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DATED  2021

# THE SECRETARY OF STATE FOR

WORK AND PENSIONS

AND

TILBURY DOUGLAS CONSTRUCTION (2)

LIMITED

CONTRACT FOR THE APPOINTMENT

OF A CONTRACTOR RELATING TO

THE RAPID ESTATES EXPANSION

PROGRAMME IN ENGLAND (SOUTH)

AND INCORPORATING THE NEC4

ENGINEERING AND CONSTRUCTION

CONTRACT

THIS CONTRACT is made on 27th September 2021 BETWEEN:

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) TILBURY DOUGLAS CONSTRUCTION LIMITED (company number 00303359)

whose registered office is at Ingenuity House Elmdon Trading Estate, Bickenhill Lane,

Birmingham, England, B37 7HQ (the "Contractor"),

together, the Parties

WHEREAS:

 The Client wishes to enter into a contract with the Contractor on the terms set out in this Contract for the carrying out and completion of the Works.

(B) The Client wishes to retain the Contractor to carry out certain additional works at the Sites which may be notified to the Contractor from time to time during the Delivery Term.

In the event that the Client requires the Contractor to carry out work in relation to any part of the Project such works will be carried out under a Task Order.

(D) The Client and Contractor accept and agree that this Contract does not guarantee that any work will be given by the Client to the Contractor or oblige the Client to instruct the Contractor to carry out any particular scope of work.

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

## 1 Introduction

1. 1 In this Contract the following words and expressions have the following meanings unless the context otherwise requires:

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

"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;

"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 physical loss of or damage to a Task Site; and/or
3. a material adverse effect upon the Client's business within the relevant Task

Site (where applicable);

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

"Delivery Term" means the period of 6 months from 07/07/2021 as may be extended in accordance with the terms of this Contract and subject to early termination pursuant to the relevant Terms and Conditions;

"Fee Percentage" means the fee percentage set out in the Tender Rates and Prices;

"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;

"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 Contractors 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;

 the occurrence of the number of Performance Failure Points reaching the Performance Credit Cap;

1. the occurrence of a Critical Failure Event; or
2. 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;

"**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;

**"Price List"** means the price list attached, incorporating the Tender Rates and Prices,

Appendix 5 where applicable and setting out the relevant Fee Percentage;

"**Performance Credit"** means £200 per Performance Failure Point;

**"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;

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

"**Performance Failure** Point' means the points that are set out in Appendix 6 of this

Contract and which shall accrue to the Contractor in the event of any Performance Failure;

"**Performance KPI**" means a KPI set out at Appendix 6;

"**Performance Level"** the levels that are set out in Appendix 6 of this Contract;

**"Performance Monitoring Report'** means the monthly performance report prepared by the Contractor in accordance clause 6.8;

"**Performance Review Meeting"** the regular meeting between the Contractor and the

Client to discuss the Performance Monitoring Report, as set out in clause 6.10;

"**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 Contracti •

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

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

**"Region"** means 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 employed staff with required contract and budget authority;

**"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;

**"Sites"** means the [TBC] sites in the Region [Southern identified at Appendix 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, and theTerms 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

**"Works"** means any works referred to in any Task Order (to include any works procured on a design and build basis).

1. M&R note: members of the Project Team to be confirmed.
2. M&R note: to be confirmed if sufficient will be known of the Sites at the time the Contract is entered into.

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**

1. 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.
   1. 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. 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. 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.
   1. The Parties' obligations in relation to the identification, approval and delivery of the Works are contained in Appendix 1.
   2. All Task Order Proposals shall be proposed by the Contractor in accordance with the provisions of Appendix 1
   3. 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).
   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

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 Notifiable Event

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

5.2

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

5.22 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:

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

5.2.4 where:

the Notifiable Event is capable of remedy but the Contractor has failed to remedy the Notifiab|e Event within a reasonable period specified by the Client; or

1. where the Notifiable Event is incapable of remedy, the Client may:
2. 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;

suspend (for such period that the Client shall specify) all or part of this Contract and/or any relevant Task Order; or

(v) terminate all or part of this Contract and/or any relevant Task Order (and such termination shall be deemed to be an RI 1 termination event under the relevant Task Order), provided that the right to terminate shall not arise as a result of a Notifiable Event which is a Repeat Failure which would not have arisen but for any Minor Performance Failure (as set out in Schedule 6).

5.3 Where the Client exercises any of its rights under Clause 52.4:

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

managing and implementing the step-in, suspension and/or termination (as the case may be);

1. any additional costs directly relating to the carrying out of all or part of this Contract and/or any relevant Task Order by the Client and/or a third party which the Client would not otherwise have incurred; and
2. any additional costs paid or allowable by the Client to a third party in relation to the carrying out of all or part of this Contract and/or any relevant Task Order by such third party;

5.3 9 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 5.24; and

5.3.3 any event in relation to the Client exercising its rights under Clause 5.2 shall not be deemed to be a compensation event for the purposes of any Task Order and the Contractor shall not be entitled to any addition to any Prices or additional costs and/or an extension of time under any Task Order:

## 6 **Performance KPIs**

### Performance Levels

1. 1 The objectives of the Performance KPls, Performance Failure Points and Performance Credits are to:
   1. .1 ensure that the Works carried out under a Task Order meet the requirements of the Client and that each Task Order is administered in accordance with the provisions of that Task Order;

6.1 .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

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

* 1. 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

6.22 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.

* 1. If a Performance Failure in respect of a particular Performance KPI 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.
  2. 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. 1 st Repeat Failure: 1.5;
     3. 2nd Repeat Failure: 2.0; and
     4. 3rd and subsequent Repeat Failures: 2.5

### Performance Credits

6.5 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-

6.6 The Contractor's liability for Performance Credits under each Task Order shall be limited to the relevant Performance Credit Cap.

## Excusing cause

6.7 Where a compensation event that results in a Performance Failure occurs and is implemented under any Task Order, then provided that the Contractor has taken reasonable steps to mitigate the effects of that event, no Performance Failure Points or Performance Credits shall accrue to the extent that such Performance Failure was caused by such compensation event.

### Performance Monitoring Reports

6.8 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:

6.8.1 a summary of all Performance Failures that occurred during the Service Period;

6.8.2 which Performance Failures remain outstanding and progress in resolving them;

6.8.3 for any Performance Failure, the cause of the fault and any action being taken to reduce the likelihood of recurrence;

6.8 for any Repeat Failures, actions taken to resolve the underlying cause and prevent recurrence;

6.8.5 the number of Performance Failure Points awarded to each Performance

Failure in that Service Period;

6.8.6 the Performance Credits to be applied in respect of that Service Period indicating the Performance Failure(s) to which the Performance Credits relate;

6.8.7 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

6.8.8 such other details as the Client may reasonably require from time to time.

6.9 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.

6.10 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.

6.1 1 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.

## 7 **Limitation**

7. 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 the completion of that Task Order.

## 8 **Extendinq this Contract**

8.1 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.

## 9 **Notices**

9.1 Any notices sent under this Contract must be in writing and in accordance with this clause 9.

9.2 The following table sets out the method by which notices may be served under this

Contract and the res ective deemed time and roof of service

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Manner of Delive | | 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 Business Day after sending and provided that the sender does not receive a non-delivery 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 Business Day. Otherwise, delivery will occur at 9.00am on the next Business Da | | Properly addressed and delivered as evidenced by signature of a delivery receipt |
| Prepaid, Royal Mail Signed For1st Class or other prepaid, next working day | | 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 | | Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt |
| service providing proof of delivery | occur at 9.00am on the same Business Day (if delivery before 9.00am) or on the next Business Day (if after  5.000m). | |  | |

9.3 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 | 30 Eastcheap  London  EC3M Il-ID | Department for Work and  Pensions, Finance Group, Commercial Directorate, Quarry House, Leeds, LS2 7 UA |
| Email | Redacted | Redacted |

### 10 **Miscellaneous**

10.1 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.

10.2 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.

10.3 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.

10.4 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.

10.5 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

Redacted

DWP Commercial Lead

Signed as a deed by TILBURY DOUGLAS

CONSTRUCTION LIMITED acting by a

Director and the Company Secretary/öN0

Redacted

Director

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.

02: Add new clause Z102 as follows:

## 1 Preparation of Task Order Proposal

1 .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.

1 .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.

1. .3 Each Task Order Proposal issued pursuant to paragraph 1.2 shall include a full description of the Proposed Task, including (without limitation):

1 .3.1 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

1.32 any other information requested by the Client from time to time.

## 2 Approval of Task Order Proposals and the Proposed Task

1. 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 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:

21.1 such expenditure relates to a material third party cost; and/or

21.2 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
  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

22.4 whether the implementation of the Task Order Proposal would breach any Law, any Client's Policies or any wider government strategy or government policy.

* 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

23.2 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 23.2 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;
  1. 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
  2. where the Client considers (acting reasonably) that the Contractor has proposed:

a programme; and/or

* + - 1. 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:

the Contractor fails to commence any remedial plan in relation to such material breach within 7 days of notification;

* + - 1. the Contractor fails to remedy such material breach within

14 days of notification; and/or

* + - 1. where the material breach relates to RI-RIOB the Client may appoint a third party immediately upon the occurrence of such breach;
  1. the Client rejects a Task Order Proposal in accordance with paragraph 23.2;
  2. 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 Zl 02; and/or

2.54 the Parties have been unable to agree the whole or any part of a Task Order Proposal.

