

DATED 2022

THE SECRETARY OF STATE FOR (1)
WORK AND PENSIONS

AND

MORRIS & SPOTTISWOOD LTD (2)

**CONTRACT FOR THE APPOINTMENT
OF A CONTRACTOR RELATING TO
THE CONSTRUCTION WORKS AND ASSOCIATED
SERVICES IN
SCOTLAND AND INCORPORATING
THE NEC4 ENGINEERING AND
CONSTRUCTION CONTRACT
LOT B**

THIS CONTRACT is made on /2022

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR WORK AND PENSIONS** acting as part of the Crown (the “**Client**”) (which expression shall include any successors in title and assigns); and
 - (2) **MORRIS & SPOTTISWOOD LTD**(company number SCO46129) whose registered office is at
54 Helen Street
Glasgow City
G51 3HQ
United Kingdom
(the “**Contractor**”),
- together, the Parties.

WHEREAS:

- (A) The Client wishes to enter into a contract with the Contractor on the terms set out in this Contract for the carrying out and completion of the Works.
- (B) The Client wishes to retain the Contractor to carry out certain additional works at the Sites which may be notified to the Contractor from time to time during the Delivery Term.
- (C) In the event that the Client requires the Contractor to carry out work in relation to any part of the Project, such works will be carried out under a Task Order.
- (D) The Client and Contractor accept and agree that this Contract does not guarantee that any work will be given by the Client to the Contractor or oblige the Client to instruct the Contractor to carry out any particular scope of work.

In consideration of £1 paid by each party to the other, receipt of which each recipient party acknowledges **IT IS HEREBY AGREED** as follows:

1 Introduction

1.1 In this Contract the following words and expressions have the following meanings unless the context otherwise requires:

“**Business Days**” means a day (other than a Saturday or Sunday or Bank Holiday) on which banks are open for domestic business in the City of London;

“**Capital Works Fee Percentage**” means the fee percentage in relation to capital works as set out in the Capital Works Tender Rates and Prices;

“**Capital Works Price List**” means the price list relating to capital works attached at Appendix 5, incorporating the Capital Works Tender Rates and Prices, where applicable and setting out the Fee Percentage;¹

“Capital Works Tender Rates and Prices” means the rates and prices submitted by the Contractor in relation to capital works for the Project, which shall be priced with reference to the Estates Expansion Programme Schedule of Rates referred to in the ITT, and taking into account but not exceeding the applicable CCS Framework Rates and Prices;²

“CDM Regulations” means the CDM Regulations 2015;

“CCS Framework Rates and Prices” means those rates and prices that apply to the Crown Commercial Service framework reference RM 6088, Lot A 1.1.4;

“Confidential Information” means all confidential information (however recorded or preserved) disclosed by the Client or the Contractor to the other party whether before or after the date of this Contract in connection with the Works, including but not limited to:

- (a) the terms of this Contract;
- (b) the fact that discussions and negotiations are taking place concerning the Works and/or the Site and the status of those discussions and negotiations;
- (c) any information that would be regarded as confidential by a reasonable business person relating to:
 - (i) the business, affairs, customers, clients, suppliers, or plans, intentions, or market opportunities of the Client and the Contractor; and
 - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the opportunities of the Client or the Contractor; and
 - (iii) any information developed by the parties in the course of carrying out this Contract.

“Contract Data” means that contract data as applicable to the relevant Works and as set out at Appendix 2;

“Contract Month” means each calendar month during the Delivery Term;

“Critical Failure Event” a failure to provide any Works in accordance with this Contract and/or any relevant Task Order and the Client considers that such failure results in or may result in:

- (a) imminent risk of danger to persons;
- (b) imminent risk of full or partial loss of a Task Site; and/or
- (c) a material adverse effect upon the Client’s reputation and/or business within the relevant Task Site (where applicable);

“Client’s Policies” means the policies and directives or other regulations of the Client from time to time copies of which are provided and updated by the Client from time to time;

“Client’s Schedules” means the following documents which are included at Appendix 11 within this document:

- (a) Part A: Appendix G (Collateral Warranty);
- (b) Part B: Appendix K (TUPE);

“Contractor’s Tender Submission” means the Contractor’s tender submitted to the Client for the Works attached at Appendix 13;

“CWAS Framework” means the CCS Framework Reference RM6088 in relation to “Construction Works and Associated Services”;

“Delivery Term” means the period of two years and six months from the date of this contract as may be extended in accordance with the terms of this Contract and subject to early termination pursuant to the relevant Terms and Conditions;

“Earn Back Points” means the earn back points set out in column L of the table set out in Part B of Appendix 8 of this Contract and which shall accrue to the Contractor in where it exceeds the relevant Performance Level in a Service Period;

“Fee Percentage” means the Capital Works Fee Percentage and/or the Life Cycle Fee Percentage (as appropriate);

“ITT” means the invitation to tender issued by the Client as part of the procurement process relating to the CWAS Framework pursuant to which the Contractor was selected to enter into this Delivery Agreement;

“Law” is any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgement or a relevant court of law, or directives of any regulatory body with which the Contractor is bound to comply;

“Life Cycle Fee Percentage” means the fee percentage in relation to life cycle works as set out in the Life Cycle Tender Rates and Prices;

“Life Cycle Price List” means the price list relating to life cycle works attached at Appendix 5, incorporating the Life Cycle Tender Rates and Prices, where applicable and setting out the Fee Percentage;³

“Life Cycle Tender Rates and Prices” means the rates and prices submitted by the Contractor in relation to life cycle works for the Project, which shall be priced with reference to the relevant PSA Schedules of Rates referred to in the ITT, and taking into account but not exceeding the applicable CCS Framework Rates and Prices;⁴

“Management Services” means those services set out in Appendix 4;

“Necessary Consents” means are all permits, licences, permissions, consents, approvals, certificates and authorisations (whether statutory or otherwise) which are required for the performance of any of the Contractor’s obligations under this Contract

or any Task Order, whether required in order to comply with Law, Statutory Requirements or as a result of the rights of any third party;

“Notifiable Event” means:

- (a) there is an adverse change in the financial circumstances of the Contractor, the Contractor becomes aware of an adverse change in the financial circumstances of the Contractor has (or anticipates that it may have) insufficient funding to adequately resource its obligations under this Contract;
- (b) the Contractor becomes aware of any circumstances relating to the Contractor or any subcontractor which shall or may bring into disrepute and/or diminish the trust that the public places in the Client and/or the carrying out of the Works;
- (c) the Contractor is under investigation and/or subject to regulatory enforcement by any relevant Client and such investigation and/or enforcement shall or may be material to the Contractor’s ability to provide the Works;
- (d) in the event that the Contractor commits a material default of this Contract and/or any Task Order that is capable of remedy;
- (e) the occurrence or likelihood of the occurrence of a Critical Failure Event;
- (f) the occurrence or likelihood of the occurrence of a Repeat Failure;
- (g) where the Contractor has been selected to take part in the Pricing Process (as defined in Appendix 1) and on three consecutive occasions:
 - (i) the Contractor has failed to submit a Task Order Proposal in accordance with Part B of Appendix 1; and/or
 - (ii) the Client is not able to approve the Contractor’s Task Order Proposal in accordance with paragraph 2.2 of Part B of Appendix 1; and/or
- (h) where the Contractor receives a RED Score under Appendix 8; and/or
- (i) the Contractor fails to provide a Parent Company Guarantee in accordance with clause 23 of this Contract;

“NUTS Codes” means the Primary NUTS Codes and Secondary NUTS Codes;

“Objectives” means:

- (a) to deliver high quality Works;
- (b) to minimise disruption to any occupants of the Task Site;
- (c) to act in a collaborative manner and in the spirit of mutual trust and respect;
- (d) to adopt and demonstrate open book accounting techniques;

- (e) to achieve value for money and comply with Appendix 4 of this Contract;
- (f) to adopt innovative and sustainable working practices;
- (g) to promote practices that encourage a positive contribution to social value; and
- (h) to achieve continuous improvement.

"Other Consultants" means any other consultants appointed by the Client in connection with the Project and shall include those other consultants' employees, agents and sub-consultants;

"Parent Company" means the parent company nominated by the Contractor and approved by the Client;

"Parent Company Guarantee" means the form of guarantee attached at Appendix 9 with such amendments as the Client and the Contractor may agree, both acting reasonably;

"Performance Bond" means the form of performance bond attached at Appendix 10 with such amendments as the Client and the Contractor may agree, both acting reasonably;

"Price List" means the either the Capital Works Price List and/or the Life Cycle Price List (as appropriate);

"Prices" means the prices set out in any Task Order;

"Primary NUTS Codes" means the NUTS Codes identified as such in Appendix 3;

"Performance Failure" means a failure by the Contractor to meet the relevant Performance Level for a Performance KPI;

"Performance Failure Point" means the points that are set out in column P of the table in Part B of Appendix 8 of this Contract and which shall accrue to the Contractor in the event of any Performance Failure in a Service Period;

"Performance KPI" means a key performance indicator as set out at Part B of Appendix 8 and as may be updated from time to time in accordance with paragraph 5.1 of Part A of Appendix 8;

"Performance Level" the levels that are set out in Appendix 8 of this Contract;

"Performance Monitoring Report" means the monthly performance report prepared by the Contractor in accordance paragraph 4.1 of Part A of Appendix 8;

"Performance Review Meeting" the regular meeting between the Contractor and the Client to discuss the Performance Monitoring Report, as set out in clause 5.3;

"Pipeline Programme" means the programme prepared by or on behalf of the Client for the Project as a whole, as updated from time to time;

"Project"

"Project Participants" means the Client, the Contractor and (as relevant) the Delivery Contractors (as identified in Appendix 1), Other Consultants and any other consultant,

sub-contractor and supplier appointed by the Client or the Contractor in relation to the Works and any obligations under this Contract;

“Project Risk Register” means the risk register created and updated in accordance with Part B of Appendix 4;

“Project Team” means the Client, the Contractor, and any other consultant, subcontractor and supplier appointed by the Client or the Contractor in relation to the Works and any obligations under this Contract⁵;

“Proposed Task” means works comprising any element of the Project at any Task Site;

“Rates and Prices” means the rates and prices set out in the Price List and where applicable calculated in accordance with Appendix 5;

“Region” means Scotland;

“Required Insurances” means those insurances required for any Proposed Task and as further set out in the Task Order Proposal;

“Scope of Requirements” means the Client’s scope document setting out the scope of requirements for the Works attached at Appendix 12;

“Senior Representatives” means at the Employer: REDACTED, Associate Commercial Specialist, Estates Category; For the Contractor REDACTED

“Service Period” means the service period for the relevant Performance KPI as set out in column G of the table set out in Part B of Appendix 8.

“Service Quarter” means the first three months and each subsequent three month period (or reduced period immediately prior to the end of this Contract) which shall be defined as Jan – Mar inclusive, Apr – Jun inclusive, Jul – Sep inclusive and Oct – Dec inclusive in a calendar year;

“Short Schedule of Cost Components” or “SSCC” means the short schedule of cost components which forms part of the Terms and Conditions;

“SSCC Tender Rates and Prices” means any rates and prices in relation to the Short Schedule of Cost Components submitted by the Contractor as part of the Capital Works Tender Rates and Prices and/or the Life Cycle Tender Rates and Prices (as appropriate);

“Sites” means the relevant sites in the Region as further identified at Appendix 3 and any further sites instructed by the Client to the Contractor;

“Statutory Requirements” means:

- (a) any statute, regulation or subordinate legislation, the common law and any treaty or European Union law which relates to the protection of the environment or health and safety whether administrative, civil or criminal;
- (b) any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the Works or the

performance of any of the obligations under this Contract and/or any Task Order;

- (c) any regulation or byelaw of any local authority, statutory undertaker or similar body or organisation which has any jurisdiction with regard to the Works or with whose systems the Works are, or are to be, connected, including any statutory provisions and any decision of a relevant authority under them which controls the right to develop any of the Sites; and
- (d) the consents of all persons who have rights or interests in or over the Works or the Sites who by the lawful exercise of their powers in the absence of such consents could delay or disrupt the carrying out or progress of the Works or the use or enjoyment of any of the Sites;

“Secondary NUTS Codes” means the NUTS Codes identified as such in Appendix 3;

“Task Order” means an appointment on the terms of which the Contractor will carry out works and/or services at the Task Site(s) and the terms of this Contract, the Terms and Conditions and the Contract Data shall be incorporated into the Task Order;

“Task Order Proposal” means a proposal issued by the Contractor to the Client following issue by the Client of a Project Instruction in accordance with Appendix 1 and in the format set out in Annex 1 of Appendix 1;

“Task Site(s)” means the site(s), being any one or more of the Sites (in the event that Works at multiple Sites are bundled into the same Task Order), to which the Task Order relates;

“Tender Rates and Prices” means the Capital Works Tender Rates and Prices, Life Cycle Tender Rates and Prices and/or the SSCC Tender Rates and Prices (as appropriate);

“Terms and Conditions” means the NEC4 Engineering and Construction Contract (Option A) and incorporating:

- (a) the schedule of amendments issued by the Crown Commercial Service under the framework agreement reference RM6088; and
- (b) those amendments set out in Appendix 1;

“Transparency Information” means the content of this Contract and any Task Order in their entirety but excluding the Contractor’s Confidential Information, and any other information that would be exempt from disclosure:

- (c) under the CWAS Framework; and/or
- (d) under the FOIA and/or the EIR; and

“Works” means the works and/or services subsequently referred to in any Task Order (to include any works procured on a design and build basis).

- 1.2 Words importing the singular only shall also include the plural and vice versa, and where the context requires, words importing persons shall include firms and corporations.
- 1.3 The headings to the clauses of this Contract shall not affect its interpretation.
- 1.4 In this Contract, save as where set out in this Contract, words and expressions shall have the same meanings as are assigned to them in the Terms and Conditions.
- 1.5 Reference in this Contract to any Act of Parliament, statute or statutory instrument shall include and refer to any statutory amendment thereto from time to time and for the time being in force and any successor to such Act of Parliament, statute and statutory instrument.
- 1.6 Defined terms set out in the NEC4 Engineering and Construction Contract shall have effect in this Contract save where expressly set out.

2 Conditions

- 2.1 The terms and conditions of the NEC4 Engineering and Construction Contract Option A have effect as modified by this Contract, the Terms and Conditions and the Appendices.
- 2.2 Where a reference is made to a clause of the NEC4 Engineering and Construction Contract Option A (June 2017 Edition) contract it shall be read and construed to be a reference to that clause as amended by this Contract, the Terms and Conditions and Appendix 1.
- 2.3 The Client has appointed the Contractor to carry out certain services under a Task Order for a Site (a "**Services Task Order**"). Once a Task Order is instructed in relation to the works that the Services Task Order relates to (a "**Works Task Order**"), the Services Task Order shall be subsumed into that Works Task Order and any monies paid to the Contractor in respect of the Services Task Order shall be treated as payments on account in respect of the relevant Works Task Order. The Contractor agrees that it does not have any entitlement to any extension of time, compensation and/or any relief whatsoever under or pursuant to the Works Task Order in relation to any of the services carried out pursuant to the Services Task Order and the Contractor waives its entitlement to any extension of time, compensation and/or any relief whatsoever in relation to the Services Task Order once the Works Task Order has been instructed in accordance with this Contract.
- 2.4 Where the Client appoints the Contractor in relation to the Works which are the subject of a Services Task Order, the Parties agree that the provisions of Part A of Appendix 1 shall not apply to the appointment of the Contractor in relation to the relevant Works Task Order.
- 2.5 In all matters in connection with this Contract, the Contractor and the Client shall act in good faith with due regard to the provisions of this Contract and the delivery of the Services and shall act reasonably and fairly with honest intention and without any intention to act maliciously or to defraud.

3 Delivery of Works

- 3.1 The Contractor shall carry out and complete the Works (to include any Works instructed by way of a Task Order) in accordance with the Terms and Conditions.

- 3.2 The Parties' obligations in relation to the identification, approval and delivery of the Works are contained in Appendix 1.
- 3.3 All Task Order Proposals shall be proposed by the Contractor in accordance with the provisions of Appendix 1.
- 3.4 Where a Task Order Proposal has been approved by the Client pursuant to Appendix 1, then the Client and the Contractor shall enter into a Task Order in respect of those Works on the basis of the Terms and Conditions.
- 3.5 The Client has no obligation to issue Task Orders to the Contractor and reserves the right to have any Works carried out or supplied by other contractors. The Client makes no representations regarding the level of Works it may appoint the Contractor to carry out during the Delivery Term and does not guarantee minimum or maximum amounts of work under a particular Task Order or in total and no form of exclusivity is granted by the Client to the Contractor in relation to the Works.

