Engrossment

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#  DATED 2021

**THE SECRETARY OF STATE FOR (1) WORK AND PENSIONS**

**AND**

**TILBURY DOUGLAS CONSTRUCTION (2) LIMITED**

**CONTRACT FOR THE APPOINTMENT**

**OF A CONTRACTOR RELATING TO**

**THE RAPID ESTATES EXPANSION**

**PROGRAMME IN SOUTH ENGLAND AND INCORPORATING THE NEC4**

**ENGINEERING AND CONSTRUCTION**

**CONTRACT**

243056653\_9/25 Mar 2021

**THIS CONTRACT** is made on 2021 **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

1. **TILBURY DOUGLAS CONSTRUCTION LIMITED** (company number 0303359) whose registered office is at Ingenuity House, Elmdon Trading Estate, Bickenhill Lane, Birmingham, B37 7HQ (the “**Contractor**”), together, the Parties.

**WHEREAS:**

1. 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.
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

1.1 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;

“**CDM Regulations**” means the CDM Regulations 2015;

“**Contract Data**” means that contract data applicable for each Task Order and as set out at Appendix 2;

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

 “**Delivery Term**” means the period of 6 months from 2 February 2021 as may be extended in accordance with the terms of this Contract and subject to early termination pursuant to the relevant Terms and Conditions;

“**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;

“**Framework** **Rates** **and** **Prices**” means those rates and prices that apply to the Crown Commercial Service framework reference RM 6088, Lot 2;

 “**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;

“**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;

“**New Works**” means potential Works, to be discussed between the Client and the Contractor in accordance with clause 3.4; "**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;

“**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 such parent company as agreed between the Client and the Contractor, both acting reasonably;

“**Parent Company Guarantee**” means the parent company guarantee executed as a deed by the Parent Company and as agreed by the parties, both acting reasonably;

“**Price List**” means the price list attached at Appendix 5;

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

“**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;

“**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;

“**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 Contract;

“**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/or as calculated in accordance with Appendix 5 and incorporating the Tender Rates and Prices;

“**Region**” means South England;

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

“**Senior Representatives**” means:

1. Client: Claire Thomas
2. Contractor: Simon Hands and/or Joe Doherty

“**Sites**” means the 5 sites in the Region as further identified at Appendix 3 and any further sites instructed by the Client to the Contractor;

“**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 approved Task Order Proposal, the Terms and Conditions and the relevant 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 included within Crown Commercial Services framework reference RM6088;

“**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 RM6088; and

“**Works**” means any works 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 (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.

2.3 The Client may appoint 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

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 of the NEC4 Engineering and Construction Contract Option A and as modified by this Contract.

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 The Employer and the Contractor shall work together to agree which New Works will be taken forward and approved for development by the Client, on what basis such New Works shall be procured and any relevant timescales for the procurement of such New Works (including timescales for the provision of any Task Order Proposal).

3.5 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.

3.6 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

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 the Project Programme as issued by the Client to the Contractor from time to time.

4.2 The Contractor shall carry out the Management Services in accordance with the provisions of Appendix 4.

# 5 Parent Company

5.1 To the extent Works at further Sites are awarded, then within 15 Business Days of a request from the Client, the Contractor shall provide the Parent Company Guarantee to the Client, duly executed by the Parent Company and with such amendments as the Client and Contractor may agree (both acting reasonably).

# 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 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 provided that no Works under a Task Order shall have a limitation period greater than 12 years from completion of that Task Order.

# 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 and provided that the Contractor agrees (acting reasonably) to such extension.

# 8 Notices

8.1 Any notices sent under this Contract must be in writing and in accordance with this clause 8.

8.2 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  | At the date and time of sending provided that if such email is issued after 17.00PM, it shall be 9.00am on the first Working Day after sending and provided that the sender does not receive a nondelivery receipt.  | 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 Working Day. Otherwise, delivery will occur at 9.00am on the next Working 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 Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).  | Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt  |

8.3 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 |
| Address  | Ingenuity House Elmdon Trading Estate Bickenhill Lane, Birmingham  | Department for Work and Pensions, Finance Group, Commercial Directorate, Quarry House, Leeds, LS2 7UA  |
| Email  | REDACTED | REDACTED |

# 9 Miscellaneous

9.1 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.

9.2 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.

9.3 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.

9.4 This Contract shall be governed by and construed and interpreted in accordance with English law and be subject to the exclusive jurisdiction of the courts of England and Wales.

