the amount due under Clause 51 (Payment) or a sum equal to the value of the service credits may be recovered by the *Employer* as a debt due from the *Consultant*.
- The Employer reserves the right to disapply the *incentive schedule* in whole or in part where the Employer considers that mitigating circumstances apply.

Improvement Plan Process

- An **Improvement Plan** is the plan to address the impact of and prevent the reoccurrence of performance by the *Consultant* which is 'Poor' or 'Requiring Improvement'.
- Where the performance of the *Consultant* is 'Poor' or 'Requiring Improvement' in the previous month, the *Employer* may serve notice (an **Improvement Notice**) on the *Consultant* setting out sufficient detail to make it clear what the *Consultant* has to rectify.
- Where an Improvement Notice is served the *Consultant* submits to the *Employer* a draft Improvement Plan and the *Employer* reviews it

as soon as possible and in any event within 10 Working Days (or such other period as the Parties agree) of the monthly performance meeting or, if later, the date of service of the Improvement Notice. The *Consultant* submits a draft Improvement Plan even if it disputes the performance rating in the previous month.

- The draft Improvement Plan sets out:
 1. full details of the performance rating in the previous month and which KPIs were rated as Red or Amber to achieve this rating; and
 2. the steps the *Consultant* proposes to take to rectify and improve the performance of these KPIs and to prevent any issues from recurring, including timescales for such steps.
- The *Consultant* provides the *Employer* with such additional information or documentation as the *Employer* reasonably requires.
- The *Employer* notifies the *Consultant* that:
 1. it agrees the draft Improvement Plan; or
 2. it rejects the draft Improvement Plan because it is inadequate, for example because it is not detailed enough to evaluate, will take too long to complete, will not prevent reoccurrence of the Red or Amber markings it was drafted to improve or is otherwise unacceptable to the *Employer*. Where the *Employer* does so it shall set out its reasons for doing so.
- Where the *Employer* accepts the Improvement Plan the *Consultant* immediately implements the actions in the Improvement Plan.
- Where the *Employer* rejects the Improvement Plan the *Consultant* resubmits its draft Improvement Plan taking into account the *Employer's* comments within 5 Working Days of notice that the *Employer* rejects the preceding Improvement Plan.
- If performance of the *Consultant* is classified as 'Poor' and the *Consultant* fails in respect of any of such incidences of 'Poor' performance:
 1. to submit a draft Improvement Plan to the *Employer* as required by this clause X20;
 2. to submit a draft Improvement Plan which the *Employer* acting reasonably does not approve;
 3. to implement an Improvement Plan agreed by the Parties by the date of rectification stipulated in the Improvement Plan; or
 4. following implementation of a previous Improvement Plan, where one or more of the same KPIs has received a Red marking in consecutive months for the same (or substantially the same) root cause,

then the *Consultant* shall be deemed to have substantially failed to comply with his obligations and such default shall be deemed not to

be capable of being put right and, without prejudice to any other right or remedy of the *Employer*, the *Employer* may terminate the *Consultant's* obligation to Provide the Services.

**Contract Data
relating to Z clauses**

- The *additional conditions of contract* are clauses Z1 to Z52 set out with this contract save for:
Z9, Z19, Z21, Z22, Z26, Z35, Z36, Z37, Z48 and Z49.

Clause Z39 Financial Distress

If Clause Z39 applies

The *credit ratings* at the Contract Date and the rating agencies issuing them are

party	rating agency	<i>credit rating</i>
<i>Consultant</i>	Fame	Secure

Clause Z42 Off Shoring of Data

The Risk Assessment is a full risk assessment and security review carried out by the *Employer* in accordance with the [Offshoring Policy for DWP Contractors](#) or any later revision or replacement.

Part two – Data provided by the Consultant

1 Statements given in all contracts

- The *Consultant* is

Name Atkins Limited

Address Woodcote Grove, Ashley Road, Epsom, Surrey,
KT18 5BW

The *key people* are¹

- Name:
- Job:
- Responsibilities:

Experience:

- Name:
- Job:
- Responsibilities:
- Experience

- The *staff rates* are: Please see Contract Schedule 4 - Price List.

The *Consultant* shall keep records of hours and days properly worked by the *Consultant's* staff in the form of timesheets.

- The following matters will be included in the Risk Register

Disruption due to Covid19, including impact of government restrictions

Travel to and from properties in winter months

Data quality (consumption data and asset information)

Optional statements **If the *Consultant* states any expenses**

- The *expenses* stated by the *Consultant* are as set out in Contract Schedule 4 - Price List. The *expenses* stated by the *Consultant* shall not exceed the amounts set out in Contract Schedule 4 - Price List, save as expressly set out in the Employer's Statement of Requirements in Contract Schedule 2.

If the *Consultant* requires additional access

The *Employer* provides access to all persons, places and things as are reasonably required for performance of the Contract.

If Option A or C is used

- The *activity schedule* is set out in Contract Schedule 4A.
- The tendered total of the Prices is two hundred and seventy-five thousand, three hundred and eighty-nine pounds and twenty five pence (£275,516.25), excluding VAT and expenses.

Additional conditions of contract – clauses Z1 to Z52

Clause Z1 Interpretation and the law

Z1.1 In this contract, except where the context shows otherwise:

- references to a document include any revision made to it in accordance with this contract;
- references to a statute or statutory instrument include any amendment or re-enactment of it from time to time and any subordinate legislation or code of practice made under it;
- references to a British, European or International standard include any current relevant standard that replaces it;
- references to persons or organisations will be construed so as to include bodies corporate, unincorporated associations, partnerships and any other legal entity; and
- the words “includes” or “including” are construed without limitation.

Z1.2 Terms for which no interpretation is provided in this contract shall have the meaning ordinarily given to them by the legal profession where appropriate but otherwise shall be interpreted in accordance with their dictionary meaning.

Authority means The Minister for the Cabinet Office ("Cabinet Office") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP

Confidential Information is any information, however it is conveyed, that relates to the business, personnel, affairs, developments, trade secrets, ideas, concepts, schemes, information, knowledge, techniques, methodology, and without limiting the above anything else in the nature of know-how, 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 to be considered to be confidential.

Consultant Personnel is all persons employed or engaged by the *Consultant* together with the *Consultant's* servants, agents, suppliers, consultants and Sub-consultants (and all persons employed by any Sub-consultant together with the Sub-consultant's servants, consultants, agents, suppliers and sub-Sub-consultants);

Contracting Authorities has the meaning given to the term in the DPS Agreement and **Contracting Authority** shall be construed accordingly;

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;

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;

Information has the meaning given under section 84 of the Freedom of Information Act 2000;

Law means any applicable law, legislation, Act of Parliament, subordinate legislation including legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, exercise of the royal prerogative, regulatory policy, guidance or industry code, judgment of a relevant court of law, regulation, directive, order, mandatory guidance, code of practice and/or requirements or any regulatory body of which the Consultant is bound to comply;

A Prohibited Act is:

- to directly or indirectly offer, promise or give any person working for or engaged by the *Employer* and/or the Authority or other Contracting Authority 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; and /or
- 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 *Employer*; 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;

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;

Material means all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, feasibility studies, planning submissions, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with this contract and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any

purpose relating to this contract;

Request for Information is a request for information or an apparent request under the FOIA or the Environmental Information Regulations;

Security Policy means the *Employer's* security policy attached as a Contract Schedule as may be updated from time to time;

Working Day is any day other than a Saturday or Sunday or public holiday in England and Wales.

Clause Z2 Prevention of fraud and bribery

(i) Insert new clauses:

Z2.1 The *Consultant* represents and warrants that neither it, nor to the best of its knowledge any of its employees, have at any time prior to the Contract Date:

- committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/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.

Z2.2. Throughout the period in which the *services* are performed the *Consultant* does not:

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

Z2.3 Throughout the period in which the *services* are performed the *Consultant*:

- establishes, maintains and enforces, and requires that its Sub-consultants 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 *Employer* on request;
- provides and maintains and where appropriate enforces an anti-bribery policy (which shall be disclosed to the *Employer* on request) to prevent it and any *Consultant's* employees or any person acting on the *Consultant's* behalf from committing a Prohibited Act.

Z2.4 The *Consultant* immediately notifies the *Employer* in writing if it becomes aware of any breach of clause Z2.1, Z2.2 and / or Z2.3, or has

reason to believe that it has or any of the its employees or Sub-consultants 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; and/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.

Z2.5 If the *Consultant* makes a notification to the *Employer* pursuant to clause Z2.4, the *Consultant* responds promptly to the *Employer's* enquiries, co-operates with any investigation, and allows the *Employer* to audit any books, records and/or any other relevant documentation in accordance with this contract.

Z2.6 Without limitation to clause 22.2 if the *Consultant* breaches Clause Z2.3, the *Employer* may instruct the *Consultant* to remove a person employed by the *Consultant* who has caused the *Consultant's* breach to remove that person and the *Consultant* shall immediately ensure that person has no further connection with the work included in this contract.

Clause Z3 Recovery of sums due from *Consultant*

Where the Employer is a Crown Body, then Z3.1 applies to the exclusion of Z3.2. Otherwise, Z3.2 applies to the exclusion of Z3.1.

Z3.1 Where under this contract any sum of money is recoverable from or payable by the *Consultant*, such sum may be deducted from or reduced by the amount of any sum or sums then due or which at any time after may become due to the *Consultant* under this contract or any other contract with any Department or Office of Her Majesty's Government.

Z3.2 Where under this contract or any other contract between the *Consultant* and the *Employer* any sum of money is recoverable from or payable by the *Consultant*, such sum may be deducted from or reduced by the amount of any sum or sums then due or which at any time after may become due to the *Consultant* under this contract or any other contract with the *Employer*.

Clause Z4 Assignment and Novation

Z4.1 The *Employer* is entitled to assign or otherwise dispose of its rights

under this contract or any part thereof to:

- any Contracting Authority; or
- any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the *Employer*.

Z4.2 The *Consultant* does not, without the written consent of the *Employer*, assign or transfer this contract, or any part of, share of or interest in it. In the absence of the *Employer's* written consent no sum of money becoming due under this contract is payable to any person other than the *Consultant*.

Z4.3 The *Employer* is entitled to, and the *Consultant* gives consent to, the novation of this contract or any part thereof to:

- any Contracting Authority; or
- any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the *Employer*;

upon such terms as the *Employer* proposes, provided that where such novation increases the burden on the *Consultant* pursuant to this contract, the novation shall be a compensation event. Accordingly a new clause 60.1(13) shall be added that reads "A novation pursuant to clause Z4.3 occurs which increases the burden on the *Consultant* pursuant to this contract".

Z4.5 Any change in the legal status of the *Employer* such that it ceases to be a Contracting Authority does not affect the validity of this contract. In such circumstances, this contract binds and inures to the benefit of any successor body to the *Employer*.

Z4.6 If this contract is novated to a body which is not a Contracting Authority or if a successor body which is not a Contracting Authority becomes the *Employer* (both such bodies being referred to in the remainder of this clause as the "transferee") the transferee is only able to assign, novate or otherwise dispose of its rights and obligations under this contract or any part thereof with the written consent of the *Consultant*.

Clause Z5 Discrimination

Z5.1 The *Consultant* does not discriminate directly or indirectly or by way of victimisation or harassment against any person contrary to the Equality Act 2010, any predecessor statute of it or any amendment or re-enactment of it from time to time (the "Discrimination Acts").

Z5.2 In connection with the *services* the *Consultant* co-operates with and assists the *Employer* to satisfy his duty under the Discrimination Acts to eliminate unlawful discrimination and to promote equality of opportunity between persons of different racial groups and between disabled people and other people.

Z5.3 Where any employee or Sub-consultant is required to carry out any activity alongside the *Employer's* employees, the *Consultant* ensures that each such employee or Sub-consultant complies with the

Employer's employment policies and codes of practice relating to discrimination and equal opportunities.

Z5.4 The *Consultant* notifies the *Employer* in writing as soon as he becomes aware of any investigation or proceedings brought against the *Consultant* under the Discrimination Acts in connection with this contract and

- provides any information requested by the investigating body, court or tribunal in the timescale allotted,
- attends (and permits a representative from the *Employer* to attend) any associated meetings,
- promptly allows access to any relevant documents and information and
- cooperates fully and promptly with the investigatory body, court or tribunal.

Z5.5 The *Consultant* indemnifies the *Employer* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Employer* arising out of or in connection with any investigation or proceedings under the Discrimination Acts resulting from any act or omission of the *Consultant*.

Z5.6 The *Consultant* includes in the conditions of contract for each Sub-consultant obligations substantially similar to those set out above.

Clause Z6 Conflict of interest

Z6.1 The *Consultant* does not take an action which would cause a conflict of interest to arise in connection with this contract. The *Consultant* notifies the *Employer* if there is any uncertainty about whether a conflict of interest may exist or arise.

Z6.2 The *Consultant* immediately notifies the *Employer* of any circumstances giving rise to or potentially giving rise to conflicts of interest relating to the *Consultant* and/or the *Employer* (including without limitation its reputation and standing), of which it is aware or anticipates may justify the *Employer* taking action to protect its interests.

Z6.3 The *Consultant* must take positive steps to mitigate any conflict of interest that may exist or arise under Clause Z6.1 or there are circumstances that may give rise to a conflict of interest under Z6.2.

Z6.4 Should the Parties be unable to either remove the conflict of interest and/or to reduce its damaging effect to a reasonably acceptable level, the *Employer* has the right to terminate this contract whereupon the provisions of PSC clause 92.2 apply to the termination.

Clause Z7 Merger, take-over or change of control

Z7.1 In clauses Z7, Z30 (Consortia), Z39 (Financial Distress), Z40 (Change of Control – new guarantee) and Z41 (Parent Company Guarantee)

- **Change of Control** is an event where a single person (or group of persons acting in concert)

-
- acquires Control of the *Consultant* or
 - acquires a direct or indirect interest in the relevant share capital of the *Consultant* and as a result holds or controls the largest direct or indirect interest in (and in any event more than 25% of) the relevant share capital of the *Consultant*,
 - **Consortium Member** is an organisation or person which is a member of a group of economic operators comprising the *Consultant*, whether as a participant in an unincorporated joint venture or a shareholder in a joint venture company,
 - **Control** has the meaning set out in section 1124 of the Corporation Tax Act 2010,
 - **Controller** is the single person (or group of persons acting in concert) that
 - has Control of the *Consultant* or a Consortium Member or
 - holds or controls the largest direct or indirect interest in the relevant share capital of the *Consultant* or a Consortium Member,
 - **Credit Rating Threshold** means the minimum credit rating for the *Consultant*, a Consortium Member or a proposed guarantor, such credit rating being set out at Annex 2 to Schedule 16 of the DPS Agreement,
 - **Guarantor** is a person who has given a Parent Company Guarantee to the *Employer* and
 - **Parent Company Guarantee** is a guarantee of the *Consultant's* performance in the form set out in the Scope, or if not set out in the Scope, the template form attached to this contract.

Z7.2 A Change of Control does not happen without the prior agreement of the *Employer*, and if a Change of Control occurs without the *Employer's* prior consent, then the *Employer* may treat the Change of Control as a substantial failure by the *Consultant* to comply with his obligations.

Z7.3 The *Consultant* notifies the *Employer* immediately if a Change of Control has occurred or is expected to occur.

Z7.4 If the Change of Control will not allow the *Consultant* to perform its obligations under this contract, the *Employer* may treat the Change of Control as a substantial failure by the *Consultant* to comply with his obligations.

Z7.5 The *Consultant* notifies the *Employer* immediately of any material change in

-
- the direct or indirect legal or beneficial ownership of any shareholding in the *Consultant*. A change is material if it relates directly or indirectly to a change of 3% or more of the issued share capital of the *Consultant*, or
 - the composition of the *Consultant*. Without limitation a change is material if it directly or indirectly affects the performance of this contract by the *Consultant*.

Z7.6 The *Consultant* notifies the *Employer* immediately of any change or proposed change in the name or status of the *Consultant*.

Z7.7 If the *Consultant* does not provide a notification required by clause Z7.5 or Z7.6, the *Employer* may treat that failure as a substantial failure by the *Consultant* to comply with his obligations.

Z7.8 In this clause Z7 a Change of Control in relation to

- material change in the ownership of shares in, or
- change in the name or status of

a Consortium Member is treated as a change relating to the *Consultant*.

Clause Z8 Appointment of *Adjudicator*

Z8.1 The *Adjudicator's* appointment under the NEC *Adjudicator's* Contract current at the *starting date* includes the following additional conditions of contract

"The *Adjudicator* complies, and takes all reasonable steps to ensure that any persons advising or aiding him comply, with the Official Secrets Act 1989. Any information concerning the *contract between the Parties* obtained either by the *Adjudicator* or any person advising or aiding him is confidential, and may not be used or disclosed by the *Adjudicator* or any such person except for the purposes of this Agreement."

Clause Z9 Project Bank Account - Not Used

Clause Z10 *Employer's* Codes of Conduct

Z10.1 The *Consultant* complies (and ensures that any person employed by him or acting on his behalf complies) with the *Employer's* code of conduct to the extent one is included as a Contract Schedule to this contract. The *Consultant* complies with the code of conduct until Completion and for the *period of retention*.

Z10.2 A failure to comply with this clause is treated as a substantial failure by the *Consultant* to comply with his obligations.

Clause Z11 Fair payment

Z11.1 The *Consultant* assesses the amount due to a Sub-consultant

without taking into account the amount assessed under this contract.

Z11.2 The *Consultant* includes in the contract with each Sub-consultant

- a period for payment of the amount due to the Sub-consultant not greater than 19 days after the date on which payment becomes due under this contract. The amount due includes, but is not limited to, payment for work which the Sub-consultant has completed from the previous assessment date up to the current assessment date in this contract,
- a provision requiring the Sub-consultant to include in each subsubcontract the same requirement, except that the period for payment is to be not greater than 23 days after the date on which payment becomes due under this contract and
- a provision requiring the Sub-consultant to assess the amount due to a subSub-consultant without taking into account the amount paid by the *Consultant*.

Z11.3 The *Consultant* notifies non-compliance with the timescales for payment through the Efficiency and Reform Group supplier feedback service. The *Consultant* includes this provision in each subcontract, and requires Sub-consultants to include the same provision in each subsubcontract.

Z11.4 A failure to comply with this condition is treated as a substantial failure by the *Consultant* to comply with his obligations.

Clause Z12 Confidentiality

Z12.1 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; and
- not disclose the other party's Confidential Information to any other person without that other party's prior written consent.

Z12.2 Clause Z12.1 shall not apply to the extent that:

- such disclosure is a requirement of the law of the contract placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause Z16 (Freedom of Information);
 - such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure;
 - 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.
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Z12.3 The *Consultant* shall not, and shall procure that the Consultant Personnel do not, use any of the *Employer's Confidential Information* received otherwise than for the purposes of this contract.

Z12.4 The *Consultant* may only disclose the *Employer's Confidential Information* to the Consultant Personnel who are directly involved in the provision of the *services* and who need to know the information, and shall ensure that such Consultant Personnel 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 Personnel 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 Personnel, the *Consultant* shall provide such evidence to the *Employer* as the *Employer* 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 Personnel, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with Consultant Personnel in connection with obligations as to confidentiality.

Z12.5 At the written request of the *Employer*, the *Consultant* shall procure that those members of the Consultant Personnel identified in the *Employer's* notice signs a confidentiality undertaking prior to commencing any work in accordance with this contract.

Z12.6 Nothing in this contract shall prevent the *Employer* from disclosing the *Consultant's Confidential Information*:

- to any Crown Body or any other Contracting Authorities. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
- to any consultant, contractor or other person engaged by the *Employer* or any person conducting an Office of Government Commerce gateway review;
- for the purpose of the examination and certification of the *Employer's* accounts; or
- for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Employer* has used its resources.

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 *Employer* under this clause Z12.6.

Z12.7 The *Employer* shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-consultant to whom the *Consultant's* Confidential Information is disclosed pursuant to the above clause is made aware of the *Employer's* obligations of confidentiality.

Z12.8 Nothing in this clause shall prevent either party from using any techniques, ideas or know-how gained during the performance of this contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of intellectual property rights.

Clause Z13 Security Requirements

Z13.1 The *Consultant* complies with, and procures the compliance of its personnel, with:

- the Security Policy;
- the Security Management Plan produced pursuant to the Security Provisions; and
- the Security Provisions contained within the Security Policy or the Scope.

Z13.2 The *Consultant* shall ensure that the Security Management Plan produced by the *Consultant* fully complies with the Security Policy.

Clause Z14 Official Secrets Act

Z14.1 The Official Secrets Act 1989 applies to this contract from the *starting date* until the *defects date* or earlier termination.

Z14.2 The *Consultant* notifies his employees and Sub-consultants of their duties under the Official Secrets Act 1989.

Z14.3 A failure to comply with this clause is treated as a substantial failure by the *Consultant* to comply with his obligations.

Z14.4 The *Consultant* complies with the staff vetting and training requirements stated in the Statement of Requirements and Scope.

Clause Z15 Data protection

Z15.1 In this clause Z15 the following terms shall have the following meanings:

“Consultant Personnel”	means all directors, officers, employees, agents, consultants and contractors of the <i>Consultant</i> and/or any Sub-Processor engaged in the performance of its obligations under this contract;
“Data Controller”	shall have the same meaning as given in Data Protection Legislation.

“Data Loss Event”	means any event that results, or may result, in unauthorised access to Personal Data held by the <i>Consultant</i> under this contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this contract, including any Personal Data Breach;
“Data Processor”	has the meaning given to it in the Data Protection Legislation, as amended from time to time;
“Data Protection Legislation”	means: <ul style="list-style-type: none"> (a) the Data Protection Act 2018; (b) the GDPR; and (c) all applicable Laws and regulations relating to Processing of Personal Data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation, in each case as amended from time to time;
“Data Subject”	has the meaning given to it in the Data Protection Legislation, as amended from time to time;
“Data Subject Access Request”	means a request made by a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access his or her Personal Data;
“GDPR”	means UK GDPR (as defined in the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019/419);
“Personal Data”	has the meaning given to it in the Data Protection Legislation as amended from time to time and shall include Special Categories of Personal Data;
“Personal Data Breach”	shall have the meaning as given in the Data Protection Legislation;

“Processing”	has the meaning given to it in the Data Protection Legislation but, for the purposes of this contract, it shall include both manual and automatic processing and “Process” and “Processed” shall be interpreted accordingly;
“Protective Measures”	<p>means appropriate technical and organisational measures which shall be sufficient to secure that the Data Processor will meet the requirements of the Data Protection Legislation and ensure the protection of the rights of the Data Subject and may include (without limitation):</p> <ul style="list-style-type: none"> (i) Pseudonymisation and encrypting Personal Data; (ii) ensuring on-going confidentiality, integrity, availability and resilience of systems and services used for data processing; (iii) measures to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident (iv) ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident; and (v) regularly assessing and evaluating the effectiveness of such measures adopted by it.
“Pseudonymisation”	shall have the same meaning as given in Data Protection Legislation;
“Restricted Country”	<p>means any country which:</p> <ul style="list-style-type: none"> a) is outside the United Kingdom; b) is not determined to be adequate pursuant to regulations made under s17A of the Data Protection Act 2018; and c) has not been confirmed by the Contracting Authority as a non-Restricted Country in writing from time-to-time.
“Special Categories of Personal Data”	shall have the meaning given in Data Protection Legislation;

“Sub-Processor” means any third party appointed to Process Personal Data on behalf of the *Consultant* related to this contract;

Z15.2 Where any Personal Data is Processed in connection with the exercise of the Parties’ rights and obligations under this contract, the Parties acknowledge that the *Employer* is the Data Controller and that the *Consultant* is the Data Processor.