4 Contractor's Duties

- 4.1 The Contractor shall perform the Works in accordance with each Task Order (as relevant), all Law and good industry practice having at all times due regard and so far as is reasonably practical to comply with any Pipeline Programme as may be issued by the Client to the Contractor from time to time.
- 4.2 The Contractor shall support the Client to ensure that all applicable parties comply with all Statutory Requirements and Necessary Consents in relation to health and safety across the Sites.
- 4.3 The Contractor shall obtain and maintain all relevant Necessary Consents required in order to carry out and complete the Works.
- 4.4 The Contractor shall carry out the Management Services in accordance with the provisions of Appendix 4.
- 4.5 Without prejudice to any other or related obligations in a Task Order, the Contractor shall, in complying with this Contract, any Task Order and its performance of the Works, act in a way which promotes the protection of the environment, sustainable construction and development and energy efficiency.
- 4.6 Without prejudice to any other or related obligations in a Task Order, the Contractor shall, in complying with this Contract, any Task Order and its performance of the Works, comply with the Statutory Requirements and Necessary Consents.
- 4.7 The Contractor shall comply with Appendix 8.

5 Notifiable Event

- 5.1 In the event that a Notifiable Event occurs, the Contractor shall notify the Client of the Notifiable Event as soon as practicable but in any event within three (3) Business Days of becoming aware of the Notifiable Event, detailing the actual or anticipated effect of the Notifiable Event.
- 5.2 If:

5.2.1 the Contractor notifies the Client pursuant to Clause 5.1 that a Notifiable Event has occurred; or

5.2.2 the Client notifies the Contractor that it considers that a Notifiable Event has occurred (setting out sufficient detail so that it is reasonably clear what the Contractor has to rectify),

then, without prejudice to any other right or remedy of the Client howsoever arising under this Contract and/or any relevant Task Order:

5.2.3 at the Client's option, give the Contractor the opportunity (at the Contractor's expense) to remedy the Notifiable Event together with any damage resulting from such Notifiable Event (where such Notifiable Event is capable of remedy) or to carry out any other necessary work to ensure that the terms of this Contract and/or any relevant Task Order are fulfilled, in accordance with the Client's instructions;

5.2.4 where:

- (i) the option to remedy has been provided but the Contractor failed to remedy the Notifiable Event within a reasonable period specified by the Client; or
- (ii) where the Notifiable Event is incapable of remedy, the Client may:
- (iii) step-in itself to carry out, or arrange for a third party to carry out, at the Contractor's expense, all or part of this Contract and/or any relevant Task Order;
- (iv) suspend (for any period) all or part of this Contract and/or any relevant Task Order; or
- (v) terminate all or part of this Contract and/or any relevant Task Order (and such termination shall be deemed to be an R11 termination event under the relevant Task Order).

5.3 Where the Client exercises any of its rights under Clause 5.2.4:

5.3.1 the Client shall have the right to charge the Contractor for and the Contractor shall on demand pay any costs and expenses reasonably incurred by the Client (including any reasonable administration costs) in respect of:

- (i) managing and implementing the step-in, suspension and/or termination (as the case may be);
- (ii) the carrying out of all or part of this Contract and/or any relevant Task Order by the Client and/or a third party; and
- (iii) any additional costs paid or allowable by the Client to a third party in relation to the carrying out of all or part of this Contract and/or any relevant Task Order by such third party;

5.3.2 the Contractor shall not be obliged to provide the relevant Works to the extent that they are subject to any rights exercised by the Client under Clause 5.2.4; and

5.3.3 any event in relation to the Client exercising its rights under Clause 5.2 shall not be deemed to be a compensation event for the purposes of any Task

Order and the Contractor shall not be entitled to any addition to any Prices or additional costs and/or an extension of time under any Task Order:

6 Limitation

6.1 Notwithstanding that the Task Order may be executed under hand, either party may bring a claim, action or proceedings against the other after six years from the date of completion of Works provided that no claim, action or proceedings may be issued or brought against the Contractor after twelve years from the date of completion of the relevant Works unless such claim, action or proceedings were notified in writing to the Contractor prior to such date.

7 Extending this Contract

7.1 The Client can extend this Contract by giving no less than 1 month written notice prior to the expiry of the Delivery Term. More than one notice can be issued provided that this Contract is not extended by more than 6 months.

8 Senior Representatives

8.1 The Contractor shall appoint the Contractor's Senior Representative from the date of this Contract and throughout the Delivery Term the Contractor's Senior Representative shall be the Client's main point of contact in relation to the Contractor's engagement under any Task Order and in connection with all matters arising under or in connection with this Contract.

8.2 The Contractor's Senior Representative shall not be replaced without the Client's consent to the replacement in writing. The Client shall be entitled to withhold its consent where the proposed replacement is not of a similar level, qualification and with equivalent experience as his predecessor and/or for any other reasonable reason.

9 Performance review and meetings

9.1 The Contractor shall attend meetings no more than once every Service Quarter with the Client and the Delivery Contractors (as defined in Appendix 1) in order to share best practice and improve and development the performance of this Contract as a whole as and when reasonably requested to do so by the Client.

9.2 The Client and Contractor shall attend a meeting on the first anniversary of the Delivery Term (the "**Annual Meeting**") and at this meeting the Contractor may request, together with such supporting information as the Client may require, the selection of any Secondary NUTS Codes (where applicable). Where the Client agrees to such request, it shall take that into account when applying any subsequent Rotational Procedure.

9.3 At the Annual Meeting, the Contractor and the Client shall review the Pipeline Programme and any other relevant information to enable the Contractor to provide recommendations on bundling of certain works and/or packages in order to benefit from economies of scale, to reduce the number of individual Task Orders and/or to minimise disruption to the Client's core business.

9.4 The Contractor's Senior Representative shall attend all meetings required by this clause at no cost to the Client and shall at all times ensure that it is in possession of up to date information regarding the Contractor's performance on Task Orders.

10 Termination

10.1 The Client shall be entitled to suspend or terminate this Contract (with or without terminating any Task Orders let hereunder pursuant to its terms and the decision whether to so terminate both Task Orders and this Contract shall be at the Client's sole discretion) at any time by giving not less than 10 Business Days' prior written notice to the Contractor.

10.2 Termination shall be without prejudice to any accrued rights or remedies or any continuing obligations of either party and without prejudice to the continuation of any Task Orders that are not co-terminated with this Contract.

10.3 Notwithstanding any provision of this Contract or the terms of any Task Order the Contractor shall not be entitled to claim any loss of profit, loss of contracts, loss of opportunity or other indirect and/or consequential losses upon termination of its employment under this Contract or any Task Order.

10.4 The Contractor's obligations under clauses 5.3, 6 and 11 – 25 (inclusive) shall survive any termination of this Contract and/or of any Task Order.

11 Disclosure of Information

Freedom of Information

11.1 Subject to Clauses 11.4, 11.5, 11.8, 11.9 and 11.11 the Contractor:

11.1.1 shall treat in confidence all Confidential Information it receives from the other;

11.1.2 shall not disclose any of that Confidential Information to any third party without the prior written consent of the other party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Confidential Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the Contract;

11.1.3 shall not use any of that Confidential Information otherwise than for the purpose of the Contract; and

11.1.4 shall not copy any of that Confidential Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the Contract.

11.2 The Contractor shall take all reasonable precautions necessary to ensure that all Confidential Information disclosed to the Contractor by or on behalf of the Client under or in connection with the Contract:

11.2.1 is disclosed to its employees and subcontractors, only to the extent necessary for the performance of the Contract; and

11.2.2 is treated in confidence by them and not disclosed except with prior written consent or used otherwise than for the purpose of performing work or having work performed for the Client under the Contract.

11.3 The Contractor shall ensure that his employees are aware of his arrangements for discharging the obligations at Clauses 11.1 and 11.2 before they receive Confidential Information and take such steps as may be reasonably practical to enforce such arrangements.

11.4 Clauses 11.1 and 11.2 shall not apply to any Confidential Information to the extent that either party:

11.4.1 exercises rights of use or disclosure granted otherwise than in consequence of, or under, the Contract;

11.4.2 has the right to use or disclose the Confidential Information in accordance with other conditions of the Contract; or

11.4.3 can show:

(i) that the Confidential Information was or has become published or publicly available for use otherwise than in breach of any provision of the Contract or any other agreement between the parties;

(ii) that the Confidential Information was already known to it (without restrictions on disclosure or use) prior to it receiving it under or in connection with the Contract;

(iii) that the Confidential Information was received without restriction on further disclosure from a third party who lawfully acquired it and who is himself under no obligation restricting its disclosure; or

(iv) from its records that the same information was derived independently of that received under or in connection with the Contract,

provided the relationship to any other Confidential Information is not revealed.

11.5 Neither party shall be in breach of this Clause where it can show that any disclosure of Confidential Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the party making the disclosure shall ensure that the recipient of the Confidential Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the parties under this Clause.

11.6 The Contractor:

11.6.1 transfers to the Client all requests for information that it receives as soon as practicable and in any event within two (2) Business Days of receiving a request for information;

11.6.2 provides the Client with a copy of all Confidential Information in its possession, or power in the form that the Client requires within five (5) Business Days (or such other period as the Client may specify) of the Client's request; and

- 11.6.3 provides all necessary assistance as reasonably requested by the Client to enable the Client to respond to the request for information within the time for compliance set out in section 10 of the Freedom of Information Act 2000 ("FOIA") or regulation 5 of the Environmental Information Regulations ("EIR").
- 11.7 The Contractor does not respond directly to a request for information unless authorised to do so by the Client.
- 11.8 The Client may disclose the Confidential Information:
- 11.8.1 on a confidential basis to any central government body for any proper purpose of the Client or of the relevant central government body, which shall include: disclosure to the Cabinet Office and/or HM Treasury for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes;
 - 11.8.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - 11.8.3 to the extent that the Client (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - 11.8.4 on a confidential basis to a professional adviser;
 - 11.8.5 on a confidential basis for the purpose of the exercise of its rights under the Contract; or
 - 11.8.6 on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract,
- and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Client under this provision.
- 11.9 Before sharing any Confidential Information in accordance with Clause 11.8 above, the Client may redact the Confidential Information. Any decision to redact information made by the Client shall be final.
- 11.10 The Contractor ensures that all Confidential Information is retained for disclosure throughout the period for retention and permits the Client to inspect such records as and when reasonably requested from time to time.
- 11.11 The Client shall not be in breach of the Contract where it can show that any disclosure of Confidential Information is made solely and to the extent necessary to comply with the FOIA or the EIR. To the extent permitted by the time for compliance under FOIA or the EIR 2004, the Client shall consult the Contractor where the Client is considering the disclosure of Confidential Information under FOIA or the EIR 2004 and, in any event, shall provide prior notification to the Contractor of any decision to disclose the Confidential Information. The Contractor acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Confidential Information in order to comply with FOIA or the EIR 2004 is a matter in which the Client shall exercise its own discretion, subject

always to the provisions of FOIA or the EIR 2004. For the avoidance of doubt, nothing in this Clause shall affect the Contractor's rights at law.

- 11.12 Nothing in this Clause shall affect the parties' obligations of confidentiality where information is disclosed orally in confidence.

12 Data protection

- 12.1 In this clause 12 and where used elsewhere in this Contract, the following terms shall have the following meanings:

"Contractor Staff" all directors, officers, employees, agents, Contractors and contractors of the Contractor and/or any Sub-Processor engaged in the performance of its obligations under this Contract;

"Controller" the same meaning as given in Data Protection Legislation;

"Data Loss Event" any event that results, or may result, in unauthorised access to Personal Data held by the Contractor 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 Protection Legislation"**

- (a) the Data Protection Act 2018;
- (b) Regulations made under the Data Protection Act 2018;
- (c) the UK GDPR; and
- (d) all applicable Laws and regulations relating to Processing of Personal Data, 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" the meaning given to it in the Data Protection Legislation, as amended from time to time;

"Data Subject Access Request" a request made by a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

"Personal Data" any information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

"Personal Data Breach" the meaning as given in the Data Protection Legislation;

"Processing" 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;

“Processor” the meaning given to it in the Data Protection Legislation, as amended from time to time;

“Protective Measures” appropriate technical and organisational measures which shall be sufficient to secure that the 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):

- (a) Pseudonymisation and encrypting Personal Data;
- (b) ensuring on-going confidentiality, integrity, availability and resilience of systems and services used for data processing;
- (c) measures to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident;
- (d) ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident; and
- (e) regularly assessing and evaluating the effectiveness of such measures adopted by it;

“Pseudonymisation” the same meaning as given in Data Protection Legislation;

“Restricted Country” any country which:

- (a) is outside the United Kingdom;
- (b) is not covered by UK adequacy regulations issued under section 17A of the Data Protection Act 2018 or paragraphs 4 and 5 of Schedule 21 of the Data Protection Act 2018; and
- (c) has not been confirmed by the Client as a non-Restricted Country in writing from time-to-time;

“Special Categories of Personal Data” the meaning given in the Data Protection Legislation;

“Sub-Processor” any third party appointed to Process Personal Data on behalf of the Contractor related to this Contract; and

“UK GDPR” the retained European Union law version of the General Data Protection Regulation (EU) 2016/679 as modified by Schedule 1 to the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 as in force in the UK from time to time.

12.2 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 Client is the Controller and that the Contractor is the Processor.

12.3 The Contractor shall:

- 12.3.1 ensure that it and the Contractor Staff 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 Client in breach or potential breach of Data Protection Legislation;

- 12.3.2 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 Client to perform its obligations under this Contract in accordance with Schedule 6 (Personal Data and Data Subjects), unless otherwise required by Law. In such case, the Contractor shall inform the Client of that legal requirement unless the Law prevents such disclosure on the grounds of public interest;
- 12.3.3 notify the Client immediately if it considers that any of the Client's instructions infringe the Data Protection Legislation;
- 12.3.4 maintain complete and accurate records and information to demonstrate its compliance with its Processor obligations under this clause 12;
- 12.3.5 keep a record of any Processing of Personal Data it carries out on behalf of the Client including the records specified in Article 30(2) of the UK GDPR and upon request provide a copy to the Client;
- 12.3.6 ensure that at all times it has in place appropriate Protective Measures to guard against a Data Loss Event, which the Client may reasonably reject (but failure to reject shall not amount to approval by the Client of the adequacy of the Protective Measures) and which shall be implemented at the Contractor's own expense and at no cost to the Client;
- 12.3.7 not disclose or transfer the Personal Data to any third party or Contractor Staff unless necessary for the provision of the service and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Client (save where such disclosure or transfer is specifically authorised under this Contract);
- 12.3.8 take reasonable steps to ensure the reliability and integrity of any Contractor Staff who have access to the Personal Data and ensure that the Contractor Staff:
 - (i) are aware of and comply with the Contractor's duties under this Contract;
 - (ii) 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 Client or as otherwise permitted by this Contract; and
 - (iii) have undergone adequate training in the use, care, protection and handling of Personal Data;
- 12.3.9 notify the Client immediately if it becomes aware of a Data Loss Event or if it receives:
 - (i) 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 Client's obligations under the Data Protection Legislation;

- (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
- (iii) 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;

12.3.10 provide the Client with full co-operation and assistance (within the timescales reasonably required by them) in relation to any complaint, communication or request made (as referred to at Clause 12.3.9) at no cost to the *Client* including by promptly providing:

- (i) the Client with full details and copies of the complaint, communication or request;
- (ii) where applicable, such assistance as is reasonably requested by the Client to enable them to comply with the Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation; and
- (iii) the Client, on request, with any Personal Data it holds in relation to a Data Subject;

12.3.11 if requested by the Client, provide a written description of the measures that the Contractor has taken and the Protective Measures in place, for the purpose of compliance with its obligations pursuant to this Clause 12.3 and provide to the Client copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals; and

12.3.12 at the written direction of the Client, delete or return Personal Data (and any copies of it) using a secure method of transfer to the Client on expiry or earlier termination of this Contract unless the Contractor is required by Law to retain Personal Data.

12.4 The Contractor shall not Process or otherwise transfer any Personal Data in or to a Restricted Country. If, after the Commencement Date, the Contractor or any Subcontractor wishes to Process and/or transfer any Personal Data in or to any Restricted Country, the following provisions shall apply:

12.4.1 the Contractor shall give a written request in accordance with Clause 12.4.1 ("**Third Country Processing Request**") to the Client which the Client shall consider in its absolute discretion;

12.4.2 the Contractor shall set out in its proposal to the Client for a Third Country Processing Request details of the following:

- (i) the Personal Data which will be transferred to and/or Processed in or to any Restricted Countries;
- (ii) the Restricted Countries to which the Personal Data will be transferred and/or Processed;

- (iii) any Subcontractor or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries; and
- (iv) how the Contractor 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 UK GDPR and/or Data Protection Legislation) so as to ensure the Client's compliance with the Data Protection Legislation;

12.4.3 in providing and evaluating the Third Country Processing Request, the Parties shall ensure that they have regard to and comply with the Data Protection Legislation and then-current Client, 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

12.4.4 the Contractor shall comply with such other instructions and shall carry out such other actions as the Client may notify in writing, including:

- (i) 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
- (ii) procuring that any Subcontractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:
 - (A) a direct data processing agreement with the Client on such terms as may be required by the Client; or
 - (B) a data processing agreement with the Contractor on terms which are equivalent to those agreed between the Client and the Subcontractor relating to the relevant Personal Data transfer, and

in each case which the Contractor 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 *Client* deems necessary for the purpose of protecting Personal Data.

