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| Draft 11.12.20204035842-0020242355141\_5 |
|  | **DATED 20th APRIL**  | **2021** |  |
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|  | **THE SECRETARY OF STATE FOR WORK AND PENSIONS****AND****Speller Metcalfe Malvern Ltd**  | **(1)****(2)** |
|  | **CONTRACT FOR THE APPOINTMENT OF A CONTRACTOR RELATING TO THE RAPID ESTATES EXPANSION PROGRAMME IN [ENGLAND (NORTH)] AND INCORPORATING THE NEC4 ENGINEERING AND CONSTRUCTION CONTRACT** |  |

**THIS CONTRACT** is made on                                                    2020 **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. **[Speller Metcalfe Malvern Ltd]** (company number 03127386 whose registered office is at Maple Road, Enigma Business Park, Malvern, Worcestershire, WR14 1GQ

together, the Parties.

**WHEREAS:**

1. The Client wishes to enter into a contract with the Contract on the terms set out in this Contract for the carrying out and completion of the Works.
2. 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.
3. 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.
4. 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. In this Contract the following words and expressions have the following meanings unless the context otherwise requires:
2. “**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;
3. “**CDM Regulations**” means the CDM Regulations 2015;
4. “**Contract Data**” means that contract data as applicable to the Initial Works and as set out at Appendix 2;
5. “**Contract Month**” means each calendar month during the Delivery Term;
6. "**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:
	1. imminent risk of danger to persons;
	2. imminent risk of full or partial loss of a Task Site; and/or
	3. a material adverse effect upon the Client’s business within the relevant Task Site (where applicable);
7. “**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;
8. “**Delivery Term**” means the period of 6 months from [XX XXX 2020][[1]](#footnote-2) as may be extended in accordance with the terms of this Contract and subject to early termination pursuant to the relevant Terms and Conditions;
9. “**Fee Percentage**” means the fee percentage set out in the Tender Rates and Prices;
10. “**Framework** **Rates** **and** **Prices**” means those rates and prices that apply to the Crown Commercial Service framework reference RM 6088, Lot 2.

“**Initial Works**” means the works set out in the Contract Data;

“**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;

1. “**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 or as a result of the rights of any third party;

“**Notifiable Event**” means:

* 1. 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 Guarantor or the Contractor has (or anticipates that it may have) insufficient funding to adequately resource its obligations under this Contract;
	2. 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;
	3. 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;
	4. in the event that the Contractor commits a material default of this Contract and/or any Task Order that is capable of remedy;
	5. the occurrence or likelihood of the occurrence of the number of Performance Failure Points reaching the Performance Credit Cap;
	6. the occurrence or likelihood of the occurrence of a Critical Failure Event; or
	7. the occurrence or likelihood of the occurrence of a Repeat Failure;

"**Objectives**" means:

* 1. to deliver a high quality Works;
	2. to minimise disruption to any occupants of the Task Site;
	3. to act in a collaborative manner and in the spirit of mutual trust and respect;
	4. to adopt and demonstrate open book accounting techniques; and
	5. to achieve value for money;
1. “**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;
2. “**Price List**” means the price list attached at Appendix F incorporating the Tender Rates and Prices, Appendix 5 where applicable and setting out the relevant Fee Percentage;
3. “**Performance Credit**” means £200 per Performance Failure Point;
4. “**Performance Credit Cap**” means the equivalent of 5% of the total of the Prices (as defined in the Terms and Conditions) for each Task Order as at the date of issue of each Task Order;
5. “**Performance Failure**” means a failure by the Contractor to meet the relevant Performance Level for a Performance KPI;
6. “**Performance Failure Point**” means the points that are set out in Appendix 6 of this Contract and which shall accrue to the Contractor in the event of any Performance Failure;
7. “**Performance** **KPI**” means a KPI set out at Appendix 6;
8. “**Performance Level**” the levels that are set out in Appendix 6 of this Contract;
9. “**Performance Monitoring Report**” means the monthly performance report prepared by the Contractor in accordance clause 6.7;
10. “**Performance Review Meeting**” the regular meeting between the Contractor and the Client to discuss the Performance Monitoring Report, as set out in clause 6.9;