9.5 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**

REDACTED

**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. Provided that the Client and the Contractor have complied with clause 3.4, 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 acting reasonably and taking into account the nature of the works to be carried out under the Task Order Proposal) of receipt by the Contractor of a Project Instruction, the Contractor shall submit a Task Order Proposal in respect of the Proposed Task and containing, as a minimum, the information set out in paragraph 1.3 together with such additional information/documentation as is required.
	3. Each Task Order Proposal issued pursuant to paragraph 1.2 shall include a full description of the Proposed Task, including (without limitation):
		1. an assessment of the fee for the Proposed Task calculated in accordance with the Rates and Prices (the “**Task Order Fee**”), together with the assumptions behind these costings and a commentary as to how the risks and assumptions used in preparing the Task Order Fee might be managed in later or during the Proposed Task; and
		2. any other information requested by the Client from time to time.
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 (or such other period agreed between the Parties) 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:

* + 1. such expenditure relates to a material third party cost; and/or
		2. the Client agrees otherwise in writing.
	1. 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

* + 1. 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. whether the implementation of the Task Order Proposal would breach any Law, any Client’s Policies or any wider government strategy or government policy.
	1. 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 (acting reasonably) rejects the Task Order Proposal and the provisions of paragraph 2.4 shall apply (and for the purpose of this paragraph 2.3.2 the Client shall be acting reasonably where it rejects the Task Order Proposal because of pricing assumptions

and/or additional compensation events proposed by the Contractor in its Task Order Proposal).

* 1. 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 Client unless:
		1. the Contractor has not performed the Task Order Proposal in accordance with these conditions;
		2. where the Contractor has not been able to use the Rates and Prices and the Client considers (acting reasonably) that the proposal costing is not at similar market levels to that of a reasonably competent contractor carrying out projects of similar scope and complexity; and/or
		3. where the Client considers (acting reasonably) that the Contractor has proposed:

(i) a programme; and/or (ii) pricing assumptions,

which are not at similar market levels to that of a reasonably competent contractor carrying out projects of similar scope and complexity.

* 1. The Client may appoint a third party to provide the whole or any part of the Task Order where:
		1. the Contractor is in material breach of its obligations under this Contract or any Task Order then:
			+ 1. the Contractor fails to commence any remedial plan in relation to such material breach within 7 days of notification;
				2. the Contractor fails to remedy such material breach within 14 days of notification; and/or
				3. where the material breach relates to R1-R10B the Client may appoint a third party immediately upon the occurrence of such breach;
		2. the Client rejects a Task Order Proposal in accordance with paragraph 2.3.2;
		3. the Contractor 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.
	2. In the event that the Client appoints a third party in accordance with paragraphs 2.5.1 to 2.5.4 (and in relation to clause 2.5.4, only to the extent that the parties have been unable to agree the whole or any part of a Task Order Proposal for the reasons set out in paragraph 2.4), the Client shall be able to recover from the Contractor any reasonable costs and expenses incurred by the Client as a result of appointing an alternative contractor. 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.

2.6A The Client shall notify the Contractor where the Client considers that it is reasonable to reject a Task Order Proposal and appoint a third party. Within 2 Business Days senior representatives at the Contractor and the Client shall meet and discuss the reasons why the Client has rejected the Task Order Proposal.

* 1. Where a Task Order Proposal has been approved by the Client (to incorporate any amendments agreed between the Parties), the Client may sign the Task Order Proposal 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.
	2. 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 2.8.2 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 Task Order Activity, 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 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 save where the Client issues an instruction to vary the Management Services.”
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 where such termination relates to one of the following reasons:

* + - * + R1-R15,
				+ R18; or
				+ R22”.
	1. Amend clause 91.1:
		1. to add at the beginning “Subject to the Corporate Insolvency and Governance Act 2020”,
		2. 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 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”

1. X18
	1. Delete X18 in its entirety and replace with the following:

"X18.1 Nothing in this Contract limits the *Contractor's* liability for:

 death or personal injury caused by the *Contractor's* negligence; or  fraud or fraudulent misrepresentation.

X18.2 Without limiting its other rights the *Contractor* is not liable to the *Client* for a matter unless details of the matter are notified to the *Contractor* in writing before the date that is 12 years after Completion of the whole of the *works* for that particular Task Order.