12.5 The Contractor shall use reasonable endeavours to assist the Client 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 Client to breach any of their obligations under the Data Protection Legislation to the extent the Contractor is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

12.6 The Contractor shall allow for audits of its Processing activity by the Client or the Client's designated auditor and comply with all reasonable requests or directions by

the Client to enable the Client to verify that the Contractor is in full compliance with its obligations under this Contract.

- 12.7 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 12.8 Before allowing any Sub-Processor to process any Personal Data related to this Contract, the Contractor shall:
 - 12.8.1 notify the Client in writing of the intended Sub-Processor and processing;
 - 12.8.2 obtain the written consent of the Client; and
 - 12.8.3 enter into a written agreement with the Sub-Processor which gives effect to the terms set out in this clause 12 such that they apply to the SubProcessor; and provide the Client with such information regarding the SubProcessor as they may reasonably require.
- 12.9 The Contractor shall remain fully liable for all acts or omissions of any Sub-Processor.
- 12.10 The Contractor indemnifies the Client against all costs, charges, expenses (including legal and administrative expenses) and payments made by the Client arising out of or in connection with any claim or proceedings under any Data Protection Legislation resulting from any act or omission of the Contractor or any Sub-Processor.
- 12.11 Within thirty (30) Working Days of the date of termination or expiry of this Contract, the Contractor shall return to the *Client* any Personal Data that are Processed in connection with the exercise of the Parties' rights and obligations under this Contract (unless applicable Law requires storage of the Personal Data) and data belonging to the *Client* that is in the Contractor's possession, power or control, either in its then current format or in a format nominated by *Client*, save that it may keep one (1) copy of any such data or information for a period of up to twelve (12) months to comply with its obligations under this Contract, or such period as is necessary for such compliance.

13 Modern slavery, child labour and inhumane treatment

- 13.1 In performing its obligations under this Contract, the Contractor shall at all times:
 - 13.1.1 comply with all applicable anti-slavery and human trafficking laws and regulations from time to time in force including the Modern Slavery Act 2015 and all related guidance issued by the UK government;
 - 13.1.2 comply with the ethical labour policy of the Client or, alternatively, have and maintain its own policies and procedures which achieve, as a minimum, those standards described in the ethical labour policy;
 - 13.1.3 comply with the modern slavery compliance obligations notified to the Contractor by the Client; and
 - 13.1.4 include in its contracts with all of its subcontractors and suppliers obligations equivalent to those set out in this Clause 13.
- 13.2 The Contractor shall implement full and appropriate due diligence processes and procedures for its Subcontractors, suppliers and other participants in its supply chains

so as to ensure that there is no slavery, human trafficking or otherwise forced or coerced labour in its supply chains.

13.3 The Contractor shall deliver to the Client on or around each anniversary of this Contract:

13.3.1 written confirmation of its continued compliance with all of the requirements of this Clause 13; and

13.3.2 if requested by the Client, a report setting out the steps it has taken to ensure that modern slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.

13.4 The Contractor shall notify the Client immediately it becomes aware of any actual or suspected slavery, human trafficking, forced or coerced labour in a supply chain that has a connection with this Contract or any breach, or potential breach, of any of the requirements of this Clause 13.

13.5 If the Client identifies or becomes aware of any potential or actual breach of this Clause 13, the Client shall raise this with the Contractor and the Contractor will immediately implement a remedial plan to ensure that there are no further breaches of this Clause 13. Notwithstanding this, it is acknowledged and agreed that the Client may, at its option and in its absolute discretion, terminate this Contract with immediate effect by giving written notice to the Contractor.

14 Corrupt gifts and payments of commission

14.1 The Contractor shall not do, and warrants that in entering this Contract it has not done any of the following (hereafter referred to as 'prohibited acts'):

14.1.1 offer, promise or give to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward;

14.1.2 doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this or any other contract with the Crown;

14.1.3 for showing or not showing favour or disfavour to any person in relation to this or any other contract with the Crown; or

14.1.4 enter into this or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge, unless before this Contract is made particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Client.

14.2 If the Contractor, its employees, agents or any subcontractor (or anyone acting on its behalf or any of its or their employees) does any of the prohibited acts or commits any offence under the Bribery Act 2010 with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the Crown, the Client shall be entitled:

14.2.1 to terminate this Contract and recover from the Contractor the amount of any loss resulting from the termination;

- 14.2.2 to recover from the Contractor the amount or value of any such gift, consideration or commission; and
- 14.2.3 to recover from the Contractor any other loss sustained in consequence of any breach of this Clause, where this Contract has not been terminated.
- 14.2.4 In exercising its rights or remedies under this Clause, the Client shall:
- 14.2.5 act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act or committing of any offence under the Bribery Act 2010;
- 14.2.6 give all due consideration, where appropriate, to action other than termination of this Contract, including (without being limited to):
- (i) requiring the Contractor to procure the termination of a subcontract where the prohibited act or committing of any offence under the Bribery Act 2010 is that of a Subcontractor or anyone acting on its or their behalf;
 - (ii) requiring the Contractor to procure the dismissal of an employee (whether its own or that of a Subcontractor or anyone acting on its behalf) where the prohibited act or committing of any offence under the Bribery Act 2010 is that of such employee.

14.3 Recovery action taken against any person in Her Majesty's service shall be without prejudice to any recovery action taken against the Contractor pursuant to this Clause.

15 Conflicts of interest

15.1 The Contractor shall take appropriate steps to ensure that the Contractor is not placed in a position where, in the reasonable opinion of the Client:

15.1.1 there is or may be an actual conflict or potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Client under the provisions of this Contract or any Task Order; or

15.1.2 the behaviour of the Contractor is not in the Client's best interests or might adversely affect the Client's reputation.

15.2 The Contractor shall as soon as reasonably practicable disclose to the Client full particulars of any behaviour or relationship which might give rise to an actual or potential conflict.

15.3 The Client may terminate this Contract by notice in writing and/or take such other steps it deems necessary where, in the reasonable opinion of the Client, there is or may be an actual conflict or potential conflict, between the financial or personal interests of the Contractor and the duties owed to the Client under the provisions of this Contract. The actions of the Client pursuant to this Clause do not prejudice or affect any right of action or remedy which has accrued or will accrue to the Client.

16 Transparency

16.1 Notwithstanding any other term of this Contract (including Clause 11) where applicable and subject to 16.2 and 16.2, the Contractor understands that the Client may publish

the Transparency Information to the general public. The Contractor shall assist and co-operate with the Client to enable the Client to publish the Transparency Information.

16.2 Before publishing the Transparency Information to the general public in accordance with Clause 16.1 above the Client shall redact any information (which may include the Contractor's Confidential Information) that would be exempt from disclosure if it was the subject of a request for information under the FOIA or the EIR.

16.3 The Client may consult with the Contractor before redacting any information from the Transparency Information in accordance with Clause 16.2 above. The Contractor acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact information is a matter in which the Client shall exercise its own discretion, subject always to the provisions of the FOIA or the EIR.

16.4 For the avoidance of doubt, nothing in this Clause 16 shall affect the Contractor's rights at law.

17 Publicity

17.1 The Contractor may only publicise the Works and/or this Contract with the Client's written agreement.

18 Retention and supply of records and data

18.1 The Contractor shall maintain all records specified in and connected with this Contract (expressly or otherwise) and make them available to the Client when requested on reasonable notice.

18.2 The Contractor shall also permit access to relevant records that relate to the contractual obligations to provide Works under this Contract, held by or controlled by them and reasonably required by the Comptroller and Auditor General, its staff and any appointed representative of the National Audit Office, and provide such explanations and information as reasonably necessary for the following purposes to enable the National Audit Office to carry out:

18.2.1 the Client's statutory audits and to examine and/or certify the Client's annual and interim report and accounts; and

18.2.2 an examination pursuant to Part II of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Client has used its resources.

18.3 With regard to the records made available to the Client under Clause 18.1 of this Clause, and subject to the provisions of Clause 11 of this Contract (Disclosure of Information), the Contractor shall permit records to be examined and if necessary copied, by the Client, as the Client may require.

18.4 Unless this Contract specifies otherwise the records referred to in this Clause shall be retained for a period of at least 6 years from the:

18.4.1 end of this Contract term;

18.4.2 termination of this Contract; or

18.4.3 final payment,

whichever occurs latest.

19 Change of control of the Contractor

19.1 The Contractor shall notify the Client, as soon as practicable, in writing of any intended, planned or actual change in control of the Contractor. The Contractor shall not be required to submit any notice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the conduct of the Contractor in the UK or other jurisdictions where the Contractor may be subject to legal sanction arising from issuing such a notice.

19.2 For the purposes of this Clause “**control**” means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person by:

19.2.1 means of the holding of shares, or the possession of voting powers in, or in relation to, the Contractor; or

19.2.2 virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Contractor,

and a change of control occurs if a person who controls the Contractor ceases to do so or if another person acquires control of the Contractor.

19.3 The Client shall consider the notice of change of control and advise the Contractor in writing of any concerns the Client may have.

20 Equality

20.1 The Contractor shall not unlawfully discriminate either directly or indirectly on the grounds of age, disability, gender (including re- assignment), sex or sexual orientation, marital status (including civil partnerships), pregnancy and maternity, race, or religion or belief.

20.2 Without prejudice to the generality of the obligation in Clause 20.1 above, the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (or any statutory modification or re- enactment thereof) or other relevant or equivalent legislation in the country where the contract is being performed.

20.3 The Contractor agrees to take reasonable efforts to secure the observance of the provisions of this Clause by any of its employees, agents or other persons acting under its direction or control who are engaged in the performance of this Contract.

20.4 The Contractor agrees to take reasonable efforts to reflect this Clause in any subcontract that it enters into to satisfy the requirements of this Contract and to require its subcontractors to reflect this Clause in their subcontracts that they enter into to satisfy the requirements of this Contract.

21 Dispute resolution

21.1 The provisions of Secondary Option W2 shall apply to any dispute resolution proceedings under this Contract.

22 Notices

22.1 Any notices sent under this Contract must be in writing and in accordance with this clause 22.

22.2 The following table sets out the method by which notices may be served under this Contract and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of service
Email	9.00am on the first Business Day after sending.	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Business Day. Otherwise, delivery will occur at 9.00am on the next Business Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt.
Prepaid, Royal Mail Signed For™ 1st Class or other prepaid, next working day service providing proof of delivery	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Business Day. Otherwise, delivery will occur at 9.00am on the same Business Day (if delivery before 9.00am) or on the next Business Day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt.

22.3 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this Contract:

	Contractor	Client
Contact	REDACTED	REDACTED
Addresses	54 Helen Street Glasgow City G51 3HQ United Kingdom	DWP, Caxton House Tothill Street London SW1H 9NA
Email	REDACTED	REDACTED

23 Parent Company Guarantee and Performance Bond

23.1 The Contractor shall provide the Parent Company Guarantee, duly executed by the Parent Company, within fifteen (15) Business Days of any request made the Client.

24 Client's Schedules

25 **Miscellaneous**

25.5 This Contract is executed as a deed and was delivered when it was dated.

The corporate seal of Secretary of State for)
Work and Pensions is hereunto) affixed
and authenticated by:)
)
)
)
)

SEAL OF SECRETARY OF STATE FOR WORK AND PENSIONS

Executed as a deed by MORRIS AND SPOTTISWOOD LTD acting by either two directors or one director and the company secretary:

REDACTED

Director's name (CAPITAL LETTERS)

REDACTED

Director's signature

REDACTED

Director's/Company secretary's name
(CAPITAL LETTERS)

REDACTED

Director's/Company secretary's signature

Appendix 1

Task Orders

The following shall be incorporated as part of the conditions of contract and in the event of a conflict with any other term, the terms of this Appendix shall take precedence:

The purpose of this Appendix 1 is to confirm when and how the Contractor will prepare a Task Order Proposal and how the approvals process for a Proposed Task will operate.

Part A

1 Definitions

1.1 In paragraphs 1 to 7 the following definitions shall apply:

- (a) **“Allocation Order”** means the order in which the Delivery Contractors are ranked as a result of the Procurement Process, as set out in Part C of this Appendix 1 and as may be amended from time to time in accordance with the provisions of Part A of this Appendix 1;
- (b) **“Delivery Contractors”** means the delivery contractors identified in Appendix 7 that the Client has entered into a Lot Contract with to deliver the construction works and associated services in Scotland including the Contractor and any other contractors more particularly specified by the Client and any Replacement Delivery Contractor (each a **“Delivery Contractor”**);
- (c) **“Extraordinary Event”** means where the Client exercises its rights under clause 5.2.4 of any Lot Contract in relation to a Notifiable Event (as defined therein) in relation to any relevant Task Order;
- (d) **“Extraordinary Identification Procedure”** means the process of selecting a Delivery Contractor to participate in the Pricing Process where an Extraordinary Event arises in accordance with paragraph 4 of this Part A; and
- (e) **“Identification Procedure”** means either the Rotational Procedure, the Extraordinary Identification Procedure or the Run Off Identification Procedure;
- (f) **“Ineligible Delivery Contractor”** means for each Task Order where the Rotational Procedure applies, a Delivery Contractor:
 - (i) that has not selected the relevant NUTS Code(s) for that Task Order and/or the Client has not approved the selection of a NUTS Code pursuant to paragraph 1.28 of Appendix 4; or
 - (ii) where a Suspension Event applies to a Delivery Contractor at the time such Task Order is placed and the Client, in its sole discretion, chooses not to waive such Suspension Event;
- (g) **“Lot Contract”** means any lot contract entered into by the Client with a Delivery Contractor pursuant to the Procurement Process;

- (h) **“Pricing Process”** means the pricing of a Task Order to a Delivery Contractor in accordance with the provisions of Part B of this Appendix 1;
- (i) **“Procurement Process”** means the procurement process relating to the CWAS Framework pursuant to which the Delivery Contractors are selected to enter into a Lot Contract;
- (j) **“Replacement Delivery Contractor”** means a replacement Delivery Contractor appointed in accordance with paragraph 3.6 of Part A of this Appendix 1;
- (k) **“Rotational Procedure”** means the procedure of identifying a Delivery Contractor to participate in the pricing of a Task Order in accordance with paragraph 3 of this Part A;
- (l) **“Run Off Delivery Contractor”** means a Delivery Contractor that previously provided works or services to the Client at the relevant Site;
- (m) **“Run Off Identification Procedure”** means the process of selecting a Delivery Contractor to participate in the Pricing Process where a Task Order relates to Run Off Works, in accordance with paragraph 3 of this Part A;
- (n) **“Run Off Longstop Date”** means the date 3 months after the date of this Contract;
- (o) **“Run Off Period”** means the period of 3 months immediately preceding the date of this Contract;
- (p) **“Run Off Task Order”** means any Task Order for any Run Off Works;
- (q) **“Run Off Works”** means any works or services to be instructed under any Task Order which directly relate to any works or services that a Delivery Contractor previously provided to the Client at a Site during the Run Off Period;
- (r) **“Suspension Event”** means where:
 - (i) a Critical Failure Event occurs; and/or
 - (ii) either the Client or the Delivery Contractor refers a dispute under this Contract and/or any Task Order to the Adjudicator in accordance with clause W2.2 of Secondary Option W2; and
- (s) **“Worked Example”** means the worked example set out at in Part D of this Appendix 1.

2 Identification Procedure

2.1 An Identification Procedure shall be used to select a Delivery Contractor to participate in the Pricing Process.

3 Rotational Procedure

3.1 On the commencement of the Delivery Term, the Allocation Order shall apply.

3.2 Subject to paragraph 3.7 of this Appendix 1, where the Client issues a Works

Task Order provided that the Works Task Order relates to the Works set out in that Services Task Order, the Rotational Procedure applies to the allocation of Task Orders.

3.3 For each Task Order where the Rotational Procedure applies, the Client shall use the Allocation Order to select a Delivery Contractor to participate in the Pricing Process for that Task Order.

3.4 Subject to paragraph 3.4 of Part A of this Appendix 1, where Rotational Procedure applies:

3.4.1 for the first Task Order issued under this Lot, the Client shall select the Delivery Contractor listed first on the Allocation Order to participate in the Pricing Process;

3.4.2 for each subsequent Task Order issued under this Lot, the Client shall select the next applicable listed Delivery Contractor to participate in the Pricing Process; and

3.4.3 the Client shall not be required to select an Ineligible Delivery Contractor,

as illustrated in the Worked Example.

3.5 A Delivery Contractor may be excluded by the Client from participating in the Rotational Procedure:

3.5.1 for the next applicable Task Order following receipt of a YELLOW Score; and

3.5.2 all applicable Task Orders:

(i) following receipt of a RED Score until such time as the Delivery Contractor demonstrates to the Client's reasonable satisfaction that the Delivery Contractor has successfully addressed the underlying cause(s) of the RED Score; and

(ii) following the occurrence of a Suspension Event for such time as the Suspension Event persists.