Z15.3 The *Consultant* shall:

Z15.3.1 ensure that it and the Consultant Personnel comply with all of the applicable requirements of the Data Protection Legislation and shall not knowingly or negligently by any act of omission, place the *Employer* in breach or potential breach of Data Protection Legislation;

Z15.3.2 process the Personal Data only to the extent and in such manner as is necessary for the purposes specified in this contract and in accordance with instructions from the *Employer* to perform its obligations under this contract in accordance with Contract Schedule 6 – Personal Data and Data Subjects, unless otherwise required by Law. In such case, the *Consultant* shall inform the *Employer* of that legal requirement unless the Law prevents such disclosure on the grounds of public interest;

Z15.3.3 notify the *Employer* immediately if it considers that any of the *Employer’s* instructions infringe the Data Protection Legislation;

Z15.3.4 maintain complete and accurate records and information to demonstrate its compliance with its Processor obligations under this clause Z15;

Z15.3.5 keep a record of any Processing of Personal Data it carries out on behalf of the *Employer* including (without limitation) the records specified in Article 30(2) of the GDPR and upon request provide a copy to the *Employer*;

Z15.3.6 ensure that at all times it has in place appropriate Protective Measures to guard against a Data Loss Event, which the *Employer* may reasonably reject (but failure to reject shall not amount to approval by the *Employer* of the adequacy of the Protective Measures) and which shall be implemented at the

Consultant's own expense and at no cost to the *Employer*;

Z15.3.7 not disclose or transfer the Personal Data to any third party or Consultant Personnel unless necessary for the provision of the services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the *Employer* (save where such disclosure or transfer is specifically authorised under this contract);

Z15.3.8 take reasonable steps to ensure the reliability and integrity of any Consultant Personnel who have access to the Personal Data and ensure that the Consultant Personnel:

Z15.3.8.1 are aware of and comply with the *Consultant's* duties under this contract;

Z15.3.8.2 are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the *Employer* or as otherwise permitted by this contract; and

Z15.3.8.3 have undergone adequate training in the use, care, protection and handling of Personal Data;

Z15.3.9 notify the *Employer* immediately if it becomes aware of a Data Loss Event or if it receives:

Z15.3.9.1 from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request) a request to rectify, block or erase any Personal Data or any other request, complaint or communication relating to the *Employer's* obligations under the Data Protection Legislation;

Z15.3.9.2 any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or

Z15.3.9.3 a request from any third party for disclosure of Personal Data where compliance with such request is

required or purported to be required by Law;

Z15.3.10 provide the *Employer* with full cooperation and assistance (within the timescales reasonably required by them) in relation to any complaint, communication or request made (as referred to at Clause **Error! Reference source not found.**(e)) at no cost to the *Employer* including by promptly providing:

Z15.3.10.1 the *Employer* with full details and copies of the complaint, communication or request;

Z15.3.10.2 where applicable, such assistance as is reasonably requested by the *Employer* to enable them to comply with the Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation; and

Z15.3.10.3 the *Employer*, on request by the *Employer*, with any Personal Data it holds in relation to a Data Subject; and

Z15.3.11 if requested by the *Employer*, provide a written description of the measures that the *Consultant* has taken and the Protective Measures in place, for the purpose of compliance with its obligations pursuant to Clause **Error! Reference source not found.** and provide to the *Employer* copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

Z15.3.12 at the written direction of the *Employer*, delete or return Personal Data (and any copies of it) using a secure method of transfer to the *Employer* on expiry or earlier termination of this contract unless the *Consultant* is required by Law to retain Personal Data.

Z15.4 The *Consultant* shall not Process or otherwise transfer any Personal Data in or to a Restricted Country. If, after the Commencement Date, the *Consultant* or any Sub-consultant wishes to Process and/or transfer any Personal Data in or to any Restricted Country, the following provisions shall apply:

Z15.4.1 the *Consultant* shall give a written request in accordance with Clause Z15.4.2 ("**Third Country Processing Request**") to the *Employer* which the *Employer* shall consider in its absolute discretion;

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- Z15.4.2 the *Consultant* shall set out in its proposal to the *Employer* for a Third Country Processing Request details of the following:
- Z15.4.2.1 the Personal Data which will be transferred to and/or Processed in or to any Restricted Countries;
 - Z15.4.2.2 the Restricted Countries to which the Personal Data will be transferred and/or Processed;
 - Z15.4.2.3 any Sub-consultants or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries; and
 - Z15.4.2.4 how the *Consultant* will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries (in accordance with Article 46 of the GDPR and/or Data Protection Legislation) so as to ensure the *Employer's* compliance with the Data Protection Legislation;
- Z15.4.3 in providing and evaluating the Variation, the Parties shall ensure that they have regard to and comply with the Data Protection Legislation and then-current *Employer*, Contracting Authority and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and
- Z15.4.4 the *Consultant* shall comply with such other instructions and shall carry out such other actions as the *Employer* may notify in writing, including:
- Z15.4.4.1 incorporating standard and/or model clauses (which are approved as offering adequate safeguards under the Data Protection Legislation) into this contract or a separate data processing agreement between the Parties; and
 - Z15.4.4.2 procuring that any Sub-consultant or other third party who will be Processing and/or receiving or
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accessing the Personal Data in any Restricted Countries either enters into:

- (a) a direct data processing agreement with the *Employer* on such terms as may be required by them; or
- (b) a data processing agreement with the *Consultant* on terms which are equivalent to those agreed between the *Employer* and the Sub-consultant relating to the relevant Personal Data transfer, and

Z15.4.4.3 in each case which the *Consultant* acknowledges may include the incorporation of model contract provisions (which are approved as offering adequate safeguards under the Data Protection Legislation) and technical and organisation measures which the *Employer* deems necessary for the purpose of protecting Personal Data.

Z15.5 The *Consultant* shall use its reasonable endeavours to assist the *Employer* to comply with any obligations under the Data Protection Legislation and shall not perform its obligations under this contract in such a way as to cause the *Employer* to breach any of their obligations under the Data Protection Legislation to the extent the *Consultant* is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

Z15.6 The *Consultant* shall allow for audits of its Processing activity by the *Employer* or the *Employer's* designated auditor and comply with all reasonable requests or directions by the *Employer* to enable the *Employer* to verify that the *Consultant* is in full compliance with its obligations under this contract.

Z15.7 The *Consultant* shall designate a data protection officer if required by the Data Protection Legislation.

Z15.8 Before allowing any Sub-Processor to process any Personal Data related to this contract, the *Consultant* shall:

- (a) notify the *Employer* in writing of the intended Sub-Processor and processing;
- (b) obtain the written consent of the *Employer*;
- (c) enter into a written agreement with the Sub-Processor which gives effect to the terms set out in this Clause 35

such that they apply to the Sub-Processor; and provide the *Employer* with such information regarding the Sub-Processor as they may reasonably require.

Z15.9 The *Consultant* shall remain fully liable for all acts or omissions of any Sub-Processor.

Z15.10 Within thirty (30) Working Days of the date of termination or expiry of this contract, the *Consultant* shall return to the *Employer* any data belonging to the *Employer* that is in the *Consultant's* possession, power or control, either in its then current format or in a format nominated by *Employer*, save that it may keep one copy of any such data or information for a period of up to twelve (12) months to comply with its obligations under the contract, or such period as is necessary for such compliance.

Clause Z16 Freedom of Information

Z16.1. The *Consultant* acknowledges that unless the *Employer* has notified the *Consultant* that the *Employer* is exempt from the provisions of the FOIA, the *Employer* is subject to the requirements of the FOIA and the Environmental Information Regulations. The *Consultant* cooperates with and assists the *Employer* so as to enable the *Employer* to comply with its information disclosure obligations.

Z16.2 The *Consultant*:

- transfers to the *Employer* 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 *Employer* with a copy of all Information relevant to the Request for Information in its possession, or power in the form that the *Employer* requires within five Working Days (or such other period as the *Employer* may specify) of the *Employer's* request;
- provides all necessary assistance as reasonably requested by the *Employer* to enable the *Employer* 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 Sub-consultants do likewise.

Z16.3 The *Employer* is responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

Z16.4 The *Consultant* does not respond directly to a Request for Information unless authorised to do so by the *Employer*.

Z16.5 The *Consultant* acknowledges that the *Employer* may, acting in accordance with the MoJ Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of

Information Act 2000, be obliged to disclose Information without consulting or obtaining consent from the *Consultant* or despite the *Consultant* having expressed negative views when consulted.

Z16.6 The *Consultant* ensures that all Information is retained for disclosure throughout the period for retention and permits the *Employer* to inspect such records as and when reasonably requested from time to time.

Clause Z17 Records and Audit Access

Z17.1 In addition to its obligations under clause 13.6 of the *conditions of contract* the *Consultant* keeps documents and information obtained or prepared by the *Consultant* or any Sub-consultant in connection with this contract for the *period for retention*.

Z17.2 The *Consultant* permits the *Employer*, comptroller, auditor general and any other auditor appointed by the *Employer* to examine documents held or controlled by the *Consultant* or any Sub-consultant.

Z17.3 The *Consultant* provides such oral or written explanations as the *Employer* or comptroller and auditor general considers necessary.

Z17.4 The *Consultant* acknowledges that, for the purpose of examining and certifying the *Employer's* accounts or any examination pursuant to Section 6(1) of the National Audit Act 1983, the comptroller and auditor general or any other auditor appointed by the *Employer* may examine documents held or controlled by the *Consultant* or any Sub-consultant and may require the *Consultant* to provide such oral or written explanations as he considers necessary. The *Consultant* promptly complies with any such requirements at his own cost. 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.

Clause Z18 Reporting: Small and Medium Enterprises

Z18.1 In this clause "SME" is

- a Sub-consultant or
- a Sub-consultant to a Sub-consultant

that also:

- is autonomous,
- is a United Kingdom or European Union enterprise not owned or controlled by a non-United Kingdom or non-European Union parent company,
- for a medium sized enterprise (medium class) employs fewer than 250 staff, has turnover no greater than 50 million Euros and does not have a balance sheet greater than 43 million Euros,

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- for a small sized enterprise (small class) employs fewer than 50 staff, has turnover no greater than 10 million Euros and does not have a balance sheet greater than 10 million Euros and
 - for a micro sized enterprise (micro class) employs fewer than 10 staff, has turnover no greater than 2 million Euros and does not have a balance sheet greater than 2 million Euros.

Z18.2 For each SME employed in connection with the *services*, the *Consultant* reports to the *Employer* on a monthly basis from the *starting date* until Completion and at the *defects date*

- the name of the SME,
- the class of SME (medium, small or micro),
- the value and percentage of the contract undertaken by the SME,
- the amounts paid to the SME and
- the aggregated value paid to the SME since the *starting date*.

Z18.3 The *Consultant* acknowledges that the *Employer* may

- publish the information supplied under clause Z18.2, along with the *Consultant's* name and this contract name and
- pass the information supplied under this clause Z18 to any government department who may then publish it along with the names of the SMEs, the *Consultant's* name and this contract name.

Z18.4 The *Consultant* ensures that the conditions of contract for each Sub-consultant who is an SME include

- a term allowing the *Employer* to publish the information supplied under Z18.2 and
- obligations substantially similar to those set out in this clause Z18.

Z18.5 The *Consultant* further ensures that the conditions of contract for each Sub-consultant include a requirement that the conditions of contract for any subSub-consultant engaged by the Sub-consultant who is an SME include obligations substantially similar to those set out in clause Z18.4.

Clause Z19 The *Employer's* liability - Not Used

Clause Z20 Tax Non-Compliance

Z20.1

(1) Tax Non-Compliance is where a tax return submitted by the *Consultant* 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 rule or legislation with similar effect or

- the failure of an avoidance scheme in which the *Consultant* was involved which was (or should have been) notified to a Relevant Tax Authority under the DOTAS or a similar regime or
- 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 Contract Date or to a civil penalty for fraud or evasion.

(2) DOTAS are the Disclosure of Tax Avoidance Schemes rules contained in Part 7 of the Finance Act 2004 and in secondary legislation made pursuant to it, 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).

(3) General Anti-Abuse Rule is

- the legislation in Part 5 of the Finance Act 2013 and
- any future legislation introduced to counteract tax advantages arising from abusive arrangements to avoid National Insurance contributions.

(4) Halifax Abuse Principle is the principle explained in the CJEU case C-255/02 Halifax and others.

(5) Relevant Tax Authority is HM Revenue & Customs or, if the *Consultant* is established in another jurisdiction, the tax authority in that jurisdiction.

Z20.2 The *Consultant* warrants that it has notified the *Employer* of any Tax Non-Compliance or any litigation in which it is involved relating to any Tax Non-Compliance prior to the Contract Date.

Z25.3 The *Consultant* notifies the *Employer* within one week of any Tax Non-Compliance occurring after the Contract Date and provides details of

- the steps the *Consultant* is taking to address the Tax Non-Compliance and to prevent a recurrence,
- any mitigating factors that it considers relevant and
- any other information requested by the *Employer*.

Z20.4 The *Consultant* is treated as having substantially failed to comply with his obligations if

- the warranty given by the *Consultant* under clause Z20.2 is untrue,
- the *Consultant* fails to notify the *Employer* of a Tax Non-Compliance or
- the *Employer* decides that any mitigating factors notified by the *Consultant* are unacceptable.

Clause Z21 Quality Management Points - Not used

Clause Z22 Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") - Not Used

Clause Z23 Changes to *staff rates* and Sub-consultants

Z23.1 When the *Consultant* proposes a revision to an existing *staff rate* or a new *staff rate*, the proposal is accompanied by a certificate from the *Consultant's* (or if appropriate Consortium Member's – as defined in clause Z7) Chief Financial Officer or Director of Finance (or an equivalent officer authorised to bind the *Consultant* and agreed by the *Employer* before the proposal is issued) confirming that the proposal

- is accurate and not misleading,
- has been prepared in conformity with generally accepted accounting principles within the United Kingdom,
- is a true and fair reflection of the information included within the *Consultant's* books, management and statutory accounts and other documents and records and
- complies with this contract.

Z23.2 Subject always to any requirements under the DPS Agreement on maximum mark-ups, discounts, charge rates, fixed quotes (as applicable), with effect from the first day of the first *extension period* ("Indexation Adjustment Date") the *staff rates* shall be adjusted as follows. The relevant adjustment shall:

Z23.2.1 be applied on Indexation Adjustment Date and the Parties shall amend the *staff rates* shown in this contract to reflect such variations;

Z23.2.2 be determined by multiplying the relevant amount or sum by the percentage increase or changes in the Consumer Price Index ("CPI Index") published for the twelve (12) Months ended on the 31st of January immediately preceding the Indexation Adjustment Date

(<https://www.ons.gov.uk/economy/inflationandpriceindices/timeseries/d7g7/mm23>);

Z23.2.3 where the published CPI Index figure at the relevant Indexation Adjustment Date is stated to be a provisional figure or is subsequently amended, that figure shall apply as ultimately confirmed or amended unless the *Employer* and the *Consultant* shall agree otherwise;

Z23.2.4 if the CPI Index is no longer published, the *Employer*

and the *Consultant* shall agree a fair and reasonable adjustment to that index or, if appropriate, shall agree a revised formula that in either event will have substantially the same effect as that specified in this clause Z23.2.

Z.23.3 Except as set out in clause Z23.2, no costs, expenses, fees or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the *Employer* or Sub-consultants of the performance of their obligations under this contract.

Z23.4 If a Sub-consultant wishes to propose revisions to an existing staff rate or a new staff rate and the *Consultant* considers that, in order to comply with any Law, the Sub-consultant should submit its proposal directly to the *Employer*, the *Consultant* submits a request to that effect to the *Employer* for acceptance. A reason for not accepting the *Consultant's* request is that Law does not require the Sub-consultant to submit its proposal directly to the *Employer*. If the *Employer* accepts the *Consultant's* request, the *Consultant* directs the Sub-consultant to submit its proposal directly to the *Employer*.

Z23.5 Where, in order to verify an invoice submitted by the *Consultant*, the *Employer* requires a Sub-consultant to provide

- records of any Time Charge and expenses incurred by it or
- a certificate that its invoice and records of any Time Charge and expenses incurred by it are accurate and not misleading

and the *Consultant* considers that, in order to comply with any Law, the Sub-consultant should submit its records and certificate directly to the *Employer*, the *Consultant* submits a request to that effect to the *Employer* for acceptance. A reason for not accepting the *Consultant's* request is that the Law does not require the Sub-consultant to submit its records and certificate directly to the *Employer*. If the *Employer* accepts the *Consultant's* request, the *Consultant* directs the Sub-consultant to submit its records and certificate directly to the *Employer*.

Z23.6 The *Consultant* includes in the conditions of contract for each Sub-consultant

- provisions substantially similar to those set out in clause Z23.1,
- a right for the *Employer* to audit any records and certificates provided by the Sub-consultant under this clause Z23,
- an obligation on the Sub-consultant to discuss directly with the *Employer* any concerns that the *Employer* may have as to the accuracy of any records and certificates provided by the Sub-consultant,
- a right for the *Consultant* to recover from the Sub-consultant (or to deduct from any amount that would otherwise be due to the Sub-consultant) the amount of any overpayment identified by the

Employer as a result of its audits and discussions with the Sub-consultant and

- an acknowledgment from the Sub-consultant that the *Employer* may enforce these provisions directly against the Sub-consultant under the Contracts (Rights of Third Parties) Act 1999.

Clause Z24 Insurance cover

Z24.1 All insurances required to be effected and maintained under this contract by the *Consultant* are placed with reputable insurers, to whom the *Employer* has no reasonable objection and upon customary and usual terms prevailing for the time being in the insurance market. The said terms and conditions do not include any term or condition to the effect that any insured must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010 or the Third Parties (Rights Against Insurers) Act (Northern Ireland) Order 1930 as amended by the Insolvency (Northern Ireland) Order 1989.

Z24.2 Nothing in this clause relieves the *Consultant* from any of its obligations and liabilities under this contract.

Clause Z25 Professional indemnity insurance

Z25.1 The *Consultant* obtains and maintains the professional indemnity insurance required by Clause 81.1 of the *conditions of contract* upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business on the basis and in an amount not less than that stated in the Contract Data, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions do not include any term or condition to the effect that the *Consultant* must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010 or the Third Parties (Rights Against Insurers) Act (Northern Ireland) 1930 as amended by the Insolvency (Northern Ireland) Order 1989.

Z25.2 The *Consultant* does not without the prior written approval of the *Employer* settle or compromise with the insurers any claim which the *Consultant* may have against the insurers and which relates to a claim by the *Employer* against the *Consultant*, nor by any act or omission lose or prejudice the *Consultant's* right to make or proceed with such a claim against the insurers.

Z25.3 The *Consultant* immediately informs the *Employer* if the professional indemnity insurance ceases to be available at rates and on terms that the *Consultant* considers to be commercially reasonable. Any increased or additional premium required by insurers by reason of the *Consultant's* own claims record or other acts, omissions, matters or

things particular to the *Consultant* is deemed to be within commercially reasonable rates.

Z25.4 The *Consultant* co-operates fully with any measures reasonably required by the *Employer* including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the *Employer* undertakes in writing to reimburse the *Consultant* in respect of the net cost of such insurance to the *Consultant* above commercially reasonable rates or, if the *Employer* effects such insurance at rates at or above commercially reasonable rates, reimbursing the *Employer* in respect of what the net cost of such insurance to the *Employer* would have been at commercially reasonable rates.

Z25.5 The above obligation in respect of professional indemnity insurance continues notwithstanding termination of the *Consultant's* employment under this contract for any reason whatsoever, including (without limitation) breach by the *Employer*.

Clause Z26 Not used

Clause Z27 Termination – PCRs, Regulation 73

Z27.1 The occurrence of the following events are deemed to be a substantial failure of the *Consultant* to comply with his obligations:

- one or more of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applied to the *Consultant* at the Contract Date.

Z27.2 The *Employer* may terminate the *Consultant's* obligation to Provide the Services by notifying the *Consultant* if this contract has been subject to substantial modification which would have required a new procurement procedure pursuant to regulation 72 of the Public Contracts Regulations 2015.

If the modification or infringement was due to a default by the *Consultant*, this is treated as a termination because of a substantial failure of the *Consultant* to comply with his obligations.

Clause Z28 Value Added Tax (VAT) Recovery and Invoicing

Z28.1 Where under this contract any amount is calculated by reference to any sum which has been or may be incurred by any person, the amount shall include any VAT in respect of that amount only to the extent that such VAT is not recoverable as input tax by that person (or a member of the same VAT group) whether by set off or repayment.

Z28.2 The *Employer* is an “end user” under section 8(1)(b)(i) of the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019 and accordingly the “reverse charge” of VAT under section 55A of the Value Added Tax Act 1994 (“VATA”) does not apply to supplies made to the *Employer* under this contract. The *Consultant* shall comply with section 55A of VATA in respect of all

supply arrangements with Sub-consultants to which it applies.

Z28.3 The *Consultant* shall ensure that each invoice contains a valid reference number. All appropriate references and a detailed breakdown of the *services* supplied and any other documentation reasonably required by the *Employer* to substantiate the invoice should be supplied in accordance with clauses Z28.8 and Z28.9.

Z28.4 The *Consultant* shall indemnify the *Employer* on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the *Employer* at any time in respect of the *Consultant's* failure to account for or to pay any VAT relating to payments made to the *Consultant* under this contract. Any amounts due under this Z28.4 shall be paid by the *Consultant* to the *Employer* not less than five (5) Working Days before the date upon which the tax or other liability is payable by the *Employer*.

Z28.5 The *Employer* shall not be liable to the *Consultant* in any way whatsoever for any error or failure made by the *Consultant* (or the *Employer*) in relation to VAT, including without limit:-

- a) where the *Consultant* is subject to a VAT ruling(s) by HMRC (or such other relevant authority) in connection with the Contract;
- b) where the *Consultant* has assumed that it can recover input VAT and (for whatever reason) this assumption is subsequently held by HMRC (or such other relevant authority) to be incorrect or invalid; and/or
- c) where the *Consultant's* treatment of VAT in respect of any claim for payment made under this contract is subsequently held by HMRC (or such other relevant authority) for whatever reason to be incorrect or invalid; and/or
- d) where the *Consultant* has specified a rate of VAT, or a VAT classification, to the *Employer* (including, but not limited to, Out of Scope, Exempt, 0%, Standard Rate and Reduced Rate) but the *Consultant* subsequently regards such a rate, or such a classification, as being a mistake on its part. Further, in the scenario described in this clause Z28.5(d), the *Consultant* shall be obliged to repay any overpayment by the *Employer* on demand.

Z28.6 Where the *Consultant* does not include VAT on an invoice, the *Employer* will not be liable to pay any VAT for that invoice either when it falls due, or at any later date.

Z28.7 The *Consultant* acknowledges that the *Employer* has advised the *Consultant* that the *Consultant* should seek its own specialist VAT advice in relation to the Contract and, in the event of any uncertainty following specialist advice, the *Consultant* should seek clarification of this contract's VAT status with HMRC.

Z28.8 The *Employer* and the *Consultant* shall exchange all orders, invoices, claims and payments via electronic methods.

Z28.9 The following information is required independently from the *Consultant* in order to verify invoices and shall be provided before or at the same time that an invoice or other claim for payment is submitted

by the *Consultant* to the *Employer*:

- a) records of any Time Charge or other charge determined by reference to *staff rates*, including where applicable in respect of compensation events. Such records shall be in the form of timesheets and/or such other evidence of time spent that the *Employer* shall reasonably require and shall be broken down according to each activity to which they relate (including details of the specific activity to which each time entry relates);
- b) the *Employer* reserves the right to request records to evidence completion of relevant activities,

and shall be sent to the following person (or such replacement person that the *Employer* shall notify)

- c) Name: Adam Russell (adam.russell@dwo.co.uk)
- d) Address: Department for Work and Pensions
Commercial Directorate
5th Floor Zone A
Caxton House
Tothill Street
London
SW1H 9NA

Clause Z29 Tax Arrangements of Public Appointees

Z29.1 For the purposes of this clause

- **Associated Company** is any company, corporation, partnership, joint venture or other entity which directly or indirectly controls, is controlled by or is under common control with the *Consultant*. The word “control” in this context means the ability or entitlement to exercise, directly or indirectly, at least 50 per cent of the voting rights attributable to the shares or other interest in the controlled company, corporation, partnership, joint venture or other entity.
- **Staff** are individuals (other than direct employees of the *Consultant*, an Associated Company or any Sub-consultant) made available by the *Consultant* to the *Employer* for the purpose of Providing the Services.