X18.3 Subject to clause X18.1 and notwithstanding any other provision of this Contract:

|  |  |
| --- | --- |
| X18.3.1  | the *Contractor's* total liability under or in connection with this Contract is limited to the aggregate of 120% the total of the Prices of the Task Orders at the time the cause of action arises provided that: .1 in calculating the total aggregate liability of the Contractor for the purposes of this clause X18.3.1 there shall not be taken into account any amounts claimed under clause X18.4.2; and .2 the Contractor’s liability under clause X18.4.2 is not limited by this clause X18.3.1; and  |
| X18.3.2  | the *Contractor's* total liability under or in connection with each individual Task Order shall be limited to 120% of the total of the Prices for that particular Task Order provided that: .1 in calculating the total aggregate liability of the Contractor for the purposes of this clause X18.3.2 there shall not be taken into account any amounts claimed under clause X18.4.2; and .2 the Contractor’s liability under clause X18.4.2 is not limited by this clause X18.3.2.  |

These limits apply however any liability arises, including, without limitation, a liability arising by breach of contract, by tort (including, without limitation, the tort of negligence), by breach of statutory duty or by any other means.

X18.4 Subject to clause X18.1, the *Contractor's* liability to the *Client* under or in connection with each individual Task Orderis also limited as follows*:*

|  |  |
| --- | --- |
| X18.4.1  | for delay damages to: .1 40% of the total of the Prices of the particular Task Order if the total of the Prices is less than £1,000,000; .2 20% of the total of the Prices of the particular Task Order if the total of the Prices is greater than £1,000,000. |
| X18.4.2  | in respect of loss or damage to the Client's property caused by the *Contractor* to the greater of: .1 100% of the total of the Prices of the particular Task Order; or  |

.2 sums up to £10,000,000 per occurrence, providing the Contractor is liable for and indemnified by the Contractor’s public liability insurance policy.

X18.5 The *Contractor* is not liable to the *Client* for a matter unless details of the matter are notified to the *Contractor* before the end of 12 years after Completion of the whole of the *works*.

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[[1]](#footnote-1)  |   |
| 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  |   |
| Details of all Necessary Consents that the Contractor will and/or should obtain and maintain for the Task Order  |   |
| Any other relevant Task information  |   |
| Details of any proposed advance payments and performance bond (if any)  |   |
| Details of any actual or anticipated impact on the Client’s statutory duties arising as a result of the implementation of the Task Order  |   |
| **Project Title and Address:**  |
| **Task Order Proposal Details**  | **Description**  |
| The total of the Prices for this Task Order  |   |
| The Brexit Items are  |   |
| The Off Site Production Facilities are  |   |
| Any compensation events shall be assessed in accordance with clause 63. 2 (where applicable) of the Terms and Conditions and the Rates and Prices shall be deemed to be the “rates or lump sums” referred to in that clause.  |

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
* Completed Contract Data

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.

 Signed by Tilbury Douglas Construction

 Limited acting by a Director

 ....................................................................

 Director

**Appendix 2**

# Contract Data

**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.

|  |  |  |
| --- | --- | --- |
| A  | Option for resolving and avoiding disputes  | W2  |

Main Option

Secondary Y(UK)2, and any Secondary Options [X5, X7, X8, X9, X15, X16 and/or X18], with

Options such amendments as set out in a Task Order where such Secondary Options shall apply to that Task Order only.

The *works* are and 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 As attached to the relevant Task Order

The Site As attached to the relevant Task Order

Information is in

The *boundaries of* As set out in the relevant Task Order *the site* are

The *language of* English *the contract* is

The *law of the* England, subject to the jurisdiction of the Courts of England *contract* is the law of

The *period for reply* two weeks is

The following matters will be included in the Early Warning Register

|  |
| --- |
|   |

|  |
| --- |
| one month  |

Early warning meetings are held at intervals no longer than

|  |  |
| --- | --- |
| **2**  | **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)

(2)

(3)

|  |  |
| --- | --- |
| **3**  | **Time**  |

|  |  |  |
| --- | --- | --- |
| The *starting date* is  The access *dates* are part of the Site  |   |  |
|   | date  |
| 1  |  |   |   |
|   |  |  |
| 2  |  |   |   |

|  |  |  |
| --- | --- | --- |
| 3  |   |   |

|  |
| --- |
| fortnightly  |

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

|  |
| --- |
|   |

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

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

|  |  |
| --- | --- |
| **4**  | **Quality Management**  |

|  |
| --- |
|  2  |

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

|  |
| --- |
|  52 from the Completion of each Task Order  |

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

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

|  |  |  |
| --- | --- | --- |
|  [emergency defects]  | is  | [24]  |

The *defect correction period* for hours

|  |  |  |
| --- | --- | --- |
| [Serious Defects  | is  |  [1]  |

The *defect correction period* for wk

|  |  |
| --- | --- |
| **5**  | **Payment**  |

|  |
| --- |
| pound sterling (£)  |

The *currency of the contract* is the

|  |
| --- |
| one  |

The *assessment interval* is calendar month

|  |
| --- |
| 2  |

The *interest rate* is, unless the provisions of the Late Payment of % per annum above the Bank of Commercial Debts (Interest) Act 1998 otherwise require, England base rate in force from time to time