3.6 If the Client terminates a Lot Contract, the Client may remove that Delivery Contractor from the Allocation Order and it shall be entitled to enter into a Lot Contract with a replacement contractor (a "**Replacement Delivery Contractor**"). Where a Replacement Delivery Contractor is appointed, then that Replacement Delivery Contractor shall be added to the bottom of the Allocation Order and the Client shall issue a revised Allocation Order to each Delivery Contractor and such revised Allocation Order shall supersede any previous version for the purposes of the Rotational Procedure.

3.7 The Rotational Procedure shall not apply to a Task Order issued following the allocation of a Services Task Order to a Delivery Contractor or any Task Order to which the Extraordinary Identification Procedure or the Run Off Identification Procedure applies.

4 Extraordinary Identification Procedure and Run Off Identification Procedure

4.1 Where an Extraordinary Event arises the Client shall, at its discretion, be entitled to identify the Delivery Contractor it considers to be the most suitable for the procurement irrespective of the Allocation Order.

4.2 Where a Task Order relates to Run Off Works, the Client may, at its discretion, be entitled to allocate the Run Off Works to the appropriate Run Off Delivery Contractor provided that:

4.2.1 the Client can demonstrate that this may be of benefit to the Client (including but not limited to enable the Client to receive the benefit of cost savings); and

4.2.2 the Identification Procedure for the relevant Task Order takes place on or before the Run Off Longstop Date.

5 Alternative Lot Contracts

5.1 For any Extraordinary Event and/or Task Order where:

5.1.1 no Delivery Contractor wishes to be selected for the Pricing Process or to undertake the Works that are the subject of the Extraordinary Event; and/or

5.1.2 the Client determines that each applicable Delivery Contractor:

(i) is an Ineligible Delivery Contractor; and/or (ii) has received a YELLOW score and/or a RED score,

so that they are excluded from participating in the Rotational Procedure for that Task Order,

the parties agree that the Client, at its discretion, shall be entitled to select a delivery contractor from an alternative Lot Contract and the Client shall apply the applicable identification procedure set out within that Lot Contract.

5.2 For any extraordinary event and/or task order which occurs under another Lot Contract where:

5.2.1 no delivery contractor under that other Lot wishes to be selected to undertake the works that are the subject of the extraordinary event; and/or

5.2.2 the Client determines that each applicable delivery contractor appointed under a Lot Contract in relation to that other Lot: (i) is an ineligible delivery contractor; and/or

(ii) has received a YELLOW score and/or a RED score,

so that they are excluded from participating in the rotational procedure under that other Lot Contract for that Task Order,

the parties agree that the Client, at its discretion, shall be entitled to use the applicable identification procedure under this Lot to select a Delivery Contractor to deliver the applicable works.

6 Pricing Process

- 6.1 Following the completion of the relevant Identification Procedure which results in a Delivery Contractor being eligible to participate in the Pricing Process, the Client shall undertake the Pricing Process with that Delivery Contractor.

Part B

1 Preparation of Task Order Proposal

- 1.1 The Client shall submit a written request (the “**Project Instruction**”) for the Delivery Contractor to produce outline proposals for the Proposed Task. The Client shall provide such information (including arrangements to access the Site) as may be reasonably required by the Delivery Contractor to enable it to develop a Task Order Proposal, provided that the Client shall not be obliged to provide such information where this may cause the Client to be in breach of Law and/or where such information is otherwise confidential to the Client.

- 1.2 Within ten (10) Business Days (or such other period as is agreed by the Parties) of receipt by the Delivery Contractor of a Project Instruction, the Delivery Contractor shall submit a Task Order Proposal in respect of the Proposed Task together with such additional information/documentation as is required.

2 Approval of Task Order Proposals and the Proposed Task

- 2.1 Following receipt of a Task Order Proposal issued pursuant to paragraph 1, the Client shall be entitled to request any reasonable additional information and/or any reasonable assistance (as the case may be) from the Delivery Contractor which the Client considers appropriate to enable it to decide whether to approve the relevant Task Order Proposal and the Delivery Contractor shall provide such information and/or any assistance (as the case may be) within three (3) Business Days of receipt of the relevant request for such further information and/or and assistance (as the case may be). The Delivery Contractor acknowledges and agrees that the costs incurred by the Contractor in responding to such requests and/or entering into any communications with the Client and/or incurring any expenditure of whatever nature in relation to such requests shall not entitle the Delivery Contractor to any payment of whatever nature and any such costs shall be borne by the Delivery Contractor unless the Client agrees otherwise in writing.

- 2.2 In deciding whether to approve a Task Order Proposal the Client shall be entitled to take into account all relevant factors which it considers would affect whether the relevant Task Order Proposal is acceptable, including, without limitation:

2.2.1 whether the Task Order Proposal is, in the sole opinion of the Client, affordable and/or offers value for money;

2.2.2 whether the Task Order Proposal, in the sole opinion of the Client, contains sufficient information to enable the Client to approve the relevant Task Order Proposal; and/or

- 2.2.3 whether the potential impact of the implementation of the Task Order Proposal would, in the sole opinion of the Client, adversely impact on the business and/or activities of the Client (including, without limitation, any of the Client's statutory duties); and/or
 - 2.2.4 whether the implementation of the Task Order Proposal would breach any Law, any Client's Policies or any wider government strategy or government policy.
- 2.3 Within ten (10) Business Days (or such longer period to be agreed by the Parties) of the later of the submission to the Client of a Task Order Proposal and the receipt by the Client of any additional information requested by the Client pursuant to paragraph 2.1, the Client shall notify the Delivery Contractor whether:
- 2.3.1 the Client approves the Task Order Proposal, whereupon the provisions of paragraph 2.7 shall apply and the Delivery Contractor shall carry out the Proposed Task as part of a Task Order in accordance with the terms of the approved Task Order Proposal; or
 - 2.3.2 the Client rejects the Task Order Proposal and the provisions of paragraph 2.4 shall apply.
- 2.4 The Delivery Contractor acknowledges and agrees that where the Client elects to reject any Task Order Proposal then the Delivery Contractor's costs in relation to the proposal shall be borne by the Delivery Contractor unless the Client agrees otherwise in writing.
- 2.5 The Client may appoint a third party, any other Delivery Contractor and/or any other delivery contractor from an alternative Lot Contract to provide the whole or any part of the Task Order where the Delivery Contractor:
- 2.5.1 is in material breach of its obligations under this Contract or any Task Order;
 - 2.5.2 fails to provide and/or the Client rejects a Task Order Proposal;
 - 2.5.3 confirms that it does not intend to submit a Task Order Proposal or fails to submit a Task Order Proposal following receipt of a Project Instruction within the time period specified in and in accordance with the provisions of this paragraph 2;
 - 2.5.4 the Parties have been unable to agree the whole or any part of a Task Order Proposal; and/or
 - 2.5.5 where the Delivery Contractor has not and/or all of the Delivery Contractors have not selected the relevant NUTS Codes for the whole or any part of a Task Order.
- 2.6 The Client may appoint any Delivery Contractor from this Lot Contract to provide the whole or any part of a task order which occurs under another Lot Contract where the delivery contractor under that Lot Contract:

- 2.6.1 is in material breach of its obligations under that Lot Contract or any task order occurring under that Lot Contract;
- 2.6.2 fails to provide and/or the Client rejects a task order proposal provided under that Lot Contract;
- 2.6.3 confirms that it does not intend to submit a task order proposal or fails to submit a task order proposal following receipt of a project instruction within the time period specified in and in accordance with the provisions of that Lot Contract;
- 2.6.4 the Parties have been unable to agree the whole or any part of a task order proposal; and/or
- 2.6.5 where, under that Lot Contract, the delivery contractor has not and/or all of the delivery contractors have not selected the relevant NUTS codes for the whole or any part of a task order.
- 2.7 The Delivery Contractor acknowledges and agrees that the Delivery Contractor shall not be entitled to any payment, compensation, damages, costs, losses and/or expenses arising out of or in connection with the circumstances set out in paragraph 2.5.
- 2.8 Where a Task Order Proposal has been approved by the Client (to incorporate any amendments the Client deems necessary), the Client may sign the Task Order Proposal (as amended, if necessary) and issue to the Delivery Contractor and such signed Task Order Proposal shall be deemed to form the Task Order. On receipt of a Task Order pursuant to this paragraph, the works to be carried out and performed by the Delivery Contractor as set out in the Task Order shall be deemed to become part of the Works.
- 2.9 The parties agree that if the Task Order Proposal is approved and any Task Order is issued by the Client and accepted by the Delivery Contractor under this paragraph 2, then the provisions of:
- 2.9.1 this Contract; and 2.9.2
- the relevant Task Order,
- shall together govern the carrying out of any Works to be performed by the Delivery Contractor. In the event of any conflict between the documents referred to in this paragraph 2.8, then the order of precedence shall be:
- 2.9.3 the relevant Task Order; and
- 2.9.4 this Contract.
- 2.10 This Contract shall be binding on the parties for the Delivery Term and shall govern any Works provided to the Client in relation to any Task Order for the entire duration of the Delivery Term, regardless of whether such Works were performed prior to the date of this Contract.
- 2.11 At any time, the Client may set off any liability of the Delivery Contractor to the Client against any liability of the Client to the Delivery Contractor, whether either liability:

- 2.11.1 is liquidated or unliquidated; or
- 2.11.2 arises under this Contract and/or any Task Order.

2.12 Without prejudice to any other rights or remedies which the Client may have, whether under this Contract or under any Task Order, the obligations for the Client and/or the Delivery Contractor to make payments in respect of any Task Orders shall be continuing obligations notwithstanding the termination of this Contract or any individual Task Order.

Part C – Allocation Order

REDACTED

Part D – Worked Example

REDACTED

Part E – Amendments to the NEC4 ECC

3 General

3.1 Amend clause 11.1 to add a new sentence at the end: “The Contractor and the Client agree that the Activity Schedule, Scope, Site Information and Accepted Programme attached to any Task Order shall be deemed to be the Activity Schedule, Scope, Site Information and Accepted Programme relevant to the works instructed under the relevant Task Order.”

3.2 Amend clause 11.2(16) to add at the end, on a new line after the third and fourth bullet points, “including the Part A Scope and the Part B Scope.”.

3.3 Add new clause 11.2(21):

“11.2(21) The Part A Scope means the scope of requirements attached to the delivery agreement entered into between the *Client* and the *Contractor* dated [INSERT DATE UPON SIGNATURE].”

3.4 Add new clause 11.2(22):

“11.2(22) The Part B Scope means the scope of works referred to in the Task Order.”

3.5 Add new clause 11.2(23):

“11.2(23) Delivery Agreement means the delivery agreement dated [DATE] entered into between the Client and the *Contractor*.”

3.6 Add new clause 11.2(24):

“11.2(24) Task Order means a task order issued by the Client to the Contractor under the Delivery Agreement, such Task Order to comprise the contract.

4 The Contractor's design.

4.1 At the end of clause 21.1 delete the full stop and add: “and in the provision of its design and carrying out of due diligence on the Part B Scope acts as a competent and experienced contractor and uses all the reasonable skill, care and diligence and the best up-to-date practice to be expected of a fully qualified and competent designer experienced in designing and performing and carrying out design for projects of a similar size, scope, nature, complexity and timescale to the works.”

4.2 Add new clause 21.4:

“21.4 The Contractor accepts entire responsibility for the Part A Scope.”

5 Requirements for Instructions

5.1 Add to the start of 17.1 and 17.2: “Subject to clause 17.3”

5.2 Add new clause 17.3: “If the ambiguity, discrepancy, omission, mistake or inconsistency referred to in clause 17.1 is within the Part A Scope, an instruction issued under clause 17.2 relating to such ambiguity, discrepancy, omission, mistake or inconsistency does not give rise to a compensation event and the Contractor is fully responsible for such ambiguity, discrepancy, omission, mistake or inconsistency and there is no effect upon, Defined Cost, Completion and/or meeting a Key Date and the Contractor is not entitled to relief from any of its obligations under the contract and/or the Delivery Agreement.”

6 Compensation events

6.1 Add new bullet point to the end of clause 60.1(1): “an instruction relating to an ambiguity, discrepancy, omission, mistake or inconsistency referred to in clause 17.3.”

6.2 Add to the end of the seventh bullet point in clause 61.4: “and the Contractor is not entitled to a compensation event to the extent that the Contractor is entitled to a compensation event under a different Task Order for the same event or Lot. The Contract agrees there shall be no double counting in respect of any compensation event entitlement”

6.3 Add new bullet point in clause 61.4 after the seventh bullet point: “relates to the carrying out of the Management Services under this Contract between the Client and the Contractor the Contractor shall not be entitled to a compensation event.”

7 Termination

7.1 Amend clause 90.2 to add at the beginning “Subject to the Corporate Insolvency and Governance Act 2020”

7.2 Amend the table at 90.2 reason column for The Contractor. Delete ‘R10’. Add ‘R10A and R10B’

7.3 Amend the table in clause 90.2 reason column for the Client to add in “R23” after “R22”.

7.4 Amend clause 91 to add a new clause 91.9:

“91.9 The Client may terminate if the Client terminates the Delivery Agreement and/or any other Task Order (R23).”

7.5 Amend clause 91.1 to add at the beginning “Subject to the Corporate Insolvency and Governance Act 2020”,

7.5.1 In the second bullet point:

(i) after (R10) delete the full stop and add

“,or

provided or taken any step in relation to a Scheme of Arrangement under Part 26 or Part 26A of the Companies Act 2006 but excluding a Scheme of Arrangement as a solvent company for the purposes of amalgamation or reconstruction (R10A), or

applied to the court for, or obtained, a moratorium under Part A1 of the Insolvency Act 1986 (R10B)”

7.6 Amend clause 91.4 to add at the beginning “Subject to the Corporate Insolvency and Governance Act 2020”

7.7 Amend clause 91.5 to add at the beginning “Subject to the Corporate Insolvency and Governance Act 2020”

7.8 Amend clause 91.6 to add at the beginning “Subject to the Corporate Insolvency and Governance Act 2020”

7.9 Y2.5 (NEC4) To the extent that the Corporate Insolvency and Governance Act 2020 is deemed to apply to the Housing Grants, Construction and Regeneration Act 1996, add at the beginning “Subject to the Corporate Insolvency and Governance Act 2020”

X18 Limitation on Liability

Delete the entirety of clause X18 and insert the following wording:

“X18.1 Nothing in this contract shall exclude or limit the Contractor’s liability for:

- X18.1 death or personal injury;
- X18.2 fraud or fraudulent misrepresentation; or
- X18.3 any negligence of the Contractor or its personnel, agents or subcontractors.

X18.2 The Contractor's liability to the Client for the Client's indirect or consequential loss is limited to the total of the Prices.

X18.3 For any one event, the liability of the Contractor to the Client for loss of or damage to the Client's property is limited to £10,000,000.

X18.4 The Contractor's liability to the Client for Defects due to its design which are not listed or the Defects Certificate is limited to the sum set out in the Contract Data⁶ any one claim.

X18.5 Subject to clause X18.1 and other than the excluded matters identified in clause X18.3, the Contractor's liability under or in connection with this Contract, whether for breach of contract, in tort or for breach of statutory duty, shall be limited to the sum set out in the Contract Data claimed in respect of each claim or series of claims arising from the same originating or underlying cause.

X18.6 The excluded matters are:

X18.6.1 amounts payable by the Contractor as stated in the contract for:

- (i) loss of or damage to the Client's property; and
- (ii) delay damages if Option X7 applies."

Annex 1

Task Order Proposal Template

Project Title and Address:	
Task Order Proposal Details	Description
Task	

Detailed description of the Works required to be undertaken by the Contractor in connection with the Task Order including the methodology as to how the Works will be carried out ⁷	
Details of the Contractor's key personnel involved in the delivery of the Task Order (such as the Contractor's project manager, quantity surveyor and supervisor)	Name: Job: Responsibilities: Qualifications: Experience:
Details of the Contractor's Sub-Contractors involved in the delivery of the Task Order	
Definition of the Task Site for the Task Order, include details of any access that the Contractor believes will be required to enable the implementation of the Task Order	
Task Order <i>boundaries of the site</i>	
Details of the matters to be included in the Early Warning Register for the Task Order	
Details of all Necessary Consents that the Contractor will and/or should obtain and maintain for the Task Order	
Any other relevant Task information	
Task Order <i>key dates and conditions</i> to be met	
Task Order <i>starting date</i>	
Task Order <i>access dates</i>	

Project Title and Address:

Task Order Proposal Details	Description
Task Order <i>completion date</i> for the whole of the <i>works</i>	
If X5 is used, the suggested <i>completion date</i> for each <i>section of the works</i>	
The period after the Contract Date within which the Contractor is to submit a first programme for acceptance is	
The place where weather is to be recorded is	
The weather data are the records of past weather measurements for each calendar month (to include where recorded and where available)	
The first invoice date for this Task Order	
Suggested programme for delivering the relevant Proposed Task (the “ Task Programme ”)	
Details of any proposed advance payments and/or Performance Bond (if any)	
Details of any retention percentage and/or retention free amount	
Additional Client’s risks relevant to the Task (if any)	
All insurances to be provided by the Contractor in connection with the <i>works</i> including details of each of the proposed Required Insurances including, without limitation, the Contractor’s proposals for the minimum limit of indemnity and any maximum deductible threshold applicable to such Required Insurances	

Details of any actual or anticipated impact on the Client's statutory duties arising as a result of the implementation of the Task Order	
Details of any Secondary Option clauses (to the extent not already set out in the Contract Data)	
Project Title and Address:	
Task Order Proposal Details	Description
If any delay damages should apply to the Task Order, calculated at the relevant rates specified	£[XXX ¹] per day or part thereof
Task Order <i>defects correction period</i>	
Applicable dispute resolution procedure option	NEC4 ECC Option W2
Details of the <i>working areas</i>	
The <i>key persons</i> are those identified in the <i>key persons schedule</i> in	
The total of the Prices for this Task Order which shall be based upon the Rates and Prices together with the assumptions behind these costings	
Details of the cash flow profile for the payment of the Prices.	Any compensation events shall be assessed in accordance with clause 63.12 of the Terms and Conditions.
Details of the proposed Task Order <i>fee percentage</i>	

The following documents attached to this Task Order shall be deemed to form part of this Task Order:

- Activity Schedule

¹ DWP to confirm rate and if different rates will apply to different Lots. Where appropriate, the rate shall be agreed with reference to a percentage of the Prices.