Z29.2 Where any Staff are liable to be taxed in the United Kingdom in respect of consideration received under this contract, the *Consultant* complies, and procures that the Staff comply, with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration.

Z29.3 Where any Staff are liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, the

Consultant complies, and procures that the Staff comply, with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration.

Z29.4 The *Employer* may, at any time during the term of this contract, request the *Consultant* to provide information to demonstrate either how any member of Staff is complying with clauses Z29.2 and Z29.3 or why those clauses do not apply to it.

Z29.5 If the *Consultant* fails to provide information in response to a request under clause Z29.4

- within the *period for reply* or
- which adequately demonstrates either how any member of Staff is complying with clauses Z29.2 and Z29.3 or why those clauses do not apply to it

the *Employer* may

- treat such failure as a substantial failure by the *Consultant* to comply with his obligations or
- instruct the *Consultant* to replace the relevant member of Staff

Z29.6 If the *Employer* receives or identifies information through any means which demonstrates that a member of Staff is not complying with clauses Z29.2 and Z29.3, the *Employer* may treat such non-compliance as a substantial failure by the *Consultant* to comply with his obligations.

Z29.7 The *Consultant* acknowledges that the *Employer* may

- supply any information which it receives under clauses Z29.4 or Z29.6 or
- advise the non-supply of information

to the Commissioners of Her Majesty's Revenue & Customs or Revenue Scotland for the purpose of the collection and management of revenue for which they are responsible.

Clause Z30 Consortia

Z30.1 Where two or more Consortium Members comprise the *Consultant*, each Consortium Member is jointly and severally liable to the Employer for the performance of the *Consultant's* obligations under this contract.

Z30.2 If the joint venture arrangement between any Consortium Members which comprise the *Consultant* is terminated for any reason, the *Employer* may

- terminate this contract with immediate effect and
- treat the termination of this contract as a substantial failure by the *Consultant* to comply with his obligations.

Z30.3 Clause 90.1 of the *conditions of contract* is amended by inserting after "the other party" in each of the second, third and fourth places where it appears the words "(or, in the case of the *Consultant*,

any Consortium Member)”.

Clause Z31 Subconsulting

Z31.1 Before:

- appointing a proposed Sub-consultant or
 - allowing a Sub-consultant to appoint a proposed subSub-consultant
- the *Consultant* submits to the *Employer* for acceptance
- a Single Procurement Document (as described in regulation 59 of the Public Contracts Regulations 2015) in respect of the proposed Sub-consultant or subSub-consultant or
 - other means of proof that none of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applies to the proposed Sub-consultant or subSub-consultant.

Z31.2 The *Consultant* does not appoint the proposed Sub-consultant (or allow the Sub-consultant to appoint the proposed subSub-consultant) until the *Employer* has accepted the submission. A reason for not accepting the submission is that it shows that there are grounds for excluding the proposed Sub-consultant or subSub-consultant under regulation 57 of the Public Contracts Regulations 2015.

Z31.3 If requested by the *Employer*, the *Consultant* provides further information to support, update or clarify a submission under clause Z31.1.

Z31.4 If, following the acceptance of a submission under clause Z31.2, it is found that one of the grounds for excluding the Sub-consultant or subSub-consultant under regulation 57 of the Public Contracts Regulations 2015 applies, the *Employer* may instruct the *Consultant* to

- replace the Sub-consultant or
- require the Sub-consultant to replace the subSub-consultant.

Clause Z32 Energy Efficiency Directive

Z32.1 To the extent contained in the Scope, the *Consultant* includes in the *conditions of contract* for each Sub-consultant and subSub-consultant obligations substantially similar to those set out in the Scope for

- compliance with the Procurement Policy Note 7/14 entitled “Implementing Article 6 of the Energy Efficiency Directive” and
- demonstrating to the *Employer* how in Providing the Services how the Sub-consultant and sub-Sub-consultant complies with the requirements of Procurement Policy Note 7/14 entitled “Implementing Article 6 of the Energy Efficiency Directive”.

Clause Z33 Compliance with statutory requirements

The *Consultant* Provides the Services in compliance with all relevant:

- legislation, acts of parliament and any instruments, rules, orders, regulations, notices, directions, bye-laws, permissions and plans for the time being made under or deriving validity from them;
- rules, regulations, building regulations, orders, bye-laws or codes of practice or similar of any local or other competent authority or of any statutory undertaker; and
- permissions, consents, approvals, licences, certificates and permits as may be necessary lawfully to commence, carry out, complete and maintain the *services*.

Clause Z34 Negotiation and mediation

Z34.1 Without prejudice to either party's right to refer a dispute to the *Adjudicator* in accordance with clause W1 or W2 (as appropriate), any dispute or difference between the Parties arising out of or relating to this contract is referred by either party initially to representatives of the *Employer* and *Consultant* for negotiation and resolution.

Z34.2 If any dispute is not resolved within ten Working Days after it has been referred to the Parties' representatives (or such longer period as the Parties may agree), it is referred to an authorised senior officer of the *Employer* and an authorised senior officer of the *Consultant* for negotiation and resolution.

Z34.3 If any dispute cannot be resolved within ten Working Days after it has been referred to the authorised senior officers of the *Employer* and *Consultant* (or such longer period as the Parties may agree) either party may decline to continue to participate in the negotiation but both should give serious consideration to referring the dispute to mediation.

Clause Z35 Collateral Warranty Agreements - Not Used

Clause Z36 Access to MOD sites - Not Used

Clause Z37 MoD DEFCON Requirements - Not Used

Clause Z38 Intellectual Property Rights

Z38.1 In this clause Z38:

- “**Intellectual Property Rights**” means any and all patents, trademarks, service marks, copyright, moral rights, rights in a design, know-how, Confidential Information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto; and
- “**Material**” means all Material prepared by or on behalf of the *Consultant*.

Z38.2 The Intellectual Property Rights in all Material and the work executed from them remains the property of the *Consultant*. The *Consultant* hereby grants to the *Employer* and to the Authority an irrevocable, royalty free, non-exclusive licence to use and reproduce the Material for any and all purposes connected with the *services*. Such licence entitles the *Employer* and the Authority to grant sub-licences to third parties in the same terms as this licence.

Z38.3 The *Consultant* shall not be liable to any licensee for any use of the Material or the Intellectual Property Rights in the Material for purposes other than those for which the same were originally prepared by or on behalf of the *Consultant*.

Z38.4 In the event that the *Consultant* does not own the copyright or any Intellectual Property Rights in any Material the *Consultant* uses all reasonable endeavours to procure the right to grant such rights to the *Employer* 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 *Employer* in accordance with the foregoing the *Consultant* procures that the third party grants a direct licence to the *Employer* on industry acceptable terms.

Z38.5 The *Consultant* waives any moral right to be identified as author of the Material in accordance with section 77, Copyright Designs and Patents Acts 1988 and any right not to have the Material subjected to derogatory treatment in accordance with section 8 of that Act as against the *Employer* or any licensee or assignee of the *Employer*.

Z38.6 In the event that any act unauthorised by the *Employer* infringes a moral right of the *Consultant* in relation to the Material the *Consultant* undertakes, if the *Employer* so requests and at the *Employer's* expense, to institute proceedings for infringement

of the moral rights.

- Z38.7 The *Consultant* warrants to the *Employer* that he has not granted and shall not (unless authorised by the *Employer*) grant any rights to any third party to use or otherwise exploit the Material.
- Z38.8 The *Consultant* supplies copies of the Material to the *Employer* and to the *Employer'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 works.
- Z38.9 After the termination or conclusion of the *Consultant's* employment, the *Consultant* supplies the *Employer* with copies and/or computer discs of such of the Material as the *Employer* may from time to time request and the *Employer* pays the *Consultant's* reasonable costs for producing such copies or discs.
- Z38.10 In Providing the Service the *Consultant* does not infringe any Intellectual Property Rights of any third party. The *Consultant* indemnifies the *Employer* against claims, proceedings, compensation and costs arising from an infringement or alleged infringement of the Intellectual Property Rights of any third party.

Clause Z39 Financial Distress

- Z39.1 In this clause Z39 Credit Rating is the *credit rating* or any revised long term *credit rating* issued by a rating agency accepted by the *Employer* in respect of the *Consultant*, a Consortium Member or any *Guarantor*.
- Z39.2 The *Consultant* notifies the *Employer* within one week if any of the following events occurs in relation to the *Consultant*, a Consortium Member or a *Guarantor*
- its Credit Rating falls below the relevant *credit rating*,
 - a further fall in its Credit Rating below the relevant credit rating,
 - it issues a profits warning to a stock exchange or makes any other public announcement about a material deterioration in its financial position or prospects,
 - it is subject to a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety,
 - it commits a material breach of its covenants to its lenders or
 - its financial position or prospects deteriorate to such an

extent that it would not meet the Credit Rating Threshold.

Z39.3 If any of the events listed in clause Z39.2 occurs, the *Employer* may require the *Consultant* to give to the *Employer* a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Consultant* and accepted by the *Employer* who (in either case) has a Credit Rating at least equal to the *credit rating* for the person to whom the event listed in clause Z39.2 has occurred.

Z39.4 The *Employer* may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Consultant* who does not comply with clause Z39.3 if the *Consultant* gives to the *Employer* an assurance that the Controller or the alternative guarantor will so comply within 18 months of the *Employer's* acceptance. If so, the Parties agree a process for reviewing the financial standing of the Controller or the alternative guarantor during that period in order to demonstrate to the *Employer* that it will so comply by the end of that period.

Z39.5 If

- the *Consultant* fails to notify the *Employer* that an event listed in clause Z39.2 has occurred,
- neither the Controller nor any alternative guarantor proposed by the *Consultant* complies with clause Z39.3,
- the *Consultant* does not give to the *Employer* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Employer* within four weeks of a request from the *Employer* to do so or
- the *Consultant* fails to demonstrate to the *Employer* that the Controller or the alternative guarantor accepted by the *Employer* will comply with clause Z39.3 within 18 months of the *Employer's* acceptance

the *Employer* may treat such failure as a substantial failure by the *Consultant* to comply with his obligations.

Clause Z40 Change of Control – new guarantee

Z40.1 If a Change of Control occurs, the *Consultant* provides to the *Employer*

- certified copies of the audited consolidated accounts of the Controller for the last three financial years,
- a certified copy of the board minute of the Controller confirming that it will give to the *Employer* a Parent

Company Guarantee if so required by the *Employer* and any other information required by the *Employer* in order to determine whether the Controller has a credit rating at least equal to the *credit rating* for the original Guarantor (if there is one) or the *Consultant* (if there is not).

Z40.2 If the Controller does not comply with the tests in clause Z40.1 or (if applicable) does not provide the legal opinion required in clause Z40.6, the *Consultant* may propose an alternative guarantor to the *Employer* for acceptance. The *Consultant* provides to the *Employer* the details set out in clause Z40.1 and (if applicable) the legal opinion required in clause Z40.6 in relation to the proposed alternative guarantor. A reason for not accepting the proposed alternative guarantor is that he does not comply with the tests in clause Z40.1 or (if applicable) does not provide the legal opinion required in clause Z40.6.

Z40.3 If so required by the *Employer*, the *Consultant* within four weeks gives to the *Employer* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Employer*.

Z40.4 The *Employer* may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Consultant* who does not comply with the tests in clause Z40.1 if the *Consultant* gives to the *Employer* an assurance that the Controller or the alternative guarantor will so comply within 18 months of the *Employer's* acceptance. If so, the Parties agree a process for reviewing the financial standing of the Controller or the alternative guarantor during that period in order to demonstrate to the *Employer* that it will so comply by the end of that period.

Z40.5 If

- neither the Controller nor any alternative guarantor proposed by the *Consultant* complies with the tests in clause Z40.1 or provides the legal opinion required by clause Z40.6,
- the *Consultant* does not give to the *Employer* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Employer* within four weeks of a request from the *Employer* to do so or
- the *Consultant* fails to demonstrate to the *Employer* that the Controller or the alternative guarantor accepted by the *Employer* will comply with the tests in clause Z40.1 within 18 months of the *Employer's* acceptance

the *Employer* may treat such failure as a substantial failure by the *Consultant* to comply with his obligations.

Z40.6 If the Controller, or any alternative guarantor proposed by the *Consultant*, is not a company incorporated in and subject to the laws of England and Wales, the *Consultant* provides a legal opinion from a lawyer or law firm which is

- qualified and registered to practise in the jurisdiction in which the Controller or guarantor is incorporated and
- accepted by the *Employer*.

The legal opinion is addressed to the *Employer* on a full reliance basis and the liability of the lawyer or law firm giving the opinion is not subject to any financial limitation unless otherwise agreed by the *Employer*.

The legal opinion confirms that the method of execution of the Parent Company Guarantee is valid and binding under applicable local law and in particular covers the matters listed in the Scope.

Clause Z41 Parent Company Guarantee – Not Used

Clause Z42 Offshoring of data

Z42.1 In this clause

Risk Assessment is a full risk assessment and security review carried out by the *Employer* in accordance with the document stated in the Contract Data

Z42.2 The Consultant does not store any of the *Employer's* data that is classified as Official or higher in accordance with "Government Security Classifications" dated April 2014 (or any later revision or replacement)

- offshore or
- in any way that it could be accessed from an offshore location

until the *Employer* has confirmed to the *Consultant* that either

- the *Employer* has gained approval for such storage in accordance with "*Offshoring information assets classified at OFFICIAL*" dated November 2015 (or any later revision or replacement) or
- such approval is not required.

Z42.3 The *Consultant* ensures that no premises are used to Provide the Services until

- such premises have passed a risk assessment or

-
- the *Employer* confirms to the *Consultant* that no risk assessment is required.

Z42.4 The *Consultant* complies with a request from the *Employer* to provide any information required to allow the *Employer* to

- gain approval for storing data or allowing access to data from an offshore location in accordance with Z42.2 or
- conduct a risk assessment for any premises for the purpose of Z42.3.

Z42.5 The *Consultant* ensures that any subcontract (at any stage of remoteness from the *Employer*) contains provisions to the same effect as this clause.

Z42.6 A failure to comply with this condition is treated as a substantial failure by the *Consultant* to comply with his obligations.

Clause Z43**Payment forecast**

Z43.1 Prior to the submission of the *Consultant's* first invoice, the *Consultant* submits to the *Employer* a payment forecast based on the *Consultant's* estimate of the interim payments (including fees and expenses) which the *Consultant* anticipates will fall due at each assessment until Completion of the whole of the services.

Z43.2 Each subsequent invoice from the *Consultant* is accompanied by an updated payment forecast, amended to show the effects of any changes in the Scope and Accepted Programme.

Clause Z44**Responsibility for documents**

Z44.1 The *Employer* may at any reasonable time examine schedules, calculations, surveys, reports, specifications, drawings and/or any other documents and information which are in the possession of the *Consultant* and which concern this contract, but no such examination relieves the *Consultant* of any responsibility to Provide the Services.

Clause Z45**Apprenticeships**

Z45.1 The *Consultant* is required to take all reasonable steps to employ apprentices, and report to the *Employer* on a quarterly basis the numbers of apprentices employed and the wider skills training provided, in Providing the Services.

Z45.2 The *Consultant* is required to make available to its employees and Sub-consultants working on this contract, information about the Government's Apprenticeship programme and wider skills opportunities.

Z45.3 The *Consultant* is to provide any further skills training opportunities that are appropriate for its employees engaged in the services.

Z45.4 The *Consultant* is to provide an annual written report detailing the following measures and be prepared to discuss apprenticeships at its regular meetings with the *Employer*:

- the number of people during the reporting period employed on this contract, including support staff and Sub-consultants,
- the number of apprentices and number of new starts on apprenticeships directly initiated through the procurement process,
- the percentage of all employees 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 employees in relation to this contract, including
 - work experience placements for 14 to 16 year olds,
 - work experience /work trial placements for other ages,
 - student sandwich/gap year placements,
 - graduate placements,
 - vocational training,
 - basic skills training and
 - on site training provision/ facilities.

Clause Z46

Termination following prolonged suspension

Z46.1 The *Consultant* may terminate his obligation to Provide the Services by notifying the Employer if

- the whole of the *services* has been stopped under clause 33 of the *conditions of contract* for a period in excess of six months;
- the *Consultant* has given the *Employer* a request for an instruction that the *services* be resumed; and
- the *Consultant* has not been given instructions to resume the *services* within a period of 30 days after the *Employer* receives from the *Consultant* a request for an instruction that the *services* be resumed.

Clause Z47

Employer's Property

Z47.1 If the *Consultant* is permitted to use equipment or other such property belonging to the *Employer* (the "Employer's Property") the following provisions apply.

- All Employer's Property remains the property of the *Employer*.
- Any failure of the Employer's Property shall not be a compensation event unless the *Consultant* demonstrates that the failure was caused by the *Employer's* undue delay in its repair or replacement.

Clause Z48

Building Information Modelling - Not Used

Clause Z49 Not used

Clause Z50 Volumes and non-exclusivity

- Z50.1 The *Consultant* acknowledges and agrees that no guarantee is given by the *Employer* in respect of levels or values of work and that the *Consultant* is appointed by the *Employer* on a non-exclusive basis. Any levels or values of work referred to in a Statement of Requirements and Scope given the *Employer* or the Contract Schedules are indicative only and shall not be binding on the *Employer*.

Clause Z51 Integrator

- Z51.1 In this clause Z51 the following terms shall have the following meanings:
- a) “**Integrator**” means the *Employer’s Agent*, being the supplier under the Integrator Agreement, and such supplier(s) that the *Employer* appoints as its replacement or successor from time to time (whether or not under the Integrator Agreement); and
 - b) “**Integrator Agreement**” means the integrator agreement dated 13 June 2017 entered into by (1) the *Employer* and (2) the Integrator.
- Z51.2 The *Consultant* acknowledges that the *Employer* has appointed the Integrator to manage this contract on behalf of the *Employer*.
- Z51.3 Unless otherwise specified by the *Employer*, the *Consultant* will liaise and cooperate with, and accept instructions from, the Integrator as if it was the *Consultant*. For the avoidance of doubt, unless specifically set out in this contract, the *Consultant* shall not have any direct liability under this contract to the Integrator.
- Z51.4 The *Employer* may, at any time, make direct contact with, and/or provide direct instructions to, the *Consultant* and the *Consultant* shall liaise directly with the *Employer* and comply with any such instructions (insofar as they are obliged to in accordance with this contract).
- Z51.5 Where the *Consultant* receives any instruction from the:
- Z51.5.1 Integrator that conflicts with any instruction received by the *Consultant* directly from the *Employer*; or
 - Z51.5.2 *Employer* that conflicts with any instruction received by the *Consultant* from the Integrator,
- the *Consultant* shall immediately notify the *Employer* and the Integrator to seek clarification in relation to which instruction it

should comply with. The *Employer* shall confirm which instruction (or any other instruction as may be relevant) the *Consultant* should comply with and the *Consultant* shall do so in accordance with its obligations under this contract.

Clause Z52

Amendments to the PSC NEC3 Core Clauses – the *Consultant*'s main responsibilities

Z52.1

New clause 21.4: insert new clause, "The fact that the *Consultant* has complied with:

- the Employer's Statement of Requirements in Contract Schedule 2 but not the Consultant Proposal as set out in Contract Schedule 3 shall not be a defence to an allegation that the *Consultant* has not satisfied the Consultant Proposal as set out in Contract Schedule 3; and
- the Consultant Proposal as set out in Contract Schedule 3 but not the Employer's Statement of Requirements in Contract Schedule 2 shall not be a defence to an allegation that the *Consultant* has not satisfied the Employer's Statement of Requirements in Contract Schedule 2,

provided that the Employer's Statement of Requirements in Contract Schedule 2 shall take priority over the Consultant Proposal as set out in Contract Schedule 3 in the event of any discrepancy or inconsistency between them."

Contract Schedule 1 - Invitation to Tender for the Provision of a Heat Decarbonisation Study in FY21/22 dated 21st September 2021, as amended



Department
for Work &
Pensions

INVITATION TO TENDER

SCHEDULE 1: INSTRUCTIONS TO POTENTIAL SUPPLIERS

Provision of Heat Decarbonisation Study in FY21/22

Further Competition under
RM3824 Heat Networks and Electricity Generation Assets DPS
Mini Competition

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1. Introduction

- 1.1 On 16th October 2018 a notice was published in the Official Journal of the European Union, reference number 2018/S 199-451364, in respect of the Crown Commercial Service – RM3824 (the "DPS Agreement") for "Heat Networks and Electricity Generation Assets (HELGA)" (the "Contract Notice").
- 1.2 This Mini-Competition is being conducted by way of a further competition for "Heat Networks and Electricity Generation Assets (HELGA)" under the terms of the DPS Agreement and in accordance with the Public Contracts Regulations 2015 (the "2015 Regulations").
- 1.3 It is being conducted to procure a Call Off Contract pursuant to that DPS Agreement by the Department for Work and Pensions (DWP) for the provision of Provision of Heat Decarbonisation Study in FY21/22. The Call Off Contract will be entered into between the Successful Supplier and DWP; for the purposes of that Call Off Contract the Successful Supplier will be the "Consultant" and the "Employer" shall be DWP.
- 1.4 The Potential Supplier who is awarded the Framework Agreement has been considered for the Provision of a Heat Decarbonisation Study in FY21/22.

1.5 The purpose of this ITT is to set out the basis on which a Tender is being invited by the Employer and to provide further information about the procurement process. Unless the context otherwise requires, capitalised expressions used in this document, Appendix A, Appendix B, Appendix C, Appendix D and Appendix E have the meanings set out in the "Glossary" at the end of this ITT.

1.6 This ITT consists of the following documents:

<u>Document Reference</u>	<u>Title</u>	<u>Supplier Action Required</u>
Schedule 1	Instructions to the Potential Supplier	The Potential Supplier is required to submit their tender in accordance with the Instructions to Potential Suppliers. Potential Suppliers are required to compete and submit documentation as directed.
Appendix A	Employer's Statement of Requirements	The Potential Supplier is required to read and understand the Statement of Requirements and take this into consideration when completing their tender.
Appendix B	ITT - Selection and Evaluation Criteria	The Potential Supplier is required to read and understand the selection and evaluation criteria and take this into consideration when completing their tender. The Potential Supplier is also required to complete and submit Annex 1 and Annex 2 to Appendix B - ITT Selection and Evaluation Criteria, in addition to other documentation requested.
Appendix C	Pricing Model	The Potential Supplier is required to provide full pricing details by completing Appendix C - Pricing Model and this must be submitted. All prices must be in GBP and must be exclusive of VAT.
Appendix D	Evaluation Methodology	The Potential Supplier and take this into consideration when completing their tender.
Appendix E	Tender Certificate	An un-amended copy must be signed by an appropriate person with the Employer to commit the Potential Supplier to the Tender offer. This document is in PDF format and should be signed with a wet signature where possible (although in the current climate electronic signatures will be accepted) witnessed and dated. This document should then be submitted.

Appendix F	Form of Call of Contract	Read and confirm commitment to enter into the Form of Call Off Contract (including DWP specific amendments) by completing and submitting Annex 2 to Appendix B - ITT Selection and Evaluation Criteria
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2. Requirement

- 2.1 This requirement is for the provision of a Heat Decarbonisation Study in FY21/22.
- 2.2 The requirements are described in further detail in the Employer's Statement of Requirements in Appendix A.
- 2.3 It is anticipated that the Call Off Contract will expire on 31/03/2022.
- 2.4 It is anticipated that the Call Off Contract will commence no later than 14th October 2021.

3. Tender Questions

- 3.1 Please refer to Appendix B - ITT Selection and Evaluation Criteria providing the questions to be answered. The questions cover the following categories:
 - **Approach to service delivery; and**
 - **Social value.**
- 3.2 The policies, projects and programmes to which public spending is directed are determined by government, using the recently revised Green Book to develop proposals that both achieve their intended objectives and deliver improved social welfare or wellbeing - referred to as social value. Public procurement is critical in translating those decisions to achieve the required outputs in the way that offers the best social value for money.
- 3.3 The huge power of public money spent through public procurement every year in the UK must support government priorities, to boost growth and productivity, help our communities recover from the COVID-19 pandemic, and tackle climate change.
- 3.4 As a central government department the Employer is committed to delivering the aims of [Procurement Policy Note \(PPN\) 06/20](#) (taking account of social value), and has therefore included question T2.1 within Appendix B - ITT Selection and Evaluation Criteria.