* 1. In the event that the Client appoints a third party in accordance with paragraphs 2.5.1 to 2.54 (and in relation to clause 25.4, 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 Al 02, then the provisions of:
     1. this Contract; and

28.2 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:

2.8 3 the relevant Task Order;

28.4 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:

is liquidated or unliquidated; or arises under this Contract and/or any Task Order

2.1 1 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.

## 3 General

3.1 Amend clause 1 1.1 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."

### 4 Compensation events

4.1 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"

4.2 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."

### 5 Termination

5.1 Amend clause 90.2 to add at the beginning "Subject to the Corporate Insolvency and Governance Act 2020"

5.2 Amend the table at 90.2 reason column for The Contractor. Delete 'RIO'. Add

'RIOB'

5.3 Amend the table in clause 90.2 reason column for the Client to add in "R23" after "R22".

5.4 Add new R23.

"R23 the Client terminates any Task Order where such termination relates to one of the following reasons:

* RI-R15,
* R18; or
* R22."

5.5 Amend clause 91.1 to add at the beginning "Subject to the Corporate Insolvency and Governance Act 2020",

5.5.1 In the second bullet point:

after (RIO) 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 (RI OA), or

applied to the court for, or obtained, a moratorium under Part Al of the Insolvency Act 1986 (RI 0B)"

* 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"

6 X18

6.1 Delete X18 in its entirety and replace with the following:

"Xl 8.1 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.

Xl 8.2 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.

X 18.3 Subject to clause X18.1 and notwithstanding any other provision of this Contract:

Xthe 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 Xl 8.3.1 there shall not be taken into account any amounts claimed under clause X18.42; and

.2 the Contractor's liability under clause Xl 8.42 is not limited by this clause X18.3.1; and

Xthe 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:

in calculating the total aggregate liability of the

Contractor for the purposes of this clause Xl 8.32 there shall not be taken into account any amounts claimed under clause )(18.4.2; and

.2 the Contractor's liability under clause Xl 8.42 is not limited by this clause Xl 8.3.2.

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.

X 18.4 Subject to clause X 18.1, the Contractor's liability to the Client under or in connection with each individual Task Order is also limited as follows:

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

.2 20% of the total of the Prices of the particular Task Order if the total of the Prices is greater than £1

in respect of loss or damage to the Client's property caused by the Contractor to the greater of:

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.

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 |  |
| 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 g date |  |
| Task Order access dates |  |





|  |  |  |  |
| --- | --- | --- | --- |
| Project Title and Address: | | | |
| Task Order Proposal Details | Description | | |
| Task Order completion date for the whole of the works |  | | |
| If 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 an |  | | |
| Details of any retention percentage and/or retention free amount |  | | |
| Additional Client's risks relevant to the Task if an |  | | |
| 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 |  | | |
| Project Title and Address: | | | | |
| Task Order Proposal Details | | Description | | |
| If any delay damages should apply to the Task Order, calculated at the relevant rates specified | | £1 ,000 | per week 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 (where applicable) in accordance with clause 63.2 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. | | |
| Details of the proposed Task Order fee percentage | |  | | |
| The total of the Prices for this Task Order | |  | | |
| The Brexit Items are | |  | | |
| The Off Site Production Facilities are | |  | | |

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 TILBURY DOUGLAS

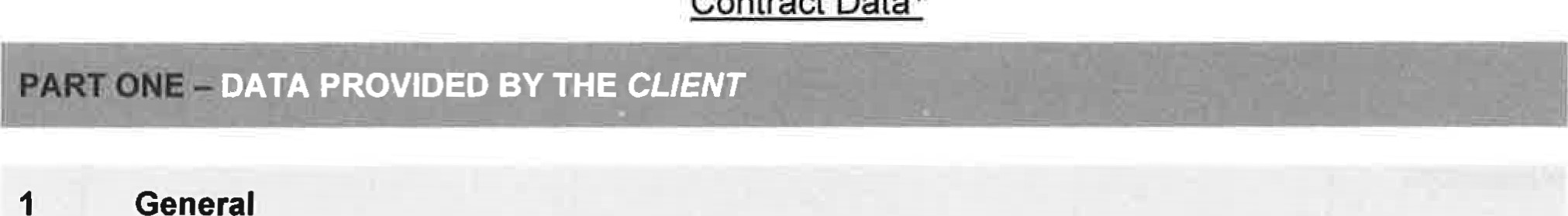
CONSTRUCTION LIMITED acting by a

Director

Redacted

Director

Appendix 2



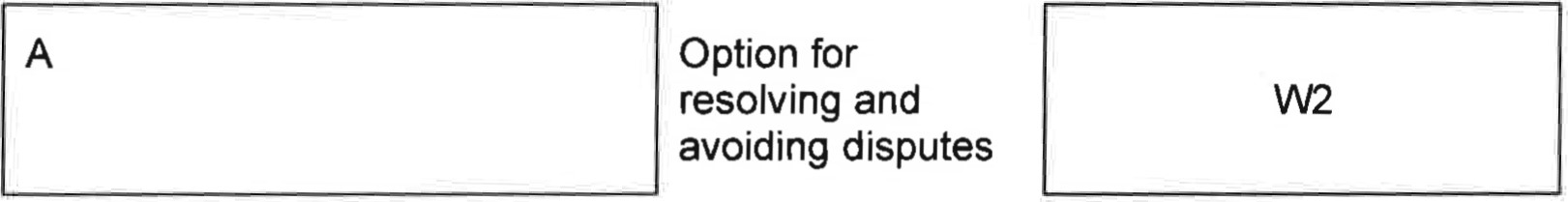
Contract

Data

General

4

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

|  |
| --- |
| (Key Performance Indicators)  and Secondary Options  X15, X16 and with such amendments as set out in a Task Order where such Secondary Options shall apply to that Task Order only. |

Secondary

Options

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 DWP — Commercial Directorate — Estates, Level 5 Caxton House, 9-12 Tothill street, electronic Westminster, London. SWIH, 9NA.

communications

The Project Manager is

|  |
| --- |
| Redacted |

Name

|  |
| --- |
| Department for Work and Pensions, Caxton Hose , 9-12 Tothill Street, London  SWIH 9NA |

Address for communications

|  |
| --- |
| Redacted |

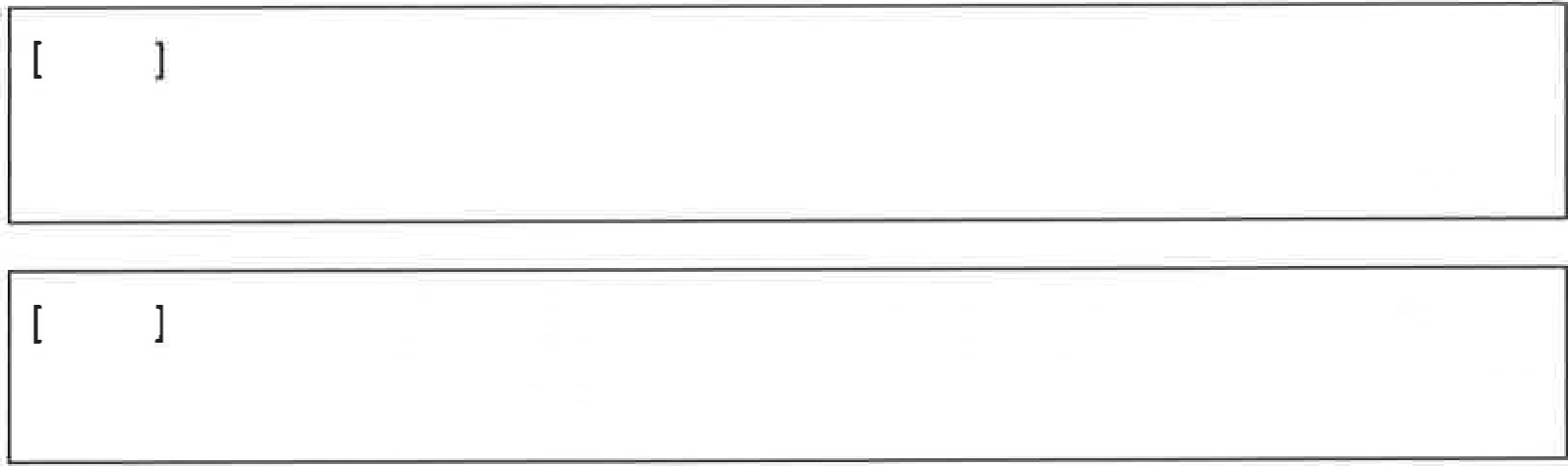
Address for electronic communications

The Supervisor is

4 All gaps to be completed during the tender process.

|  |
| --- |
| [Refer to Task Order] |

Name

Address for communications

Address for electronic communications

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

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

|  |
| --- |
| As set out in the relevant Task Order |

The boundaries of the site are

|  |
| --- |
|  |
| English |

The language of the contract is

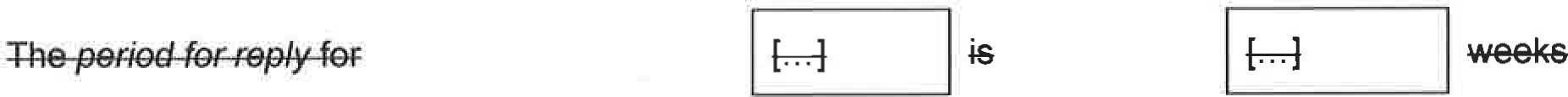
|  |
| --- |
| England, subject to the exclusive jurisdiction of the Courts of England |