- Scope
- Site Information
- Accepted Programme • Cash flow profile

Signed by **THE SECRETARY OF STATE FOR
WORK AND PENSIONS**

.....
Authorised Signatory

We accept the terms of this Task Order and agree to proceed accordingly.
Executed as a deed by **MORRIS AND
SPOTTISWOOD LTD** acting by either two
directors or one director and the company
secretary:

.....
Director's name (CAPITAL LETTERS) Director's signature

.....
Director's/Company secretary's name Director's/Company secretary's signature
(CAPITAL LETTERS)

Appendix 2

Contract Data⁹

All gaps to be completed during Task Order process.

1 General

The *conditions of contract* are the core clauses and the clauses for the following main Option, the Option for resolving and avoiding disputes and secondary Options of the NEC4 Engineering and Construction Contract June 2017 including amendments dated January 2019.

Main Option

A

Option
resolving and
avoiding disputes

W2

Secondary X5 (Sectional Completion), X7 (Delay Damages) X18 (Limitation of Liability), X13 Options (Performance Bond), X14 (X), X16 (Retention) X20 (Key Performance Indicators)

Y(UK)2, and any Secondary Options set out in a Task Order and such Secondary Options shall apply to that Task Order only.

The *works* are As set out in the relevant Task Order

The *Client* is The Secretary of State for Work and Pensions

Address for
electronic
communications []

The *Project Manager* is

Name

[]

Address for
communications

[]

Address for
electronic communications []

The *Supervisor* is

Name []

Address for []
communications

Address for []
electronic communications

The Scope is in For any Works instructed under a Task Order: as attached to the relevant Task
Order together with any other documents identified in the relevant Task Order²

The Site For any Works instructed under a Task Order: as attached to the relevant Task Information
is in Order

The *boundaries of the site* are For any Works instructed under a Task Order, as set out in the relevant Task Order

The *language of the contract* is English

The *law of the contract* is the law of

England, subject to the jurisdiction of the Courts of England

The *period for reply*

one week

except that is

The *period for reply*
weeks

[...]

is

[...]

for

The *period for reply* for weeks

[...]

is

[...]

The following matters will be included in the Early Warning Register

For any Works instructed under a Task Order, as set out in the relevant Task Order

Early warning meetings are held at intervals no longer than

one month

2 The *Contractor's* main responsibilities

² This is likely to include the scope attached to the Task Order and all other relevant design documents where the works are full design and build (Part B Scope).

If the *Client* has identified work which is set to meet a stated *condition* by a *key date*. The *key dates* and *conditions* to be met are

	<i>condition</i> to be met	<i>key date</i>
(1)	For any Works instructed under a Task Order, as set out in the relevant Task Order	For any Works instructed under a Task Order, as set out in the relevant Task Order
(2)	For any Works instructed under a Task Order, as set out in the relevant Task Order	For any Works instructed under a Task Order, as set out in the relevant Task Order
(3)	For any Works instructed under a Task Order, as set out in the relevant Task Order	For any Works instructed under a Task Order, as set out in the relevant Task Order

3 Time

The *starting date* is

For any Works instructed under a Task Order, as set out in the relevant Task Order

The access *dates* are

part of the Site

date

1 For any Works instructed under a Task Order, as set out in the relevant Task Order

For any Works instructed under a Task Order, as set out in the relevant Task Order

2 For any Works instructed under a Task Order, as set out in the relevant Task Order

For any Works instructed under a Task Order, as set out in the relevant Task Order

3 For any Works instructed under a Task Order, as set out in the relevant Task Order

For any Works instructed under a Task Order, as set out in the relevant Task Order

The *Contractor* submits revised programmes at intervals no longer than

fortnightly

The *completion date* for the whole of the *works* is

For any Works instructed under a Task Order, as set out in the relevant Task Order

The *Client* ~~is~~/is not] willing to take over the *works* before the Completion Date

The period after the Contract Date within which the *Contractor* is to submit a first programme for acceptance is

For any Works instructed under a Task Order, as set out in the relevant Task Order

4 Quality Management

The period after the Contract Date within which the *Contractor* is to submit a quality policy statement and quality plan is

2 wks

The period between Completion of the whole of the *works* and the *defects date* is

52 wks

The *defect correction period* is four weeks except that:

The *defect correction period* for is wks

[]

[]

The *defect correction period* for is wks

[]

[]

5 Payment

The *currency of the contract* is the

pound sterling (£)

The *assessment interval* is calendar month

one

The *interest rate* is, unless the provisions of the Late Payment of Commercial Debts (Interest) Act 1998 otherwise require, England time to time

2

% per annum above the Bank of base rate in force from

6 Compensation events

The place where weather is to be recorded is

For any Works instructed under a Task Order, as set out in the relevant Task Order

The *weather measurements* to be recorded for each calendar month are

- the cumulative rainfall (mm)
- the number of days with rainfall more than 5 mm
- the number of days with minimum air temperature less than 0 degrees Celsius
- the number of days with snow lying at 9AM hours GMT

and these measurements:

The *weather measurements* are supplied by

The Met Office

The *weather data* are the records of past *weather measurements* for each calendar month which

were recorded at

For any Works instructed under a Task Order, as set out in the relevant Task Order

and which are available from

For any Works instructed under a Task Order, as set out in the relevant Task Order

Assumed values for the ten year return *weather data* for each *weather measurement* for each calendar month are

The *value engineering percentage* is 50%, unless another percentage is stated here, % which case it is

These are additional compensation events

- N/A

8 Liabilities and insurance

These are additional *Client's* liabilities

(1)

N/A

(2)

N/A

(3)

N/A

- The minimum amount of cover for insurance against loss of or damage to property (except the works, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the Contractor) arising from or in connection with the Contractor Providing the Works for any one event is: £10,000,000.
- The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with this contract for any one event £10,000,000
- The Contractor shall also be required to take out and maintain those insurances identified in the relevant Task Order.

Resolving and avoiding disputes

The *tribunal* is

N/A

The *arbitration procedure* is

N/A

The place where *arbitration* is to be held is

N/A

The person or organisation who will choose an arbitrator if the Parties cannot agree a choice or if the *arbitration procedure* does not state who selects an arbitrator is

N/A

The *Senior Representatives* of the *Client* are

Name (1)

[]

Address for communications

[]

Address for electronic communications

[]

Name (2)

Address for communications

[]

Address for electronic communications

[]

The *Adjudicator* is the person chosen by

The Parties

[]

The person or organisation who will choose an *Adjudicator* if the Parties cannot agree a choice is

The Chairman for the time being of the Technology and Construction Solicitors Association

The *Adjudicator nominating body* is

The Technology and Construction Solicitors Association

Option X5: Sectional Completion

Option X5 is used

The completion date for each section of the works is

section

description

completion date

(1)

(2)

(3)

(4)

Option X7: Delay damages

Delay damages for Completion of the whole of the *works* are part

For any Works
instructed under a Task
Order, as set out in the
relevant Task Order

per day or
thereof

Option X13: Performance Bond

If Option X13 is used The amount of the performance bond
is

Option X14: Advanced payment to the *Contractor*

If Option X14 is used The amount of the advanced payment
is

The period after the Contract Date
from which the *Contractor* repays the
instalments in assessments is

The instalments are
(either an amount or a percentage of
the payment otherwise due)

Advance payment An
(Delete as required.

advanced payment bond is/is not
applicable) bond

Option X16: Retention (not used with Option F)

If Option X16 is used **The *retention free* amount is**

The *retention percentage* is

%

Retention bond **The *Contractor* may/may not give the *Client* a retention bond. (Delete as
applicable).**

Option X18: Limitation of Liability

Refer to the schedule of amendments contained within CCS Framework Reference RM6088 and as attached at Appendix 6 and the clauses contained within Part E of Appendix 1 to this Contract.

Where the parties agree that Option X18 shall apply:

The Contractor's liability for Defects under X18.4 is limited, in respect of any one claim, to³:

--

The Contractor's liability under or in connection with this Contract under X18.5 is limited, in respect of each claim or series of claims arising from the same originating or underlying cause, to:

--

Option X20: Key Performance Indicators

The incentive schedule for Key Performance Indicators is in

Attached at Appendix 8 of the Delivery Agreement
--

A report of performance against each Key Performance Indicator is provided at intervals of

Monthly

--

Option Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996

The first *invoice date* is

For any Works instructed under a Task Order, as set out in the relevant Task Order
--

Later *invoice dates* occur on the same day of each calendar month after the first *invoice date* until all amounts due to the *Contractor* under the contract have been paid.

Option Z: Additional conditions of contract

³ 11 Lot A: £1m, Lot B: £5m and Lot C: £10m.

The *additional conditions of contract* are the following clauses

Clauses Z2 to Z101 in the NEC4 schedule of amendments contained within CCS Framework Reference RM6088 and as attached at Appendix 6 of the Delivery Agreement.

The clauses contained within Part E of Appendix 1 of the Delivery Agreement.

PART TWO – DATA PROVIDED BY THE CONTRACTOR

Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

1 General

The *Contractor* is

Name

[]

Address for communications

[]

Address for electronic
communications

[]

The *fee percentage* is %

[]¹²

For any Works instructed under a Task Order, as set out in the relevant

The *working areas* are

Task Order

The key persons are those identified in the *key persons schedule* in

For any Works instructed
under a Task Order, as set
out in the relevant Task
Order

The following matters will be included in the Early Warning Register

For any Works instructed under a Task Order, as set out in the relevant Task Order

2 The *Contractor's* main responsibilities

The Scope for the *Contractor's* design is in

For any Works instructed under a Task Order: The Scope of Requirements attached to the Delivery Agreement, and [insert]¹³

¹² As set out in the Capital Works/Life Cycle Tender Rates and Prices (as appropriate).

¹³ This will be the Part B Scope.

3 Time

The programme identified in the Contract Data is in For any Works instructed under a Task Order, as set out in the relevant Task Order

The *completion date* for the whole of the *works* is For any Works instructed under a Task Order, as set out in the relevant Task Order

5 Payment

The *activity schedule* is in For any Works instructed under a Task Order, as set out in the relevant Task Order

The tendered total of the Prices is For any Works instructed under a Task Order, as set out in the relevant Task Order

Resolving and Avoiding Disputes

The *Senior Representatives* of the *Contractor* are

Name (1) []

Address for communications []

Address for electronic communications []

Name (2) _____

Address for communications

[]

Address for electronic communications

[]

[]

Data for the Short Schedule of Cost Components⁴

The *people rates* are
category of person

	unit	rate

The published list of Equipment is the edition current at the Contact Date of the list published by

The percentage for adjustment for Equipment in the published list
is minus)

% (state plus or

The rates for other Equipment are

Equipment	rate
-----------	------

⁴ To be completed using either the Tender Schedule of Cost Components or, if no schedule is submitted by the Contractor, the rates in the CCS framework.

The rates for Defined Cost of manufacture and fabrication outside the Workings Areas by the *Contractor* are

category of person	rate

The rates for Defined Cost of design outside the Workings Areas are

category of person	rate

The categories of design people whose travelling expenses to and from the Working Areas are included in Defined Cost are

--

Appendix 3

The Sites and NUTS Codes

Scotland: M5, M6, M7, M8, M9

Appendix 4

Part A - Management Services

1 Working together

1.1 In relation to the carrying out of the Works and any obligations under this Contract, the Parties shall work together in order to achieve the Objectives. To that end the Client and the Contractor agree they shall each give to, and welcome from, the other, and the other Project Participants, feedback on performance and shall draw each other's attention to any difficulties and shall share information openly, at the earliest practicable time. They shall support collaborative behaviour and address behaviour that does not comply with the Objectives.

1.2 During the Delivery Term the Contractor shall:

1.2.1 collaborate with the Client and the Project Team to achieve the Objectives;

1.2.2 work with the Client in a supportive manner;

1.2.3 produce such reports and documentation as may reasonably be requested from time to time by the Client;

1.2.4 work collectively with the Client and the Project Team to support the delivery of the Works on a best for project basis;

1.2.5 work collectively with the Client and the Project Team to discuss the Pipeline Programme and whether certain works and/or packages should be bundled into appropriate Task Orders;

1.2.6 develop and use common systems and processes with the Client and the Project Participants;

1.2.7 discuss costings of the Works on an open-book basis;

1.2.8 work with the Client to determine whether the Contractor should select additional NUTS Codes to those NUTS Codes initially selected by the Contractor;

1.2.9 work with the Client to agree acceptable processes for demonstrating value for money and understand the key drivers for value for money; and

1.2.10 give advice, information and opinion fully, openly and objectively to the Client and the Project Team.

1.3 The role of the Project Team is to guide the successful delivery of the Project and the Works. The Project Team will meet at regular intervals and on the first anniversary of the Delivery Term to share information relating to the Project and the Works, to consider the risks and opportunities affecting the Project and the Works, to consider how best to coordinate and manage the Project and the Works, to review progress and to make any decisions necessary for the

successful delivery of the Project and the Works which are then communicated to all relevant Project Participants.

- 1.4 In the event of any dispute between the Parties and/or the members of the Project Team, it is the intention that any court or adjudicator or other forum to which the dispute is referred shall take account of the Objectives and of the Parties' adherence to it when making any award.
- 1.5 The Client and the Contractor shall co-operate with the other members of the Project Team in the provision of information with a view to ensuring that relevant information is provided to all Project Participants needing this information in a timely fashion.
- 1.6 Subject always to the terms of any Task Order, if the Contractor identifies any ambiguities or discrepancies in any information provided by the Client or any other member of the Project Team, the Contractor shall agree how to resolve them after consultation, if appropriate, with the Project Team. If no agreement is reached, the Client shall issue an instruction.
- 1.7 The Client hereby elects to be treated as the only client in respect of the Works for the purposes of the CDM Regulations.
- 1.8 The Contractor shall act as "principal contractor" in respect of the Works for the purposes of the CDM Regulations.

2 Continuous Improvement

- 2.1 The Contractor shall, throughout the Delivery Term, adopt a policy of continuous improvement in relation to the Works pursuant to which it will regularly review with the Client the Works and the manner in which it is providing the Works with a view to reducing the Client's costs (including the Prices and/or the Price List) and/or improving the quality and efficiency of the Works. The Contractor and the Client will provide to each other any information which may be relevant to assisting in fulfilling these objectives.
- 2.2 Without limiting paragraph 2.1 and if the Client so requires at any point during the Delivery Term, the Contractor shall produce a plan for improving the provision of Works and/or reducing the Prices and/or the Price List (without adversely affecting the performance of this Contract and/or any Task Order) ("**Continuous Improvement Plan**") for the Client's approval. The Continuous Improvement Plan shall be in the format agreed between the Parties and shall contain, as a minimum, proposals in respect of the following:
 - 2.2.1 identifying the emergence of relevant new and evolving technologies;
 - 2.2.2 changes in business processes of the Contractor or the Client and ways of working that would provide cost savings and/or enhanced benefits to the Client (such as methods of interaction, supply chain efficiencies, reduction in energy consumption and methods of sale);
 - 2.2.3 new or potential improvements to the provision of the Works including the quality, responsiveness, procedures, benchmarking methods, likely

performance mechanisms and Client support services in relation to the Works; and

- 2.2.4 measuring and reducing the sustainability impacts of the Contractor's operations and supply-chains pertaining to the Works and identifying opportunities to assist the Client in meeting their sustainability objectives.

2.3 The initial Continuous Improvement Plan for the first Service Quarter is attached at Part B of this Appendix 4. As and when required, but at least once each Service Quarter, the Contractor shall review the Continuous Improvement Plan and submit any updates or changes to the Client for the Client's approval.