“**Project**” means the refurbishment and fit out of the Sites;

1. “**Project** **Participants**” means the Client, the Contractor and (as relevant) the 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;
2. “**Project Programme**” means the programme prepared by or on behalf of the Client for the Project as a whole, as updated from time to time;
3. “**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, sub-contractor and supplier appointed by the Client or the Contractor in relation to the Works and any obligations under this Contract[[2]](#footnote-3);

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

1. “**Rates and Prices**” means the rates and prices set out in the Price List and where applicable calculated in accordance with Appendix 5;
2. “**Region**” means England North.
3. “**Required Insurances**” means those insurances required for any Proposed Task and as further set out in the Task Order Proposal;

“**Senior Representatives**” means

1. (a) Client: Claire Thomas

(b) Contractor: - Matthew Bailey

“**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;

1. “**Sites**” means the number of sites to be confirmed in the South Region and any further sites instructed by the Client to the Contractor;
2. “**Task Order**” means an appointment on the terms of which the Contractor will carry out Works at the Task Site 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**” means the site, being any one or more of the Sites, to which the Task Order relates;

“**Tender Rates and Prices**” means the rates and prices submitted by the Contractor for the Project and taking into account but not exceeding the Framework Rates and Prices;

“**Terms and Conditions**” means the NEC4 Engineering and Construction Contract (Option A) and incorporating the schedule of amendments issued by the Crown Commercial Service under the framework agreement reference; and

1. “**Works**” means the Initial Works and any works subsequently referred to in any Task Order (to include any works procured on a design and build basis).
	1. 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.
	2. The headings to the clauses of this Contract shall not affect its interpretation.
	3. 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.
	4. 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.
	5. Defined terms set out in the NEC4 Engineering and Construction Contract shall have effect in this Contract save where expressly set out.
2. Conditions
	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. Where a reference is made to a clause of the NEC4 Engineering and Construction Contract Option A (April 2013 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.
	3. [The Client has appointed and/or may appoint the Contractor to carry out certain services ("**Early Services**") pursuant to a services agreement dated to be advised ("**Early Services Agreement**"). From and including the date of this Contract the terms and conditions of this Contract shall supersede the Early Services Agreement and shall govern retrospectively the Early Services carried out pursuant to the Early Services Agreement and every act or omission of the Contractor pursuant to or in connection with the Early Services Agreement shall be deemed to have been performed or committed under this Contract. Any monies paid to the Contractor in respect of the Early Services shall be treated as payments on account in respect of the Prices under this Contract. 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 this Contract or the Early Services Agreement in relation to any of the Early Services carried out pursuant to the Early Services Agreement and the Contractor waives its entitlement to any extension of time, compensation and/or any relief whatsoever in relation to the Early Services.]
	4. [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 for that same Site (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.]
3. Delivery of Works
	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 of the NEC4 Engineering and Construction Contract Option A and as modified by this Contract.
	2. The Parties’ obligations in relation to the identification, approval and delivery of the Works are contained in Appendix 1.
	3. All Task Order Proposals shall by proposed by the Contractor in accordance with the provisions of Appendix 1
	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.
	5. The Client makes no representations regarding the level of Works it may appoint the Contractor to carry out during the Delivery Term.
4. Contractor’s Duties
	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 the Project Programme as issued by the Client to the Contractor from time to time.
	2. The Contractor shall carry out the Management Services in accordance with the provisions of Appendix 4.
5. Notifiable Event
	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.
	2. If:
		1. the Contractor notifies the Client pursuant to Clause 5.1 that a Notifiable Event has occurred; or
		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:

* + 1. 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;
		2. where:
			1. 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
			2. where the Notifiable Event is incapable of remedy,

the Client may:

* + - 1. 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;
			2. suspend (for any period) all or part of this Contract and/or any relevant Task Order; or
			3. 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).
	1. Where the Client exercises any of its rights under Clause 5.2.4:
		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:
			1. managing and implementing the step-in, suspension and/or termination (as the case may be);
			2. 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
			3. 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;
		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
		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:
1. Performance KPIs