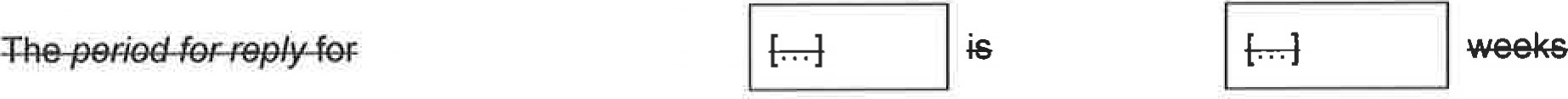
The law of the contract is the law of

|  |
| --- |
| two weeks |

The period for reply except that

is





The following matters will be included in the Early Warning Register

[refer to relevant task order]

|  |
| --- |
| one month |

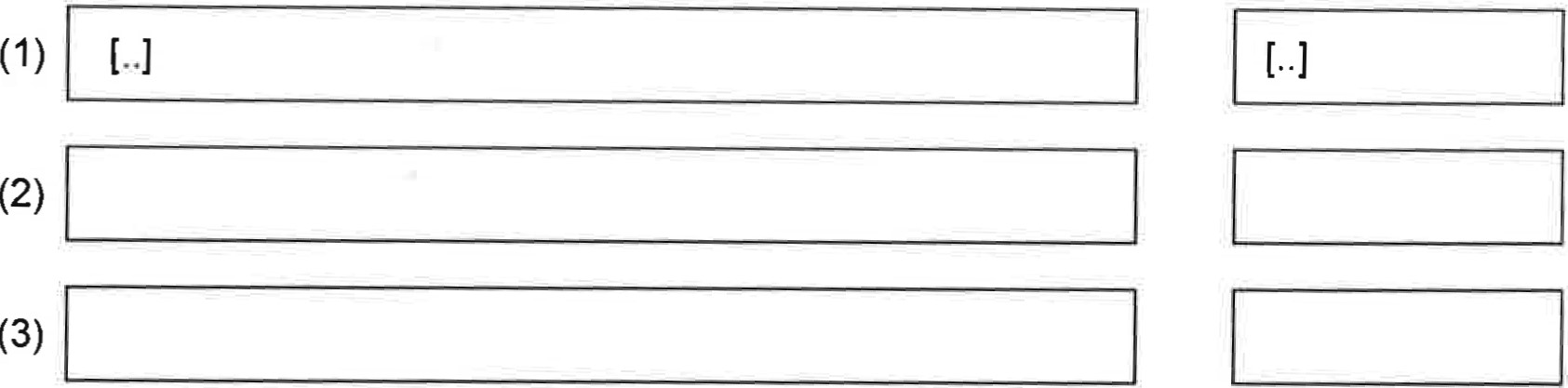
Early warning meetings are held at intervals no longer than

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. Time

The starting date is 

The access dates are

part of the Site date



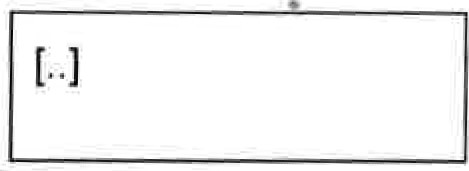
|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 2 |  | |  | |
| |  | | --- | | 3 | | | |  | |

|  |
| --- |
| fortnightly |

The Contractor submits revised programmes at intervals no longer than

The completion date for the whole of the works is 

The Client Ðs/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

1. Quality Management

|  |
| --- |
| 2 |

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

|  |
| --- |
| 52 from the |

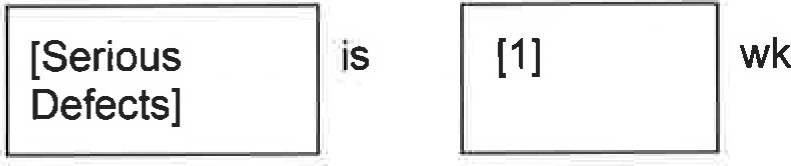
The period between Completion of the whole of the works and the defects date iswks Completion of each

Task Order

The defect correction period is four weeks except that:

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

The defect correction period forhours

The defect correction period for

1. Payment

The currency of the contract is the pound sterling (£)

|  |
| --- |
| one |

The assessment interval iscalendar 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

1. Compensation events

|  |
| --- |
| [as detailed in task order] |

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 9AM0 hours GMT

and these measurements:



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

The weather measurements are supplied by

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

|  |
| --- |
| [refer to task order] |

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



|  |  |  |
| --- | --- | --- |
| |  | | --- | | 50 | |  |

The value engineering percentage is 50%, unless another percentage is stated her 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").   3. 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.  4. 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 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.

5. 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.

(2) 

(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.
* 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

The tribunal is 

The arbitration procedure is 

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



The Senior Representatives of the Client are

|  |
| --- |
| Redacted |

Name (1)

|  |  |
| --- | --- |
| Department for Work and Pensions, Caxton Hose London , SWIH 9NA | 9-12 Tothill Street, |

Address for communications

|  |
| --- |
| Redacted |

Address for electronic communications

|  |
| --- |
| Redacted |

Name (2)

|  |  |
| --- | --- |
| Department for Work and Pensions, Caxton Hose London , SWIH 9NA | 9-12 Tothill Street, |

Address for communications

|  |
| --- |
| Redacted |

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

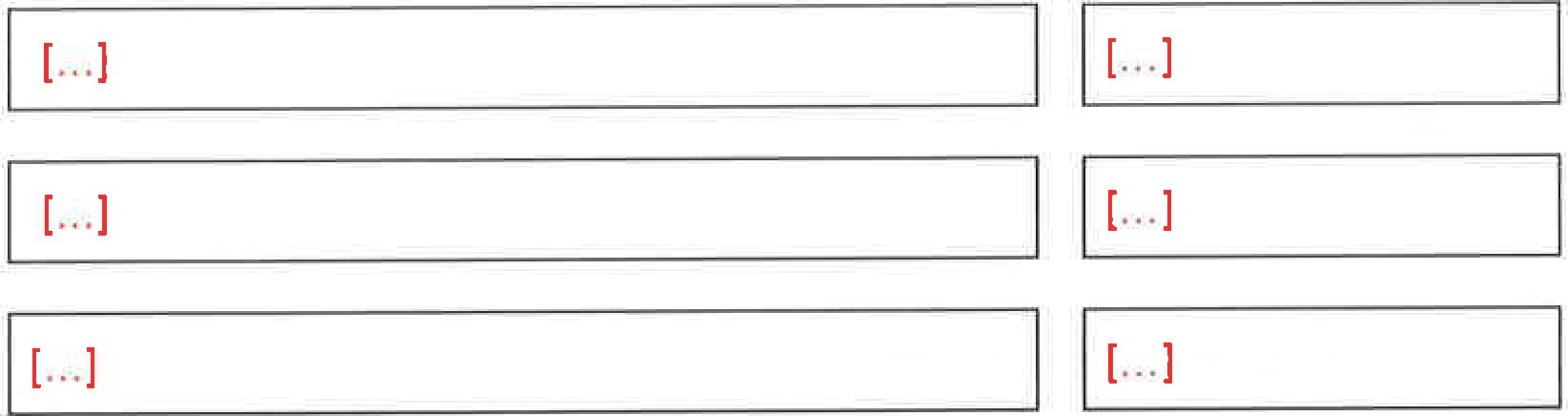
|  |
| --- |
| The Technology and Construction Solicitors Association |

The Adjudicator nominating body is

**Option X5: Sectional Completion**

The completion date for each section of the works is

Section Description completion date

(2)

(3)

(4)

**Option X7: Delay damages**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Delay damages for Completion of the whole of the works are  **Option X8: Undertakings to the Client or Others**  The undertakings to Others are provided to | | | £1 ,ooo | | per week or part thereof |
|  | |
|  | | |  | |  |
|  | | |  | |  |
|  | | |  | |  |
| *The Subcontractor undertaking to Others are*  works provided to | | |  | |  |
|  | cclient |  |  | |  |
|  |  |  | |  |
|  |  |  | |  |
| *The Subcontractor undertaking to the works* |  |  | |  |
|  | | |  | |  |
|  | | |  | |  |
|  | | |  | |  |
| **Option X15: The Contractor's design**  The period for retention following Completion of the whole of the works or earlier termination is  **Option X16: Retention**  The retention free amount is:  The retention percentage is:  The Contractor may/may not give the Client a retention bond (delete | | |  | | s |
| 12 | yea |
| s applicable | |