2.4 The Client shall notify the Contractor of its approval or rejection of the proposed Continuous Improvement Plan or any updates to it within twenty (20) Business Days of receipt. If it is rejected then the Contractor shall, within ten (10) Business Days of receipt of notice of rejection, submit a revised Continuous Improvement Plan reflecting the changes required. If this revised Continuous Improvement Plan is also rejected the Contractor shall provide a second revised Continuous Improvement Plan for approval. Should this second revised Continuous Improvement Plan be rejected ("**Second Rejection**") the Parties may escalate this to the Senior Representatives who shall meet to discuss the Second Rejection within ten (10) Business Days of the notice of rejection. Where such meeting achieves a solution acceptable to the Client and the Contractor, such solution shall be implemented by the Client and the Contractor. Where such meeting does not achieve a solution acceptable to the Client and the Contractor, the process used in W2 shall be followed.

2.5 Where a Continuous Improvement Plan is approved, it shall constitute the Continuous Improvement Plan for the purposes of this Contract.

2.6 The Contractor shall provide sufficient information with each suggested improvement to enable a decision on whether to implement it. The Contractor shall provide any further information as requested.

2.7 All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall have no effect on and are included in the Prices and/or the Price List.

2.8 Should the Contractor's costs in providing the Works to the Client be reduced as a result of any changes implemented, all of the cost savings shall be passed on to the Client by way of a consequential and immediate reduction in the Prices and/or the Price List.

3 Allocation of risks

3.1 The Project Team shall carry out, complete and populate the Project Risk Register to identify:

- 3.1.1 potential risks relating to the delivery of the Project, the occurrence of which are capable of adversely affecting the time for completion, cost or quality of the Project;
- 3.1.2 the probability of these risks occurring;

3.1.3 a financial estimate of the most likely consequences of each risk occurring;
and

3.1.4 the actions agreed to be taken to mitigate, manage or remove each risk
and the individual responsible for reporting on the progress of the
actions agreed.

3.2 The Project Team shall regularly update and amend the Project Risk Register
(seeking the assistance of other Project Participants as considered
appropriate) and shall arrange regular meetings with the Client and members
of the Project Team to review and update the Project Risk Register and to
consider:

3.2.1 any new risks that have arisen since the date of the last review;

3.2.2 the steps taken to prevent/mitigate previously identified risks;

3.2.3 risks which have been successfully prevented/mitigated (which can
be removed from the Project Risk Register); and

3.2.4 the prioritisation of all continuing risks and agreement of an action plan in
respect of, and risk owners for, all risks prioritised as serious risks.

4 Problem solving

4.1 Without prejudice to option W2, as soon as a Party is aware of any difference or
dispute with the Client and the Contractor arising out of or in connection with
the Works (a “**Difference**”) such Party will give notice to the other.

4.2 Upon receipt of the notice in paragraph 4.1, there shall be a meeting between
respective representatives of the Client and the Contractor having authority to
settle the matter. Where such meeting achieves a solution acceptable to the
Client and the Contractor, such solution shall be implemented by the Client and
the Contractor.

4.3 If such meeting fails to achieve a solution acceptable to the Client and the
Contractor, the Difference shall be escalated to the Senior Representatives and
within ten (10) Business Days of the meeting referred to in paragraph 7.2 the
Senior Representatives shall meet to discuss the Difference. Where such
meeting achieves a solution acceptable to the Client and the Contractor, such
solution shall be implemented by the Client and the Contractor. Where such
meeting does not achieve a solution acceptable to the Client and the
Contractor, the process used in W2 shall be followed.

5 Fee

5.1 The Contractor agrees that the fee for the Management Services shall be nil.

Part B - Continuous Improvement Plan for the first Service Quarter

Appendix 5

REDACTED

Appendix 6

Schedule of Amendments

STANDARD 'BOILERPLATE' AMENDMENTS

NEC4

JANUARY 31, 2019

CABINET OFFICE

Crown Commercial Service The standardised 'boilerplate' amendments project addresses a need to simplify the inclusion of government-specific clauses to the NEC, JCT and PPC2000 contracts. Centrally mandated government policies and some legislative requirements were being applied by a range of government departments, but as separate operations and with differing approaches. Scope was identified for a simple and standard set of terms which provide a unified front to implement policy and reduce the need for excessive additional drafting, creating a more efficient standardised approach. These terms would be applied across government construction contracts. In order to bring about this situation, a cross-governmental review of construction contract amendments was undertaken by the Crown Commercial Service (CCS) and the Infrastructure and Projects Authority (IPA). Eighteen clauses were identified as those which would benefit most from the standardisation described above. These clauses were reviewed and redrafted to enhance their ease of comprehension, with the core wording translated to NEC, JCT and PPC2000 terminology.

These eighteen clauses are replicated within the NEC, JCT and PPC2000 boilerplate documents. This is the **NEC4 version**.

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

Process

The clauses are amended to the contract by way of an additional Schedule of Amendments. This must be referred to in the base contract. The following segment indicates the modification which must be made to the base contract, as well as the steps needed to incorporate the Boilerplate Amendments.

NEC4 Engineering & Construction Contract

- In Contract Data Part One, complete the clause headed “If Option Z is used” to read:
The *additional conditions of contract* are as detailed in the appended Schedule of Amendments which is to be read and construed accordingly.
- Append pages 8 to 42 of this Standard ‘Boilerplate’ Amendments document to the standard contract document as this Schedule of Amendments.
- Remove or strikethrough those clauses which do not apply to the current project and amend terms as provided by guidance notes. • Add additional, project specific amendments in the normal way.

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SUMMARY OF CLAUSES

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

1. Definitions

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

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

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

4. Official Secrets Act

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

5. Freedom of Information

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

6. Confidentiality and Information Sharing

Some public sector information is sensitive and cannot be shared, while at other times organisation must share details about its processes in the interest of transparency. As such, this clause provides obligations for both parties to safeguard confidential information, exceptions where that obligation does not apply, and additional restrictions on the Contractor and further rights for the Client.

7. Security Requirements

This clause is a preface to a schedule requiring the Contractor to create and maintain a comprehensive Information Security Management System. This must be agreed with the Client, contain measures sufficient to ensure security on the project in question, and be regularly reviewed to reflect changes in good practice or project details. It must be tested

appropriately and be fully compliant with ISO 27001, subject to audits as required. The schedule also indicates some of the steps to be taken in the event of a security breach. 8.

Tax Compliance

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

9. Contract (Rights of Third Parties) Act 1999

Excluding third party rights is a common clause in all manner of contracts. The Boilerplate clause removes that exclusion in the case of collateral warranties – a common and often necessary provision in public sector construction. It should be noted that this does not apply to the NEC4 Boilerplate document as the contract directly deals with this under Option X8.

10. Fair Payment

This is a clause also aimed at improving how subcontractors are paid, similarly endorsed in the Government Construction Strategy 2016. Obligations are placed on the Contractor to assess and promptly pay subcontractors, and to ensure that these obligations are also included in their contracts with subcontractors. It should be noted that Fair Payment is a separate clause with the NEC Boilerplate document, whereas within JCT and PPC it is combined with the SME provisions to form 'Conditions of Sub-Contracting' (JCT) or 'Supply Chain' (PPC).

11. Building Information Modelling (BIM)

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

12. The Housing Grants, Construction and Regeneration Act 1996 ('Construction Act 2011')

This is an NEC-only clause which expands on an existing provision. If NEC Option Y(UK)2 applies, then the Construction Act also applies to this contract even if the project is in Northern Ireland.

13. Intellectual Property Rights

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

14. MOD DEFCONS

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

15. Small and Medium Enterprises (SMEs)

Government policy dictates that SMEs should be encouraged and brought into public sector projects, as reinforced in the Government Construction Strategy 2016, Construction Sector Deal and Construction 2025. There is a general target for 33% of central government procurement spend going to SMEs by 2022. This Boilerplate clause requires Contractors to employ a certain amount of SMEs as subcontractors, and to respect a number of other obligations regarding reporting and how they manage these SMEs. 16.

Apprenticeships

In a similar way to SMEs, there is an overarching government policy for public sector organisations to promote the creation and use of apprenticeship schemes, as per the

Government Construction Strategy 2016, the Construction Sector Deal and Construction 2025. In particular, a 2015 Procurement Policy Note describes the steps that public sector organisations must take to ensure they are meeting the government's apprentice aims. This Boilerplate provides a way for Clients to ensure that Contractors do this by creating an obligation to employ certain amounts of apprentices. They must also provide further training opportunities and information about the Government Apprenticeship programme, and engage with the Project Manager to review and discuss a number of measures relating to Apprenticeships.

17. GDPR

With the recent advent of the General Data Protection Regulation, every construction project is required to include provisions within their contracts to ensure compliance. The Boilerplate document includes a Schedule so these regulations can be complied with, with areas for the parties to fill in to reflect project specific data protection requirements.

18. Cyber Essentials

This clause provides a way to include the Government Cyber Essentials scheme into construction projects. This scheme provides for a number of controls which organisations should implement to reduce the risk of common internet based threats. The clause lists obligations on the Contractor to provide proof of the required certification at certain stages of the project, and to apply the same obligations to its sub-Contractors.

19. Project Bank Accounts
The Project Bank Accounts scheme is a government policy aimed at enhancing the speed with which payment progresses down the construction supply chain. The scheme has been promoted in the Government Construction Strategies and should be used within central government projects unless there are compelling reasons not to do so. Amended provisions have not been included within this boilerplate document, however their use is encouraged. They should be incorporated using the standard facilities within NEC, JCT and PPC documents.

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SCHEDULE OF AMENDMENTS TO NEC4 ENGINEERING AND CONSTRUCTION CONTRACT

Option Z2 - Identified and defined terms Insert

new clause 11.3 additional defined terms.

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

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

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

11. (3) Commercially Sensitive Information is the information agreed between the Parties (if any) comprising the information of a commercially sensitive

nature relating to the *Contractor*, the charges for the works, its IPR or its business or which the *Contractor* has indicated to the *Client* that, if disclosed by the *Client*, would cause the *Contractor* significant commercial disadvantage or material financial loss.

11.3 (4) Confidential Information is the Client's Confidential Information and/or the Contractor's Confidential Information.

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

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

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

11.3 (8) Data Controller has the meaning given to it in the Data Protection Act 2018.

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

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

11.3 (11) FOIA is the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.

11.3 (12) General Anti-Abuse Rule is ○ the legislation in Part 5 of the Finance Act 2013 and

- any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements and to avoid national insurance contributions.

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

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

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

11.3(16) An Occasion of Tax Non-Compliance is

- where any tax return of the *Contractor* submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of
- a Relevant Tax Authority successfully challenging the *Contractor* under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle or
- the failure of an avoidance scheme which the *Contractor* was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime and

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

11. 3(17) Personal Data has the meaning given to it in the Data Protection Act 2018.

11.3 (18) Prohibited Act is

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

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

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

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

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Option Z 4 - Admittance to site Insert

new clause 19A:

19A.1 The *Contractor* submits to the *Project Manager* details of people who are to be employed by it and its Subcontractors in Providing the Works. The details include a list of names and addresses, the capabilities in which they are employed, and other information required by the *Project Manager*.

19A.2 The *Project Manager* may instruct the *Contractor* to take measures to prevent unauthorised persons being admitted to the Site.

19A.3 Employees of the *Contractor* and its Subcontractors are to carry a *Client's* pass and comply with all conduct requirements from the *Client* whilst they are on the parts of the Site identified in the Scope.

19A.4 The *Contractor* submits to the *Project Manager* for acceptance a list of the names of the people for whom passes are required. On acceptance, the *Project Manager* issues the passes to the *Contractor*. Each pass is returned to the *Project Manager* when the person no longer requires access to that part of the Site or after the *Project Manager* has given notice that the person is not to be admitted to the Site.

19A.5 The *Contractor* does not take photographs of the Site or of work carried out in connection with the *works* unless it has obtained the acceptance of the *Project Manager*.

19A.6 The *Contractor* takes the measures needed to prevent its and its Subcontractors' people taking, publishing or otherwise circulating such photographs.

Option Z5 - Prevention of fraud and bribery Insert

new clauses:

18.4.1 The *Contractor* represents and warrants that neither it, nor to the best of its knowledge any of its people, 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 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.

18.4.2 During the carrying out of the *works* the *Contractor* does not

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

18.4.3 In Providing the Works the *Contractor*

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

18.4.4 The *Contractor* immediately notifies the *Client* in writing if it becomes aware of any breach of clause 18.4.1, or has reason to believe that it has or any of its people or Subcontractors have

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

18.4.5 If the *Contractor* makes a notification to the *Client* pursuant to clause 18.4.4, the *Contractor* responds promptly to the *Client's* enquiries, co-operates with any

investigation, and allows the *Client* to audit any books, records and/or any other relevant documentation in accordance with this contract.

- 18.4.6 If the *Contractor* breaches Clause 18.4.3, the *Client* may by notice require the *Contractor* to remove from carrying out the *works* any person whose acts or omissions have caused the *Contractor's* breach.

Option Z7 - Legislation and Official secrets

Insert new clauses:

20.5 The *Contractor* complies with Law in the carrying out of the *works*.

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

20.7 The *Contractor* notifies its employees and its Subcontractors of their duties under these Acts.

Option Z10 - Freedom of information Insert

new clauses:

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

29.4 The *Contractor*

- transfers to the *Project Manager* 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 *Project Manager* with a copy of all information in its possession, or power in the form that the *Project Manager* requires within five working days (or such other period as the *Project Manager* may specify) of the *Project Manager's* request,
- provides all necessary assistance as reasonably requested by the *Project Manager* to enable the *Client* to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental

Information Regulations and

- procures that its Subcontractors do likewise.

5. The *Client* is responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.

6. The *Contractor* does not respond directly to a Request for Information unless authorised to do so by the *Project Manager*.

7. The *Contractor* acknowledges that the *Client* may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of information Act 2000, be obliged to disclose information without consulting or obtaining consent from the *Contractor* or despite the *Contractor* having expressed negative views when consulted.

8. The *Contractor* ensures that all information is retained for disclosure throughout the *period for retention* and permits the *Project Manager* to inspect such records as and when reasonably requested from time to time.

Option Z13 - Confidentiality and Information Sharing

Insert a new clause

29.9 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this contract, each Party shall

- treat the other Party's Confidential Information as confidential and safeguard it accordingly,
- not disclose the other Party's Confidential Information to any other person without prior written consent,
- immediately notify the other Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information and

- notify the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may be a criminal offence under the Bribery Act 2010.

29.10 The clause above shall not apply to the extent that

- such disclosure is a requirement of the Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the

Environmental Information Regulations pursuant to clause Z10 (Freedom of Information),

- such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner,
- such information was obtained from a third party without obligation of confidentiality,
- such information was already in the public domain at the time of disclosure otherwise than by a breach of this contract or
- it is independently developed without access to the other party's Confidential Information.

11. The *Contractor* may only disclose the *Client's* Confidential Information to the people who are directly involved in Providing the Works and who need to know the information, and shall ensure that such people are aware of and shall comply with these obligations as to confidentiality.

The *Contractor* shall not, and shall procure that the *Contractor's* people do not, use any of the Client Confidential Information received otherwise than for the purposes of this contract.

12. The *Contractor* may only disclose the Client Confidential Information to *Contractor's* people who need to know the information, and shall ensure that such people are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any default, act or omission of any *Contractor's* people causes or contributes (or could cause or contribute) to the *Contractor* breaching its obligations as to confidentiality under or in connection with this contract, the *Contractor* 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 *Contractor's* people, the *Contractor* shall provide such evidence to the *Client* as the *Client* may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the *Contractor* is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from *Contractor's* people, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with *Contractor's* people in connection with obligations as to confidentiality.

13. At the written request of the *Client*, the *Contractor* shall procure that those members of the *Contractor's* people identified in the *Client's* request signs a confidentiality undertaking prior to commencing any work in accordance with this contract.

14. Nothing in this contract shall prevent the *Client* from disclosing the *Contractor's* Confidential Information

- to any Crown Body or any other Contracting Bodies. All Crown Bodies or Contracting Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Body,
- to a professional adviser, contractor, consultant, supplier or other person engaged by the *Client* or any Crown Body (including any benchmarking

- organisation) for any purpose connected with this contract, or any person conducting an Office of Government Commerce Gateway Review,
 - for the purpose of the examination and certification of the *Client's* accounts,
 - for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Client* has used its resources,
 - for the purpose of the exercise of its rights under this contract or
 - to a proposed successor body of the *Client* in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this contract,

and for the purposes of the foregoing, disclosure of the Contractor's Confidential Information shall be on a confidential basis and subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the *Client* under this clause 29.14.

15. The *Client* shall use all reasonable endeavours to ensure that any government department, Contracting Body, people, third party or subcontractor to whom the *Contractor's* Confidential Information is disclosed pursuant to the above clause is made aware of the *Client's* obligations of confidentiality.
16. Nothing in this clause shall prevent either party from using any techniques, ideas or know-how gained during the performance of the contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.
17. The *Client* may disclose the Confidential Information of the *Contractor*
 - to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement,
 - to the extent that the *Client* (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions,

Option Z14 - Security Requirements

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

Option Z16 - Tax Compliance Insert

new clauses:

29.18 The *Contractor* represents and warrants that at the Contract Date, it has notified the *Client* in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance.