Overview

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- 3.5 The Employer anticipates that, following the issue of this ITT, the remainder of the Call Off Contract will be conducted on the basis set out below.
- 3.6 Potential Suppliers are invited to submit a Tender to the Employer, subject to and in accordance with the requirements of this ITT using the DWP eProcurement Solution (Bravo), the “Portal”, supplied by Jaggaer.

Administration of the Procurement Process

- 3.7 The Employer will be administering this Call Off Contract electronically via the Portal. No hard copy documents will be issued and all communications with the Employer must be conducted via the Portal.
- 3.8 To ensure all communications relating to the Call Off Contract are received, the Potential Supplier must ensure that the point of contact it nominates on the Portal is kept up to date and is accurate at all times. Access to the Portal is available 24 hours a day, 7 days a week, and 365 days a year anywhere in the world via the internet unless notified otherwise by the Portal.
- 3.9 Support is available to help the Potential Supplier to understand and use the system or query any issues with the system as follows:
- Freephone helpdesk (0800 069 8630), available Monday-Friday 8am to 6pm (UK time in English language only); or
 - By emailing: help@bravosolution.co.uk; and
 - Help guides available within the Portal.
- 3.10 Potential Suppliers must ensure that their registration on the Portal directly relates to the part of the Potential Supplier’s organisation that submits the Tender (some larger suppliers may have several subsidiaries so registration needs to apply to that part of organisation responsible for the Tender). The entity tendering for the Call Off Contract must be the party that will enter into the Call Off Contract if appointed as the Successful Supplier.

Inputting information on the Portal

- 3.11 Potential Suppliers may use the online ‘Help for Suppliers’ function on the Portal. The content is designed to explain the Portal in business terms, allowing Potential Suppliers to quickly understand the features and benefits of the software. The ‘Help for Suppliers’ function content is presented by software module, and divided into process activities, for example, ITTs and e-Auctions.
- 3.12 If Potential Suppliers have any software queries refer to the 'Help for Suppliers' function in the first instance. If there is still an issue, Potential Suppliers should email or telephone the Portal helpdesk using the details in paragraph 3.9 of these Instructions to Potential Suppliers with a Tender reference, a clear description of the

problem and contact details (ensure that plenty of time is allowed for issues to be resolved prior to any deadlines including the Submission Deadline).

- 3.13 Potential Suppliers should save progress regularly when using the Portal. For security reasons access to the Portal will 'time out' if inactive (i.e. if you do not click 'save') for fifteen (15) minutes or more. Failure to save regularly risks losing your work. This is part of strict government requirements to maintain security and Tender integrity and cannot be changed. Note that typing does not mean you are active on the Portal.
- 3.14 Please ensure that 'pop ups' are not blocked on your browser. Should you be inactive for fifteen (15) minutes, the Portal will notify you through a 'pop up'. It is vital that that you are able to see this pop up in order to click the 'Refresh' link in this 'pop up' so you are not disconnected from the Portal and lose any unsaved information.
- 3.15 Do not leave your response until the last minutes/hours before the Submission Deadline. If you experience connection problems, you may miss the Submission Deadline. Late Tenders will not be accepted. It will not be possible to upload any further information after the Submission Deadline. IT problems within Potential Suppliers' systems will not be considered reasonable grounds for late submission of Tenders or issues within the Tender documents.
- 3.16 Please ensure that you submit your response when completed using the 'submit response' button on the Portal. Failure to do this will result in your Tender not being visible to the Employer.
- 3.17 If the Employer makes any changes to the settings and questions area of a live/running Tender, Potential Suppliers must re-publish their response on the Portal. This is to ensure that changes are brought to the attention of Potential Suppliers. You may receive a message prompt from the Employer. Generally, this will not mean re-entering information but you should not rely on this as it is each Potential Supplier's responsibility to ensure that responses to each question are uploaded correctly.
- 3.18 Do not use the 'Back' or 'Forward' buttons on your browser, you could potentially lose your work. Please use the links on the Portal to navigate through the Tender.
- 3.19 To understand icons, use your mouse to 'hover' over the icon and view the 'ToolTip'. Note that Numeric fields will not accept text, spaces, symbols etc. The red asterisk indicates a mandatory field. This must be completed in order for Potential Suppliers to submit their response to the Employer.
- 3.20 Potential Suppliers that are delegating their response for colleagues to complete should ensure that their colleagues are aware of this information and also the Instructions to Potential Suppliers and should be IT literate.
- 3.21 Potential Suppliers should treat Portal logins securely. If you believe that you have lost your password, please log onto the website and click onto "Forgotten your password?" and follow the instructions.
- 3.22 The Qualification Envelope will show some information provided when the Potential Suppliers registered on the Portal. The answers provided in that profile will

automatically be used to pre-populate some parts of the Qualification Envelope. Potential Suppliers should check this information and have the opportunity to update these answers (as appropriate) and the new information will be saved against the organisation profile.

Formalities for submission of Tenders

- 3.23 The Instructions to Potential Suppliers have been specifically designed to be compatible with the Employer's e-tendering and e-evaluation requirements and must not, under any circumstances, be altered by Potential Suppliers.
- 3.24 Potential Suppliers must adhere to the following requirements and all other instructions specified in these Instructions to Potential Suppliers when submitting their Tenders:
- 3.24.1 Do not embed documents within other documents. Instead provide separate electronic copies of the documents, clearly labelled and referenced, if necessary;
- 3.24.2 The Tender must be in English;
- 3.24.3 The Tender must include a list of all supporting material;
- 3.24.4 Electronic copies of the Tender shall be in PDF or MS Excel 1997–2003 format. Files submitted in Microsoft Project format will not be accepted;
- 3.24.5 Potential Suppliers should use Arial 12 font type and size and text must be in black typeface;
- 3.24.6 Potential Suppliers must answer all questions/provide all other responses using the relevant templates provided, presenting them in the same sequence and using the same references. All answers must be self-contained with no cross-referencing. Responses to individual parts of the Technical Envelope are likely to be evaluated by different teams of evaluators and so each of these responses must be capable of evaluation on a stand-alone basis rather than cross referring to other responses;
- 3.24.7 The Tender must be clear, concise and complete. The Employer reserves the right to award a lower mark to a Potential Supplier or exclude the Potential Supplier from the Procurement Process (as appropriate) if their Tender is not clear, concise and complete. Potential Suppliers should submit only such information as is necessary to respond effectively to these Instructions to Potential Suppliers. Unless specifically requested, do not include extraneous presentation materials;
- 3.24.8 Tenders will be evaluated on the basis of information submitted by the Submission Deadline specified. Where information or documentation submitted appears to be incomplete or erroneous or specific documents are missing, the Employer reserves the right to request the Potential Supplier to submit, supplement, clarify or complete the information or documentation. This right to request clarification is without prejudice to the Employer's rights to reject a

Tender under paragraph 15 or otherwise in these Instructions to Potential Suppliers.

3.24.9 The Tender must be submitted by a duly authorised representative of the Potential Supplier;

3.24.10 All acronyms and abbreviations, if used, must be fully explained;

3.24.11 While the Portal allows for large individual attachment sizes (max 50mb at a time), we recommend that you keep Attachments to a manageable size to ensure ease and speed of access. Please note that the Employer does not guarantee that you will be able to upload files up to the maximum size, particularly at busy times. For this reason, it is recommended that Potential Suppliers should ensure files are well below the maximum stated and allow plenty of time to upload, so they have enough time to resolve any technical difficulties before the Submission Deadline. Only attach documents that the Employer has permitted and make sure that you attach them in the correct area;

3.24.12 Where a YES, NO or Not Applicable response is required, please click the appropriate YES, NO or Not Applicable statement on the drop down options bar;

3.24.13 Where any questionnaire or template response documents are in the form of an Excel or similar spreadsheet, Potential Suppliers should note that certain text (e.g. giving instructions or guidance on completion) within cells may not be visible without opening up the relevant cells. Potential Suppliers are responsible for ensuring they have checked each cell as necessary to identify the full text contained in that cell; and

3.24.14 Potential Suppliers must not insert or otherwise seek to apply any qualifications or assumptions around any of the matters on which responses are required.

Clarification Questions

3.25 The Potential Supplier is permitted to seek clarification from the Employer in relation to the Tender submission requirements, the Services or any other matters relating to this Call Off Contract. Clarification questions may be submitted during the period at any time using the Portal messaging service prior to the deadline for clarification requests.

3.26 Potential Suppliers will have the opportunity to raise clarification questions about this document and Call Off Contract generally. All questions raised must be submitted via the Portal messaging service.

3.27 A "Question and Answer" (Q&A) Log will be published on Portal and updated regularly. It will be the responsibility of the Potential Supplier to monitor the Portal for the latest activity.

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- 3.28 Subject always to the Employer's obligations under the Freedom of Information Act 2000 (FOIA) and any other applicable legislation, if a question is deemed by the Potential Supplier to be commercially confidential, then the Potential Supplier should clearly indicate as part of its question that it believes this is the case. The Employer will consider this and may exercise its discretion to keep such information confidential when handling the question.
- 3.29 Questions not deemed to be commercially confidential will be considered by DWP to be of significance to all other Potential Suppliers. If DWP intends to follow this course of action in respect of a question which the Potential Supplier has indicated contains commercially confidential information it will inform the Potential Supplier who raised the question before sharing the question with all other Potential Suppliers to provide an opportunity for the question to be withdrawn by that Potential Supplier. Subject to this, all questions and answers will be made anonymous and made available to all Potential Suppliers via the Q&A Log.
- 3.30 The final date for the submission of clarification questions along with the date of the publication of the final Tender Query Schedule is shown in the procurement timetable set out in paragraph 3.35. Where clarification questions have been received, the Employer will endeavor to publish an updated Tender Query Schedule every 2 working days. The Potential Supplier should note that, subject to any changes notified by the Employer, the deadline for submitting clarification requests is **28/09/2021 at 10am**.

Clarifications by the Employer

- 3.31 The Employer may need to clarify details of a Tender and in those instances the Employer will send any questions using the Portal to the named representative of the Potential Supplier (by email) that is registered on the Portal, who should arrange for a reply to be provided by the stipulated clarification response deadline.
- 3.32 The Employer may seek independent financial and market advice to validate information declared, or to assist in the evaluation.

Tender Submission Deadline

- 3.33 Subject to any changes notified by the Employer after the date of issuing this ITT, the **deadline for the submission of Tenders is 05/10/2021 at (10am) (the "Submission Deadline")**. Further information on other requirements applicable to the submission of the Tender, including the form and contents of each submission, is set out in paragraph 6 of this Instructions to Potential Suppliers.
- 3.34 The Tender received by the Employer by the Submission Deadline referred to above in paragraph 3.33 will be checked for compliance against the requirements of this ITT. The Tender will then be evaluated in accordance with Appendix D - Evaluation Methodology. It is anticipated that the Employer will award a Call Off Contract to the Potential Supplier with the highest scoring Tender following this evaluation process.

Timetable

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- 3.35 The Employer anticipates that the timetable for this Call Off Contract will be as set out in the table below. Potential Suppliers should note, however, that this timetable provides indicative timescales only and is subject to change.

Activity	Date
Publication of the ITT to Potential Suppliers	21/09/2021
Deadline for Submissions of Tender Questions (Q&A)	28/09/2021 at 10am
Deadline for Receipt of Tenders	05/10/2021 at 10am
Qualitative and Financial Compliance Checks	05/10/2021
Evaluation and Internal Governance	06/10/2021 to 14/10/2021
Suppliers Notified	14/10/2021
Sign Contract	From 14/10/2021
Milestone 1 (25 sites)	17/12/2021
Milestone 2 (remaining sites)	18/02/2022

Contract Award

- 3.36 Contract award is subject to the formal approval process of the Employer. Until all necessary approvals are obtained, no Contract(s) will be entered into.

4. Tie Break Situation & Methodology

- 4.1 In the event that there is a “Tie-Break” between two or more Potential Suppliers, the Employer will apply the following methodology.
- 4.2 The Employer’s policy is that a tie-break will only be applied where two or more winning bidders have achieved the same score in the evaluation of the bids.

-
- 4.3 In these circumstances, the tie-breaker will involve additional weighting being awarded. Where a tie-breaker is required; it will be applied to the scores of all bidders with winning equal scores.
- 4.4 Note that the use of one tie-breaker may not be sufficient to clearly identify the winner and so, in the event that the first tie-breaker does not produce a result which differentiates the bidders who have the same score, a second tie-breaker will be used. If at any step this produces a clear result, which differentiates the bidders who have the same score, the process will be terminated. If a winner is identified at any step, they will be appointed as a Successful Supplier.
- 4.5 The application of the tie-breaker will be as follows.
- 4.5.1 **Step 1** – 10% of the total weighted score for question T1.1 of the ITT response (Approach to service delivery) will be added to the final score.
- 4.5.2 **Step 2** – 10% of the total weighted score for question T1.2 of the ITT response (Approach to service delivery) will be added to the score from step 1.
- 4.5.3 **Step 3** – 10% of the total weighted score for question T1.3 of the ITT response (Approach to service delivery), will be added to the score from step 2.
- 4.5.4 **Step 4** – 10% of the total weighted score for question T2.1 of the ITT response, (Social value), will be added to the score from step 3.
- 4.6 In the event that the tie-breaker is not conclusive, the supplier with the highest scoring core percentage fee will be appointed as the Successful Supplier.

5. Financial Viability Risk Assessment

- 5.1 The aim of the Financial Viability Risk Assessment is to ensure the Successful Supplier has sufficient resources to successfully deliver the contract with a minimal risk of failure. The assessment will consist of an analysis of the Successful Supplier's audited accounts from the last two years. These will be sourced directly from Companies House using the Successful Supplier information submitted in Annex 1 to Appendix B - ITT Selection and Evaluation Criteria. If a Potential Supplier is exempt from provision of audited accounts by Companies House, the Potential Supplier should still complete Annex 1 to Appendix B - ITT Selection and Evaluation Criteria in order for the Employer to verify the exemption. The Employer will then request the Potential Supplier's internal management information in order to complete the analysis.
- 5.2 The analysis of the accounts and/or internal management information, and any other supporting information requested will utilise appropriate financial ratio analysis and sound financial judgement. Suitably qualified and experienced staff will conduct the analysis to ensure an accurate, consistent and professional approach.
- 5.3 Individual Potential Supplier responses will be assessed on the following two areas:

-
- Organisational Stability; and
 - Financial Stability.

- 5.4 An organisation that has a negative balance sheet (technically insolvent) will be given a RAG rating of **RED**. Further investigation and clarification will be required by the Employer to fully understand the issues causing the red rating.
- 5.5 As part of such investigation and clarification the Employer may require the Potential Supplier to provide supplementary information relating to the matters specified. If, following such clarification, the Employer is satisfied that there are clear and robust mitigating circumstances, which provide satisfactory assurance that there is minimal risk of contract failure as demonstrated by the clarification and/or supplementary information provided, the Employer reserves the right to amend the RAG rating from **RED** to **AMBER**.
- 5.6 If you identify that your organisation will be rated **RED**, but believe there to be mitigating circumstances, then you should submit an explanation and supporting evidence of the mitigating circumstances with your annual accounts.
- 5.7 If any Potential Suppliers score a mixture of **AMBER** and **GREEN**, the **AMBER** score takes priority.
- 5.8 For an organisation which achieves an **AMBER** rating it may be necessary for the Successful Supplier to supply additional evidence that the Potential Supplier can manage the level of growth, from an organisational, financial and delivery perspective. Table 1 provides the RAG criteria and related action across all areas of the assessment.
- 5.9 The Employer reserves the right to include or exclude Clause Z41 (Appendix F) post-tender. Please note that this option will only be exercised following a Red or Amber Financial Viability Risk Assessment, where the Employer is seeking supplementary information and assurances from the Potential Supplier in regards to their organisational and financial stability.

Organisational Stability

- 5.10 This section focuses on the overall stability of the organisation. Using the data supplied in the financial statements or internal management information, an assessment will be completed to determine the stability of the organisation.
- 5.11 If the assessment raises major concerns about the organisation this will result in the organisation being given a **RED** rating. Organisations who do not fall into the above rating category will receive a **GREEN** rating.

Financial Stability

- 5.12 This section involves completing a ratio analysis of the financial information contained in the Potential Supplier's financial statements or internal management information and will inform the outcome of this part of the assessment.

-
- 5.13 Two ratios will be analysed: the Acid Test ratio and the Debt ratio. Please see Table 2 for details of the scoring and weighting criteria that will be attributed to this assessment. When analysing a Potential Supplier's Liabilities, the Employer will exclude any amounts in relation to Provisions for Pensions Liabilities.

Financial Stability Scoring Methodology

- 5.14 The financial tests performed during the evaluation process are set out in Table 1: Financial Tests during Evaluation
- 5.14.1 The Successful Supplier will be given an **AMBER** or **GREEN** risk rating based on this assessment. **GREEN** ratings will be deemed as having passed the analysis.
- 5.14.2 If achieving an **AMBER** rating, the Commercial Finance Business Partner Team may seek further clarification and reassurance that any potential risks can be fully mitigated.
- 5.14.3 Acid Test Ratio = (Current Assets – Inventory) / Current Liabilities
- 5.14.4 Debt Ratio = (Total Debt – Pensions Liability) / Total Assets

Table 1: Financial Tests during Evaluation

Criteria	Score
Acid Test Ratio	>1.1 = Green <1.1 = Amber
Debt Ratio	<0.5 = Green >0.5 = Amber

6. Tender Submission Requirements

Overview

- 6.1 Each Potential Supplier will be required by way of its Tender submission to the Employer to submit the following three "Envelopes" via the Portal:
- (i) **A “Qualification” Envelope**; which must be fully completed and all questions responded to as directed. It is a mandatory requirement for the Potential Supplier to fully complete the Qualification Envelope. The Potential Supplier should upload all documentation requested within clause 1.2 of Appendix B - ITT Selection and Evaluation Criteria.

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- (ii) **A "Technical" Envelope**; which must be fully completed and all questions responded to as directed, which will be used for the purposes of identifying an overall "Quality" score in relation to a compliant Tender. This is set out at Appendix D - Evaluation Methodology; and
- (iii) **A "Commercial" Envelope**; to which a completed Appendix C – Pricing Model must be uploaded and which will be used for the purposes of identifying the Potential Supplier's prices in relation to a compliant Tender.

- 6.2 If the Potential Supplier fails to complete and submit its Tender, comprising the three "Envelopes" as referred to above, strictly in accordance with the requirements of this document, it risks having its Tender rejected by the Employer.
- 6.3 All documents which are provided in response to the qualification and technical questions should be clearly titled at the point of uploading via the Portal. The Potential Supplier should name each document in their submission alike the examples in the table below:

Document Required	How the document should be titled
Qualification Envelope documentation listed within clause 1.2 of Appendix B - ITT Selection and Evaluation Criteria.	The Potential Supplier should name each document in line with the corresponding requirement and sub-paragraph number within paragraph 1.2 of Appendix B - ITT Selection and Evaluation Criteria, followed by your company name. For example, the statement on how conflicts of interest will be addressed should be titled 'Conflict of Interest Statement - para 1.2.7 - ABC Ltd.'
Responses to Appendix B - Selection and Evaluation Criteria	T1.1 - ABC Ltd

Technical Envelope

- 6.4 The Potential Supplier is required to respond to a number of technical questions which can be found in the Technical Envelope. The Potential Supplier will be required to attach their response in PDF to each Technical Question.

Tender Completion

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- 6.5 All answers must be self-contained with no cross-referencing. Responses to individual parts of the Technical Envelope may be evaluated by different teams of evaluators and so each of these responses must be capable of evaluation on a stand-alone basis.
- 6.6 Where the Employer has put a page limit on the response to some or all questions the Potential Supplier must adhere to this and submit their answer accordingly. It is the responsibility of the Potential Supplier to recognise any page limits within the Technical Envelope. The page limit will be set out in the relevant question and any response in excess of these limits will be disregarded and will not be evaluated. One page is defined as 1 page in PDF (Arial font, size 12) or 1 tab in MS Excel. For example, for a page count limit of 4, the Potential Supplier may submit one PDF doc (2 sides) and one MS Excel (2 tabs).
- 6.7 Tables, graphs and charts in support of responses are all permitted, provided the total response including these is within the specified page limits.
- 6.8 Responses must be presented using Arial, font size 12 (English language and black typeface) - this includes instances where information may be tabulated as part of the response. The only exception permitted is for illustrative screen shots, graphs and charts, which should be presented within the allocated page limit for the question they are relevant to and must not be embedded separately as this information will be disregarded.
- 6.9 The Tender must be completed using PDF and MS Excel 2003 - 2020 format.
- 6.10 All acronyms and abbreviations, if used, must be fully explained. You should submit clear, concise and unambiguous statements that provide sufficient evidence of your ability to deliver the requirements of the Employer's Statement of Requirements and Scope.
- 6.11 The Tender must be clear, concise and complete. The Employer reserves the right to award a lower mark to a Potential Supplier or exclude the Potential Supplier from the Procurement Process (as appropriate) if their Tender is not clear, concise and complete. Potential Suppliers should submit only such information as is necessary to respond effectively to these Instructions to Potential Supplier. Unless specifically requested, do not include extraneous presentation materials.
- 6.12 Where a YES, NO or Not Applicable response is required, please click the appropriate YES, NO or Not Applicable statement on the drop-down options bar.
- 6.13 The Potential Supplier should note that certain text within MS Excel documents (e.g. giving instructions or guidance on completion) within cells may not be visible without opening up the relevant cells. Potential Suppliers are responsible for ensuring they have checked each cell as necessary to identify the full text contained in that cell.
- 6.14 Tenders will be evaluated on the basis of information submitted by the Submission Deadline specified. Where information or documentation submitted appears to be incomplete or erroneous or specific documents are missing, the Employer reserves the right to request the Potential Supplier to submit, supplement, clarify or complete the
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information or documentation. This right to request clarification is without prejudice to the Employer's rights to reject a Tender under paragraph 15 or otherwise in these Instructions to Potential Suppliers.

Submissions Relating to Technical Envelope

- 6.15 It is assumed for the purposes of producing the Tender that the Potential Supplier will have reviewed all documents and be satisfied that they have a full understanding of the Employer's requirement as described in The Employer's Statement of Requirements and Scope. Potential Suppliers can query their understanding of The Employer's Statement of Requirements and Scope during the period for clarifications referred to in paragraphs 3.25 to 3.30 above.
- 6.16 References to sections of The Employer's Statement of Requirements and Scope within the questions in the Technical Envelope are as a guide only. Other requirements elsewhere within The Employer's Statement of Requirements and Scope that are incidental or connected to the specific requirement in question may also be taken into account when the Employer assesses whether the Potential Supplier fully addresses the requirement that relates to a particular question within the Technical Envelope.

Commercial Envelope

- 6.17 Please see Appendix C - Pricing Model and Appendix D - Evaluation Methodology for the Employer's pricing evaluation requirements and the method by which those requirements are incorporated into the overall evaluation methodology.

Tender Submission Procedure

- 6.18 This ITT has been specifically designed to be compatible with DWP's e-tendering and e-evaluation requirements and must not, under any circumstances, be altered by Potential Suppliers.
- 6.19 The Tender must be submitted to the Employer using the DWP Portal. A Tender submitted by any other means will not be accepted.
- 6.20 A Tender response may be completed and submitted via the DWP Portal at any time before the Submission Deadline. Instructions explaining how to submit and complete relevant responses are located within the Portal.
- 6.21 A Potential Supplier may modify and resubmit its Tender at any time prior to the Submission Deadline. Tenders cannot be modified after the Submission Deadline. As at the Submission Deadline, the Potential Supplier must ensure that it has only submitted a single Tender through the Portal (and has not duplicated its response).
- 6.22 Each Potential Supplier is responsible for ensuring that its Tender has been successfully completed and all relevant information uploaded to the Portal prior to the Submission Deadline. For these purposes, it is recommended that each Potential Supplier allows time for a final check to be undertaken prior to the Submission Deadline. It will not be possible for Potential Suppliers to submit any further

information after the Submission Deadline. Information Technology (IT) problems affecting the Potential Supplier's own system will not be considered reasonable grounds for late submission.