**Option X20: Key Performance Indicators**

|  |
| --- |
| Attached at Appendix 6 |
| As referred to in clause 6.8 |

The incentive schedule for Key Performance Indicators is in

A report of performance against each Key Performance Indicator is provided at inter,tals of

Option Y(UK)2: The Housing Grants, Construction and Regeneratlon 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 Z 101 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. |

The additional conditions of contract are the following clauses



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

1. General

The Contractor is

|  |
| --- |
| Tilbury Douglas Construction Limited |

Name

|  |
| --- |
| 30 Eastcheap, London, EC3M IHD |

Address for communications

|  |
| --- |
| Redacted  Redacted |

Address for electronic communications

|  |
| --- |
| [as relevant task order] |

The fee percentage is

|  |
| --- |
| [refer to relevant task order] |

The working areas are

|  |
| --- |
| [refer to relevant task order |

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

The following matters will be included in the Early Warning Register

[refer to relevant task order]

1. The Contractor's main responsibilities

The Scope for the Contractor's design is in

1. Time

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

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

5 Payment

The activity schedule is in

The tendered total of the Prices is

Resolving and Avoiding Disputes

The Senior Representatives of the Contractor are

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

As attached to the relevant Task Order

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

Name (1)

Address for communications

Address for electronic communications

Name (2)

Address for communications

Address for electronic communications Paul Harvey

Ingenuity House, Elmdon Trading Estate, Bickenhill lane,

Birmingham, England, B37 7HQ

Redacted

[refer to relevant task order]

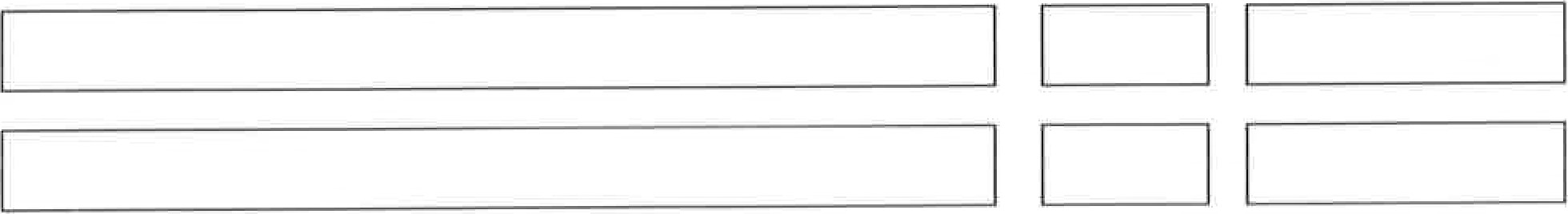




Data for the Shorter Schedule of Cost Components[[2]](#footnote-2)

The people rates are

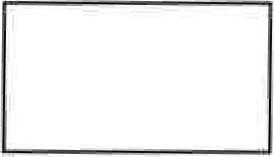
|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| category of person |  | unit |  | rate |
| [refer CCS pricing schedule] |  |  |



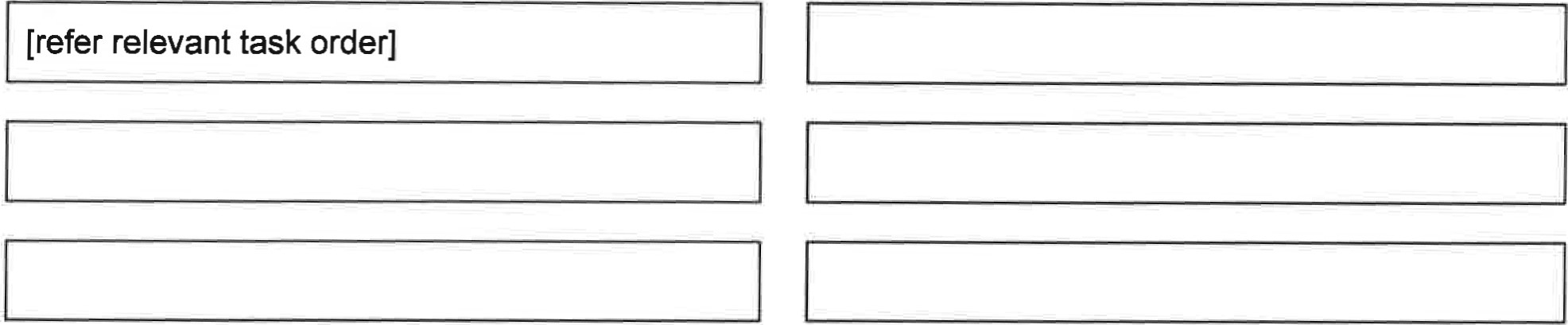


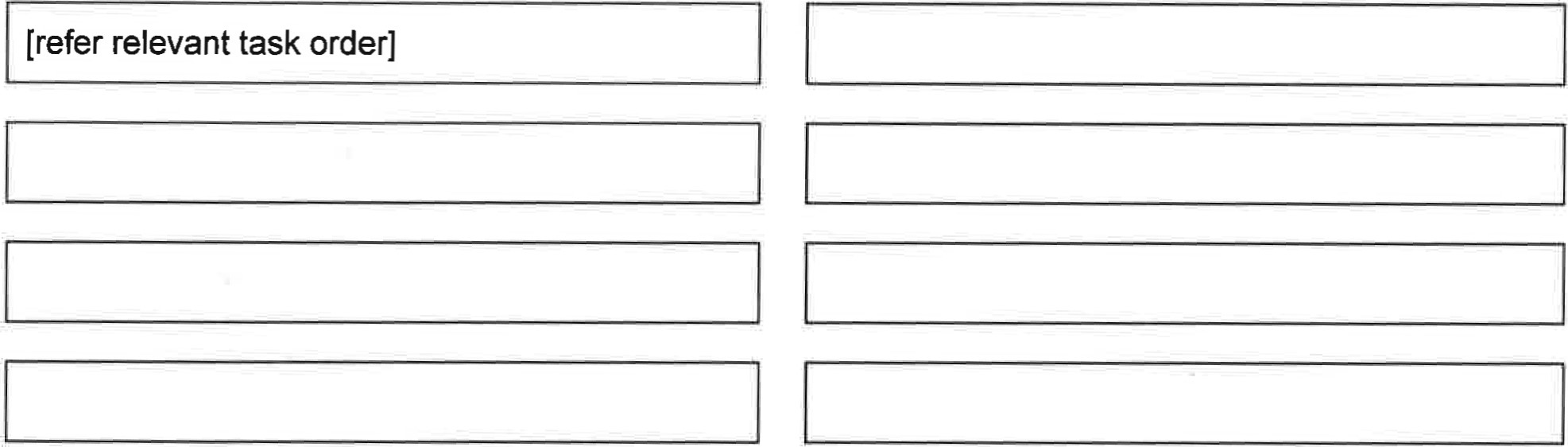
The published list of Equipment is the edition current at the Contact Date of the list published by

[as relevant task order]

The percentage for adjustment for Equipment in the published% (state plus or list isminus)

The rates for other Equipment are

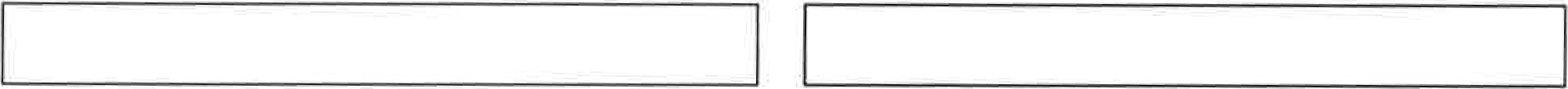
Equipment rate

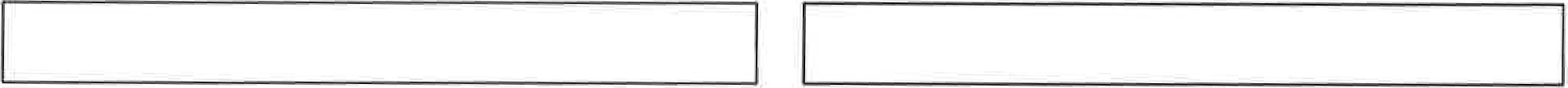


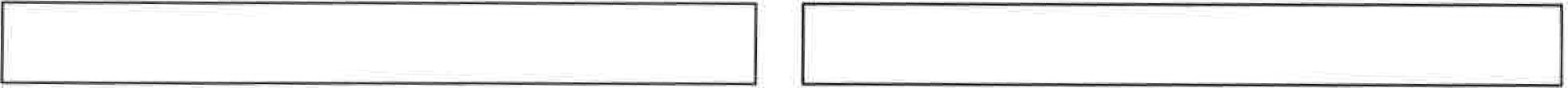
The rates for Defined Cost of manufacture and fabrication outside the Workings Areas by the Contractor are

category of person rate

|  |  |  |
| --- | --- | --- |
| |  | | --- | | [refer relevant task order] | |  |

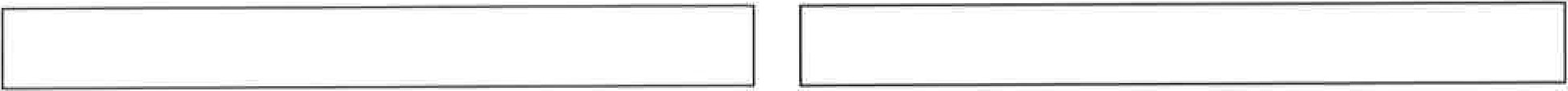






The rates for Defined Cost of design outside the Workings Areas are

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.]