Performance Levels

* 1. The objectives of the Performance KPIs, Performance Failure Points and Performance Credits are to:
		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;
		2. provide a mechanism whereby the Client can attain meaningful recognition of inconvenience and/or loss resulting from the Contractor's failure to deliver the Works for which it has contracted to deliver and/or administer the Task Order in accordance with the provisions of that Task Order; and
		3. incentivise the Contractor to meet and exceed the requirements set out in a Task Order and to remedy any Performance Failure expeditiously.
	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. 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
		2. is below the Performance Level in respect of each Performance (i.e. a Performance Failure arises), the appropriate number of Performance Failure Points will accrue to the Contractor in respect of that Performance KPI.
	3. If a Performance Failure occurs during two (2) consecutive months or during two (2) months in any four (4) month period, 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.
	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. initial failure: 1;
		2. 1st Repeat Failure: 1.5;
		3. 2nd Repeat Failure: 2.0; and
		4. 3rd and subsequent Repeat Failures: 2.5.

Performance Credits

* 1. Subject to clause 6.6, without prejudice to the Client’s other rights and remedies under this Contract and/or any Task Order, within [20] Business Days of the end of each Service Quarter, the Contractor shall pay or allow to the Client a sum equal to the total Performance Credits accrued in respect of the Service Quarter just ended. The Client shall be entitled to set off any such Performance Credits against any sums owed to the Contractor under this Contract and/or any Task Order.
	2. The Contractor’s liability for Performance Credits under each Task Order shall be limited to the relevant Performance Credit Cap.

Excusing cause

* 1. Where a compensation event occurs under any Task Order that results in a Performance Failure, then provided that the Contractor has complied with its obligations under the Task Order to notify the Client of that event and has mitigated the effects of that event, no Performance Failure Points or Performance Credits shall accrue in for that event.

Performance Monitoring Reports

* 1. Within [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 respect of the Service Quarter just ended:
		1. a summary of all Performance Failures that occurred during the Service Period;
		2. which Performance Failures remain outstanding and progress in resolving them;
		3. for any Performance Failure, the cause of the fault and any action being taken to reduce the likelihood of recurrence;
		4. for any Repeat Failures, actions taken to resolve the underlying cause and prevent recurrence;
		5. the number of Performance Failure Points awarded to each Performance Failure in that Service Period;
		6. the Performance Credits to be applied in respect of that Service Period indicating the Performance Failure(s) to which the Performance Credits relate;
		7. a rolling total of the number of Performance Failures that have occurred and the amount of Performance Credits that have been incurred by the Contractor; and
		8. such other details as the Client may reasonably require from time to time.
	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.
	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. 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 and Performance Credits for any specified period.
1. Limitation
	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 a Project 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 Project unless such claim, action or proceedings were notified in writing to the Contractor prior to such date.
2. Extending this Contract
	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.
3. Notices
	1. Any notices sent under this Contract must be in writing and in accordance with this clause 9.
	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:

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| --- | --- | --- |
| 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 |

* 1. 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:

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| --- | --- | --- |
|  | Contractor | Authority |
| Contract | Speller Metcalfe Malvern Ltd | DWP  |
| Address | Maple Road, Enigma Business Park, Malvern, Worcestershire, WR14 1GQ | Tothill StreetWestminsterSW1H 9NA |
| Email | REDACTED | www.dwp.gov.uk |

1. Miscellaneous
	1. This Contract and each Task Order embody the complete and entire agreement between the Client and the Contractor in relation to the Project and supersede all other oral and/or written communications. The parties shall not be bound by, or be liable for, any statement, representation, promise, inducement or understanding not set forth herein.
	2. Save for any Task Orders issued in accordance with this Contract, no amendments of or modifications to this Contract shall be valid unless reduced to writing and executed as a deed by both parties.
	3. Save where expressly stated, the Contracts (Rights of Third Parties) Act 1999 is excluded from applying to this Contract and nothing herein, save where expressly stated, confers or purports to confer to any third party any benefit or any right to enforce any term and/or condition of this Contract.
	4. This Contract shall be governed by and construed and interpreted in accordance with English law and be subject to the jurisdiction of the courts of England and Wales.
	5. This Contract is executed as a deed and was delivered when it was dated.