|  |  |
| --- | --- |
| **6**  | **Compensation events**  |

|  |
| --- |
|   |

The place where weather is to be recorded is

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 relevant hours where the*Windspeed exceeds the limits stated in a crane’s duty charts that prevent the crane from working (as measured on the site by the crane’s anemometer) or windspeed exceeding HSE guidelines for operations on site.*

|  |
| --- |
|  The Met Office  |

The *weather measurements* are supplied by

|  |
| --- |
|   |

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

|  |
| --- |
|   |

and which are available from

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

[N/A

|  |
| --- |
| 50  |

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

% in which case it is

These are additional compensation events

|  |
| --- |
| **1. CLC Guidance** A Covid-19 Event means: a novel coronavirus (SARS-CoV-2 which includes any mutations and/or variant strains) epidemic in the United Kingdom.  Subject to item 3, a change in the guidance issued by or on behalf of the Construction Leadership Council ("CLC") that occurs after the date of the Task Order Proposal (the "Base Date"), which directly results from a Covid-19 Event and where such change: * affects the Site and / or any Off Site Production Facility(together the "Work Spaces"); and
* advises additional restrictions on working practices which are more onerous than those set out in any superseded guidance issued by or on behalf of the CLC at the Base Date.

  **2. Lockdown Event and/or Spike Event** Subject to item 3, where either:  |
| * the implementation after the Base Date by the UK Government and/or any local authority of restrictions that directly result from a Covid-19 Event and where such restrictions require the Contractor to close the Work Spaces and/or restrict access to parts of the Work Spaces, other than where the closure of the Site and/or implementation of the restrictions are solely confined to the Contractor, any subcontractor and/or the site (known as a "Lockdown Event"); and/or
* an increase in the prevalence of Covid-19 after the Base Date which prevents the Contractor from maintaining a sufficient level of resources at the Work Spaces (a " Spike Event").

 1. **Assessment rules for the purposes of the contract**

The assessment of any additional compensation events set out in this part of the Contract Data shall be in accordance with the provisions of the contract save that: * + the Project Manager shall be permitted to assume that the Contractor has allowed for in its Prices and programme all publicly available information issued by or on behalf of the UK Government, local government, the Construction Leadership Council, including any superseded guidance (to the extent that it is relevant for the works and the Site) issued prior to the Base Date;
	+ if the Project Manager considers it to be fair and reasonable in the circumstances, rates and lump sums may be used to assess the compensation events set out in this part of the Contract Data;
	+ the Contractor shall be permitted to recover its direct on-site costs and shall not be entitled to recover any other costs including without limitation overheads and profit, prolongation and/or disruption costs and any such direct on-site costs shall be added to the Prices taking into account the assessment rules set out in the contract;
	+ the resulting Fee on such assessment shall be nil; and
	+ to the extent that there are any changes to the Prices that are solely the result of the compensation events set out in this part of the Contract Data, the Prices will only be adjusted by 50% of the assessed sum.

 1. **Brexit (save for Brexit Items)**

 Without prejudice to item 5, where a delay to the completion date to the whole of the works is caused by any delay to the arrival of those materials being incorporated into the works which are being procured from the European Union or the lack of labour that is caused by the United Kingdom ceasing to be a member of the European Union and ceasing to be subject to any transitional arrangements which substantively treat the United Kingdom as a member of the European Union (“Brexit”), provided always that the Contractor has carried out all actions which a contractor experienced in carrying out works of a similar size, scope, type and complexity to the works would be reasonably expected to perform to mitigate the effects of any such delay, including (without limitation) demonstrating that appropriate alternative materials or labour could not be sourced from the United Kingdom.  Any event relating to Brexit does not entitle the Contractor to any increase in the Prices or to any other monetary claim, right, demand, entitlement or set-off of whatever nature whether or not presently known to the Contractor or to the law arising out of or in connection with Brexit.  Any delay damages paid by the Contractor under Option X7 shall be reduced by 50% for the first 2 weeks to the extent that there is a delay to the completion date to the whole of the works and where the delay relates to Brexit under and in accordance with this item 4.  1. **Brexit Items**

In relation to a Brexit Item, where an unforeseen tariff or other direct cost is added to the price of such Brexit Item as a consequence of Brexit, the Contractor shall be entitled to adjust the relevant Rate and/or Price accordingly.  |

|  |  |
| --- | --- |
| **8**  | **Liabilities and insurance**  |

These are additional *Client’s* liabilities

|  |
| --- |
|  Loss or damage to all existing buildings and property existing within the Site which the Client may elect to ‘self-insure’ and in doing so accepts all of the Client’s associated risks arising out of or in relation to such ‘self-insurance’ and provided that the Contractor shall be responsible for the first £10,000,000 of any one occurrence in relation to such loss or damage to the existing buildings and property existing within the Site to the extent indemnified under its public liability insurance policy.  |

(1)

|  |
| --- |
|  N/A  |

(2)

|  |
| --- |
|  N/A  |

(3)

* 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.