Redacted

Appendix 4

Manaqement Services

## 1 Workinq toqether

1. .1 In relation to the carrying out of the Works and any obligations under this Contract, the Parties shall work together in order to achieve the Objectives. To that end the Client and the Contractor agree they shall each give to, and welcome from, the other, and the other Project Participants, feedback on performance and shall draw each other's attention to any difficulties and shall share information openly, at the earliest practicable time. They shall support collaborative behaviour and address behaviour that does not comply with the Objectives.

1.2 During the Delivery Term the Contractor shall:

1 .2.1 collaborate with the Client and the Project Team to achieve the Objectives;

* 1. work with the Client in a supportive manner;
  2. produce such reports and documentation as may reasonably be requested from time to time by the Client;
  3. work collectively with the Client and the Project Team to support the delivery of the Works on a best for project basis;
  4. develop and use common systems and processes with the Client and the Project Participants;
  5. discuss costings of the Works on an open-book basis;
  6. work with the Client to agree acceptable processes for demonstrating value for money and understand the key drivers for value for money; and
  7. give advice, information and opinion fully, openly and objectively to the Client and the Project Team.

1. .3 The role of the Project Team is to guide the successful delivery of the Project and the Works. The Project Team will meet at regular intervals to share information relating to the Project and the Works, to consider the risks and opportunities affecting the Project and the Works, to consider how best to coordinate and manage the Project and the Works, to review progress and to make any decisions necessary for the successful delivery of the Project and the Works which are then communicated to all relevant Project Participants.

1.4 In the event of any dispute between the Parties and/or the members of the Project Team, it is the intention that any court or adjudicator or other forum to which the dispute is referred shall take account of the Objectives and of the Parties' adherence to it when making any award.

1 .5 The Client and the Contractor shall co-operate with the other members of the Project Team in the provision of information with a view to ensuring that relevant information is provided to all Project Participants needing this information in a timely fashion and with a view to ensuring that all relevant dates in the Project Programme will be met.

1 .6 Subject always to the terms of any Task Order, if the Contractor identifies any ambiguities or discrepancies in any information provided by the Client or any other member of the Project Team, the Contractor shall agree how to resolve them after consultation, if appropriate, with the Project Team. If no agreement is reached, the Client shall issue an instruction.

1 .7 The Client hereby elects to be treated as the only client in respect of the Works for the purposes of the CDM Regulations.

1 .8 The Contractor shall act as "principal contractor" in respect of the Works for the purposes of the CDM Regulations.

## 2 Allocation of risks

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

21.1 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;

2.1 .2 the probability of these risks occurring;

2.1 .3 a financial estimate of the most likely consequences of each risk occurring; and

2.1 .4 the actions agreed to be taken to mitigate, manage or remove each risk and the individual responsible for reporting on the progress of the actions agreed.

2.2 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:

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

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

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

2.2 4 the prioritisation of all continuing risks and agreement of an action plan in respect of, and risk owners for, all risks prioritised as serious risks.

## 3 Problem solvjnq

3.1 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.

3.2 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.

3.3 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

4.1 The Contractor agrees that the fee for the Management Sen./ices 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 .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 .1 .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;

1 .1 .2 where the Parties:

agree that there is no sufficiently detailed cost element contained within the Price List to derive new Rates and

Prices; or 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 .1 .3 any new Rates and Prices agreed or determined pursuant to this Appendix shall:

include pricing for all risks associated with the relevant Works; and

(ii) exclude any costs in respect of which the Contractor is entitled to recover under any other provision of this Contract.

1 .2 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.

#### 2 Determining new Rates and Prices

1. 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.
   1. 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:

2.2.1 agree to refer the matter for determination by the Adjudicator pursuant option W2; or

22.2 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.

#### 3 Procedure

3.1 The following principles are to govern each tendering exercise initiated pursuant to this paragraph 3:

3.1 .1 the object of the tender is to obtain open-market rates and prices;

3.1.2 the process is to be genuinely competitive;

31.3 the evaluation of tenders is to be fair, robust and transparent; and

3.1.4 tendered prices are to be presented in a form that demonstrates value for money for the Works to which they relate.

3.2 The Contractor shall be responsible for the carrying out of the tendering procedure in accordance with this paragraph 3.

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.

3.4 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.

3.5 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.

3.6 The Contractor shall:

3.6.1 prepare all necessary tender documentation;

36.2 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. 6.3 where applicable, revise such tender documentation to take into account the Client's comments pursuant to paragraph 3.6.2.
   1. The Contractor shall:
   2. 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
   3. where applicable, revise such evaluation methodology to take into account the Client's comments pursuant to paragraph 3.7.1 .
   4. 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.
   5. 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.
   6. 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)).

3.1 1 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.

* 1. 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.
  2. 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.
  3. 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.
  4. Without prejudice to any other provision of this Appendix, the Contractor shall provide to the Client:
  5. market advertisements proposed for any tender exercise;
  6. technical specifications relevant to any tender;
     1. copies of all documentation and communications submitted by a tenderer relating to a tender; and
     2. 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 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 by the Contractor 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

N/R

Part B L— 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]



# STANDARD

'BOILERPLATE'

AMENDMENTS

NEC4

## JANUARY 31, 2019

CABINET OFFICE Crown Commercial Service

The standardised 'boilerplate' amendments project addresses a need to simplify the inclusion of government-specific clauses to the NEC, JCT and PPC2000 contracts. Centrally mandated government policies and some legislative requirements were being applied by a range of government departments, but as separate operations and with differing approaches. Scope was identified for a simple and standard set of terms which provide a unified front to implement policy and reduce the need for excessive additional drafting, creating a more efficient standardised approach. These terms would be applied across government construction contracts.

In order to bring about this situation, a cross-governmental review of construction contract amendments was undertaken by the Crown Commercial Service (CCS) and the Infrastructure and Projects Authority (IPA). Eighteen clauses were identified as those which would benefit most from the standardisation described above. These clauses were reviewed and redrafted to enhance their ease of comprehension, with the core wording translated to NEC, JCT and PPC2000 terminology.

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

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

Process

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

**NEC4 Engineering & Construction Contract**

* In Contract Data Part One, complete the clause headed "If Option Z is used" to read:

The additional conditions of contract are as detailed in the appended Schedule of Amendments which is to be read and construed accordingly.

* Append pages 8 to 42 of this Standard 'Boilerplate' Amendments document to the standard contract document as this Schedule of Amendments.
* Remove or strikethrough those clauses which do not apply to the current project and amend terms as provided by guidance notes.  Add additional, project specific amendments in the normal way.

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**SUMMARY OF CLAUSES**

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

1. Definitions

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

1. Admittance to Site

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

1. Prevention of Fraud and Bribery

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

1. Official Secrets Act

Contractors are often required to abide by this Act due to the sensitive nature of some public sector projects. The Boilerplate clause saves Clients from drafting this themselves if required, creating an obligation to comply with this Act and, where appropriate, section 1 1 of the Atomic Energy Act 1946.

1. Freedom of Information

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

1. Confidentiality and Information Sharing

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

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

1. Security Requirements

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

1. Tax Compliance

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

1. Contract (Rights of Third Parties) Act 1999

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

1. Fair Payment

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

1 1. Building Information Modelling (BIM)

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

1. The Housing Grants, Construction and Regeneration Act 1996 ('Construction Act 201 1')

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

1. Intellectual Property Rights

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

1. MOD DEFCONs

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

1. Small and Medium Enterprises (SMEs)

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

1. Apprenticeships

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

1. GDPR

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

1. Cyber Essentials

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

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

1. Project Bank Accounts

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

### **SCHEDULE OF AMENDMENTS TO NEC4 ENGINEERING AND CONSTRUCTION CONTRACT**

**Option Z2** - Identified and defined terms

Insert new clause 1 1.3 additional defined terms.

1 1.3 (1) Client Confidential Information is all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and contractors of the Client, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential.

1 1.3 (2) Client Data is the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and  which are supplied to the Contractor by or on behalf of the Client,

 which the Contractor is required to generate, process, store or transmit pursuant to this contract or

1. which are any Personal Data for which the Client is the Data Controller to the extent that such Personal Data is held or processed by the Contractor.
2. 1 (3) Commercially Sensitive Information is the information agreed between the Parties (if any) comprising the information of a commercially sensitive nature relating to the Contractor, the charges for the works, its IPR or its business or which the Contractor has indicated to the Client that, if disclosed by the Client, would cause the Contractor significant commercial disadvantage or material financial loss.

1 1.3 (4) Confidential Information is the Client's Confidential Information and/or the Contractor's Confidential Information.