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| The corporate seal of Secretary of State for )Work and Pensions is hereunto )affixed and authenticated by: ) ) ) REDACTED SEAL OF **SECRETARY OF STATE FOR WORK AND PENSIONS**20TH APRIL 2021  |

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| --- | --- |
| Signed as a deed by **[Speller Metcalfe malvern ltd]** acting by a Director and the Company Secretary/two DirectorsREDACTED |  |
|  |  |
| DirectorREDACTED |  |
|  |  |
| Director/Company Secretary |  |

**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.

Z102: Add new clause Z102 as follows:

1. Preparation of Task Order Proposal
	1. The Client shall submit a written request (the “**Project Instruction**”) for the 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 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.
	2. Within 10 Business Days (or such other period as is agreed by the Parties) of receipt by the Contractor of a Project Instruction, the 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
	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 Contractor which the Client considers appropriate to enable it to decide whether to approve the relevant Task Order Proposal and the Contractor shall provide such information and/or any assistance (as the case may be) within 3 Business Days of receipt of the relevant request for such further information and/or and assistance (as the case may be). The 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 Contractor to any payment of whatever nature and any such costs shall be borne by the Contractor unless the Client agrees otherwise in writing.
	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:
		1. whether the Task Order Proposal is, in the sole opinion of the Client, affordable and/or offers value for money;
		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
		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
		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.
	3. Within 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 Contractor whether:
		1. the Client approves the Task Order Proposal, whereupon the provisions of paragraph 2.7 shall apply and the 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. the Client rejects the Task Order Proposal and the provisions of paragraph 2.4 shall apply.
	4. The Contractor acknowledges and agrees that where the Client elects to reject any Task Order Proposal then the Contractor's costs in relation to the proposal shall be borne by the Contractor unless the Client agrees otherwise in writing.
	5. The Client may appoint a third party to provide the whole or any part of the Task Order where the Contractor:
		1. is in material breach of its obligations under this Contract or any Task Order;
		2. fails to provide and/or the Client rejects a Task Order Proposal;
		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 clause Z102; and/or
		4. the Parties have been unable to agree the whole or any part of a Task Order Proposal.
	6. The Contractor acknowledges and agrees that the 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. In the event that the Client is required to appoint a third party in accordance with paragraph 2.5, the Client shall be able to recover from the Contractor as a debt any expenses, losses, damages and/or liabilities incurred by the Client as a result of appointing an alternative Contractor.
	7. 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 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 Contractor as set out in the Task Order shall be deemed to become part of the Works.
	8. The parties agree that if the Task Order Proposal is approved and any Task Order is issued by the Client and accepted by the Contractor under this clause A102, then the provisions of:
		1. this Contract; and
		2. the relevant Task Order,

shall together govern the carrying out of any Works to be performed by the Contractor. In the event of any conflict between the documents referred to in this paragraph 2.8, then the order of precedence shall be:

* + 1. the relevant Task Order;
		2. this Contract.
	1. 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. At any time, the Client may set off any liability of the Contractor to the Client against any liability of the Client to the Contractor, whether either liability:
		1. is liquidated or unliquidated; or
		2. arises under this Contract and/or any Task Order.
	3. 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 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.
1. General
	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.”
2. Compensation events
	1. 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. The Contract agrees there shall be no double counting in respect of any compensation event entitlement”
	2. 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.”
3. Termination
	1. Amend clause 90.2 to add at the beginning “Subject to the Corporate Insolvency and Governance Act 2020”
	2. Amend the table at 90.2 reason column for The Contractor. Delete ‘R10’. Add ‘R10B’
	3. Amend the table in clause 90.2 reason column for the Client to add in “R23” after “R22”.
	4. Add new R23:

 “R23 the Client terminates any Task Order”.