29.19 If, at any point prior to the *defects date*, an Occasion of Tax Non-Compliance occurs, the *Contractor* shall

- notify the *Client* in writing of such fact within 5 days of its occurrence and
- promptly provide to the *Client*
- details of the steps which the *Contractor* is taking to address the Occasions of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant and
- such other information in relation to the Occasion of Tax Non-Compliance as the *Client* may reasonably require.

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Option Z22 - Fair payment Insert

a new clause:

57.1 The *Contractor* assesses the amount due to a Subcontractor without taking into account the amount certified by the *Project Manager*.

57.2 The *Contractor* includes in the contract with each Subcontractor

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

Option Z42 - The Housing Grants, Construction and Regeneration Act 1996 Add
an additional clause Y2.6

Y2.6

If Option Y(UK)2 is said to apply then notwithstanding that this contract relates to the carrying out of construction operations other than in England or Wales or Scotland, the Act is deemed to apply to this contract. [Guidance: for works carried out in Northern Ireland]

Option Z44 - Intellectual Property Rights

Delete clause 22 and insert the following clause

In this clause 22 only:

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

22.1 The Intellectual Property Rights in all Documents prepared by or on behalf of the *Contractor* in relation to this contract and the work executed from them remains the property of the *Contractor*. The *Contractor* hereby grants to the *Client* an irrevocable, royalty free, non-exclusive licence to use and reproduce the Documents for any and all purposes connected with the construction, use, alterations or demolition of the *works*. Such licence entitles the *Client* to grant sub-licences to third parties in the same terms as this licence provided always that the *Contractor* shall not be liable to any licensee for any use of the Documents or the Intellectual Property Rights in the Documents for purposes other than those for which the same were originally prepared by or on behalf of the *Contractor*.

22.2 The *Client* may assign novate or otherwise transfer its rights and obligations under the licence granted pursuant to 22.1 to a Crown Body or to anybody (including any private sector body) which performs or carries on any functions and/or activities that previously had been performed and/or carried on by the *Client*.

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

22.4 The *Contractor* waives any moral right to be identified as author of the Documents in accordance with section 77, Copyright Designs and Patents Acts 1988 and any right not to

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have the Documents subjected to derogatory treatment in accordance with section 8 of that Act as against the *Client* or any licensee or assignee of the *Client*.

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

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

22.7 The *Contractor* supplies copies of the Documents to the *Project Manager* and to the *Client*'s other contractors and consultants for no additional fee to the extent necessary to

enable them to discharge their respective functions in relation to this contract or related works.

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

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

Option Z46 - MoD DEFCON Requirements

Insert a new clause: 19B

This clause is to incorporate MoD special terms and conditions in the form of DEFCONs and DEFORMs as detailed in [Guidance: Client to reference DEFCON / DEFORM Schedule].

Option Z47 - Small and Medium Sized Enterprises (SMEs) Insert

new clause:

26.5

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

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

Where available, the *Contractor* is required to tender its Subcontracts using the same online electronic portal as was provided by the *Client* for the purposes of tendering this contract. The *Contractor* is to ensure that the terms and conditions used to engage Subcontractors are no less favourable than those of this contract. A reason for the *Project Manager* not accepting subcontract documents proposed by the *Contractor* is that they are unduly disadvantageous to the Subcontractor.

Option Z48 - Apprenticeships Insert

new clause:

26.6

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

The *Contractor* takes all reasonable steps to ensure that no less than a percentage of its people (agreed between the Parties) are on formal apprenticeship programmes or that a similar proportion of hours worked in Providing the Works, (which may include support staff and Subcontractors) are provided by people on formal apprenticeship programmes. The *Contractor* makes available to its people and Subcontractors working on the contract, information about the Government's Apprenticeship programme and wider skills opportunities.

The *Contractor* provides any further skills training opportunities that are appropriate for its people engaged in Providing the Works.

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

- the number of people during the reporting period employed on the contract, including support staff and Subcontractors,
- the number of apprentices and number of new starts on apprenticeships directly

initiated through this contract,

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

Option Z100 - GDPR

Insert new clause Z100 as follows:

Z100 GDPR

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

Option Z101 – Cyber Essentials

Insert new clause Z101 as follows:

Z101 Cyber Essentials

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

Page Break

SCHEDULE[Guidance: insert schedule ref here]

GDPR The

following definitions shall apply to this Schedule [Guidance: insert schedule ref here]

Agreement : this contract;

Processor Personnel : means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement **GDPR CLAUSE DEFINITIONS:**

Data Protection Legislation : (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 subject to Royal Assent to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

Data Protection Impact Assessment : an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Controller , **Processor** , **Data Subject** , **Personal Data** , **Personal Data Breach** , **Data Protection Officer** take the meaning given in the GDPR.

Data Loss Event : any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

Data Subject Request : a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

DPA 2018 : Data Protection Act 2018

GDPR : the General Data Protection Regulation (Regulation (EU) 2016/679)

Joint Controllers: where two or more Controllers jointly determine the purposes and means of processing

LED : Law Enforcement Directive (Directive (EU) 2016/680)

Protective Measures : appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Schedule [x] (Security).

Sub-processor : any third party appointed to process Personal Data on behalf of that Processor related to this Agreement

1. DATA PROTECTION

1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the *Client* is the Controller and the *Contractor* is the Processor unless otherwise specified in Schedule

[X]. The only processing that the Processor is authorised to do is listed in Schedule [X] by the Controller and may not be determined by the Processor.

1.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

1.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

- a. a systematic description of the envisaged processing operations and the purpose of the processing;
- b. an assessment of the necessity and proportionality of the processing operations in relation to the *works*;
- c. an assessment of the risks to the rights and freedoms of Data Subjects; and
- d. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

1.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- a. process that Personal Data only in accordance with Schedule [X], unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
- b. ensure that it has in place Protective Measures, are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - i. nature of the data to be protected;
 - ii. harm that might result from a Data Loss Event;
 - iii. state of technological development; and
 - iv. cost of implementing any measures;

ensure that :

- i. the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule X);
- ii. it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - A. are aware of and comply with the Processor's duties under this clause;
 - B. are subject to appropriate confidentiality undertakings with the Processor or any Subprocessor;
 - C. 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 Controller or as otherwise permitted by this Agreement; and
 - D. have undergone adequate training in the use, care, protection and handling of Personal Data; and

- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
- i. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 - ii. the Data Subject has enforceable rights and effective legal remedies;
 - iii. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - iv. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

1.5 Subject to clause 1.6, the Processor shall notify the Controller immediately if it:

- a. receives a Data Subject Request (or purported Data Subject Request);
 - b. receives a request to rectify, block or erase any Personal Data;
 - c. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - d. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - e. receives 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; or
 - f. becomes aware of a Data Loss Event.
6. The Processor's obligation to notify under clause 1.5 shall include the provision of further information to the Controller in phases, as details become available.
7. Taking into account the nature of the processing, the Processor shall provide the

Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

- a. the Controller with full details and copies of the complaint, communication or request;
- b. such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
- c. the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
- d. assistance as requested by the Controller following any Data Loss Event;
- e. assistance as requested by the Controller with respect to any request from the

Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.

1.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:

- a. the Controller determines that the processing is not occasional;
- b. the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
- c. the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

9. The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.

10. Each Party shall designate its own data protection officer if required by the Data Protection Legislation .

11. Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:

- a. notify the Controller in writing of the intended Sub-processor and processing;
 - b. obtain the written consent of the Controller;
 - c. enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause [X] such that they apply to the Sub-processor; and
 - d. provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
12. The Processor shall remain fully liable for all acts or omissions of any of its Subprocessors.
13. The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
14. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
15. Where the Parties include two or more Joint Controllers as identified in Schedule [X] in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Schedule [Y] in replacement of Clauses 1.1-1.14 for the Personal Data under Joint Control.

Annex A - Part 2: Schedule of Processing, Personal Data and Data Subjects

Schedule [X] Processing, Personal Data and Data Subjects

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

1. The contact details of the Controller's Data Protection Officer are: [Insert Contact details]
2. The contact details of the Processor's Data Protection Officer are: [Insert Contact details]
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
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Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the <i>Client</i> is the Controller and the <i>Contractor</i> is the Processor in accordance with Clause 1.1. [Guidance: You may need to vary this section where (in the rare case) the <i>Client</i> and <i>Contractor</i> have a different relationship. For example where the Parties are Joint Controller of some Personal Data: “Notwithstanding Clause 1.1 the Parties acknowledge that they are also Joint Controllers for the purposes of the Data Protection Legislation in respect of: [Insert the scope of Personal Data which the purposes and means of the processing is determined by the both Parties] In respect of Personal Data under Joint Control, Clause 1.1-1.15 will not apply and the Parties agree to put in place a Joint Controller Agreement as outlined in Schedule Y instead.”
Subject matter of the processing	[This should be a high level, short description of what the processing is about i.e. its subject matter of the contract. Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to members of the public.]
Duration of the processing	[Clearly set out the duration of the processing including dates]
Nature and purposes of the processing	[Please be as specific as possible, but make sure that you cover all intended purposes. The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.
	The purpose might include: employment processing, statutory obligation, recruitment assessment etc]
Type of Personal Data being Processed	[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]

Categories of Data Subject	[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	[Describe how long the data will be retained for, how it be returned or destroyed]

SCHEDULE J

1. CONTRACT SCHEDULE J - SECURITY PROVISIONS

1. Definitions

For the purposes of this schedule the following terms shall have the meanings given below:

"Affiliates" in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;

"Breach of Security" in accordance with the Security Requirements and the Security Policy, the occurrence of:

- a. any unauthorised access to or use of the works the Client Premises, the Sites, the Contractor System and/or any ICT, information or data (including the Confidential Information and the Client Data) used by the *Client* and/or the *Contractor* in connection with this contract; and/or
- b. the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Client Data), including any copies of such information or data, used by the *Client* and/or the *Contractor* in connection with this contract.

"Clearance" means national security clearance and employment checks undertaken by and/or obtained from the Defence Vetting Agency;

"Contractor Equipment" the hardware, computer and telecoms devices and equipment supplied by the *Contractor* or its Subcontractors (but not hired, leased or loaned from the *Client*) for the carrying out of the *works*;

"Contractor Software"	software which is proprietary to the <i>Contractor</i> , including software which is or will be used by the <i>Contractor</i> for the purposes of carrying out of the <i>works</i> ;
"Contractor System"	the information and communications technology system used by the <i>Contractor</i> in carrying out of the <i>works</i> including the Software, the <i>Contractor</i> Equipment and related cabling (but excluding the Client System);
"Control"	means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and
"Default"	"Controls" and "Controlled" shall be interpreted accordingly; any breach of the obligations of the relevant party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant party, its employees, servants, agents or Sub contractors in connection with or in relation to the subject-matter of this contract and in respect of which such party is liable to the other;
"Dispute Resolution Procedure"	the dispute resolution procedure set out in this contract (if any) or as agreed between the parties;
"Client Premises"	means premises owned, controlled or occupied by the <i>Client</i> or its Affiliates which are made available for use by the <i>Contractor</i> or its Subcontractors for carrying out of the <i>works</i> (or any of them) on the terms set out in this contract or any separate agreement or licence;
"Client System"	the <i>Client's</i> computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the <i>Client</i> or the <i>Contractor</i> in connection with this contract which is owned by or licensed to the <i>Client</i> by a third party and which interfaces with the <i>Contractor</i> System or which is necessary for the <i>Client</i> to receive the <i>works</i> ;
"Environmental Information Regulations"	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issues by the Information Commissioner or relevant Government Department in relation to such regulations;
"FOIA"	the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation;

"Good Industry Practice"	the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector;
"ICT"	information and communications technology;
"ICT Environment"	the Client System and the <i>Contractor</i> System;
"Impact Assessment"	an assessment of a Compensation Event;
"Information"	has the meaning given under section 84 of the Freedom of Information Act 2000;
"Information Assets Register"	the register of information assets to be created and maintained by the <i>Contractor</i> throughout the carrying out of the <i>works</i> as described in the contract (if any) or as otherwise agreed between the parties;
"ISMS"	the Information Security Management System as defined by ISO/IEC 27001. The scope of the ISMS will be as agreed by the parties and will directly reflect the scope of the <i>works</i> ;
"Know-How"	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the <i>works</i> but excluding know how already in the <i>Contractor's</i> or the <i>Client's</i> possession before this contract;
"List x"	means, in relation to a Subcontractor, one who has been placed on List x in accordance with Ministry of Defence guidelines and procedures, due to that Sub contractor undertaking work on its premises marked as CONFIDENTIAL or above;
"Malicious Software"	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
"Process"	has the meaning given to it under the Data Protection Legislation but, for the purposes of this contract, it shall include both manual and automatic processing;
"Protectively Marked"	shall have the meaning as set out in the Security Policy Framework.

"Regulatory Bodies"	those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this contract or any other affairs of the <i>Client</i> and "Regulatory Body" shall be construed accordingly;
"Request for Information"	a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
"Security Management Plan"	the <i>Contractor's</i> security plan prepared pursuant to paragraph 1.5.3 of schedule J (Security Management Plan) an outline of which is set out in Appendix 1 of schedule J (Security Management Plan);
"Security Policy Framework"	means the Cabinet Office Security Policy Framework (available from the Cabinet Office Security Policy Division);
"Security Requirements"	means the requirements in the contract relating to security of the carrying out of the <i>works</i> (if any) or such other requirements as the <i>Client</i> may notify to the <i>Contractor</i> from time to time
"Security Tests"	shall have the meaning set out in Appendix 2 (Security Management Plan) [Guidance: define "Security Tests" in Security Management Plan]
"Software"	Specially Written Software, <i>Contractor</i> Software and Third Party Software;
"Specially Written Software"	any software created by the <i>Contractor</i> (or by a third party on behalf of the <i>Contractor</i>) specifically for the purposes of this contract;
"Staff Vetting Procedures"	the <i>Client's</i> procedures and departmental policies for the vetting of personnel whose role will involve the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measures, including, but not limited to, the provisions of the Official Secrets Act 1911 to 1989;
"Statement of Applicability"	shall have the meaning set out in ISO/IEC 27001 and as agreed by the parties during the procurement phase;
"Standards"	the British or international standards, <i>Client's</i> internal policies and procedures, Government codes of practice and guidance together with any other specified policies or procedures referred to in this contract (if any) or as otherwise agreed by the parties;

"Third Party Software" software which is proprietary to any third party other than an Affiliate of the *Contractor* which is or will be used by the *Contractor* for the purposes of carrying out of the *works*; and

2. Introduction

1. This schedule covers:

1. principles of protective security to be applied in carrying out of the *works*;
2. wider aspects of security relating to carrying out of the *works*;
3. the development, implementation, operation, maintenance and continual improvement of an ISMS;
4. the creation and maintenance of the Security Management Plan;
5. audit and testing of ISMS compliance with the Security Requirements;
6. conformance to ISO/IEC 27001 (Information Security Requirements Specification) and ISO/IEC27002 (Information Security Code of Practice) and;
7. obligations in the event of actual, potential or attempted breaches of security.

3. Principles of Security

1. The *Contractor* acknowledges that the *Client* places great emphasis on the confidentiality, integrity and availability of information and consequently on the security provided by the ISMS.
2. The *Contractor* shall be responsible for the effective performance of the ISMS and shall at all times provide a level of security which:
 1. is in accordance with Good Industry Practice, the *law of the contract* and this contract;
 2. complies with the Security Policy;
 3. complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (Tiers 1-4) available from the Cabinet Office Security Policy Division (COSPD);
 4. meets any specific security threats to the ISMS; and
 5. complies with ISO/IEC27001 and ISO/IEC27002 in accordance with paragraph 1.3.2 of this schedule; 1.3.2.6 complies with the Security Requirements; and1.3.2.7 complies with the *Client's* ICT standards.

3. The references to standards, guidance and policies set out in paragraph 1.3.2.2 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, from time to time.

4. In the event of any inconsistency in the provisions of the above standards, guidance and policies, the *Contractor* gives an early warning to the *Project Manager* of such inconsistency immediately upon becoming aware of the same, and the *Project Manager* shall, as soon as practicable, advise the *Contractor* which provision the *Contractor* shall be required to comply with.