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

1 1.3 (6) Contractor's Confidential Information is any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and contractors of the Contractor, including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, including the Commercially Sensitive Information.

1 1.3 (7) Crown Body is any department, office or agency of the Crown.

1 1.3 (8) Data Controller has the meaning given to it in the Data Protection Act 2018.

1 1.3 (9) DOTAS is the Disclosure of Tax avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, Sl 2012/1868 made under s. 132A Social Security Administration Act 1992.

1 1.3 (10) Environmental Information Regulations is the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner in relation to such regulations.

1 1.3(1 1) FOIA is the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.

1 1.3 (12) General Anti-Abuse Rule is  the legislation in Part 5 of the Finance Act 2013 and

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

1 1.3 (13) Halifax Abuse Principle is the principle explained in the CJEU Case C-255/02 Halifax and others.

1 1.3 (14) Intellectual Property Rights or "IPRs" is

* copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information,

applications for registration, and the right to apply for registration, for any of the rights listed in the first bullet point that are capable of being registered in any country or jurisdiction, all other rights having equivalent or similar effect in any country or jurisdiction and

* all or any goodwill relating or attached thereto.

1 1.3 (15) Law is any law, statute, subordinate legislation within the meaning of section 21 (1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Contractor is bound to comply under the law of the contract.

1 1.3(16) An Occasion of Tax Non-Compliance is

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

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

1 1.3(17) Personal Data has the meaning given to it in the Data Protection Act 2018.

1 1.3 (18) Prohibited Act is

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

1 1.3 (19) Request for Information is a request for information or an apparent request under the Code of Practice on Access to government Information, FOIA or the Environmental Information Regulations.

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

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

1 1.3 (22) Security Policy means the Clients security policy attached as Appendix 1 to Contract Schedule J (Security Provisions) as may be updated from time to time.

**Option Z 4 - Admittance to site**

Insert new clause 19A:

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

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

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

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

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

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

**Option Z5 - Prevention of fraud and bribery**

Insert new clauses:

18.4.1 The Contractor represents and warrants that neither it, nor to the best of its knowledge any of its people, have at any time prior to the Contract Date

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

18.42 During the carrying out of the works the Contractor does not

* commit a Prohibited Act and
* do or suffer anything to be done which would cause the Client or any of the Client's

employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

18.4.3 In Providing the Works the Contractor

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

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

Subcontractors have  been subject to an investigation or prosecution which relates to an alleged Prohibited Act,

* been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act or
* received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this contract or otherwise suspects that any person or party directly or indirectly connected with this contract has committed or attempted to commit a Prohibited Act.
  + 1. If the Contractor makes a notification to the Client pursuant to clause 18.44, the Contractor responds promptly to the Client's enquiries, co-operates with any investigation, and allows the Client to audit any books, records and/or any other relevant documentation in accordance with this contract.
    2. If the Contractor breaches Clause 18.43, the Client may by notice require the Contractor to remove from carrying out the works any person whose acts or omissions have caused the Contractors breach.

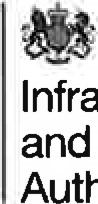
Option Z7 - Legislation and Official secrets

Insert new clauses:

* 1. The Contractor complies with Law in the carrying out of the works.
  2. The Official Secrets Acts 1911 to 1989 and, where appropriate, the provisions of section 1 1 of the Atomic Energy Act 1946 apply to this contract.
  3. The Contractor notifies its employees and its Subcontractors of their duties under these Acts.

Option ZIO - Freedom of information

Insert new clauses:

* 1. The Contractor acknowledges that unless the Project Manager has notified the Contractor that the Client is exempt from the provisions of the FOIA, the Client is subject to the requirements of the Code of Practice on Government Information, the FOIA and the Environmental Information Regulations. The Contractor cooperates with and assists the Client so as to enable the Client to comply with its information disclosure obligations.
  2. The Contractor
* transfers to the Project Manager all Requests for Information that it receives as soon as practicable and in any event within two working days of receiving a Request for Information,

provides the Project Manager with a copy of all information in its possession, or power in the form that the Project Manager requires within five working days (or such other period as the Project Manager may specify) of the Project Managers request,

* provides all necessary assistance as reasonably requested by the Project Manager to enable the Client to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations and  procures that its Subcontractors do likewise.
  1. The Client is responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations
  2. The Contractor does not respond directly to a Request for Information unless authorised to do so by the Project Manager.
  3. The Contractor acknowledges that the Client may, acting in accordance with the

Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of information Act 2000, be obliged to disclose information without consulting or obtaining consent from the Contractor or despite the Contractor having expressed negative views when consulted.

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

Option Z13 - Confidentiality and Information Sharing

Insert a new clause

* 1. Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this contract, each Party shall
* treat the other Party's Confidential Information as confidential and safeguard it accordingly,

not disclose the other Party's Confidential Information to any other person without prior written consent,

* immediately notify the other Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information and

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

29.10 The clause above shall not apply to the extent that

such disclosure is a requirement of the Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause ZIO (Freedom of Information),

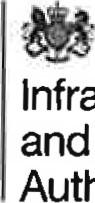
* such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner,  such information was obtained from a third party without obligation of confidentiality,
* such information was already in the public domain at the time of disclosure otherwise than by a breach of this contract or

it is independently developed without access to the other party's Confidential Information.

29.1 1 The Contractor may only disclose the Client's Confidential Information to the people who are directly involved in Providing the Works and who need to know the information, and shall ensure that such people are aware of and shall comply with these obligations as to confidentiality.

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

* 1. The Contractor may only disclose the Client Confidential Information to Contractors people who need to know the information, and shall ensure that such people are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any default, act or omission of any Contractor's people causes or contributes (or could cause or contribute) to the Contractor breaching its obligations as to confidentiality under or in connection with this contract, the Contractor shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Contractors people , the Contractor shall provide such evidence to the Client as the Client may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the Contractor is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from Contractor's people, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with Contractor's people in connection with obligations as to confidentiality.
  2. At the written request of the Client, the Contractor shall procure that those members of the Contractors people identified in the Clients request signs a confidentiality undertaking prior to commencing any work in accordance with this contract.
  3. Nothing in this contract shall prevent the Client from disclosing the Contractors

Confidential Information

* to any Crown Body or any other Contracting Bodies. All Crown Bodies or Contracting Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Body,

to a professional adviser, contractor, consultant, supplier or other person engaged by the Client or any Crown Body (including any benchmarking organisation) for any purpose connected with this contract, or any person conducting an Office of Government Commerce Gateway Review,  for the purpose of the examination and certification of the Clients accounts,

* for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Client has used its resources,  for the purpose of the exercise of its rights under this contract or
* to a proposed successor body of the Client in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this contract,

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

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

Option Z14 - Security Requirements

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

Option Z16 - Tax Compliance

Insert new clauses:

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

Option Z22 - Fair payment

Insert a new clause:

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

Option Z42 - The Housing Grants, Construction and Regeneration Act 1996

Add an additional clause Y2.6

Y2.6

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

Option Z44 - Intellectual Property Rights

Delete clause 22 and insert the following clause

In this clause 22 only:

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

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

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

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

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

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

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

22.7 The Contractor supplies copies of the Documents to the Project Manager and to the Clients other contractors and consultants for no additional fee to the extent necessary to enable them to discharge their respective functions in relation to this contract or related works.

22.8 After the termination or conclusion of the Contractors employment hereunder, the

Contractor supplies the Project Managerwith copies and/or computer discs of such of the Documents as the Project Manager may from time to time request and the Client pays the Contractors reasonable costs for producing such copies or discs.

22.9 In carrying out the works the Contractor does not infringe any Intellectual Property

Rights of any third party. The Contractor indemnifies the Client against claims, proceedings,

compensation and costs arising from an infringement or alleged infringement of the Intellectual Property Rights of any third party.

Option Z46 - MOD DEFCON Requirements

Insert a new clause:

19B

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

Option Z47 - Small and Medium Sized Enterprises (SMEs)

Insert new clause:

26.5

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

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

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

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

Option Z48 - Apprenticeships

Insert new clause:

26.6

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

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

The Contractor makes available to its people and Subcontractors working on the contract, information about the Government's Apprenticeship programme and wider skills opportunities.

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

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

* the number of people during the reporting period employed on the contract, including support staff and Subcontractors,
* the number of apprentices and number of new starts on apprenticeships directly initiated through this contract,  the percentage of all people taking part in an apprenticeship programme,

 if applicable, an explanation from the Contractor as to why it is not managing to meet the specified percentage target,  actions being taken to improve the take up of apprenticeships and

* other training/skills development being undertaken by people in relation to this contract, including:

1. work experience placements for 14 to 16 year olds,
2. work experience /work trial placements for other ages,
3. student sandwich/gap year placements,
4. graduate placements,

vocational training,  basic skills training and

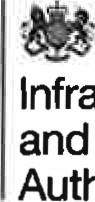
(g) on site training provision/ facilities.