* 1. Amend clause 91.1 to add at the beginning “Subject to the Corporate Insolvency and Governance Act 2020”,
		1. In the second bullet point:
			1. 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 re construction (R10A), or

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

* 1. Amend clause 91.4 to add at the beginning “Subject to the Corporate Insolvency and Governance Act 2020”
	2. Amend clause 91.5 to add at the beginning “Subject to the Corporate Insolvency and Governance Act 2020”
	3. Amend clause 91.6 to add at the beginning “Subject to the Corporate Insolvency and Governance Act 2020”
	4. 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”

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[[3]](#footnote-4) |  |
| 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 *boundaries of the site* |  |
| 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 *key dates* and *conditions* to be met |  |
| Task Order *starting date* |  |
| Task Order *access dates* |  |
| Task Order *completion date* for the whole of the *works* |  |
| If X5 is used, the suggested *completion date* for each *section of the works* |  |
| 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 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 *works* 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) |  |
| If any delay damages should apply to the Task Order, calculated at the relevant rates specified | £[1,000[[4]](#footnote-5)] | per day or part thereof |
| Task Order *defects correction period* |  |
| Applicable dispute resolution procedure option | NEC4 ECC Option W2 |
| Details of the *working areas* |  |
| The *key persons* are those identified in the *key persons schedule* 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 *fee percentage* |  |

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

* Activity Schedule
* Scope
* Site Information
* Accepted Programme
* Cash flow profile

|  |
| --- |
| Signed by **THE SECRETARY OF STATE** **FOR WORK AND PENSIONS**  |
| REDACTED |
| Authorised Signatory |

We accept the terms of this Task Order and agree to proceed accordingly.

|  |  |
| --- | --- |
| Signed by **[CONTRACTOR]** acting by a Director  |  |
| REDACTED |  |
| Director |  |

**Appendix 2**

Contract Data[[5]](#footnote-6)

|  |
| --- |
| **PART ONE – DATA PROVIDED BY THE *CLIENT*** |
|  |
| 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 for resolving and avoiding disputes | W2 |
|  |
| Secondary Options | 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 |  For the Initial Works      . For any Works instructed under a Task Order, 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 the Initial Works: as attached at Appendix 6. For any Works instructed under a Task Order: as attached to the relevant Task Order |
|  |
| The Site Information is in | For the Initial Works: as attached at Appendix 6. For any Works instructed under a Task Order: as attached to the relevant Task Order |
|  |
| The *boundaries of the site* are | For the Initial Works:      . 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* is | two weeks | except that |
|  |
| ~~The~~ *~~period for reply~~* ~~for~~ | ~~[…]~~ | ~~is~~ | ~~[…]~~ | ~~weeks~~ |
|  |
| ~~The~~ *~~period for reply~~* ~~for~~ | ~~[…]~~ | ~~is~~ | ~~[…]~~ | ~~weeks~~ |
|  |
| The following matters will be included in the Early Warning Register |
| For the Initial Works:      . 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 |
|  |
| 1. **The *Contractor’s* main responsibilities**
 |
|  |
| 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 |
|  | *condition* to be met |  | *key date* |
| (1) |  For the Initial Works:      . For any Works instructed under a Task Order, as set out in the relevant Task Order |  |  For the Initial Works:      . For any Works instructed under a Task Order, as set out in the relevant Task Order |
|  |
| (2) |  For the Initial Works:      . For any Works instructed under a Task Order, as set out in the relevant Task Order  |   | For the Initial Works:      . For any Works instructed under a Task Order, as set out in the relevant Task Order |
|  |
| (3) | For the Initial Works:      . For any Works instructed under a Task Order, as set out in the relevant Task Order |  | For the Initial Works:      . For any Works instructed under a Task Order, as set out in the relevant Task Order |
|  |
|  |
|  |
| 1. **Time**
 |
|  |
| The *starting date* is | For the Initial Works:      . 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 the Initial Works:      . For any Works instructed under a Task Order, as set out in the relevant Task Order |  | For the Initial Works:      . For any Works instructed under a Task Order, as set out in the relevant Task Order |
|  |
| 2 For the Initial Works:      . For any Works instructed under a Task Order, as set out in the relevant Task Order |  | For the Initial Works:      . For any Works instructed under a Task Order, as set out in the relevant Task Order |
|  |
| 3 For the Initial Works:      . For any Works instructed under a Task Order, as set out in the relevant Task Order |  | For the Initial Works:      . 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 the Initial Works:      . 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 the Initial Works:      . For any Works instructed under a Task Order, as set out in the relevant Task Order |
|  |
| 1. **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 |
|  |
| 1. **Payment**
 |
|  |
| The *currency of the contract* is the | pound sterling (£) |
|  |
| The *assessment interval* is | one | calendar month |
|  |
| The *interest rate* is, unless the provisions of the Late Payment of Commercial Debts (Interest) Act 1998 otherwise require, | 2 | % per annum above the Bank of England base rate in force from time to time |
|  |
|  |
|  |
| 1. **Compensation events**
 |
|  |
| The place where weather is to be recorded is | For the Initial Works:      . 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: |
| N/A |
|  |
| 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 the Initial Works:      . For any Works instructed under a Task Order, as set out in the relevant Task Order |
|  |
| and which are available from | For the Initial Works:      . 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, in which case it is | 50 | % |
|  |
|  |
| These are additional compensation events  |
| * N/A
 |
|  |
| 1. **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 X7: Delay damages** |
|  |
| Delay damages for Completion of the whole of the *works* are | For the Initial Works: £[1,000[[6]](#footnote-7)]. For any Works instructed under a Task Order, as set out in the relevant Task Order | per day or part thereof |
|  |
|