4. ISMS and Security Management Plan

1. Introduction:

- (i) The *Contractor* shall develop, implement, operate, maintain and continuously improve and maintain an ISMS which will, without prejudice to paragraph 1.3.2, be accepted, by the *Project Manager*, tested in accordance with the provisions relating to testing as set out in the contract (if any) or as otherwise agreed between the Parties, periodically updated and audited in accordance with ISO/IEC 27001.
 - 1. The *Contractor* shall develop and maintain a Security Management Plan in accordance with this Schedule to apply during the carrying out of the *works*.
 - 2. The *Contractor* shall comply with its obligations set out in the Security Management Plan.
 - 3. Both the ISMS and the Security Management Plan shall, unless otherwise specified by the *Client*, aim to protect all aspects of the *works* and all processes associated with carrying out of the *works*, including the construction, use, alterations or demolition of the *works*, the *Contractor* System and any ICT, information and data (including the Client Confidential Information and the Client Data) to the extent used by the *Client* or the *Contractor* in connection with this contract.
- 2. Development of the Security Management Plan:
 - 1. Within 20 Working Days after the Contract Date and in accordance with paragraph 1.4.4 (Amendment and Revision), the *Contractor* will prepare and deliver to the *Project Manager* for acceptance a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan set out in Appendix 2 of this Part 2 of this Contract Schedule J.
 - 2. If the Security Management Plan, or any subsequent revision to it in accordance with paragraph 1.4.4 (Amendment and Revision), is accepted by the *Project Manager* it will be adopted immediately and will replace the previous version of the Security Management Plan at Appendix 2 of this Part 2 of this Contract Schedule J. If the Security Management Plan is not accepted by the *Project Manager* the *Contractor* shall amend it within 10 Working Days or such other period as the parties may agree in writing of a notice of non-acceptance from the *Project Manager* and re-submit to the *Project Manager* for accepted. The parties will use all reasonable endeavours to ensure that the acceptance process takes as little time as possible and in any event no longer than 15 Working Days (or such other period as the parties may agree in writing) from the date of its first submission to the *Project Manager*. If the *Project Manager* does not accept the Security Management Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure. No acceptance to be given by the *Project Manager* pursuant to this paragraph 1.4.2.2 of this schedule may be unreasonably withheld or delayed. However any failure to accept the Security Management Plan on the grounds that it does not comply with the requirements set out in paragraph 1.4.3.4 shall be deemed to be reasonable.
- 3. Content of the Security Management Plan:
 - 1. The Security Management Plan will set out the security measures to be implemented and maintained by the *Contractor* in relation to all aspects of the *works* and all processes associated

with carrying out of the *works* and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the *works* comply with the provisions of this schedule (including the principles set out in paragraph 1.3);

2. The Security Management Plan (including the draft version) should also set out the plans for transiting all security arrangements and responsibilities from those in place at the Contract Date to those incorporated in the *Contractor's* ISMS at the date notified by the *Project Manager* to the *Contractor* for the *Contractor* to meet the full obligations of the Security Requirements.

3. The Security Management Plan will be structured in accordance with ISO/IEC27001 and ISO/IEC27002, cross-referencing if necessary to other schedules of this contract which cover specific areas included within that standard.

4. The Security Management Plan shall be written in plain English in language which is readily comprehensible to the staff of the *Contractor* and the *Client* engaged in the *works* and shall only reference documents which are in the possession of the *Client* or whose location is otherwise specified in this schedule.

4. Amendment and Revision of the ISMS and Security Management Plan:

1. The ISMS and Security Management Plan will be fully reviewed and updated by the *Contractor* annually or from time to time to reflect:

- a. emerging changes in Good Industry Practice;
- b. any change or proposed change to the Contractor System, the *works* and/or associated processes;
- c. any new perceived or changed security threats; and (d) any reasonable request by the *Project Manager*.

2. The *Contractor* will provide the *Project Manager* with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Management Plan at no additional cost to the *Client*. The results of the review should include, without limitation:

- a. suggested improvements to the effectiveness of the ISMS;
- b. updates to the risk assessments;
- c. proposed modifications to the procedures and controls that effect information security to respond to events that may impact on the ISMS; and
- d. suggested improvements in measuring the effectiveness of controls.

3. On receipt of the results of such reviews, the *Project Manager* will accept any amendments or revisions to the ISMS or Security Management Plan in accordance with the process set out at paragraph 1.4.2.2.

4. Any change or amendment which the *Contractor* proposes to make to the ISMS or Security Management Plan (as a result of a

Project Manager's request or change to the *works* or otherwise) shall be subject to the early warning procedure and shall not be implemented until accepted in writing by the *Project Manager*.

5. Testing

1. The *Contractor* shall conduct Security Tests of the ISMS on an annual basis or as otherwise agreed by the parties. The date, timing, content and conduct of such Security Tests shall be agreed in advance with the *Project Manager*.
 2. The *Project Manager* shall be entitled to witness the conduct of the Security Tests. The *Contractor* shall provide the *Project Manager* with the results of such tests (in a form accepted by the *Client* in advance) as soon as practicable after completion of each Security Test.
 3. Without prejudice to any other right of audit or access granted to the *Client* pursuant to this contract, the *Project Manager* and/or its authorised representatives shall be entitled, at any time and without giving notice to the *Contractor*, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the *Contractor's* compliance with the ISMS and the Security Management Plan. The *Project Manager* may notify the *Contractor* of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the carrying out of the *works*. If such tests adversely affect the *Contractor's* ability to carry out the *works* in accordance with the Scope, the *Contractor* shall be granted relief against any resultant under-performance for the period of the tests.
 4. Where any Security Test carried out pursuant to paragraphs 1.4.5.2 or 1.4.5.3 above reveals any actual or potential Breach of Security, the *Contractor* shall promptly notify the *Project Manager* of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the *Contractor* proposes to make in order to correct such failure or weakness. Subject to the *Project Manager's* acceptance in accordance with paragraph (i), the *Contractor* shall implement such changes to the ISMS and the Security Management Plan in accordance with the timetable agreed with the *Project Manager* or, otherwise, as soon as reasonably possible. Where the change to the ISMS or Security Management Plan is made to address a non-compliance with the Security Policy or Security Requirements, the change to the ISMS or Security Management Plan is Disallowed Cost.
 5. Compliance with ISO/IEC 27001
1. Unless otherwise agreed by the parties, the *Contractor* shall obtain independent certification of the ISMS to ISO/IEC 27001 within 12 months of the Contract Date and shall maintain such certification until the Defects Certificate or a termination certificate has been issued.
 2. In the event that paragraph 1.5.1 above applies, if certain parts of the ISMS do not conform to Good Industry Practice, or controls as described in ISO/IEC 27002 are not consistent with the Security Policy, and, as a result, the *Contractor* reasonably believes that it is not

compliant with ISO/IEC 27001, the *Contractor* shall promptly notify the *Project Manager* of this and the *Client* in its absolute discretion may waive the requirement for certification in respect of the relevant parts.

3. The *Project Manager* shall be entitled to carry out such regular security audits as may be required and in accordance with Good Industry Practice, in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001.
4. If, on the basis of evidence provided by such audits, it is the *Project Manager's* reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 is not being achieved by the *Contractor*, then the *Project Manager* shall notify the *Contractor* of the same and give the *Contractor* a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to become compliant with the principles and practices of ISO/IEC 27001. If the *Contractor* does not become compliant within the required time then the *Project Manager* has the right to obtain an independent audit against these standards in whole or in part.
5. If, as a result of any such independent audit as described in paragraph 1.5.4 the *Contractor* is found to be non-compliant with the principles and practices of ISO/IEC 27001 then the *Contractor* shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the *Client* in obtaining such audit.
6. Breach of Security
 1. Either party shall give an early warning to the other in accordance with the agreed security incident management process as defined by the ISMS upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.
 2. Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 1.6.1, the *Contractor* shall:

1. immediately take all reasonable steps necessary to:

- a. remedy such breach or protect the integrity of the ISMS against any such potential or attempted breach or threat; and
 - b. prevent an equivalent breach in the future.

such steps shall include any action or changes reasonably required by the *Project Manager*; and

2. as soon as reasonably practicable provide to the *Project Manager* full details (using such reporting mechanism as defined by the ISMS) of the Breach of Security or the potential or attempted Breach of Security. **Appendix 1 – Security Policy**

[Guidance Note: Append Security Policy]

Appendix 2 – Security Management Plan

[Guidance Note: Append Security Management Plan] Page Break

SCHEDULE [Guidance: insert schedule ref here]

CYBER ESSENTIALS

CYBER ESSENTIALS SCHEME

1. DEFINITIONS

1.1 In this Schedule, the following words shall have the following meanings:

"Cyber Essentials Scheme" the Cyber Essentials Scheme developed by the Government which provides a clear statement of the basic controls all

organisations should implement to mitigate the risk from common internet based threats (as may be amended from time to time). Details of the Cyber Essentials Scheme can be found here: <https://www.gov.uk/government/publications/cyberessentialscheme-overview>;

"Cyber Essentials Basic Certificate" the certificate awarded on the basis of self-assessment, verified by an independent certification body, under the Cyber Essentials Scheme and is the basic level of assurance; **"Cyber Essentials Basic Certificate"** the Cyber

Essentials Plus Certificate or the Cyber Essential Scheme certificate equivalent to be provided by the *Contractor* as set out in the Framework Data Sheet;

"Cyber Essential Scheme Data" sensitive and personal information and other relevant information as referred to in the Cyber Essentials Scheme; and

"Cyber Essentials Plus Certificate" the certification awarded on the basis of external testing by an independent certification body of the *Contractor's* cyber security approach under the Cyber Essentials Scheme and is a more advanced level of assurance.

2. CYBER ESSENTIALS OBLIGATIONS

2.1 Where the Scope requires that the *Contractor* provide a Cyber Essentials Certificate prior to the execution of the *works* the *Contractor* shall provide a valid Cyber Essentials Certificate, then on or prior to the commencement of the *works* the *Contractor* delivers to the *Client* evidence of the same. Where the *Contractor* fails to comply with this paragraph it shall be prohibited from commencing the carrying out of the *works* under any contract until such time as the *Contractor* has evidenced to the *Client* its compliance with this paragraph

2.1.

2.2 Where the *Contractor* continues to Process Cyber Essentials Scheme Data during the carrying out of the *works* the *Contractor* delivers to the *Client* evidence of renewal of the Cyber Essentials Certificate on each anniversary of the first applicable certificate obtained by the *Contractor* under paragraph 2.1.

2.3 Where the *Contractor* is due to Process Cyber Essentials Scheme Data after the commencement of the *works* but before completion of the *works* the *Contractor* delivers to the *Client* evidence of:

2.3.1 a valid and current Cyber Essentials Certificate before the *Contractor* Processes any such Cyber Essentials Scheme Data; and

2.3.2 renewal of the valid Cyber Essentials Certificate on each anniversary of the first Cyber Essentials Scheme certificate obtained by the *Contractor* under paragraph 2.1.

2.4 In the event that the *Contractor* fails to comply with paragraphs 2.2 or 2.3 (as applicable), the *Client* reserves the right to terminate this contract for material Default.

- 2.5 The *Contractor* ensures that all sub-contracts with Sub-Contractors who Process Cyber Essentials Data contain provisions no less onerous on the Sub-Contractors than those imposed on the *Contractor* under this contract in respect of the Cyber Essentials Scheme under paragraph 2.1 of this Schedule
- 2.6 This Schedule shall survive termination or expiry of this contract.

Appendix 7

Delivery Contractors

FES
Morris & Spottiswood
Amey
Clark
GHI

Appendix 8

Performance KPIs

PART A

1 Performance Levels

1.1 The objectives of the Performance KPIs and Performance Failure Points are to:

1.1.1 ensure that the Works carried out under a Task Order meet the requirements of the Client and that each Task Order is administered in accordance with the provisions of that Task Order;

1.1.2 provide a mechanism whereby the Client can attain meaningful recognition of inconvenience resulting from the Contractor's failure to deliver the Works⁵ for which it has contracted to deliver and/or administer the Task Order in accordance with the provisions of that Task Order; and

1.1.3 incentivise the Contractor to meet and exceed the requirements set out in a Task Order and to remedy any Performance Failure expeditiously.

1.2 Without prejudice to the Client's other rights and remedies under this Contract and/or any Task Order, if the level of performance of the Contractor of any element of a Task Order during a Service Period:

1.2.1 achieves the Performance Level in respect of each Performance KPI, no Performance Failure Points will accrue to the Contractor in respect of that Performance KPI; or

1.2.2 is below the Performance Level in respect of each Performance (i.e. a Performance Failure arises), the appropriate number of Performance

⁵ To review following finalised KPIs.

Failure Points will accrue to the Contractor in respect of that Performance KPI.

- 1.3 If a Performance Failure occurs for two (2) or more Task Orders, the second such failure shall be a "**Repeat Failure**". Any subsequent failure by the Contractor to achieve that same Performance Level shall also be a Repeat Failure.

-
- 1.4 If any Repeat Failure occurs, the number of Performance Failure Points that shall accrue to the Contractor in respect of such Repeat Failure shall be the number of Performance Failure Points that would normally accrue in respect of an initial failure of that Performance Level multiplied in accordance with the following:

- 1.4.1 initial failure: 1;
- 1.4.2 1st Repeat Failure: 1.5;
- 1.4.3 2nd Repeat Failure: 2.0; and
- 1.4.4 3rd and subsequent Repeat Failures: 2.5.

2 Performance Failure Points

- 2.1 Subject to paragraph 3.2, in any Service Quarter, where the Contractor accrues 100 or more Performance Failure Points, the Contractor shall receive a YELLOW Score for the purposes of the Contract.
- 2.2 Subject to paragraph 3.2, in any Service Quarter, where the Contractor accrues 150 or more Performance Failure Points, the Contractor shall receive a RED Score for the purposes of the Contract.
- 2.3 Where the Contractor receives a YELLOW or RED Score, without limitation to the Client's other rights and remedies which are available to it under this Contract, the Client may suspend and/or exclude (as applicable) the Contractor from participating in the Identification Procedure as set out in Part A of Appendix 1.

3 Earn Back Points

- 3.1 Subject to paragraph 4, in any Service Period, where the Contractor meets and/or exceeds the relevant Performance Level, the Contractor shall receive Earn Back Points for the purposes of the Contract.
- 3.2 At the end of each Service Quarter, any Earn Back Points shall be taken into account when determining the amount of Performance Failure Points accrued by the Contractor for any Task Order completed by the Contractor in any Service Quarter.

4 Performance Monitoring Reports

- 4.1 Within twenty (20) Business Days of the end of each Service Quarter, the Contractor shall provide a Performance Monitoring Report to the Client. The Performance Monitoring Report shall be in the format agreed between the Parties and shall contain, as a minimum, the following information in relation to each Task Order in respect of the Service Quarter just ended:

- 4.1.1 a scorecard summarising the Contractor's level of performance in relation to each Performance Level and setting out the detail in relation to the underlying figures;
 - 4.1.2 a summary of all Performance Failures that occurred during the Service Quarter;
 - 4.1.3 which Performance Failures remain outstanding and progress in resolving them;
 - 4.1.4 for any Performance Failure, the cause of the fault and any action being taken to reduce the likelihood of recurrence;
 - 4.1.5 for any Repeat Failures, actions taken to resolve the underlying cause and prevent recurrence;
 - 4.1.6 the number of Performance Failure Points awarded to each Performance Failure in that Service Quarter;
 - 4.1.7 any Earn Back Points that the Contractor considers should be taken into account as part of ongoing performing monitoring;
 - 4.1.8 a rolling total of the number of Performance Failure Points that have occurred; and
 - 4.1.9 such other details as the Client may reasonably require from time to time.
- 4.2 The draft Performance Monitoring Report shall be reviewed and its contents agreed by the parties at the Performance Review Meeting which immediately follows the issue of such report.
- 4.3 The parties shall attend Performance Review Meetings in each Service Quarter (unless otherwise agreed). The Performance Review Meetings will be the forum for the review by the Contractor and the Client of the Performance Monitoring Reports. The Performance Review Meetings shall take place at a date and time agreed by the Contractor and Client in the Service Quarter following the Service Quarter to which the Performance Monitoring Report pertains and shall be fully minuted.
- 4.4 The Contractor shall provide to the Client such supporting documentation as the Client may reasonably require in order to verify the level of the performance by the Contractor and the calculations of the amount of Performance Failure Points for any specified period.
- 4.5 If the Contractor fails to provide any Performance Monitoring Report in accordance with this paragraph 4 then it shall receive a RED Score.

5 Changes to KPIs

- 5.1 The Client may (acting reasonably):
 - 5.1.1 change the weighting of one or more of Performance KPIs; and/or
 - 5.1.2 change one or more of the Performance KPIs,

and the Contractor shall not be entitled to object to, or increase the Prices, as a result of such changes provided that:

- (i) the Client gives the Contractor at least one (1) Service Quarter's notice (or such shorter notice period as may be agreed with the Contractor); and
- (ii) it is reasonable to make such changes, including (without limitation) where:
 - (A) it becomes apparent that a Performance KPI is failing to accurately capture the required output; and/or
 - (B) where it is necessary to reflect changes in the Client's business requirements and/or priorities; and/or
 - (C) where it is necessary to reflect changing industry standards.

5.2 Where a Performance KPIs is changed in accordance with paragraph 5.1, the change shall be effective from the expiry of the notice referred to in paragraph 5.1, or such later date as the parties may agree.

PART B

REDACTED

Parent Company Guarantee

[TO BE INSERTED ON A PROJECT SPECIFIC BASIS IF REQUIRED BY THE CLIENT]

10

Performance Bond

[TO BE INSERTED ON A PROJECT SPECIFIC BASIS IF REQUIRED BY THE CLIENT]

Client's Schedules

Part A: Appendix G (Collateral Warranty)

[TO BE INSERTED ON A PROJECT SPECIFIC BASIS IF REQUIRED BY THE CLIENT]

Part B: Appendix K (TUPE)

Scope of Requirements

[TO BE INSERTED ON A PROJECT SPECIFIC BASIS IF REQUIRED BY THE CLIENT]

Contractor's Tender Submission

REDACTED