Option zOO - GDPR

Insert new clause Z 100 as follows

GDPR

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

Option ZIOI — Cyber Essentials

Insert new clause ZIOI as follows:

ZIOI Cyber Essentials

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

SCHEDULE[Guidance: insert schedule ref here] GDPR

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

Agreement : this contract;

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

GDPR CLAUSE DEFINITIONS:

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

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

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

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

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

DPA 2018 : Data Protection Act 2018

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

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

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

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

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

1. DATA PROTECTION

1. .1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the

Client is the Controller and the Contractor is the Processor unless otherwise specified in

Schedule

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

* 1. The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
  2. The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

1. a systematic description of the envisaged processing operations and the purpose of the processing;
2. an assessment of the necessity and proportionality of the processing operations in relation to the works;
3. an assessment of the risks to the rights and freedoms of Data Subjects; and
4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

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

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

(c) ensure that

1. the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule X);
2. it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
3. are aware of and comply with the Processor's duties under this clause;
4. are subject to appropriate confidentiality undertakings with the Processor or any Subprocessor;
5. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
6. have undergone adequate training in the use, care, protection and handling of Personal Data; and

(d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

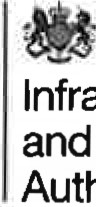
1. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
2. the Data Subject has enforceable rights and effective legal remedies;
3. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
4. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;

(e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

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

1. receives a Data Subject Request (or purported Data Subject Request);
2. receives a request to rectify, block or erase any Personal Data;
3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
5. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
6. becomes aware of a Data Loss Event.
   1. The Processor's obligation to notify under clause 1.5 shall include the provision of further information to the Controller in phases, as details become available.
   2. Taking into account the nature of the processing, the Processor shall provide the

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

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

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

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

1. the Controller determines that the processing is not occasional;
2. the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
3. the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
   1. The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
   2. Each Party shall designate its own data protection officer if required by the Data Protection Legislation 

1.1 1 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:

1. notify the Controller in writing of the intended Sub-processor and processing;
2. obtain the written consent of the Controller;
3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause [X] such that they apply to the Sub-processor; and
4. provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
   1. The Processor shall remain fully liable for all acts or omissions of any of its Subprocessors.
   2. The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
   3. The Parties agree to take account of any guidance issued by the Information

Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

* 1. Where the Parties include two or more Joint Controllers as identified in Schedule [X] in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Schedule [Y] in replacement of Clauses 1.1-1.14 for the Personal Data under Joint Control.

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

Schedule [X] Processing, Personal Data and Data Subjects

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

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

|  |  |
| --- | --- |
| Description | Details |
| Identity of the  Controller and  Processor | The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the  Contractor is the Processor in accordance with Clause 1.1 .  [Guidance: You may need to vary this section where (in the rare case) the Client and Contractor have a different relationship. For example, where the Parties are Joint Controller of some Personal Data:  "Notwithstanding Clause 1.1 the Parties acknowledge that they are also Joint Controllers for the purposes of the Data Protection Legislation in respect of:  [Insert the scope of Personal Data which the purposes and means of the processing is determined by the both Parties]  In respect of Personal Data under Joint Control, Clause 1 .1-1 15 will not apply and the Parties agree to put in place a Joint Controller Agreement as outlined in Schedule Y instead |
| Subject matter of the processing | [This should be a high level, short description of what the processing is about i.e. its subject matter of the contract.  Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to members of the public. ) |
| Duration of the processing | [Clearly set out the duration of the processing including dates] |
| Nature and purposes of the processing | [Please be as specific as possible, but make sure that you cover all intended purposes.  The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available alignment or combination, restriction, erasure or destruction of    data (whether or not by automated means) etc. |



|  |  |
| --- | --- |
|  | The purpose might include: employment processing, statutory obligation, recruitment assessment etc] |
| Type of Personal Data being Processed | [Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc] |
| Categories of Data Subject | [Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc] |
| Plan for return and destruction of the data once the processing is complete  UNLESS requirement under union or member state law to preserve that type of data | [Describe how long the data will be retained for, how it be returned or destroyed] |

## SCHEDULE J

 1 CONTRACT SCHEDULE J - SECURITY PROVISIONS

1. . 1 Definitions

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

|  |  |
| --- | --- |
| "Affiliates" | in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time; |
| "Breach of Security" | in accordance with the Security Requirements and the Security Policy, the occurrence of:   1. any unauthorised access to or use of the works the Client Premises, the Sites, the Contractor System and/or any ICT, information or data (including the Confidential Information and the Client Data) used by the Client and/or the Contractor in connection with this contract; and/or 2. the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Client Data), including any copies of such information or data, used by the Client and/or the Contractor in connection with this contract. |
| "Clearance" | means national security clearance and employment checks undertaken by and/or obtained from the Defence Vetting Agency; |
| "Contractor | the hardware, computer and telecoms devices and |
| Equipment" | equipment supplied by the Contractor or its Subcontractors (but not hired, leased or loaned from the Client) for the carrying out of the works; |
| "Contractor Software" | software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of carrying out of the works; |
| "Contractor System" | the information and communications technology system used by the Contractorin carrying out of the works including the Software, the Contractor Equipment and related cabling (but excluding the Client System); |
| "Control" | means that a person possesses, directly or indirectly, the |

power to direct or cause the direction of the management

and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "Controls" and "Controlled" shall be interpreted accordingly;

|  |  |
| --- | --- |
| "Default" | any breach of the obligations of the relevant party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant party, its employees, servants, agents or Sub contractors in connection with or in relation to the subject-matter of this contract and in respect of which such party is liable to the other; |
| "Dispute Resolution | the dispute resolution procedure set out in this contract (if |
| Procedure" | any) or as agreed between the parties; |
| "Client Premises" | means premises owned, controlled or occupied by the Client or its Affiliates which are made available for use by the Contractor or its Subcontractors for carrying out of the works (or any of them) on the terms set out in this contract or any separate agreement or licence; |
| "Client System" | the Clients computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Client or the Contractor in connection with this contract which is owned by or licensed to the Client by a third party and which interfaces with the Contractor System or which is necessary for the Client to receive the works; |
| "Environmental | the Environmental Information Regulations 2004 together |
| Information | with any guidance and/or codes of practice issues by the |
| Regulations" | Information Commissioner or relevant Government  Department in relation to such regulations; |
| "FOIA" | the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government  Department in relation to such legislation; |
| "Good Industry | the exercise of that degree of skill, care, prudence, |
| Practice" | efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector; information and communications technology; |
| "ICT Environment" | the Client System and the Contractor System; |
| "Impact Assessment" | an assessment of a Compensation Event; |

|  |  |
| --- | --- |
| "Information" | has the meaning given under section 84 of the Freedom of Information Act 2000; |
| "Information Assets | the register of information assets to be created and |
| Register" | maintained by the Contractor throughout the carrying out of the works as described in the contract (if any) or as otherwise agreed between the parties; |
| "ISMS" | the Information Security Management System as defined by ISO/IEC 27001. The scope of the ISMS will be as agreed by the parties and will directly reflect the scope of the works; |
| "Know-How" | all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the works but excluding know how already in the Contract o/s or the Clients possession before this contract; |
| "List x" | means, in relation to a Subcontractor, one who has been placed on List x jn accordance with Ministry of Defence guidelines and procedures, due to that Sub contractor undertaking work on its premises marked as CONFIDENTIAL or above; |
| "Malicious Software" | any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence; |
| "Process" | has the meaning given to it under the Data Protection Legislation but, for the purposes of this contract, it shall include both manual and automatic processing; |
| "Protectively Marked" | shall have the meaning as set out in the Security Policy  Framework. |
| "Regulatory Bodies" | those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this contract or any other affairs of the Client and 'Regulatory Body" shall be construed accordingly; |
| "Request for | a request for information or an apparent request under the |
| Information" | Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations; |



|  |  |
| --- | --- |
| "Security Management | the Contractors security plan prepared pursuant to paragraph 1.53 of schedule J (Security Management Plan) an outline of which is set out in Appendix 1 of schedule J (Security Management Plan); |
| "Security Policy | means the Cabinet Office Security Policy Framework |
| Framework" | (available from the Cabinet Office Security Policy Division); |
| "Security | means the requirements in the contract relating to security |
| Requirements" | of the carrying out of the works (if any) or such other requirements as the Client may notify to the Contractorfrom time to time |
| "Security Tests" | shall have the meaning set out in Appendix 2 (Security Management Plan) [Guidance: define "Security Tests" in Security Management Plan] |
| "Software" | Specially Written Software, Contractor Software and Third Party Software; |
| "Specially Written | any software created by the Contractor (or by a third party |
| Software" | on behalf of the Contractor) specifically for the purposes of this contract; |
| "Staff Vetting | the Clients procedures and departmental policies for the |
| Procedures" | vetting of personnel whose role will involve the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measures, including, but not limited to, the provisions of the Official Secrets Act 1911 to 1989; |
| "Statement of | shall have the meaning set out in ISO/IEC 27001 and as |
| Applicability" | agreed by the parties during the procurement phase; |
| "Standards" | the British or international standards, Clients internal policies and procedures, Government codes of practice and guidance together with any other specified policies or procedures referred to in this contract (if any) or as otherwise agreed by the parties; |
| "Third Party Software" | software which is proprietary to any third party other than an Affiliate of the Contractor which is or will be used by the Contractor for the purposes of carrying out of the works; and |

1.2 Introduction

 1 .2.1 This schedule covers:

principles of protective security to be applied in carrying out of the works;

1 .2.1 .2 wider aspects of security relating to carrying out of the works;

the development, implementation, operation, maintenance and continual improvement of an ISMS;

the creation and maintenance of the Security Management

audit and testing of ISMS compliance with the Security Requirements;

conformance to ISO/IEC 27001 (Information Security Requirements Specification) and ISO/lEC27002 (Information Security Code of Practice) and;

obligations in the event of actual, potential or attempted breaches of security.