- 6.23 Potential Suppliers must not seek to alter the content or functionality of any Excel spreadsheet, declaration or other response template issued as part of this Invitation to Tender save only for the population of those tender-specific items of information which are specifically required to be included in relevant instructions for the response template in question. Without prejudice to the generality of this requirement and save only to the extent (if any) specifically permitted by DWP to do so in relevant instructions, Potential Suppliers must not insert or otherwise seek to apply any qualifications or assumptions around any of the matters on which responses are required.
- 6.24 You should be aware that if your Tender is successful Tender submission will form part of your Call Off Contract with the Employer.

Additional Materials, Documents & Attachments

- 6.25 No additional documentation should be submitted with the Tender unless specifically requested by the Employer in this document. Any further material shall not be taken into account during evaluation.
- 6.26 Information that forms part of general company literature or promotional brochures will not be evaluated and should not be submitted.
- 6.27 The Tender should not contain any inserted, pasted or embedded pictures or documents (image files, Adobe Acrobat documents or other Word documents) unless specifically requested by the Employer.
- 6.28 Any additional documents requested by the Employer must be clearly referenced within the body of the Tender using a unique, un-ambiguous and relevant file name. They must be saved using MS Word (in Web Page, filtered format only), MS Excel, MS Power Point, Adobe Acrobat, pdf or jpeg formats. No other file formats should be used.

Tender Validity Period

- 6.29 The Tender must remain valid and capable of acceptance by the Employer for ninety (90) days from the Submission Deadline.

Sub-Contracting Arrangements

- 6.30 Consortium bids will not be accepted by the Employer. Where the Potential Supplier proposes to sub-contract any part of the Services, the Potential Supplier must provide full details of their supply chain as part of its tender. Potential Suppliers must also declare any conflicts of interest.
- 6.31 Based on the information provided by the Potential Supplier under paragraph 6.30 above, the Employer may clarify any aspect of the Sub-Contract arrangement to

ensure that the arrangement is appropriate and that the arrangement does not cause a conflict of interest which cannot be mitigated to the Employer's satisfaction.

6.32 If you intend to use a supply chain for this contract, you must demonstrate you have effective systems in place to ensure a reliable supply chain and pay all sub-contractors in your supply chain promptly and effectively. Prior to contract award, the following evidence will be required from the Successful Supplier:

- A copy of your standard payment terms for all of your supply chain contracts.
- A copy of your standard payment terms used with sub-contractors on public sector contracts subject to the Public Contract Regulations 2015. (this should include (as a minimum) 30 day payment terms).
- A copy of your procedures for resolving disputed invoices promptly and effectively.
- Details of any payments of interest for late payments you have paid in the past twelve months or which became due during the past twelve months and remain payable (contractually or under late payment legislation) and, if any such payment has been made (or arose), an explanation as to why this occurred and an outline of what remedial steps have been taken to ensure this does not occur again.
- A breakdown of the percentage of invoices paid by you to those in your immediate supply chain on all contracts for each of the two previous six month reporting periods. This should include the percentage of invoices paid within each of the following categories:
 - Within 30 days
 - In 31 to 60 days
 - In 61 days or more
 - Due but not paid by the last date for payment under agreed contractual terms.

Note: As not all payments involve an invoice, this should include all situations where payments are due.

It is acceptable to cross refer to information that has previously been submitted to Government or other bodies or is publicly available (provided it covers the required reporting periods), including data published in accordance with the Reporting on Payment Practices and Performance Regulations 2017. If you do wish to cross refer, please provide details and/or insert link(s) in your response.

You should explain in your response what a reporting period is by referring to the BEIS Guidance:

<https://www.gov.uk/government/publications/business-payment-practices-and-performance-reporting-requirements>

If the Successful Supplier is unable to demonstrate that all invoices have been paid within the agreed contractual terms, the Employer will require a written explanation in no more than 2000 characters.

If the Successful Supplier is unable to demonstrate that $\geq 95\%$ of invoices payable to your supply chain on all contracts have been paid within 60 days of the receipt of the invoice in at least one of the last two six months reporting periods, the Employer will require an action plan for improvement which includes (as a minimum) the following:

1. Identification of the primary causes of failure to pay:
 - (a) 95% of all supply chain invoices within 60 days; and
 - (b) if relevant under the previous question, all invoices within agreed terms.
 2. Actions to address each of these causes.
 3. A mechanism for and commitment to regular reporting on progress to the bidder's audit committee (or equivalent).
 4. Plan signed off by director.
 5. Plan published on its website (this can be a shorter, summary plan).
- 6.33 The attention of the Potential Supplier is also drawn to the general rules set out in paragraph 17 of this Instructions to Potential Suppliers in relation to any Change in Circumstance.

Licensing and Registration

- 6.34 The Employer requires Potential Suppliers to indicate if licensing and registration is required for your business in order to provide the Services and, if so, whether your organisation holds the required licensing and registration. The Employer must be satisfied that Potential Supplier has the required licenses and registration to meet the requirement otherwise the Tender will be rejected.

Security Policy

- 6.35 The attention of the Potential Supplier is drawn to the Security Policy in Contract Schedule 7 of the Form of Contract in Appendix F.
- 6.36 Prior to contract award, the Successful Supplier and any sub-contractors (as applicable) shall complete the Information Security Questionnaire in the format stipulated by the Employer and embedded in this paragraph within 5 working days of being notified by the Employer that the Consultant is the successful Framework Supplier (as defined in the Framework Agreement) in respect of this Call Off Contract.

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- 6.37 The Potential Supplier is not required to complete the Information Security Questionnaire as part of their Tender. However, the Potential Supplier is required to read and understand the Information Security Questionnaire to ensure they can complete this in full in the event that they are notified by the Employer to be the successful Framework Supplier (as defined in the Framework Agreement) in respect of this Call Off Contract). A full response entails providing supporting comments in column G on how you will or, do meet all minimum requirements as listed in the guidance in column D. Where meeting requirements is planned for development, please provide an action plan within column G. The Employer will require copies of any referenced supporting evidence.



Information
Security Questionnaire

7. Use of SMEs in the Successful Supplier's Supply Chain

- 7.1 The Employer recognises the important role Small and Medium Enterprises (SMEs) have in helping to deliver economic growth and prosperity. SMEs are defined as enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding 50 million euros (€50,000,000), and/or an annual balance sheet total not exceeding 43 million euros (€43,000,000). DWP is committed to supporting the government's target of 33% of government spending with third party suppliers to go to SMEs through either direct or indirect spend through the supply chain where it is relevant to the contractual requirement to do so and provides value for money.

8. Transfer of Undertakings (Protection of Employment) Regulations (TUPE)

- 8.1 Your attention is drawn to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended ("**TUPE Regulations**"). It is the Employer's view that the commencement of the provision of the *service* or a part of thereof is not expected to result in a Relevant Transfer. Clause Z22 within Appendix F has therefore not been used.
- 8.2 The Employer confirms that it currently does not consider that TUPE will apply to any staff and accordingly it has not identified any person to be a Transferring Former Consultant Employee or Transferring Employer Employee.
- 8.3 If you have a contrary view to that of the Employer on the applicability of TUPE, it would be helpful if you would advise the Employer via the Employer's Agent email giving the reasons no later than one (1) week prior to the Submission Deadline.

9. Reliance

- 9.1 The only information upon which the Potential Supplier or member of a Potential Supplier's Team may rely in respect of this Call Off Contract will be such information (if any) as may be specifically and expressly represented and/or warranted in the Final Contract.

9.2 Subject only to paragraph 9.1:

9.2.1 a Potential Supplier considering entering a contractual relationship in respect of the Services should make their own investigations and enquiries as to DWP's requirements beforehand; and

9.2.2 neither DWP nor any of its officers, ministers, employees, agents or advisors makes any representation or warranty as to, or (save in the case of fraudulent misrepresentation) accepts any liability or responsibility in relation to, the adequacy, accuracy, reasonableness or completeness of this ITT and/or any Associated Documents (including, but not limited to, loss or damage arising as a result of reliance placed by the Potential Supplier and/or any member of the Potential Supplier's Team on any such information).

9.3 The issue of this ITT is not to be construed as a commitment by DWP to enter into a contract as a result of the Mini-Competition. Any expenditure, work or effort undertaken prior to the execution of any Final Contract is accordingly a matter solely for the commercial judgement of the Potential Supplier and (if applicable) members of the Potential Supplier's Team.

10. Confidentiality

10.1 Subject to the exceptions referred to in paragraph 10.3 below, the ITT and associated Documents are made available to the Potential Supplier on condition that it:

10.1.1 shall at all times treat the ITT and Associated Documents as confidential;

10.1.2 subject to paragraph 10.3, shall not disclose, copy, reproduce, distribute or pass the ITT and/or any Associated Documents to any other person at any time or allow any of these things to happen;

10.1.3 shall not use the ITT and/or any Associated Documents for any purpose other than for the purposes of preparing for, and engaging in the Call Off Contract and submitting (or deciding whether to submit) a Tender;

10.1.4 shall comply with the provisions of paragraph 10 of this Instructions to Potential Suppliers (which contains restrictions on publicity activity within any section of the media); and

10.1.5 shall procure that each of the members of the Potential Supplier's Team who receives any of the Information is made aware of, and complies with the provisions of, paragraph 10 of this Instructions to Potential Suppliers as if it were a Potential Supplier.

10.2 If the Potential Supplier, in DWP's opinion, breaches any of the requirements of paragraph 10 of this Instructions to Potential Suppliers may, at DWP's sole discretion, be disqualified from further participation in the Call Off Contract (without prejudice to any other civil remedies available to DWP and without prejudice to any criminal liability which such conduct by the Potential Supplier may attract).

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- 10.3 The Potential Supplier may disclose, distribute or pass the ITT and Associated Documents to another person if either:
- 10.3.1 this is necessary and done for the sole purpose of enabling the Tender to be submitted and the person receiving the ITT and Associated Documents undertakes in writing to keep the ITT and Associated Documents confidential on the same terms as set out in paragraph 10 of this Instructions to Potential Suppliers/ITT; or
 - 10.3.2 the Potential Supplier obtains the prior written consent of DWP in relation to such disclosure, distribution or passing of the ITT and Associated Documents.
- 10.4 By participating in this Call Off Contract, the Potential Supplier understands and agrees, and shall procure that all others whose information is supplied to support their Tender agrees, that DWP is permitted to disclose all information submitted to it to the United Kingdom Parliament or any other contracting Employer (as defined in the 2015 Regulations), office or agency of Her Majesty's Government in the United Kingdom and their officers, ministers, servants, agents and advisers. In addition, the Potential Supplier's attention is drawn to paragraph 16 of this Instructions to Potential Suppliers.

11. Canvassing

- 11.1 The Potential Supplier or member of the Potential Supplier's Team who, in connection with the Call Off Contract:
- 11.1.1 offers any inducement, fee or reward to any servant or agent of DWP or any person acting as an advisor to DWP in connection with the Call Off Contract or does anything which would constitute a breach of the Prevention of Corruption Act 1889 to 1916;
 - 11.1.2 contacts any servant or agent of DWP or any person acting as an advisor to DWP prior to a contract being entered into about any aspect of the Call Off Contract in a manner not permitted by this ITT; and/or
 - 11.1.3 contacts the Supply Chain Integrator (Sodexo) or any sub-contractors involved in this Project, including Baker Mallett LLP or Rider Levett Bucknall UK Ltd. For the avoidance of any doubt please see the Estates Target Operating Model diagram and accompanying information in Appendix A – Employer's Statement of Requirements for all suppliers part of the Estates Target Operating Model.
 - 11.1.4 does anything which would constitute a breach of the Bribery Act 2010
- may at DWP's absolute discretion be disqualified from further participation in the Call Off Contract (in either case without prejudice to any other civil remedies available to DWP and without prejudice to any criminal liability which such conduct by the Potential Supplier or member of the Potential Supplier's Team may attract).
- 11.2 Paragraph 11.1 applies without prejudice to Part 2 of the 2015 Regulations which provides, in certain circumstances, for the mandatory exclusion of the Potential Supplier.
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12. Non-Collusion

- 12.1 The Potential Supplier or member of the Potential Supplier's Team who, in connection with this Call Off Contract and without obtaining the prior written consent of DWP:
- i. fixes or adjusts the amount of its Tender by or in accordance with any agreement or arrangement with any other person (other than a member of the Potential Supplier's Team acting in that capacity);
 - ii. enters into any agreement or arrangement with any other person (other than a member of the Potential Supplier's Team acting in that capacity) that it shall refrain from submitting the Tender or as to the amount of the Tender to be submitted;
 - iii. offers or agrees to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to the proposed Tender any act or omissions; or
 - iv. communicates to any person other than DWP or a member of the Potential Supplier's Team the amount or approximate amount of its Tender (except where such disclosures are made in confidence to obtain quotations necessary for the preparing of the Tender);
- may at the Employer's absolute discretion be disqualified from further participation in the Call Off Contract (without prejudice to any other civil remedies available to DWP and without prejudice to any criminal liability that such conduct by the Potential Supplier may attract).

13. Copyright

- 13.1 The copyright in this ITT and the Associated Documents is vested in DWP. This ITT and the Associated Documents may not be reproduced, copied or stored in any medium without the prior written consent of DWP except for the purposes of preparing and submitting the Tender.

14. Publicity

- 14.1 The Potential Supplier and members of the Potential Supplier's Team shall not undertake (or permit to be undertaken) at any time (whether prior to or after any contract has been entered into) any publicity or activity with any section of the media (including, but not limited to, making any announcements) in relation to this Call Off Contract and/or the Services other than with the prior written consent of DWP. In this paragraph 14.1, the word "media" includes (but is not limited to) radio, television, newspapers, trade and specialist press, the internet and email accessible by the public at large and the representatives of such media.

15. Right to Reject Initial Tender/Exclude the Potential Supplier

- 15.1 The Employer reserves the right to reject a Tender and/or exclude the Potential Supplier and/or one or more members of the Potential Supplier's Team from further participation in the Call Off Contract where:

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- 15.1.1 the Tender is submitted late, is completed incorrectly, is incomplete, is submitted other than via the Portal or otherwise fails to meet any of the Employer's submission requirements which have been notified to the Potential Supplier, including those set out in this ITT;
 - 15.1.2 the Potential Supplier and/or any relevant members of the Potential Supplier's Team are unable to satisfy the terms of Article 57 of Directive 2014/24/EU and/or Regulation 57 of the 2015 Regulations at any stage during the Call Off Contract;
 - 15.1.3 the Potential Supplier and/or any relevant members of the Potential Supplier's Team are guilty of material misrepresentation or false statement in relation to the Tender and/or the Call Off Contract;
 - 15.1.4 the Potential Supplier and/or any member of the Potential Supplier's Team fails to comply with any of the terms set out this ITT and/or any Associated Documents;
 - 15.1.5 as a result of any Change in Circumstance the Employer considers that the Potential Supplier and/or particular members of the Potential Supplier's Team should be excluded from further participation in the Call Off Contract; and/or
 - 15.1.6 the Employer has a right under any other provision in this ITT and/or under the general law to reject the Tender and/or exclude the Potential Supplier and/or one or more members of the Potential Supplier's Team from further participation in the Call Off Contract.

16. Freedom of Information

- 16.1 All information relating to the Potential Supplier, any member of the Potential Supplier's Team and/or any Tender which is submitted to DWP and/or any information relating to any contract to which DWP is party, including information arising under a contract or about its performance, may be accessible under the FOIA or Environmental Information Regulations 2004 (EIR). DWP is under a legal obligation to disclose such information if requested, unless an exemption applies. DWP may also be required to disclose requirements under other legislation or applicable codes of practice or otherwise as required by law, including by order of a court of competent jurisdiction.
- 16.2 The Potential Supplier must, as part of this Call Off Contract, identify to DWP information submitted which it regards as being potentially exempt from disclosure by DWP under the FOIA or EIR. Such identification may be either specific or by class. The Potential Supplier must state the grounds that it believes exist for potentially exempting the information from disclosure, together with detailed reasoning for each. The Potential Supplier should also indicate whether it considers that the potential exemption from disclosure applies only for the duration of the Call Off Contract or whether the potential exemption would continue after the conclusion of the Call Off Contract.

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- 16.3 Please note that, consistent with the spirit of its obligations under the FOIA or EIR, as a general principle DWP will seek to prevent, or restrict the scope of confidentiality obligations sought to be imposed upon it other than in accordance with the FOIA or EIR. As such DWP reserves the right not to accept, in whole or in part, receipt of any information marked as confidential or sensitive or to require further explanation of the reasons why the Potential Supplier considers confidentiality obligations to be appropriate in a particular case.
- 16.4 Where the Potential Supplier has indicated that information should be exempted from disclosure, DWP may disclose this information following its own consideration of the situation. DWP may, in its absolute discretion, consult with the Potential Supplier before making a decision on a request for information. The interpretation of DWP in relation to any exemption shall be final. DWP shall not be liable for any loss, damage, harm or other detriment however caused arising from any disclosure of information under FOIA or EIR.
- 16.5 Without prejudice to the other provisions of the paragraphs above, the Potential Supplier acknowledges that, except for any information which is exempt from disclosure in accordance with the FOIA, the content of the Final Contract may be disclosed under the FOIA. DWP shall be responsible for determining in its absolute discretion whether any of the content of the Final Contract is exempt from disclosure in accordance with the provisions of FOIA.
- 16.6 Subject to redactions for confidentiality as determined by DWP, notwithstanding any other term of the Final Contract, the Potential Supplier in the event that it is appointed as the supplier of the Services hereby gives its consent for DWP to publish the Final Contract in its entirety, including from time to time agreed changes to the Final Contract, to the general public. DWP may consult with the relevant Potential Supplier to inform its decision regarding any redactions but DWP shall have the final decision in its absolute discretion. The relevant Potential Supplier shall assist and cooperate with DWP to enable DWP to publish the Final Contract.

17. Change in Circumstances

- 17.1 The Potential Supplier is required to notify the Employer of the occurrence of any of the events listed below (each a "Change in Circumstance") immediately upon becoming aware of any such event. A Change in Circumstance means the occurrence of any of the following:
- 17.1.1 any change, or anticipated change, to the information previously provided to Crown Commercial Service (whether under the terms of the relevant Framework Agreement and/or pursuant to the original procurement process which led to the award of the relevant Framework Agreement) in respect of the Potential Supplier and/or any member of the Potential Supplier's Team, including (but not limited to) any change to:
- 17.1.2 the identity, control or financial standing of the Potential Supplier and/or any member of the Potential Supplier's Team; or

17.1.3 the structure of any sub-contracting arrangements or any other aspect of the relationship, or proposed relationship, between the Potential Supplier and any member(s) of the Potential Supplier's Team; or

17.1.4 any other change, or anticipated change, to the circumstances of the Potential Supplier and/or any members of the Potential Supplier's Team, or the basis of its Tender, which may be expected to influence DWP's decision on the suitability or capability of that Potential Supplier and/or any relevant member of the Potential Supplier's Team to provide the Services.

17.2 Any such notification shall provide full details of the actual or anticipated Change in Circumstance.

17.3 DWP reserves the right a following a Change in Circumstance to revisit any previous suitability or capability assessment and, where it considers appropriate, either exclude the Potential Supplier from further participation in the Call Off Contract, or impose such conditions on the Potential Supplier's continued participation as DWP considers appropriate.

18. Competition Matters

18.1 The Potential Supplier is responsible for complying with any applicable domestic and European competition law requirements and for obtaining any clearances required under these requirements. For the avoidance of doubt, this includes but is not limited to any merger control clearances which may be required for the creation of the Potential Supplier entity.

19. Conflicts of Interest

19.1 The Potential Supplier is responsible for ensuring that there are no conflicts of interest between, on the one hand, the Potential Supplier and/or the members of the Potential Supplier's Team and, on the other hand, DWP. The Potential Supplier must notify DWP of any actual or potential conflict of interest that may be relevant to this Call Off Contract and/or the submission or evaluation of the Tender as soon as reasonably practicable after it becomes aware of such a conflict. Failure to declare such conflicts and/or failure to address such conflicts to the reasonable satisfaction of DWP may result in the Potential Supplier and/or members of the Potential Supplier's Team being excluded from further participation in the Call Off Contract.

20. Tender Process and Costs

20.1 DWP reserves the right at any time:

20.1.1 to issue amendments or modifications to the ITT and/or the Associated Documents;

20.1.2 to alter the timetable or any other any aspect of the Call Off Contract;

20.1.3 not to award a contract;

20.1.4 to cancel or withdraw from the Call Off Contract at any stage; and/or

20.1.5 to re-invite a Tender on the same or any alternative basis.

- 20.2 Any costs or expenses incurred by the Potential Supplier or the Potential Supplier's Team or any other person in connection with the Call Off Contract, including (but not limited to) the submission of its Tender, will not be reimbursed by DWP and neither DWP nor any of its officers, ministers, employees, agents or advisors will be liable in any way to the Potential Supplier, any member of the Potential Supplier's Team or any other person for any costs, expenses or losses incurred by the Potential Supplier, any member of the Potential Supplier's Team or any other person in connection with this Call Off Contract, including (but not limited to) where the Call Off Contract is cancelled or DWP otherwise decides not to award a contract pursuant to the Call Off Contract.

21. Withdrawing from Call Off Contract

- 21.1 The Potential Supplier may decline to take part in the Call Off Contract, but should they choose not to participate, they should alert DWP promptly, giving reasons, and return to DWP all copies of the documentation issued to them by DWP or downloaded from the Portal.

22. Governing Law and Jurisdiction

- 22.1 This Call Off Contract and any Final Contract shall be governed by English Law and subject to the exclusive jurisdiction of the English Courts.

23. Languages

- 23.1 English shall be the official language for all means of communication between Potential Suppliers and DWP on all matters relating to the Call Off Contract.

24. DWP Complaints Procedure

- 24.1 The Employer has published a Commercial Complaints Process for use during competitive procurement.
- 24.2 This process gives details of:
- 24.2.1 DWP Commercial Code of Practice – Competitive Tendering;
 - 24.2.2 The DWP Commercial Complaints Process; and
 - 24.2.3 Information to accompany a commercial complaint.

25. Return of Documents

- 25.1 DWP is unable to return any documents submitted by the Potential Supplier responding to this ITT.

26. Warnings and disclaimers

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- 26.1 While the information contained in these Instructions to Potential Suppliers is believed to be correct at the time of issue, neither the Employer, its advisors will accept any liability for its accuracy, adequacy or completeness, nor will any express or implied warranty be given (including, but not limited to, loss or damage arising as a result of reliance placed by the Potential Supplier and/or any member of the Potential Supplier's Team on any such information). This exclusion extends to liability in relation to any statement, opinion or conclusion contained in or any omission from, the ITT and in respect of any other written or oral communication transmitted (or otherwise made available) to any Potential Supplier. This exclusion does not extend to any fraudulent misrepresentation made by or on behalf of the Employer.
- 26.2 If a Potential Supplier proposes to enter into a Contract with the Employer, it must rely on its own enquiries and on the Form of Call Off Contract in Appendix F, subject to the limitations and restrictions specified in it.
- 26.3 Neither the issue of the ITT, nor any of the information presented in it, should be regarded as a commitment or representation on the part of the Employer (or any other person) to enter into a contractual arrangement.