* Additional clause

* The minimum level of indemnity for insurance for claims made against him arising out of the Contractor’s failure to use the skill and care normally used by professionals providing services similar to the Services in respect of each claim is £5 million for any one claim or series of claims arising out of one single incident and in the aggregate for the Period of insurance, save that if the total of the Prices for any one Task Order exceed £5,000,000, the level of professional indemnity insurance required shall be £10,000,000 for any one claim or series of claims arising out of one single incident and in the aggregate for the Period of insurance.

**Resolving and avoiding disputes**

|  |
| --- |
| N/A  |

The *tribunal* is

|  |
| --- |
| N/A  |

The *arbitration procedure* is

|  |
| --- |
| N/A  |

The place where *arbitration* is to be held is

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 Technology and Construction Solicitors Association  |

The *Adjudicator nominating body* is

## Option X5: Sectional Completion

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   | £1,000  | per week or part thereof  |
| **Option X8: Undertakings to the *Client* or Others**  |  |  |

The undertakings to Others are provided to

 […]

[…]

The *Subcontractor undertaking to Others* are

 works provided to

|  |  |  |
| --- | --- | --- |
| […]  |   | […]  |

|  |  |  |
| --- | --- | --- |
| […]  |   | […]  |

The *Subcontractor undertaking to the Client* are works

[…]

|  |
| --- |
| […]  |
|  **Option X15: The *Contractor’s* design**  |

|  |  |  |
| --- | --- | --- |
| The *period for retention* following Completion of the whole of the *works* or earlier termination is  | 12  | years  |
|  **Option X16: Retention**  |  |  |

The retention free amount is:

The retention percentage is:

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

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

|  |
| --- |
|   |

The first *invoice date* is

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**

|  |
| --- |
| Clauses Z2 to Z101 in the NEC4 schedule of amendments contained within CCS Framework Reference RM6088 The clauses contained within Appendix 1 to this Contract  |

The *additional conditions of contract* are the following clauses

|  |  |
| --- | --- |
| **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

|  |
| --- |
|   |

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

The following matters will be included in the Early Warning Register

|  |
| --- |
|      |

|  |  |
| --- | --- |
| **2**  | **The *Contractor’s* main responsibilities**  |

|  |
| --- |
| As attached to the relevant Task Order  |

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

|  |  |
| --- | --- |
| **3**  | **Time**  |

The programme identified in the Contract Data is in As attached to the relevant Task Order

 The *completion date* for the whole of the *works* is As attached to the relevant Task Order

**5 Payment**

|  |
| --- |
| As attached to the relevant Task Order  |

The *activity schedule* is in

|  |
| --- |
|  and as set out in the relevant Task Order  |

The tendered total of the Prices is

**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[[2]](#footnote-2)**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  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 % (state plus or is 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**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Bundle**  | **Property Number**   | **Property Name**  | **City/Town**  | **NIA (Sqm)**  |
| **Bundle 3**  | P484  | 42-46 Abington Street  | Northampton  | 2517  |
| P549  | Headgate  | Colchester  | 915  |
| P550  | Harvey Shopping Centre (Unit 58-60)  | Harlow  | 792  |
| P578  | Meadows Shopping Centre  | Chelmsford  | 1835  |
| P684  | High Street, HP11 2DN  | High Wycombe  | 710  |

# The Sites

**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;

* + 1. the probability of these risks occurring;
		2. a financial estimate of the most likely consequences of each risk occurring; and
		3. 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.
	1. 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.
1. 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.
2. Fee
	1. The Contractor agrees that the fee for the Management Services shall be deemed to be included within the Fee

**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

* + 1. where applicable, revise such tender documentation to take into account the Client's comments pursuant to paragraph 3.6.2.
	1. 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.
	2. 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.
	3. 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.
	4. 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)).
	5. 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.
	6. 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.
	7. 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.
	8. 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.
	9. 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 legally enforceable claims, demands or notices which may be brought 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 by the Contracture 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.

# Rates and Prices

REDACTED

1. 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-1)
2. To be completed using the rates in the CCS framework. [↑](#footnote-ref-2)