|  |
| --- |
| **Option X20: Key Performance Indicators** |
|  |
| The incentive schedule for Key Performance Indicators is in  | Attached at Appendix 6 |  |
| 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 the Initial Works:      . 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** |
|  |
| 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.The clauses contained within Appendix 1 to this Contract. |
|  |

|  |  |
| --- | --- |
| **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 | [     ] | % |
|  |
| The *working areas* are  | For the Initial Works:      . For any Works instructed under a Task Order, as set out in the relevant Task Order |
|  |
| The key persons are those identified in the *key persons schedule* in | For the Initial Works:      . 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 the Initial Works:      . For any Works instructed under a Task Order, as set out in the relevant Task Order  |
|  |
| 1. **The *Contractor’s* main responsibilities**
 |
|  |
| The Scope for the *Contractor’s* design is in | For the Initial Works: attached at Appendix 6. For any Works instructed under a Task Order, as set out in the relevant Task Order |
|  |
| 1. **Time**
 |
|  |
| The programme identified in the Contract Data is in | For the Initial Works: attached at Appendix 6. 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 the Initial Works:      . For any Works instructed under a Task Order, as set out in the relevant Task Order |
|  |
|  |
| **5 Payment** |
|  |
| The *activity schedule* is in  | For the Initial Works: attached at Appendix 6. For any Works instructed under a Task Order, as set out in the relevant Task Order |
|  |
|  |
| The tendered total of the Prices is | For the Initial Works:      . 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 Shorter Schedule of Cost Components[[7]](#footnote-8) |
|  |
| 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 |  | % (state plus or minus) |
|  |
| The rates for other Equipment are |
| Equipment |  | rate |
|  |  |  |
|  |
|  |  |  |
|  |
|  |  |  |
|  |
|  |  |  |
|  |
| 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