Glossary of Terms

2015 Regulations	means the Public Contracts Regulations 2015.
Associated Documents	means, in addition to the ITT, any other documents or information which DWP may from time to time provide or make available in connection with the Call Off Contract.
Change in Circumstance	has the meaning given to that expression in paragraph 17 of this document.
Call Off Contract	<p>means the form of contract set out at Appendix F – Call Off Contract of the ITT;</p> <p>The relevant Call Off Contract (or “Call Off Contract Procedure” within the meaning of the Framework Agreement) which is (to be) conducted under the terms of this ITT in respect of the procurement by DWP of the Services.</p>

DWP (also referred to as the "Employer")	means the Secretary of State for Work and Pensions acting as part of the Crown through his/her representatives in the Department for Work and Pensions.
EIR	means the Environmental Information Regulations 2004.
Final Contract	the contract (if any) actually entered into between DWP and the Successful Supplier pursuant to the Call Off Contract.
FOIA	means the Freedom of Information Act 2000.
Framework Agreement	means Crown Commercial Service Framework RM3824 for Heat Networks and Electricity Generation Assets (HELGA) DPS
ITT	means this invitation to tender pack in relation to a particular Call Off Contract (to be) conducted by DWP under the Framework Agreements, comprising a front end "Invitation to Tender" document and various appendices to this.
Moderation Meeting	means a meeting (or meetings as the case may be) at which members of DWP's evaluation team will meet with one or more moderators in order to reach a consensus decision on the scoring of each scored element of the Tender response.

Moderated Score	means the final score which is applied to each scored element of the Potential Supplier's Tender response following a Moderation Meeting.
Portal	means the DWP e-Procurement Solution (ePS) portal used by the Employer for the purposes of administering the Procurement Process electronically, which is currently supplied by Jaggaer;
Potential Supplier	means the Supplier who is party to the Framework Agreement and who have been invited by DWP to participate in this Call Off Contract.
Potential Supplier's Team	means any officers, employees, agents or advisors of the Potential Supplier and/or (if applicable) of any relevant sub-contractors.
Services	the particular requirements which are the subject of this ITT.
Submission Deadline	means the final time and date by which Tenders must be submitted, being the relevant time and date set out in the procurement timetable at paragraph 3.35 of this document, or such other time and date as may be communicated to the Potential Supplier for these purposes;
Successful Supplier	means the Potential Supplier who is successful in being awarded a contract by the Employer pursuant to the Call Off Contract;

Supplier	shall have the meaning given to the term within the Framework Agreement;
Supply Chain	means those sub-contractors and other third party suppliers (if any) who the Potential Supplier proposes to use/engage with for the purposes of delivering the Services if successful in the Call Off Contract;
Tender	means a tender, in respect of the Services, which is or (as the context requires) may be submitted in response to this document by the Potential Supplier;



Department
for Work &
Pensions

APPENDIX B - ITT SELECTION AND EVALUATION CRITERIA

Provision of Heat Decarbonisation Study in FY21/22

Further Competition under

RM3824 Heat Networks and Electricity Generation Assets (HELGA) DPS

Mini Competition

1. Qualification Envelope Requirements

- 1.1 As part of submitting a compliant Tender, the Potential Supplier must comply with the following requirements:

1.1.1 Possession of the following levels of insurance cover:

- 1.1.1.1 £5m in employer's liability insurance cover;
- 1.1.1.2 £2m in public liability insurance cover;
- 1.1.1.3 £2m in professional indemnity insurance cover; and
- 1.1.1.4 £2m in product liability insurance cover.

1.1.2 Cyber Essentials Basic Certification, as defined in the DPS Agreement;

1.1.3 Provision of a signed and dated Tender Certificate, found in Appendix E, without any caveats or unauthorised amendments. This Tender Certificate must be signed by an appropriate person to commit the Potential Supplier to the Tender offer. This should be signed with a wet signature where possible (although in the current climate electronic signatures will be accepted) witnessed and dated;

1.1.4 Provision of a statement detailing any current conflict of interest, or one which may arise during the provision of the services (including conflicts within the supply chain) and how they will mitigate it. Conflicts may (without limitation) include where Potential Suppliers are:

- 1.1.4.1 Currently working for or advising any member of the current DWP Estates Target Operating Model named in Annex 2 to Appendix A - The Employer's Statement of Requirements and Scope;
- 1.1.4.2 Currently working for or advising Baker Mallett LLP, Rider Levett Bucknall UK Ltd or Gleeds Advisory Ltd;
- 1.1.4.3 Currently working for or advising the landlord of a DWP site; and/or
- 1.1.4.4 Currently working for or advising Contractors who are on:
 - the Crown Commercial Service (CCS) Construction Works and Associated Services Framework (RM6088);
 - the Pagabo Medium Works Framework;
 - the Pagabo Major Works Framework;
 - the Pagabo Re-fit and Refurbishment Framework; and
 - the SCAPE Construction Framework.

who may in the future be selected to work on this project.

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- 1.1.5 Acceptance of the Form of Agreement specified in Appendix F which is based upon the NEC3 Professional Services Contract April 2013; and
 - 1.1.6 Provision of the information requested in Annex 1 to this Appendix B - ITT Selection and Evaluation Criteria in order for the Employer to source the Potential Suppliers' audited accounts from the last two years directly from Companies House.
- 1.2 In order to provide confirmation that the Potential Supplier can adhere to the requirements listed in paragraphs 1.1.1 to 1.1.5, the Potential Supplier is requested to submit the following documents within the Qualification Envelope:
- 1.2.1 a PDF copy of the Employer's Liability insurance certificate;
 - 1.2.2 a PDF copy of the Public Liability insurance certificate;
 - 1.2.3 a PDF copy of the Professional Indemnity insurance certificate
 - 1.2.4 a PDF copy of the Product Liability insurance certificate;
 - 1.2.5 a PDF copy of Cyber Essentials Basic Certification;
 - 1.2.6 a PDF copy of a signed and dated Tender Certificate completed in line with the requirements of 1.1.3;
 - 1.2.7 a completed conflict of interest statement meeting the requirements of **Error! Reference source not found.**;
 - 1.2.8 a completed copy of Annex 1 to this Appendix B - ITT Selection and Evaluation Criteria; and
 - 1.2.9 a completed copy of Annex 2 to this Appendix B - ITT Selection and Evaluation Criteria.
- 1.3 Annex 2 contains questions which are Pass / Fail. Therefore, if a Potential Supplier cannot or is unwilling to answer 'Yes', their Tender will be deemed non-compliant and they will be unable to be considered for this requirement. The Potential Supplier should confirm by deleting the inappropriate answer in Annex 2.

2. Technical Envelope Requirements

- 2.1 Potential Bidders MUST answer ALL questions in Table 1 below within the Technical Envelope requirements. Responses must be uploaded as an attachment. The page limit and scope of permitted attachments is set per question.
- 2.2 Please note that the page limit inserted in brackets after each question is not to be exceeded. Any text which is in excess of this limit shall be disregarded and shall not be considered in the evaluation process. Please refer to Schedule 1 - Instructions to Potential Suppliers for further instructions.

2.3 If the Potential Supplier fails to answer each sub-question or part of each question it shall result in the Potential Supplier being awarded 0 marks for that entire question.

Table 1

Question No	Question	Weighting
Approach to service delivery		60%
T1.1	<p>Please confirm the key personnel proposed to be used in delivering the services, including rationale for their appointment.</p> <p>The response should include the following:</p> <ul style="list-style-type: none">• an organogram of the team proposed to deliver the services, including but not limited to all key personnel. The organogram should reference your wider organisation, office locations and line of authority, as well as confirm whether any personnel will be sub-contractors. (Maximum of 1 side of A4 per organogram).• CVs for up to 7 key personnel proposed inclusive of office location, relevant experience and grade. Please note that the Employer expects to receive CVs for personnel with the technical expertise required, as well as account or project management personnel. Please ensure that CVs provide qualifications and examples of their experience in relation to projects similar in size and value to this project within the last 5 years. CVs should confirm BPSS clearance. (Maximum of 1 side of A4 per CV).• A supporting narrative should also be provided confirming the suitability of your proposed key personnel that will be available to fulfil project delivery. The narrative must:<ul style="list-style-type: none">- highlight the relevant experience and qualifications of proposed key personnel;- confirm their resource availability throughout the life of the project;	20%

	<ul style="list-style-type: none"> - clearly identify your firm's resource capacity and contingency measures to ensure full continuity of a quality service to the Employer in the event of holiday leave, sickness or staff attrition; - provide details of how key personnel will be managed, including your escalation process. <p>(Maximum of 1 side of A4 for supporting narrative)</p>	
T1.2	<p>Provide a detailed method statement for delivery of the services specified in the ITT and allowed for in the proposed price, particularly drawing on your approach and success with similar projects.</p> <ul style="list-style-type: none"> • The response shall explain how relevant expertise, knowledge, skills, systems, processes and technology will enhance delivery. • The response should include up to two detailed case studies for similar services delivered in the last 5 years and how this experience will help you provide a high-quality service to the Employer. • The response should explain the approach that will be taken to ensure all reporting and communication will be accurate and clear within the Employer's diverse stakeholder group. • Please include an explanation of how all Key Performance Indicators will be met. <p>(Maximum 2 sides of A4, size 12 Arial font - 20%)</p>	20%
T1.3	<p>Provide a delivery plan, broken down into stages, with supporting narrative that demonstrates how you will manage the project to ensure timely completion of project milestones.</p> <ul style="list-style-type: none"> • The response should identify the number of staff you intend to deploy and proposed timelines, specifying any dependencies, risks or potential issues. 	20%

	<ul style="list-style-type: none"> The response should include all data, meetings and presentations that you will required with the Employer (including meeting lengths). <p>(Maximum 2 sides of A4, including delivery plan and narrative, size 12 Arial font)</p>	
Social Value <i>This question has been included as part of implementation of Procurement Policy Note (PPN) 06/20 published by the Government Commercial Function in December 2020. Potential Suppliers are encouraged to read the documentation available through the link provided above, and The Social Value Model in particular.</i>		10%
T2.1	<p>Describe the commitment your organisation will make to ensure that opportunities under the contract deliver the Policy Outcome and Award Criteria set out below. Please include:</p> <ul style="list-style-type: none"> your 'Method Statement', stating how you will achieve this and how your commitment meets the Award Criteria, and a timed project plan and process, including how you will implement your commitment and by when. Also, how you will monitor, measure and report on your commitments/the impact of your proposals. You should include but not be limited to: <ul style="list-style-type: none"> - timed action plan - use of metrics - tools/processes used to gather data - reporting - feedback and improvement - transparency <p>You should base your response around the following award criteria and sub-criteria, which will be used to evaluate the response.</p>	10%

	<p>Social Value Model Theme:</p> <p>Social Value Model Theme: Fighting Climate Change</p> <p>Policy Outcome: Effective stewardship of the environment</p> <p>Award Criteria: Effective measures to deliver any/all of the following benefits through the contract:</p> <ul style="list-style-type: none"> • How you will influence staff, suppliers, customers and communities through the delivery of the contract to support the Policy Outcome, e.g. engagement, co-design/creation, training and education, partnering/collaborating, volunteering. <p>Sub-Criteria: Activities that demonstrate and describe the Potential Supplier's existing or planned:</p> <ul style="list-style-type: none"> • Understanding of how to influence staff, suppliers, customers, communities and/or any other appropriate stakeholders through the delivery of the contract to support environmental protection and improvement. • Activities to reconnect people with the environment and increase awareness of ways to protect and enhance it. Illustrative examples: <ul style="list-style-type: none"> ▪ Engagement to raise awareness of the benefits of the 	
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	<p>environmental opportunities identified.</p> <ul style="list-style-type: none"> ▪ Co-design/creation. Working collaboratively to devise and deliver solutions to support environmental objectives. ▪ Training and education. Influencing behaviour to reduce waste and use resources more efficiently in the performance of the contract. ▪ Partnering/collaborating in engaging with the community in relation to the performance of the contract, to support environmental objectives. ▪ Volunteering opportunities for the contract workforce, e.g. undertaking activities that encourage direct positive impact. <p><i>(Maximum 2 sides of A4, including Method Statement and timed project plan and process, size 12 Arial font)</i></p>	
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3. Commercial Envelope Requirements

- 3.1 The Potential Supplier is required to provide full pricing details by completing Appendix C - Pricing Model and submitting this as an attachment within the Commercial Envelope.
- 3.2 All prices must be in GBP and must be inclusive of expenses, but exclusive of VAT.

3.3 Pricing constitutes 30% of the overall evaluation score.

4. Evaluation Methodology

4.1 The Potential Supplier is referred to Appendix D - Evaluation Methodology for information on how the requirements set out in this Appendix B - ITT Selection and Evaluation Criteria will be evaluated.

Annex 1

Full name of the Potential Supplier submitting the information:	
Company registration number (if applicable):	
Full name of the immediate parent company (if applicable):	
Immediate parent company registration number (if applicable):	
Full name of the ultimate parent company (if applicable):	
Ultimate parent company registration number (if applicable):	

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Annex 2

COMPLIANCE PASS/FAIL QUESTIONS		Pass/Fail	
1.1	Has a PDF copy of the Employer's Liability insurance certificate confirming £5m in insurance cover been submitted?	Yes	No
1.2	Has a PDF copy of the Public Liability insurance certificate confirming £2m in insurance cover been submitted?	Yes	No
1.3	Has a PDF copy of the Professional Indemnity insurance certificate confirming £2m in insurance cover been submitted?	Yes	No
1.4	Has a PDF copy of the Product Liability insurance certificate confirming £2m in insurance cover been submitted?	Yes	No
1.5	Has a PDF copy of Cyber Essentials Basic Certification been submitted?	Yes	No
1.6	Has a signed and dated PDF copy of the signed Tender Certificate been submitted?	Yes	No
1.7	Has a statement on how Conflicts of Interest will be addressed been provided?	Yes	No
1.8	Does the Potential Supplier accept the Form of Contract in Appendix F? <i>Please note that amendments proposed to the Form of Contract in section 2.6 of the Technical Envelope may be rejected.</i>	Yes	No
1.9	Has the Potential Supplier provided the information requested in Annex 1 to Appendix B - ITT Selection and Evaluation Criteria?	Yes	No
1.10	Has the Potential Supplier submitted Annex 2 to Appendix B - ITT Selection and Evaluation Criteria?	Yes	No

APPENDIX C - PRICING MODEL

[redacted]

APPENDIX D - EVALUATION METHODOLOGY

Provision of Heat Decarbonisation Study in FY21/22

Further Competition under

RM3824 Heat Networks and Electricity Generation Assets (HELGA) DPS

Mini Competition

1. Award Criteria

- 1.1 The following is the weighting that DWP will apply for the Award Criteria and will be used to assess supplier's the responses during the scoring and moderating phase of the ITT evaluation phase. The weighting must be read in conjunction with the scoring mechanisms is as follows:
- 1.1.1 The maximum amount of points available for quality (including questions on the approach to service delivery and social value) is 70%.
- 1.1.2 The maximum amount of points available for price is 30%.

2. Evaluation Methodology

- 2.1 The Tenders must be submitted strictly in accordance with the requirements of this ITT and will be evaluated in accordance with the steps 1 to 3 as described below.
- 2.2 Where necessary, the Employer may clarify any aspect of the Tender submission via Jaggaer. Where a request for clarification is made by the Employer, the Potential Supplier must provide the requested information in a timely manner and within the timescales specified by the Employer in its request for clarification. The Tender evaluation will be carried out in line with the following steps:

3. Step One: Compliance Check

- 3.1 The Employer will review the Tender submission to ensure full compliance with the requirements which are set out in this ITT. Please read and carefully review Schedule 1 - Instructions to Potential Suppliers for detail of submission requirements.
- 3.2 The Employer's compliance check will include (but is not limited to):
- 3.2.1 an assessment against the following questions:

COMPLIANCE PASS/FAIL QUESTIONS		Pass/Fail	
Please Note: The following questions are Pass / Fail, therefore if a Potential Supplier cannot or is unwilling to answer ‘Yes’, their Tender will be deemed non-compliant and they will be unable to be considered for this requirement. The Potential Supplier should confirm by deleting the inappropriate answer in Annex 2 to Appendix B – ITT Selection and Evaluation Criteria.			
1.1	Has a PDF copy of the Employer’s Liability insurance certificate confirming £5m in insurance cover been submitted?	Yes	No
1.2	Has a PDF copy of the Public Liability insurance certificate confirming £2m in insurance cover been submitted?	Yes	No

1.3	Has a PDF copy of the Professional Indemnity insurance certificate confirming £2m in insurance cover been submitted?	Yes	No
1.4	Has a PDF copy of the Product Liability insurance certificate confirming £2m in insurance cover been submitted?	Yes	No
1.5	Has a PDF copy of Cyber Essentials Basic Certification been submitted?	Yes	No
1.6	Has a signed and dated PDF copy of the signed Tender Certificate been submitted?	Yes	No
1.7	Has a statement on how Conflicts of Interest will be addressed been provided?	Yes	No
1.8	Does the Potential Supplier accept the Form of Contract in Appendix F? <i>Please note that amendments proposed to the Form of Contract in section 2.6 of the Technical Envelope may be rejected.</i>	Yes	No
1.9	Has the Potential Supplier provided the information requested in Annex 1 to Appendix B - ITT Selection and Evaluation Criteria?	Yes	No
1.10	Has the Potential Supplier submitted Annex 2 to Appendix B - ITT Selection and Evaluation Criteria?	Yes	No

3.2.2 An assessment to ensure that all documents requested have been completed in full and in the correct format, including adherence to word and page count limits as applicable. The word and page limit will be set out in the relevant question and any response in excess of these limits will be disregarded and will not be evaluated. The Employer reserves the right to exclude a Potential Supplier that submits a non-compliant Tender. Compliant Tenders will progress to step 2 of the evaluation process.

4. Step Two: Quality Evaluation

- 4.1 Potential Suppliers must answer the quality questions identified within Appendix B - ITT Selection and Evaluation Criteria.
- 4.2 The Employer will give your responses to our evaluation panel. Each evaluator will independently assess your responses to the quality questions using the response guidance and the evaluation criteria which is described in Appendix B - ITT Selection and Evaluation Criteria against each of the questions.

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- 4.3 Each evaluator will give a mark and a reason for their mark for each question they are assessing. Once the evaluators have independently assessed your answers to the questions, the Employer will arrange for the evaluators to meet and they will discuss the quality of your answers and discuss their marks and reasons for that mark. The discussion will continue until a consensus is reached regarding the mark, and a reason for that mark, for each question.
- 4.4 When the consensus meeting has taken place and the final mark for each question has been agreed by the evaluators, your final mark for each question will be multiplied by that questions weighting to calculate your weighted mark for that question. Each weighted mark for each question will then be added together to calculate your quality score.
- 4.5 Scores for quality will be allocated on a 0 – 4 basis as set out in the table below:

Score	Definition	Awarding this score means ...
4	Excellent	An excellent answer which provides a full and detailed response to the relevant question and a high level of assurance to the Employer that the relevant approach/solution proposed by the supplier will be deliverable and will meet the relevant requirements of the Project. The response includes a high level of detail and excellent supporting evidence.
3	Good	A good answer which provides a full response to the relevant question and a good level of assurance to the Employer that the relevant approach/solution proposed by the supplier will be deliverable and will meet the relevant requirements of the project. The level of detail and supporting evidence is generally good (though there may be some weaknesses in relation to specific elements)
2	Satisfactory	An adequate answer which provides a reasonable level of assurance to the Employer that the relevant approach/solution proposed by the Potential Supplier will be deliverable and will meet the relevant requirements of the project. The level of detail and supporting evidence provided is generally adequate, though there are some weaknesses in relation to specific elements.
1	Limited	A barely adequate answer which provides only a qualified assurance to the Employer that the relevant approach/solution proposed by the supplier will be deliverable and will meet the relevant requirements of project. The response contains limited detail and/or limited supporting evidence as to one or more material elements.
0	Poor	A poor/unacceptable answer which is incomplete, provides little or no clarity or detail as to the relevant approach/solution being proposed by the supplier and/or gives an unacceptably low level of assurance to the Employer that the relevant approach/solution proposed by

		the supplier will be deliverable and will meet the relevant requirements of the project. The response contains little or no detail and/or supporting evidence as to one or more material elements.
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- 4.6 For the quality scoring, the Potential Supplier must score the minimum score threshold outlined in the table below for each question, including all sub questions or parts of each question. Failure to meet any of the quality thresholds will disqualify the tender submission and it will not be evaluated further. Please see the table below.

No:	Question	Maximum Points Available	Minimum Score Threshold
1	Approach to service delivery	60%	2
T1.1	Please confirm the key personnel proposed to be used in delivering the services including rationale for their appointment.	20%	2
T1.2	Provide a detailed method statement for delivery of the services specified in the ITT and allowed for in the proposed price, particularly drawing on your approach and success with similar projects.	20%	2
T1.3	Provide a delivery plan, broken down into stages, with supporting narrative that demonstrates how you will manage the project to ensure timely completion of project milestones.	20%	2
2	Social Value	10%	1
T2.1	Describe the commitment your organisation will make to ensure that opportunities under the contract deliver the Policy Outcome and Award Criteria set out in Appendix B - ITT Selection and Evaluation Criteria. Please include: • your 'Method Statement', stating how you will achieve this and how your commitment meets	10%	1

	<p>the Award Criteria, and</p> <ul style="list-style-type: none"> • a timed project plan and process, including how you will implement your commitment and by when. Also, how you will monitor, measure and report on your commitments/the impact of your proposals. You should include but not be limited to: <ul style="list-style-type: none"> - timed action plan - use of metrics - tools/processes used to gather data - reporting - feedback and improvement - transparency 		
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- 4.7 The evaluated score is **calculated by taking the** score for each question and multiplying by the weighting of each question. Scores will be added together to produce an Evaluated Score. This Evaluated Score will then be divided by the maximum possible Evaluation Score to produce a percentage figure. The percentage figure will then be multiplied by 70 to give the bidder's score out of 70 for the Quality section of the evaluation.
- 4.8 Percentage differences and relative scores will be expressed as numbers rounded to two decimal places.
- 4.9 The Question Weighting for each question will be divided by the maximum possible score of 4. This will then be multiplied by the Moderated Score awarded by the Evaluation Team to arrive at a score for each response. See example below:

Question Weighting (%)	Maximum Weighting divided by maximum possible score of 4	Evaluation Team's Moderated Score	Total percentage score achieved for the response (%)
20	5	3	15
15	3.75	2	7.5

- 4.10 Tenders that have met or exceeded the quality threshold(s) will then be evaluated for price. For the avoidance of doubt, failure to meet any of the quality thresholds will disqualify the tender submission and it will not be evaluated further.

5. Step Three: Price Evaluation

- 5.1 Pricing constitutes 30% of the overall evaluation score, with this 30% attributed to overall total cost of Deliverable 1 & Deliverable 2.

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- 5.2 The Potential Supplier with the lowest combined fee for Deliverable 1 & Deliverable 2, will achieve the highest score available and the other tenders relatively lower scores based on the percentage difference between them.
- 5.3 Percentage differences and relative scores will be expressed as numbers rounded to two decimal places.
- 5.4 A maximum of 30 points are available for an Overall Total Score. To achieve a maximum score of 30 points the Potential Supplier would need to submit the lowest combined fee for Deliverable 1 & Deliverable 2 (30 points).
- 5.5 For example, if a Potential Supplier submits the lowest combined fee for Deliverable 1 & Deliverable 2 at £100k, the submission will receive the maximum 30 points. If another tender submission is 10% more expensive, 10% of the total points available will be deducted, giving that tender submission an overall score of 27 points.

Example below:

Potential Supplier	A	B	C	D
Combined Fee for Deliverable 1 & Deliverable 2 – 100% Weighting	£100,000	£110,000	£115,000	£125,000
% difference from lowest price	0%	10%	15%	25%
Total Score	30.00	27.00	25.50	22.5

- 5.6 Potential Suppliers should be aware that although this calculation may result in a negative number, the minimum possible score for price shall be nil (0).
- 5.7 Potential Suppliers should be aware that when evaluating costs, the Employer will consider the credibility of the price submitted. If costs are believed to be abnormally low (e.g. unrealistically and/or unsustainably low prices), the Employer will seek clarification from the Potential Supplier to understand the basis of the price submitted. If clarification does not satisfy the Employer's concerns, the Employer reserves the right to exclude the tender from further evaluation.
- 5.8 Potential Suppliers should note that prices cannot be altered after final tenders have been submitted.

6. Award Decision

- 6.1 The scores from the Quality Evaluation and Price Evaluation will be added together to give the overall Tender mark out of 100.

6.2 A contract will be awarded according to the highest overall Tender score.

[redacted]

Contract Schedule 2 - Employer's Statement of Requirements

1. Background to the Employer

The Department for Work and Pensions (the **Employer**) is responsible for welfare, pensions and child maintenance policy. As the UK's biggest public service department it administers the State Pension and a range of working age, disability and ill health benefits to around 20 million claimants and customers.

The Employer delivers these services across England, Wales and Scotland (including the Orkney and Shetland Islands), across a diverse estate of c.850 buildings. This number is made up primarily of JobCentre Plus offices, but also includes Health Assessment Centres and back offices. The back office sites consist of corporate centres, large processing centres and service centres very similar to call centre environments, which are not open to the public. The Employer's estate is geographically dispersed due to the high street nature of the JobCentre Plus and Health Assessment Centre portfolio - requiring local presence to serve customers.

Of this estate, 39% is age expired and prone to failure. Approximately 40% of properties are rated as poor or very poor against the BPI (Building Performance Index). A rolling programme of Life Cycle Works (**LCW**) is required to repair and replace key assets, such as heating systems, HVAC and roofs.

The Employer operates an 'Estates Target Operating Model' (**ETOM**), which is described further in Annex 2.

2. Background to the Employer's Requirements

In order to meet the new Greening Government Commitments targets relating to non-traded emissions, a process of heat decarbonisation is required across the Employer's estate. The Employer is looking to decarbonise heat systems across its estate by replacing gas boilers with lower carbon alternatives. The Employer's Design Standards state that:

For new build and major refurbishment projects (where project scope allows):

- Ensure heating and hot water generation is fossil fuel free.
- The preference where available is connection to a local low or zero carbon district heat network.
- Where no low or zero carbon heat network is available, new offices and major refurbishment schemes will be heated electrically, usually via heat pumps, wherever practicable.

For lifecycle boiler replacements:

- Like-for-like gas or oil fired boiler replacement will be avoided. Instead, heating and hot water generation is to be fossil fuel free.
- The preference where available is connection to a local low or zero carbon district heat network.

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- Where no low or zero carbon heat network is available, buildings will be heated electrically, usually via heat pumps, wherever practicable.

When tendering boiler replacement schemes, public procurement procedures require that the Employer gives the Contractors the same specification at tender stage, and mark each bid objectively against this specification. Setting the specification as a range of high level aspirations risks a wide range of alternative solutions being proposed which cannot be marked on an equal basis.

The Employer does not currently have a very clear idea of what the scope is for heat decarbonisation across its estate of circa 800 buildings, with uncertainty around which heating schemes are viable for low carbon solutions, other sustainable solutions and which would need to be like-for-like replacements due to either building constraints or short lease span. Without information on the alternative options available to replace the Employer's gas boilers, the Employer's specification has previously been limited to a like-for-like replacement. Most of the Employer's sites are not thought to be located within the vicinity of existing low carbon heat networks, so the Employer has a requirement to determine viable alternative solutions and ultimately agree the final approach per site. Prior to tendering for replacement of gas boilers, the Employer requires a specification which details the scope of the solution being sought to ensure that a compliant tender exercise can be delivered.

The Employer has identified 50 to 55 sites across England, Scotland and Wales (listed in Annex 1) which are due for gas boiler replacements in FY22/23 (please note that the sites in Annex 1 are subject to change by notification by the Employer to the Consultant (which may include addition, removal and/or substitution of sites)) (the **In-Scope Sites**). For that reason, the Employer is looking for the Consultant to appoint a team to develop 'heat decarbonisation plans' in FY21/22 in respect of the In-Scope Sites (being the Property Level Reports as set out under Deliverable 1 below), liaising and cooperating with the Employer and Sodexo Ltd (being the Employer's supplier of estates integration services) as appropriate. This will inform the specifications used to tender for Contractor works on the In-Scope Sites.

To support this process, the Employer has applied for grant funding from the [Public Sector Low Carbon Skills Fund \(PSLCSF\)](#) in order to develop heat decarbonisation plans for the Employer's estate, outlining the different options available to the Employer to decarbonise heat, as well as associated benefits, costs and risks. Each heat decarbonisation plan must adhere to the requirements of the Public Sector Low Carbon Skills Fund (PSLCSF), including its detailed description of what such a plan is required to include. More details can be found [here](#).

3. The Employer's Requirements

The Consultant will comply with the requirements set out in this section 3, including provision of the following deliverables:

Deliverable 1:

Provide Property Level Reports, meeting the satisfaction of the Employer, on the suitability for decarbonisation of the In-Scope Sites. Each Property Level Report shall be a document in MS Word

format which must constitute a 'heat decarbonisation plan' that meets the PSLCSF requirements, and shall include (but is not limited to) the following information:

- Executive summary;
- Existing installation, including review of the M&E and built fabric. This will include aspects such as what type of heating system is installed, floors covered and ancillary equipment;
- Restrictions and limitations - This should include (but not be limited to) what options are there for a low carbon solution following the removal of the existing boilers? Does the electrical capacity support low carbon technological alternatives? Do the existing ancillary systems need upgrading (e.g. larger heat emitters)? Are any fabric upgrades required?
- An investigation should be made into the availability of local heat networks. If such a network is available, connection to the heat network as an option for heat decarbonisation should be investigated;
- Suitability on a sliding scale;
- Simple/complex rating;
- Thermal modelling will be carried out to understand the theoretical heat load requirements and compare with the existing heating and cooling capacities and energy demand profiles. An element of Digital Twinning or similar at a selection of the larger sites (minimum 11) will be included to understand heat pump operation to inform initial sizing and scope;
- Benefits - DEC, energy savings - carbon and cost;
- Holistic view of the site with regard to decarbonisation;
- Costings - outline budget costs based on industry standards;
 - On a like for like basis;
 - For a low carbon solution – this should include (but not be limited to) estimated carbon savings that would be achieved compared with a BAU scenario;
- Indicative delivery programme; and
- Recommendations for solutions - these should include (but not be limited to) recommending a suitable low carbon alternative (or state that none is available due to site constraints, for example). What would be the approximate budget for undertaking these works (including materials, labour and uplifts/ on costs). These should apply to both:
 - Primary works; and
 - Secondary/complimentary works.

The Employer may request that further information is included in the Property Level Report.

The Consultant will carry out a desktop study and the site visits referred to in section d) below, making use of site plans/layouts, information on lease lengths, utilities consumption, asset and other data

held by the Employer. The Consultant will ensure that it is familiar with this information to inform the site visits. The Property Level Reports are to be based on and take into account the findings of the desktop study and the site visits.

The Employer requires that Property Level Reports will be completed for 25 of the In-Scope Sites on or before 17th December 2021 (Milestone 1). Property Level Reports for the remaining In-Scope Sites will be completed on or before 18th February 2022 (Milestone 2). Which sites fall under which Milestone is up to the discretion of the Consultant. Site visits and Property Level Reports will be completed by the Consultant at regular intervals and on a 'staggered' basis from contract appointment in October 2021, in advance of the Milestones. The Consultant shall provide a weekly update each week during the term of the contract to confirm which site visits have been completed in the relevant week.

The Consultant shall provide a 'Programme Level Report,' meeting the satisfaction of the Employer, to be provided on or before each Milestone Completion Date. The Programme Level Report is a document to be submitted in MS Excel format which summarises the information within the individual Property Level Reports that are to be submitted on or before the Milestone Completion Date in question. It is envisaged that the Programme Level Report would include (but not be limited to) the following relevant headline information:

- Existing installation
- Suitability on a sliding scale
- Complexity rating
- Recommendations –
 - Primary works
 - Secondary / complimentary works
- Budget costs
- Potential carbon savings –
 - On a like for like basis
 - For a low carbon solution

The Consultant shall work with the Employer to refine the scope of the Programme Level Report following submission of the first Property Level Reports after contract award. Any amendments to the scope of the Programme Level Report shall be in the discretion of the Employer.

The Milestones for Deliverable 1 are summarised below:

No	Milestone	Completion Date
1	Production of 25 Property Level Reports and summary Programme Level Report	17/12/2021

	meeting the satisfaction of the Employer.	
2	Production of the remaining Property Level Reports and summary Programme Level Report meeting the satisfaction of the Employer.	18/02/2022

The Employer has a high level of confidence that the number of In-Scope Sites will be no less than 50 sites and no more than 55 sites. However, the Consultant acknowledges and agrees that no guarantee is given by the Employer in respect of volumes of In-Scope Sites under this contract, which is non-exclusive.

The In-Scope Sites are subject to additions, removals and/or substitution of sites. The Employer will endeavour to ensure any substituted sites are within the same Region and Universal Credit District as the initially communicated site in Annex 1 e.g. the Employer will endeavour to ensure any replacement to a site initially communicated to be in West Scotland is also in West Scotland. Any changes will be communicated to the Consultant as soon as is reasonably practicable. The amount due to the Consultant for expenses will be limited to the expenses properly spent by the Consultant in providing the Services i.e. the forecast expenses in Appendix C - Pricing Model are an upper limit and not a fixed amount. The expenses which are assessed within the amount due may not exceed the forecast expenses in Appendix C - Pricing Model, unless the Employer is unable to provide replacement sites within the same Region and Universal Credit District as the initially proposed site, in which case the expenses which are assessed within the amount due may be increased by the demonstrable, additional expenses properly spent by the Consultant in respect of that site which are caused by the replacement site being in a different Region and Universal Credit District.

Deliverable 2:

Using the knowledge gained through providing Deliverable 1, the Consultant shall undertake a high-level portfolio wide review of the rest of the Employer's estate and shall provide the outputs set out below on or prior to 31st March 2022. The outputs from this exercise shall include (but shall not be limited to):

- An overarching policy document on a strategic approach to decarbonisation of heat schemes at portfolio level;
- A 'suitability' matrix which can be applied to specific property types / size, this should be designed to allow:
 - Ranking / prioritisation based on property suitability / construction type
 - Consequential / complimentary works required
- A suite of design standards;
- Any additional outputs that the Employer reasonably requires.

All outputs must meet the PSLCSF requirements highlighted above, where applicable.

a) Suggested Phases

It is suggested that the production of the Property Level Reports would broadly consist of the following phases:

- **Gather** (collect utilities consumption data, survey the In-Scope Sites including detailed system and building fabric surveys to include boilers, domestic hot water (DHW) generation, heat emitters, operating temperatures, controls, fabric and ventilation systems and values, etc);
- **Define** (define energy use patterns, appraisal criteria, replacement options to be considered, low carbon technologies to be modelled and costed, electrical capacity headroom);
- **Analyse** (model the low carbon technology options against appraisal criteria); and
- **Report** (identify the replacement programme, indicating those that can be accommodated in FY22/23 and those that require more complex modifications and cannot - suggesting an alternative later route to decarbonisation for these sites, roadmap to heat decarbonisation for wider estate based on findings).

b) Reporting

The Consultant shall provide regular reports and information relating to these services as detailed in this Statement of Requirements or required by the Employer. The Consultant shall also:

- demonstrate whether the approved budget and cash-flow is being maintained; and
- identify those matters which require a decision from the Employer and where necessary, provide assistance for the Employer to make an informed decision on all such matters.

c) Employer Data

A significant amount of data will be shared with and accessed by the Consultant as part of this contract. The Employer is intending to collate all data to be shared with and accessed by the Consultant before contract award, so that the Consultant will have this information immediately from

contract appointment. The Employer has the following data available for all sites in the Employer's estate:

- Property name, address and postcode;
- Net Internal Area;
- Tenure (leasehold/freehold);
- Lease lengths;
- Listed status;
- Normal operating hours; and
- Site contacts (for any sites requiring site visits).

The Employer also has access to the following data for some sites if required by the Consultant:

- Asset Register with CIBSE Condition Rating. This will include data on the type of boiler, the kW rating, the age of the boiler and if it is a water system or VRF, data on the age of the building and what the building fabric consists of will also be provided;
- Glazing details;
- Utilities data, including electricity, water and gas billing data, actual energy consumption figures based on usage and historic meter readings). Gas consumption data will come from the Employer's Energy Bureau. A proportion of sites have half-hourly data which will be available from our Stark web portal – please see Annex 1;
- Energy Benchmark report (including DEC and EPC rating by property where available – please see Annex 1);
- We also have a separate report showing consumption per site against CIBSE TM46 benchmarks, broken down by utility, where data is available;
- Asbestos Register;
- Limited floor plans. If required, Operation & Maintenance Manuals may be available and potentially only on-site; and
- Building age and EPC certificates;

All data will have Government Security Classification of OFFICIAL, and may also be marked as OFFICIAL-SENSITIVE. The Consultant shall advise the Employer regarding when particular data would be needed and if any other data would be required.

d) Site Visits

The Consultant shall undertake site visits at the In-Scope Sites, which will comprise non-intrusive review and assessment of different types of assets on the Employer's estate. This will be supported by the additional information to be provided by the Employer on contract award.

The Consultant shall produce a risk assessment and method statement in compliance with health and safety legislation for each In-Scope Site.

If required under the latest Government Coronavirus Guidelines, the Employer will provide a letter confirming that Consultant Personnel undertaking site visits are under contract with the Employer and are considered to be key workers.

Consultant Personnel undertaking site visits must comply with the Employer's latest coronavirus policies and procedures, minimising contact with others as much as possible.

Consultant Personnel must be fully attuned to the Employer's business environment and the sensitive nature of the Employer's operations. When conducting site visits, Consultant Personnel must ensure photographs taken do not record identifiable images of other persons or elements of the Employer's operations beyond the scope of this Statement of Requirements.

Please note that although the Employer is highly confident that Deliverable 1 is required for 50 sites, the locations of those sites may be subject to change. The Employer will use its best endeavours to ensure any replacement sites are within the same geographic region as the initially communicated site e.g. the Employer will use its best endeavours to ensure any replacement to a site initially communicated to be in Greater London is also in Greater London. Any changes will be communicated to the Consultant as soon as is practicable. The amount due to the Consultant for expenses will be limited to the expenses properly spent by the Consultant in providing the Services. The amount due may not exceed the forecast expenses for Deliverable 1 in the Price List unless the Employer is unable to provide replacement sites within the same geographic region as the initially proposed site.

e) Consultant Personnel Requirements

All Consultant Personnel (as defined in Appendix F) must be professionally qualified and highly competent in this sector - having relevant technical expertise, qualifications and substantive experience in successfully undertaking similar roles. A strong team ethic is essential, allied to an ability to communicate clearly and effectively with a wide and diverse stakeholder community.

The Employer requires that all Consultant Personnel employed, whether permanent or temporary, on the provision of the *services* are subject to the requirements of the HM Government Baseline Personnel Security Standard (BPSS).

There is no requirement to apply to the Employer or any other third party for BPSS clearance. BPSS clearance is obtained if the following steps have been completed as part of your organisation's pre-employment checks:

- Verification of identity
- Verification of Nationality and Immigration Status (including an entitlement to undertake the work in question)
- Verification of Employment history (past 3 years)

-
- Verification of Criminal record (unspent convictions only). This will require a basic disclosure certificate (at cost via Disclosure and Barring Service, Disclosure Scotland and Access Northern Ireland).

Copies of the current HM Government Baseline Personnel Security Standard, providing further information regarding how each of these steps should be verified, can be found via the following link [Government Baseline Personnel Security Standard](#). The Consultant is expected to arrange the BPSS checks at no additional charge.

All Consultant Personnel must comply with the Employer's Security Policy. The Consultant will only be expected to comply with those Security Policies and Standards (as defined in Appendix F) that are applicable to their delivery model and technologies used.

The Consultant must be able to immediately (on contract award) resource this requirement with Consultant Personnel meeting the requirements of this section e).

f) Handover

The Consultant will provide an effective handover to colleagues in the Employer's operations and any other persons identified by the Employer. The Consultant will also provide any assistance required by the Employer to exit the contract and tender for any ongoing or future support or services free of charge.

g) Cooperation and assistance

The Consultant shall cooperate and liaise with the Employer and Sodexo Ltd as necessary to provide the requirements under this Statement of Requirements.

The Consultant will be expected to work collaboratively with the Employer in transitioning to a new ETOM (as detailed in Annex 2) and provide any assistance required by the Employer to ensure continuous service delivery free of charge.

h) Credit Rating

The Consultant is referred to the requirements of clause Z39 within Appendix F.

4. Annexes

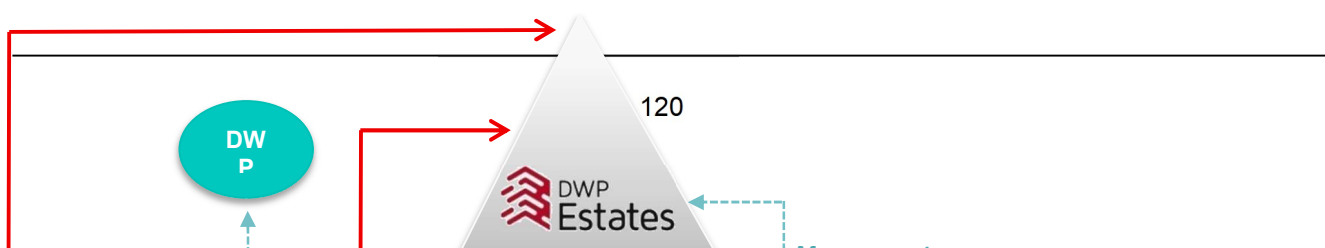
Annex 1 - Site Information

Annex 2 - The Employer's 'Estates Target Operating Model' (ETOM)

Within the Department, the Employer's Estates Directorate are accountable for the delivery of all aspects of real estate services, supported by the Estates Category Team within Commercial Directorate to undertake all commercial activity required within the complex estates portfolio.

The Employer operates an 'Estates Target Operating Model' (ETOM), shown in Figure 1, whereby a large proportion of the estates management is out-sourced to an independent third party organisation ('the Supply Chain Integrator').

Figure 1: The Employer's Estates Target Operating Model (ETOM)



Each of the following headings within Figure 2 are referred to by the Employer as ‘towers:’

- FM (Facilities Management), supplied by Mitie FM Ltd;
- Security, supplied by G4S
- Projects (This includes providers of professional services, all providers of construction, fit-out and LCW as well as suppliers of furniture, fittings and equipment (FFE).
- LLM (Landlord and Lease Management), supplied by Cushman and Wakefield Plc.

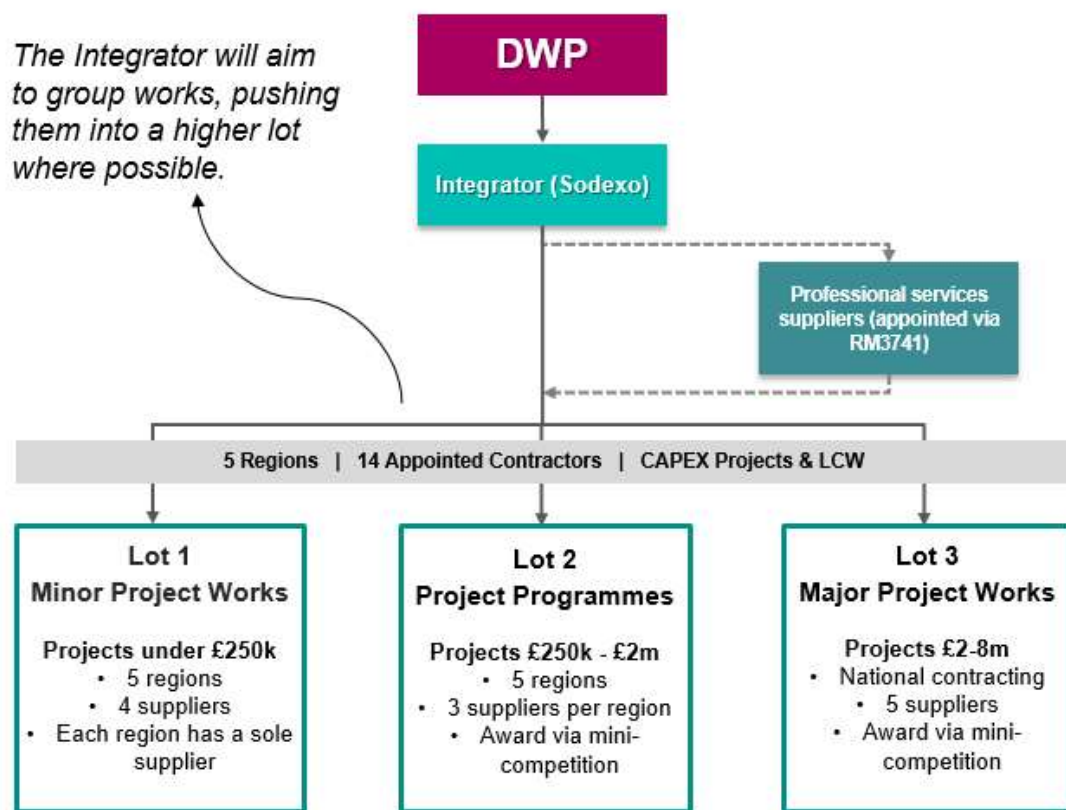
The Employer has engaged and authorised Sodexo Ltd (Sodexo) under the role of the "Supply Chain Integrator" to perform certain estate related duties and obligations. In this capacity, Sodexo is charged with deploying the Department's LCW programme. To ensure successful programme delivery, Sodexo work closely with providers of professional services appointed from CCS Framework RM3741 Project Management and Full Design Team Services (PMFDTS) and contractors on the Employer's 'Estate Jobcentre & Office Fit Out Contractor Framework' (the Contractor(s)). Diagrams providing more information about the Estate Jobcentre & Office Fit Out Contractor Framework can be found in Table 1 and Figures 2 and 3.

Table 1: Estate Jobcentre & Office Fit Out Contractor Framework Contractors

	Lot 1 (£0-£250k)	Lot 2 (£250k - £2m)	Lot 3 (£2m-£8m)
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Region	A	B	C	D	E	A	B	C	D	E	National
FES Support Services Ltd									X		
Interserve Construction Ltd							X	X			X
ISG Fit Out Ltd		X									X
John Graham Construction											X
Kier Construction Ltd											X
Midas Construction Ltd										X	
Mitie Property Services (UK) Ltd				X							
Morris & Spottiswood								X	X		
Overbury							X		X		
Resolution Interiors Ltd			X		X	X				X	
Seddon Construction Ltd						X		X			
Speller Metcalfe Malvern Ltd	X					X				X	
Wates Construction Ltd											X
Willmott Dixon Interiors							X				

Figure 2: The Employer's Estate Job Centre & Office Fit Out Contractor Framework



Contractors have been appointed and allocated to geographic regions as shown in Figure 3. Following the expiry of the DWP Estate Jobcentre & Office Fit Out Contractor Framework on 31st March 2022, the Employer intends to use other public sector Frameworks, including CCS Framework RM6088: Construction Works and Associated Services, as well as Frameworks available from Scape and Pagabo.

Figure 3: The Employer's Estate Job Centre & Office Fit Out Contractor Framework Regions

Region A – East Anglia, East Midlands & West Midlands, Norfolk, Suffolk, Cambridgeshire, Bedfordshire, Buckinghamshire, Hertfordshire, Essex, Lincolnshire, Nottinghamshire, Staffordshire, Shropshire, Derbyshire, Hereford and Worcestershire, West Midlands, Warwickshire, Leicestershire, Northamptonshire

Region B – London & South East England, London, Kent, East Sussex, Surrey, Berkshire, Oxfordshire, Hampshire

Region C – North West England & North Wales, Cumbria, Lancashire, Manchester, Merseyside, Cheshire, Clwyd Gwynedd

Region D – Scotland and North East England, Northumberland, Newcastle Area, Durham, Teesside, Yorkshire, Humber area, Grampian, Highland, Tayside, Central, Fife, Edinburgh, Borders, Dumfries & Galloway, Glasgow, Ayrshire and Lanark, Argyll and Bute

Region E – South Wales & South West England, Dorset, Somerset, Devon, Cornwall, Gloucestershire, Bristol, Wiltshire, Gwent, Mid Glamorgan, Dyfed, Powys



The Employer has recently undertaken a review of the ETOM and is exploring a variety of options for how the ETOM may be delivered following expiry of the current Supply Chain Integrator agreement with Sodexo on 31st March 2022.