*[Insert details of the Sites, to the extent known.]*

**Appendix 4**

Management Services

1. Working together
	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.
	2. During the Delivery Term the Contractor shall:
		1. collaborate with the Client and the Project Team to achieve the Objectives;
		2. work with the Client in a supportive manner;
		3. produce such reports and documentation as may reasonably be requested from time to time by the Client;
		4. work collectively with the Client and the Project Team to support the delivery of the Works on a best for project basis;
		5. develop and use common systems and processes with the Client and the Project Participants;
		6. discuss costings of the Works on an open-book basis;
		7. work with the Client to agree acceptable processes for demonstrating value for money and understand the key drivers for value for money; and
		8. give advice, information and opinion fully, openly and objectively to the Client and the Project Team.
	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 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.
	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.
	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 and with a view to ensuring that all relevant dates in the Project Programme will be met.
	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.
	7. The Client hereby elects to be treated as the only client in respect of the Works for the purposes of the CDM Regulations.
	8. The Contractor shall act as “principal contractor” in respect of the Works for the purposes of the CDM Regulations.
2. Allocation of risks
	1. The Project Team shall carry out, complete and populate the Project Risk Register to identify:
		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;
		2. the probability of these risks occurring;
		3. a financial estimate of the most likely consequences of each risk occurring; and
		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.
	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:
		1. any new risks that have arisen since the date of the last review;
		2. the steps taken to prevent/mitigate previously identified risks;
		3. risks which have been successfully prevented/mitigated (which can be removed from the Project Risk Register); and
		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.
3. Problem solving
	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.
	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.
	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 [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.
4. Fee
	1. The Contractor agrees that the fee for the Management Services shall be nil.

**Appendix 5**

Rates and Prices

1. Rates and Prices where are is no analogous rate
	1. Where the Contractor has, in its Task Order Proposal for a relevant Proposed Task, identified that there are no analogous Rates and Prices for any element of the Works, then the Parties shall seek to agree new Rates and Prices as follows:
		1. the Parties shall, within five (5) Business Days of receipt by the Client of the relevant Task Order Proposal, meet to discuss whether there is any sufficiently detailed cost element within the Price List to derive new Rates and Prices for the whole or the relevant part of the Works;
		2. where the Parties:
			1. agree that there is no sufficiently detailed cost element contained within the Price List to derive new Rates and Prices; or
			2. fail to agree a new set out Rates and Prices,

then the provisions of paragraph 2 shall apply to determine the applicable price(s) for the whole or the relevant part of such relevant Works; and

* + 1. any new Rates and Prices agreed or determined pursuant to this Appendix shall:
			1. include pricing for all risks associated with the relevant Works; and
			2. exclude any costs in respect of which the Contractor is entitled to recover under any other provision of this Contract.
	1. Where any new Rates and Prices are agreed or determined pursuant to this Appendix, such new Rates and Prices and shall be incorporated into the Price List and shall apply to the calculation of the costs for the whole or the relevant part (as the case may be) of the relevant Works for all subsequent Task Order Proposals.
1. Determining new Rates and Prices
	1. The Client shall be entitled to propose that the rates and charges charged by third party suppliers for analogous tasks undertaken under its contractual arrangements with such third party suppliers (from time to time) be used.
	2. Where the Contractor does not agree to the rates and charges proposed by the Employer pursuant to paragraph 2.1 within five (5) Business Days of receipt of such proposed rates, then the Parties may either:
		1. agree to refer the matter for determination by the Adjudicator pursuant option W2; or
		2. follow the competitive tendering procedure set out in paragraph 3,

in either case to set the new Rates and Prices for the whole or the relevant part of the relevant Works.