This will involve a newly appointed integrator to work with the Employer and the Employer's supply chain. It is anticipated the newly appointed integrator will be performing the following tasks after March 2022:

- System provision and integration: across supply chain systems, the integrator shall support the Employer's operational and strategic estates management by providing the required IT system, application hosting, implementation, training support and security for the management of the services.
- Helpdesk and work order management: The integrator shall provide a helpdesk facility, which shall be the single point of contact for all of the Employer's end-users in relation to all workplace, property and FM related service requests. This shall include the end-to-end management of planned, condition based, reactive, statutory, periodic or billable ad hoc works, maintenance projects including scheduling and any other work orders relating to the occupation of property. To facilitate this, the Integrator shall be responsible for maintaining a master asset register and master PPM schedule (together the Asset Management Services). The Integrator shall manage the asset change request

process providing a holistic view and intelligence across the Employer's estate and the Employer's estates supply chain.

- Data, analytics and MI reporting: The integrator shall provide a comprehensive and flexible reporting solution to cover the functional, operational and strategic aspects of managing the Employer's estate and its supply chain.
- Finance & cost management: The integrator shall provide the Employer with management information, including cost and financial reporting, through the integration, aggregation and verification (cost audit automation and cross sectional data checks) of the Employer supply chain data.
- Supply chain transition: The integrator shall support the Employer in the design, tender, mobilisation and exit of new supply chain members as required, specific to the systems interfaces and the integrator's services.

Contract Schedule 3 - Consultant Proposal dated 7th October 2021

[redacted]

Contract Schedule 7 - Security Policy

1. GENERAL

The Consultant shall, and shall procure that any Sub-consultant (as applicable) shall, comply with the Employer's security requirements as set out in the Call Off Contract which include the requirements set out in this Schedule 8 to the Call Off Contract (the "**Security Policy**"). The Security Policy includes, but is not limited to, requirements regarding the confidentiality, integrity and availability of Employer Assets, the Employer's Systems Environment and the Consultant's Systems Environment. Terms used in this Schedule 8 which are not defined below shall have the meanings given to them in the Contract Data and/or clause Z1 (Interpretation and the law) of this Call Off Contract.

"Availability Test"	shall mean the activities performed by the Consultant to confirm the availability of any or all components of any relevant ICT system as specified by the Employer.
"Breach of Security"	means the occurrence of: (I) any unauthorised access to or use of Employer Data, the Employer's Systems Environment (or any part thereof) or the Consultant's Systems Environment (or any part thereof); (II) the loss and/or unauthorised disclosure of any Employer Data, the Employer's Systems Environment (or any part thereof) or the Consultant's Systems Environment (or any part thereof); (III) any unauthorised event resulting in loss of availability of any Employer Data, the Employer's Systems Environment (or any part thereof) or the Consultant's Systems Environment (or any part thereof); (IV) any unauthorised changes or modification to any Employer Data, the Employer's Systems Environment (or any part thereof) or the Consultant's Systems

	Environment (or any part thereof).
“CHECK”	shall mean the scheme for authorised penetration tests which scheme is managed by the NCSC.
“Cloud”	shall mean an off-premise network of remote ICT servers on the Internet to store, process, manage and transmit data.
“Consultant’s Systems Environment”	means any ICT systems provided by the Consultant (and any Sub-consultant) which are or may be used for the provision of the <i>services</i> .
“Cyber Essentials Plus”	shall mean the Government-backed, industry-supported scheme managed by the NCSC with higher level of security requirements to help organisations to protect themselves against online threats or the relevant successor or replacement scheme which is published and/or formally recommended by the NCSC.
“Cyber Security Information Sharing Partnership” or “CiSP”	shall mean the cyber security information sharing partnership established by the NCSC or the relevant successor or replacement scheme which is published and/or formally recommended by the NCSC.
“Employer Assets”	mean any <i>Employer Devices</i> and <i>Employer Data</i> .
“Employer Data”	<p>means the data, guidance, specifications, instructions, toolkits, plans, databases, patents, patterns, models, design, 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:-</p> <ul style="list-style-type: none"> (i) supplied to the <i>Consultant</i> by or on behalf of the Employer; or (ii) which the <i>Consultant</i> is required to generate, process, store or transmit

	pursuant to this Call Off Contract.
“Employer’s Systems Environment”	means all of the Employer’s ICT systems which are or may be used for the provision of the <i>services</i> .
“Good Security Practice”	<p>shall mean:</p> <ul style="list-style-type: none"> a) the technical and organisational measures and practices that are required by, or recommended in, nationally or internationally accepted management standards and codes of practice relating to Information Security (such as published by the International Organization for Standardization or the National Institute of Standards and Technology); b) security standards and guidelines relating to Information Security (including generally accepted principles regarding the segregation of the duties of governance, implementation and control) provided to the general public or Information Security practitioners and stakeholders by generally recognised authorities and organisations; and c) the Government’s security policies, frameworks, standards and guidelines relating to Information Security.
“Information Security”	<p>shall mean:</p> <ul style="list-style-type: none"> a) the protection and preservation of: <ul style="list-style-type: none"> i) the confidentiality, integrity and availability of any Employer Assets, the Employer’s Systems Environment (or any part thereof) and the Consultant’s Systems Environment (or any part thereof); ii) related properties of information including, but not

	<p>limited to, authenticity, accountability, and non-repudiation; and</p> <p>b) compliance with all Law applicable to the processing, transmission, storage and disposal of Employer Assets.</p>
“Information Security Manager”	shall mean the person appointed by the Consultant with the appropriate experience, authority and expertise to ensure that the Consultant complies with the Security Policy.
“Information Security Management System (“ISMS”)	shall mean the set of policies, processes and systems designed, implemented and maintained by the Consultant to manage Information Security Risk as specified by ISO/IEC 27001.
“Information Security Questionnaire”	shall mean the Employer’s set of questions used to audit and on an ongoing basis assure the Consultant’s compliance with the Security Policy. The Information Security Questionnaire is the Security Management Plan.
“Information Security Risk”	shall mean any risk that might adversely affect Information Security including, but not limited to, a Breach of Security.
“ISO/IEC 27001, ISO/IEC 27002 and ISO 22301	<p>shall mean</p> <p>a) ISO/IEC 27001;</p> <p>b) ISO/IEC 27002/IEC; and</p> <p>c) ISO 22301</p> <p>in each case as most recently published by the International Organization for Standardization or its successor entity (the “ISO”) or the relevant successor or replacement information security standard which is formally recommended by the ISO.</p>
“NCSC”	shall mean the National Cyber Security Centre or its successor entity (where applicable).
“Party”	shall mean the Consultant or the Employer (as appropriate) and "Parties" shall mean both of them.

“Penetration Test”	shall mean a simulated attack on any Employer Assets, the Employer’s Systems Environment (or any part thereof) or the Consultant’s Systems Environment (or any part thereof).
“PCI DSS”	shall mean the Payment Card Industry Data Security Standard as most recently published by the PCI Security Standards Council, LLC or its successor entity (the “PCI”).
“Risk Profile”	shall mean a description of any set of risk. The set of risks can contain those that relate to a whole organisation, part of an organisation or as otherwise applicable.
“Security Test”	shall include, but not be limited to, Penetration Test, Vulnerability Scan, Availability Test and any other security related test and audit.
“Security Policies”	mean the Employer’s Security Policies published by the Employer from time to time and shall include any successor, replacement or additional Security Policies. The Security Policies are set out in Annex A.
“Security Policies and Standards”	mean the Security Policies and the Security Standards
“Security Standards”	mean the Employer’s Security Standards published by the Employer from time to time and shall include any successor, replacement or additional Security Standards. The Security Standards are set out in Annex B.
“Tigerscheme”	shall mean a scheme for authorised penetration tests which scheme is managed by USW Commercial Services Ltd.
“Vulnerability Scan”	shall mean an ongoing activity to identify any potential vulnerability in any Employer Assets, the Employer’s Systems Environment (or any part thereof) or the Consultant’s Systems Environment (or any part thereof).

-
- 1.1 Reference to any notice to be provided by the Consultant to the Employer shall be construed as a notice to be provided by the Consultant to the Employer's Agent.

2. PRINCIPLES OF SECURITY

- 2.1 The Consultant shall at all times comply with the Security Policy and provide a level of security which is in accordance with the Security Policies and Standards, Good Security Practice and Law.

3. ISO/IEC 27001 COMPLIANCE AND AUDIT

- 3.1 The Consultant shall, and shall procure that any Sub-consultant (as applicable) shall, comply with ISO/IEC 27001 in relation to the *services* during the Call Off Contract.
- 3.2 The Consultant shall appoint an Information Security Manager and shall notify the Employer of the identity of the Information Security Manager on the *starting date* and, where applicable, within 5 Working Days following any change in the identity of the Information Security Manager.
- 3.3 The Consultant shall ensure that it operates and maintains the Information Security Management System during the period in which *services* are Provided and that the Information Security Management System meets the Security Policies and Standards, Good Security Practice and Law and includes:
- a) a scope statement (which covers all of the Services provided under this Call Off Contract);
 - b) a risk assessment (which shall include any risks specific to the Services);
 - c) a statement of applicability;
 - d) a risk treatment plan; and
 - e) an incident management plan
- in each case as specified by ISO/IEC 27001.

The Consultant shall provide the Information Security Management System to the Employer upon request within 10 Working Days from such request.

- 3.3A If the Consultant reasonably considers that it is not reasonably commercially possible for it to comply with paragraphs 3.1 and 3.3 of this Schedule by the Contract Date, the Consultant shall:
- a) give written notice to the Employer to inform it of the same and complete, in cooperation with the Employer, the Information Security Questionnaire within 5 working days of being notified by the Employer that the Consultant is the successful DPS Supplier (as defined in the DPS Agreement) in respect of this Call Off Contract in accordance with paragraph 6.1 of this Schedule;
 - b) provide to the Employer, for its consideration, within 10 working days of being notified by the Employer that the Consultant is the successful DPS Supplier (as defined in the DPS Agreement) in respect of this Call Off Contract:

-
- i. a proposed action plan (including a timetable) indicating how the Consultant will become compliant with paragraphs 3.1 and 3.3 of this Schedule and the dates by which they can reasonably become compliant (assuming the Consultant uses all reasonable endeavours to do so) ("**Proposed ISO27001 Action Plan**"); and
 - ii. its proposed Information Security Management System that mitigates the failure to comply with paragraphs 3.1 and 3.3 of this Schedule as far as reasonably commercially possible and which is otherwise compliant with the requirements of this Schedule ("**Proposed ISMS**"),

and the Consultant shall make such amendments to the Proposed ISO27001 Action Plan and the Proposed ISMS that the Employer shall consider necessary in the interests of complying with this Schedule and managing Information Security Risk. Upon the Employer being satisfied with the Proposed ISO27001 Action Plan and Proposed ISMS (following implementation of such amendments it considers necessary) it shall notify the Consultant, upon which they shall become the "**ISO27001 Action Plan**" and "**Interim ISMS**" respectively;

- c) use all reasonable endeavours to become compliant with paragraphs 3.1 and 3.3 of this Schedule as soon as possible and in any event shall become compliant by no later than the dates set out in the ISO27001 Action Plan; and
- d) operate and maintain the Proposed ISMS until such time as the Interim ISMS is approved, upon which it will operate and maintain the Interim ISMS, as modified from time to time pursuant to the implementation of the ISO27001 Action Plan.

Any breach of this paragraph 3.3A constitutes a substantial failure to comply with the Consultant's obligations under the Call Off Contract.

- 3.4 The Consultant shall carry out regular Security Tests in compliance with ISO/IEC 27001 and shall within 10 Working Days after completion of the relevant audit provide any associated security audit reports to the Employer.
- 3.5 Notwithstanding the provisions of paragraph **Error! Reference source not found.** to paragraph **Error! Reference source not found.**, the Employer may, in its absolute discretion, notify the Consultant that it is not in compliance with the Security Policy and provide details of such non-compliance. The Consultant shall, at its own expense, undertake those actions required in order to comply with the Security Policy within one calendar month following such notification or on a date as agreed by the Parties. For the avoidance of doubt, any failure to comply with the Security Policy within the required timeframe (regardless of whether such failure is capable of remedy) shall constitute a substantial failure by the Consultant to comply with his obligations.

4. CYBER ESSENTIALS PLUS SCHEME

- 4.1 The Consultant shall, and shall procure that any Sub-Consultant (as applicable) shall, obtain and maintain certification to Cyber Essentials Plus (the "Cyber Essentials Plus Certificate") in relation to the Services during the period in which services are Provided. The Cyber Essentials Plus Certificate shall be provided by the Consultant to the Employer annually on the dates as agreed by the Parties.

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- 4.2 The Consultant shall notify the Employer of any failure to obtain, or the revocation of, a Cyber Essentials Plus Certificate within 2 Working Days of confirmation of such failure or revocation. The Consultant shall, at its own expense, undertake those actions required in order to obtain a Cyber Essentials Plus Certificate following such failure or revocation. For the avoidance of doubt, any failure to obtain and/or maintain a Cyber Essentials Plus Certificate during the period in which *services* are Provided after the first date on which the Consultant was required to provide a Cyber Essentials Plus Certificate in accordance with paragraph **Error! Reference source not found.** (regardless of whether such failure is capable of remedy) shall constitute a substantial failure by the Consultant to comply with his obligations.
- 4.3 If the Consultant reasonably considers that it is not reasonably commercially possible for it to obtain certification to Cyber Essentials Plus by the Contract Date, the Consultant shall:
- a) give written notice to the Employer to inform it of the same and complete, in cooperation with the Employer, the Information Security Questionnaire within 5 working days of being notified by the Employer that the Consultant is the successful DPS Supplier (as defined in the DPS Agreement) in respect of this Call Off Contract in accordance with paragraph 6.1 of this Schedule;
 - b) provide to the Employer, for its consideration, within 10 working days of being notified by the Employer that the Consultant is the successful DPS Supplier (as defined in the DPS Agreement) in respect of this Call Off Contract, a proposed action plan (including a timetable) indicating how certification to Cyber Essentials Plus will be obtained and the date by which it will be obtained (assuming the Consultant uses all reasonable endeavours to do so) ("**Proposed CEP Action Plan**") and the Consultant shall make such amendments to the Proposed CEP Action Plan that the Employer shall consider necessary in the interests of complying with this Schedule and managing Information Security Risk. Upon the Employer being satisfied with the Proposed CEP Action Plan (following implementation of such amendments it considers necessary) it shall notify the Consultant, upon which it shall become the "**CEP Action Plan**"; and
 - c) use all reasonable endeavours to obtain certification to Cyber Essentials Plus soon as possible and in any event shall become compliant by no later than the dates set out in the CEP Action Plan.

Any breach of this paragraph 4.3 constitutes a substantial failure to comply with the Consultant's obligations under the Call Off Contract.

5. RISK MANAGEMENT

- 5.1 The Consultant shall operate and maintain policies and processes for risk management (the **Risk Management Policy**) during the period in which *services* are Provided which includes standards and processes for the assessment of any potential risks in relation to the *services* and processes to ensure that the Security Policy is met (the **Risk Assessment**). The Consultant shall provide the Risk Management Policy to the Employer upon request within 10 Working Days of such request. The Employer may, at its absolute discretion, require changes to the Risk Management Policy to comply with the Security Policy. The Consultant shall, at its own expense, undertake those actions required in order to implement the changes required by the Employer within one calendar month of such request or on a date as agreed by the Parties.

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- 5.2 The Consultant shall carry out a Risk Assessment (i) at least annually, (ii) in the event of a material change in the Consultant's Systems Environment or in the threat landscape or (iii) at the request of the Employer. The Consultant shall provide the report of the Risk Assessment to the Employer, in the case of at least annual Risk Assessments, within 5 Working Days of completion of the Risk Assessment or, in the case of all other Risk Assessments, within one calendar month after completion of the Risk Assessment or on a date as agreed by the Parties. The Consultant shall notify the Employer within 5 Working Days if the Risk Profile in relation to the Services has changed materially, for example, but not limited to, from one risk rating to another risk rating.
- 5.3 If the Employer decides, at its absolute discretion, that any Risk Assessment does not meet the Security Policy, the Consultant shall repeat the Risk Assessment within one calendar month of such request or as agreed by the Parties.
- 5.4 The Consultant shall, and shall procure that any Sub-consultant (as applicable) shall, co-operate with the Employer in relation to the Employer's own risk management processes regarding the *services*.
- 5.5 For the avoidance of doubt, the Consultant shall pay all costs in relation to undertaking any action required to meet the requirements stipulated in this paragraph **Error! Reference source not found..** Any failure by the Consultant to comply with any requirement of this paragraph **Error! Reference source not found.** (regardless of whether such failure is capable of remedy), shall constitute a substantial failure by the Consultant to comply with his obligations.

6. SECURITY AUDIT AND ASSURANCE

- 6.1 The Consultant shall, and shall procure that any Sub-consultant (as applicable) shall, complete the information security questionnaire in the format stipulated by the Employer (the "**Information Security Questionnaire**") within 5 working days of being notified by the Employer that the Consultant is the successful DPS Supplier (as defined in the DPS Agreement) in respect of this Call Off Contract and at least annually or at the request by the Employer. The Consultant shall provide the completed Information Security Questionnaire to the Employer within one calendar month from the date of request.
- 6.2 The Consultant shall conduct Security Tests to assess the Information Security of the Consultant's Systems Environment and, if requested, the Employer's Systems Environment. In relation to such Security Tests, the Consultant shall appoint a third party which i) in respect of any Penetration Test, is duly accredited by CHECK, CREST (International), or Tigerscheme and, ii) in respect of any Security Test to which PCI DSS apply, is an approved scanning vendor duly accredited by the PCI. Such Security Test shall be carried out (i) at least annually, (ii) in the event of a material change in the Consultant's Systems Environment or in the Employer's System Environment or (iii) at the request of the Employer which request may include, but is not limited to, a repeat of a previous Security Test. The content, and format of any report of such Security Tests shall be approved in advance of the Security Test by the Employer. The Consultant shall provide any report of such Security Tests within one calendar month following the completion of such Security Test or on a date agreed by the Parties. The Consultant shall, at its own expense, undertake those actions required to rectify any risks identified by any Security Test in the manner and within the timeframe required by the Employer in its absolute discretion.
- 6.3 The Employer shall be entitled to send the Employer's Agent or such other person it shall reasonably require to witness the conduct of any Security Test. The Consultant shall provide
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to the Employer notice of any Security Test at least one month prior to the relevant Security Test.

- 6.4 Where the Consultant provides code development services to the Employer, the Consultant shall comply with the Security Policy in respect of code development within the Consultant's Systems Environment and the Employer's Systems Environment.
- 6.5 Where the Consultant provides software development services, the Consultant shall comply with the code development practices specified in the Statement of Requirements and Scope or in the Security Policy.
- 6.6 The Employer, or an agent appointed by it, may undertake Security Tests in respect of the Consultant's Systems Environment after providing advance notice to the Consultant. If any Security Test identifies any non-compliance with the Security Policy, the Consultant shall, at its own expense, undertake those actions required in order to rectify such identified non-compliance in the manner and timeframe as stipulated by the Employer at its absolute discretion. The Consultant shall provide all such co-operation and assistance in relation to any Security Test conducted by the Employer as the Employer may reasonably require.
- 6.7 The Employer shall schedule regular security governance review meetings which the Consultant shall, and shall procure that any Sub-consultant (as applicable) shall, attend.

7. PCI DSS COMPLIANCE AND CERTIFICATION

- 7.1 Where the Consultant obtains, stores, processes or transmits payment card data, the Consultant shall comply with the PCI DSS.
- 7.2 The Consultant shall obtain and maintain up-to-date attestation of compliance certificates ("AoC") provided by a qualified security assessor accredited by the PCI and up-to-date self-assessment questionnaires ("SAQ") completed by a qualified security assessor or an internal security assessor, in each case accredited by the PCI (each with the content and format as stipulated by the PCI and such reports the "PCI Reports"), during the period in which services are Provided. The Consultant shall provide the respective PCI Reports to the Employer upon request within 10 Working Days of such request.
- 7.3 The Consultant shall notify the Employer of any failure to obtain a PCI Report or a revocation of a PCI Report within 2 Working Days of confirmation of such failure or revocation. The Consultant shall, at its own expense, undertake those actions required in order to obtain a PCI Report following such failure or revocation within one calendar month of such failure or revocation.

8. SECURITY POLICIES AND STANDARDS

- 8.1 The Consultant shall, and shall procure that any Sub-consultant (as applicable) shall, comply with the Security Policies and Standards set out Annex A and B.
- 8.2 Notwithstanding the foregoing, the Security Policy applicable to the services may be subject to change following certain events including, but not limited to, any relevant change in the delivery of the Services. The Employer may issue instructions to the Consultant to comply with any amended Security Policy as required by the Employer, provided that where such amended Security Policy increases the burden on the Consultant pursuant to this contract, the novation shall be a compensation event. Accordingly a new clause 60.1(14) shall be added that reads

“An amendment to a Security Policy pursuant to paragraph 8.2 of Contract Schedule 8 occurs which increases the burden on the Consultant pursuant to this Call Off Contract”.

- 8.3 The Consultant shall, and shall procure that any Sub-consultant (as applicable) shall, maintain appropriate records and is otherwise able to demonstrate compliance with the Security Policies and Standards.

9. CYBER SECURITY INFORMATION SHARING PARTNERSHIP

- 9.1 The Consultant may become a member of the Cyber Security Information Sharing Partnership in accordance with the recommendations by the NCSC during the period in which *services* are Provided. The Consultant may participate in the Cyber Security Information Sharing Partnership for the exchange of cyber threat information.
- 9.2 Where the Consultant becomes a member of the Cyber Security Information Sharing Partnership, it shall review the NCSC weekly threat reports on a weekly basis and implement recommendations in line with the Consultant’s Risk Management Policy.

ANNEX A – EMPLOYER SECURITY POLICIES AND STANDARDS

The Security Policies are published on:

<https://www.gov.uk/government/publications/dwp-procurement-security-policies-and-standards> unless specified otherwise:

- a) Acceptable Use Policy
- b) Information Security Policy
- c) Physical Security Policy
- d) Information Management Policy
- e) Email Policy
- f) Technical Vulnerability Management Policy
- g) Remote Working Policy
- h) Social Media Policy
- i) Forensic Readiness Policy
- j) SMS Text Policy
- k) Privileged Users Security Policy
- l) User Access Control Policy

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- m) Security Classification Policy
 - n) Cryptographic Key Management Policy
 - o) HMG Personnel Security Controls – May 2018
(published on <https://www.gov.uk/government/publications/hmg-personnel-security-controls>)
 - p) NCSC Secure Sanitisation of Storage Media
(published on <https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media>)

ANNEX B – SECURITY STANDARDS

The Security Standards are published on:

<https://www.gov.uk/government/publications/dwp-procurement-security-policies-and-standards>:

- a) SS-001 - Part 1 - Access & Authentication Controls
- b) SS-001 - Part 2 - Privileged User Access Controls
- c) SS-002 - PKI & Key Management
- d) SS-003 - Software Development
- e) SS-005 - Database Management System Security Standard
- f) SS-006 - Security Boundaries
- g) SS-007 - Use of Cryptography
- h) SS-008 - Server Operating System
- i) SS-009 - Hypervisor
- j) SS-010 - Desktop Operating System
- k) SS-011 - Containerisation
- l) SS-012 - Protective Monitoring Standard for External Use
- m) SS-013 - Firewall Security
- n) SS-014 - Security Incident Management
- o) SS-015 - Malware Protection
- p) SS-016 - Remote Access
- q) SS-017 - Mobile Devices
- r) SS-018 - Network Security Design
- s) SS-019 - Wireless Network
- t) SS-022 - Voice & Video Communications
- u) SS-023 - Cloud Computing
- v) SS-025 - Virtualisation
- w) SS-027 - Application Security Testing
- x) SS-028 - Microservices Architecture
- y) SS-029 - Securely Serving Web Content
- z) SS-030 - Oracle Database
- aa) SS-031 - Domain Management
- bb) SS-033 - Patching

Contract Schedule 8 - Employer's Code of Conduct

You can find the latest version of the Employer's Code of Conduct published on:
<https://www.gov.uk/government/publications/supplier-code-of-conduct> unless specified otherwise.

Contract Schedule 9 - Key Performance Indicators