1. Procedure
	1. The following principles are to govern each tendering exercise initiated pursuant to this paragraph 3:
		1. the object of the tender is to obtain open-market rates and prices;
		2. the process is to be genuinely competitive;
		3. the evaluation of tenders is to be fair, robust and transparent; and
		4. tendered prices are to be presented in a form that demonstrates value for money for the Works to which they relate.
	2. The Contractor shall be responsible for the carrying out of the tendering procedure in accordance with this paragraph 3.
	3. The Contractor shall procure that tenderers will be invited by open invitation or from no fewer than three (3) suitably qualified, experienced and willing contractors.
	4. The Contractor shall discuss and agree with the Client those contractors who it proposes to invite to tender and the Client may require other potential contractors to be invited to tender as part of such discussions.
	5. The Contractor will provide the Client with all relevant background information on the tenderers it proposes pursuant to paragraph 3.4, in order to demonstrate such tenderers' capability (including technical and financial capability) and capacity to undertake the relevant work or supply.
	6. The Contractor shall:
		1. prepare all necessary tender documentation;
		2. provide copies to the Client for review and comment before despatch, allowing the Client a reasonable time for review prior to such proposed despatch; and
		3. where applicable, revise such tender documentation to take into account the Client's comments pursuant to paragraph 3.6.2.
	7. The Contractor shall:
		1. prepare a tender evaluation methodology prior to the tender issue date and issue such methodology to the Client for review and comment, allowing the Client a reasonable time for review prior to such proposed despatch; and
		2. where applicable, revise such evaluation methodology to take into account the Client's comments pursuant to paragraph 3.7.1.
	8. The Contractor shall ensure that all prices submitted as part of any tender submission will be calculated (to the extent practicable) on the same basis and using the same assumptions as applied to derive the Unit Rates.
	9. The Contractor shall invite the Client to attend at all tender openings and any subsequent interviews, value engineering workshops or other meetings with all or any (as applicable) of the tenderers.
	10. The Contractor shall provide copies of all issued tenders and submissions received from tenderers, together with copies of all relevant supporting information, minutes of meetings and reports in respect of each tender, (such copies to be delivered to the Client as soon as possible from the date the Contractor produced, issued or received the same (as the case may be)).
	11. The Contractor shall prepare a report on each submitted tender response, disclosing the basis upon which the evaluation was carried out (including details of scoring), and including a recommendation as to the tender which represents, having regard to the relevant agreed tender evaluation criteria, fair open market rates and which, in the Contractor's opinion offers value for money and why it should be utilised in order to determine the relevant Rates and Prices for the relevant Works for the purposes of this Appendix.
	12. The Contractor and the Client shall discuss such tender report and shall agree which tender should be utilised in order to determine the relevant Rates and Prices for the relevant Works for the purposes of this Appendix.
	13. If the Contractor and the Client cannot agree which tender should be utilised in order to determine the relevant Rates and Prices for the relevant Works, the matter may be referred by either party to the dispute resolution procedure set out in option W2.
	14. Following agreement to a tender by the Contractor and the Client (as referred to in paragraph 3.12) or, if paragraph 3.13 applies, upon determination pursuant to the dispute resolution procedure, the relevant Rates and Prices for the relevant Works shall become the relevant Rates and Prices for the purposes of this Appendix.
	15. Without prejudice to any other provision of this Appendix, the Contractor shall provide to the Client:
		1. market advertisements proposed for any tender exercise;
		2. technical specifications relevant to any tender;
		3. copies of all documentation and communications submitted by a tenderer relating to a tender; and
		4. the tender evaluation records and reports prepared by the Contractor,

in each case as soon as reasonably practicable from the date the Contractor has produced, issued or received the same.

* 1. The Client may enter onto any premises of the Contractor (which any of them own/use for the purposes of their businesses) at all reasonable times to observe, inspect and satisfy itself as to the adequacy of the carrying out of any tender in accordance with the procedure set out in this Appendix.
	2. The Contractor shall indemnify and keep the Client fully indemnified at all times from and against all claims, demands or notices which may be brought or alleged or threatened against the Client and from and against all losses and fines which the Client may suffer or incur in relation to any such claims, demands or notices which occur as a result of a breach of this Appendix and/or any claim made by any person (including, without limitation, a tenderer or prospective tenderer) that is not awarded a contract pursuant to any tender governed by the procedure set out in this Appendix.

**Appendix 6**

Initial Works

Part A – Activity Schedule

*[insert]*

Part B – Scope

*[insert]*

Part C – Site Information

*[insert]*

Part D – Accepted Programme

*[insert]*

Part E – *incentive schedule*

*[insert]*

Part F – Schedule of Amendments

*[insert from framework RM 6088]*

**Appendix 6**

Performance KPIs

REDACTED

1. M&R note: to be confirmed. [↑](#footnote-ref-2)
2. M&R note: members of the Project Team to be confirmed. [↑](#footnote-ref-3)
3. Note: if the Task Order is for any design, the description will need to clearly set out what that design is and what it is for. [↑](#footnote-ref-4)
4. This may be amended for Lot 3 [↑](#footnote-ref-5)
5. All gaps to be completed during the tender process. [↑](#footnote-ref-6)
6. This may be amended for Lot 3. [↑](#footnote-ref-7)
7. To be completed using the rates in the CCS framework. [↑](#footnote-ref-8)