1. .3 Principles of Security

1 .3.1 The Contractor acknowledges that the Client places great emphasis on the confidentiality, integrity and availability of information and consequently on the security provided by the ISMS.

* 1. The Contractor shall be responsible for the effective performance of the ISMS and shall at all times provide a level of security which:

is in accordance with Good Industry Practice, the law of the contract and this contract; complies with the Security Policy;

complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (Tiers 1-4) available from the Cabinet Office Security Policy Division (COSPD);

1 .3.2.4 meets any specific security threats to the ISMS; and

complies with ISO/lEC27001 and ISO/lEC27002 in accordance with paragraph 1.32 of this schedule; complies with the Security Requirements; and complies with the Clients ICT standards.

1 .3.3 The references to standards, guidance and policies set out in paragraph

1.3.2.2 shall be deemed to be references to such items as developed and

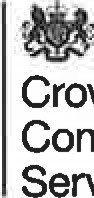
updated and to any successor to or replacement for such standards, guidance and policies, from time to time.

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

1.4 ISMS and Security Management Plan

1 .4.1 Introduction:

The Contractor shall develop, implement, operate, maintain and continuously improve and maintain an ISMS which will, without prejudice to paragraph 1.32, be accepted, by the Project Manager, tested in accordance with the provisions relating to testing as set out in the contract (if any) or as otherwise agreed between the Parties, periodically updated and audited in accordance with ISO/IEC 27001.

* + - 1. The Contractor shall develop and maintain a Security Management Plan in accordance with this Schedule to apply during the carrying out of the works.
      2. The Contractor shall comply with its obligations set out in the Security Management Plan.
      3. Both the ISMS and the Security Management Plan shall, unless otherwise specified by the Client, aim to protect all aspects of the works and all processes associated with carrying out of the works, including the construction, use, alterations or demolition of the works, the Contractor System and any ICT, information and data (including the Client Confidential Information and the Client Data) to the extent used by the Client or the Contractor in connection with this contract.
    1. Development of the Security Management Plan:

1.4.2.1 Within 20 Working Days after the Contract Date and in accordance with paragraph 1.4.4 (Amendment and Revision), the Contractor will prepare and deliver to the Project Manager for acceptance a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan set out in Appendix 2 of this Part 2 of this Contract Schedule J.

1 .4.2.2 If the Security Management Plan, or any subsequent revision to it in accordance with paragraph 1.4.4 (Amendment and Revision), is accepted by the Project Managerjt will be adopted immediately and will replace the previous version of the Security Management Plan at Appendix 2 of this Part 2 of this Contract Schedule J. If the Security Management Plan is not accepted by the Project Manager the Contractor shall amend it within 10 Working Days or such other period as the parties may agree in writing of a notice of non- acceptance from the Project Manager and re-submit to the Project Manager for accepted. The parties will use all reasonable endeavours to ensure that the acceptance process takes as little time as possible and in any event no longer than 15 Working Days (or such other period as the parties may agree in writing) from the date of its first submission to the Project Manager. If the Project Manager does not accept the Security Management Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure. No acceptance to be given by the Project Manager pursuant to this paragraph 1.4.2.2 of this schedule may be unreasonably withheld or delayed. However any failure to accept the Security Management Plan on the grounds that it does not comply with the requirements set out in paragraph 1.4.3.4 shall be deemed to be reasonable.

 1 .4.3 Content of the Security Management Plan:

1 .4.3.1 The Security Management Plan will set out the security measures to be implemented and maintained by the Contractor in relation to all aspects of the works and all processes associated with carrying out of the works and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the works comply with the provisions of this schedule (including the principles set out in paragraph 1.3);

1 .4.3.2 The Security Management Plan (including the draft version) should also set out the plans for transiting all security arrangements and responsibilities from those in place at the Contract Date to those incorporated in the Contractors ISMS at the date notified by the Project Manager to the Contractor f the Contractor to meet the full obligations of the Security Requirements.

1 .4.3.3 The Security Management Plan will be structured in accordance with ISO/lEC27001 and ISO/lEC27002, cross-referencing if necessary to other schedules of this contract which cover specific areas included within that standard.

1. .4.3.4 The Security Management Plan shall be written in plain English in language which is readily comprehensible to the staff of the Contractor and the Client engaged in the works and shall only

reference documents which are in the possession of the Client or whose location is otherwise specified in this schedule.

1.44 Amendment and Revision of the ISMS and Security Management Plan:

1 .4.4.1 The ISMS and Security Management Plan will be fully reviewed and updated by the Contractor annually or from time to time to reflect:

* 1. emerging changes in Good Industry Practice;
  2. any change or proposed change to the Contractor System, the works and/or associated processes; (c) any new perceived or changed security threats; and

(d) any reasonable request by the Project Manager

1 .4.4.2 The Contractorwill provide the Project Manager with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Management Plan at no additional cost to the Client. The results of the review should include, without limitation:

* + 1. suggested improvements to the effectiveness of the ISMS;
    2. updates to the risk assessments;
    3. proposed modifications to the procedures and controls that effect information security to respond to events that may impact on the ISMS; and
    4. suggested improvements in measuring the effectiveness of controls.

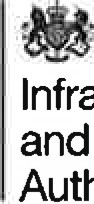
1 .4.4.3 On receipt of the results of such reviews, the Project Manager will accept any amendments or revisions to the ISMS or Security Management Plan in accordance with the process set out at paragraph 1.4.2.2.

1 .4.4.4 Any change or amendment which the Contractor proposes to make to the ISMS or Security Management Plan (as a result of a Project Managers request or change to the works or otherwise) shall be subject to the early warning procedure and shall not be implemented until accepted in writing by the Project Manager.

1 .4.5 Testing

1 .4.5.1 The Contractor shall conduct Security Tests of the ISMS on an annual basis or as otherwise agreed by the parties. The date, timing, content and conduct of such Security Tests shall be agreed in advance with the Project Manager.

1 .4.5.2 The Project Manager shall be entitled to witness the conduct of the Security Tests. The Contractor shall provide the Project Manager with the results of such tests (in a form accepted by the Client in advance) as soon as practicable after completion of each Security Test.

1 .4.5.3 Without prejudice to any other right of audit or access granted to the Client pursuant to this contract, the Project Manager and/or its authorised representatives shall be entitled, at any time and without giving notice to the Contractor, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the Contractors compliance with the ISMS and the Security Management Plan. The Project Manager may notify the Contractor of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the carrying out of the works. If such tests adversely affect the Contractors ability to carry out the works in accordance with the Scope, the Contractor shall be granted relief against any resultant under-performance for the period of the tests.

1 .4.5.4 Where any Security Test carried out pursuant to paragraphs 1.4.5.2 or 1.4.5.3 above reveals any actual or potential Breach of Security, the Contractor shall promptly notify the Project Manager of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the Contractor proposes to make in order to correct such failure or weakness. Subject to the Project Managers acceptance in accordance with paragraph (i), the Contractor shall implement such changes to the ISMS and the Security Management Plan in accordance with the timetable agreed with the Project Manager or, otherwise, as soon as reasonably possible. Where the change to the ISMS or Security Management Plan is made to address a non-compliance with the Security Policy or Security Requirements, the change to the ISMS or Security Management Plan is Disallowed Cost.

1. .5 Compliance with ISO/IEC 27001

1 .5.1 Unless otherwise agreed by the parties, the Contractor shall obtain independent certification of the ISMS to ISO/IEC 27001 within 12 months of the Contract Date and shall maintain such certification until the Defects Certificate or a termination certificate has been issued.

1.52 In the event that paragraph 1.51 above applies, if certain parts of the ISMS do not conform to Good Industry Practice, or controls as described in

ISO/IEC 27002 are not consistent with the Security Policy, and, as a result, the Contractor reasonably believes that it is not compliant with ISO/IEC 27001, the Contractor shall promptly notify the Project Manager of this and the Client in its absolute discretion may waive the requirement for certification in respect of the relevant parts.

1.5.3 The Project Manager shall be entitled to carry out such regular security audits as may be required and in accordance with Good Industry Practice, in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001.

1.5.4 If, on the basis of evidence provided by such audits, it is the Project Managers reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 is not being achieved by the Contractor, then the Project Manager shall notify the Contractor of the same and give the Contractor a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to become compliant with the principles and practices of ISO/IEC 27001.

Contractor does not become compliant within the required time then the Project Manager has the right to obtain an independent audit against these  standards in whole or in part.

1.5.5 If, as a result of any such independent audit as described in paragraph 1.54 the Contractor is found to be non-compliant with the principles and practices of ISO/IEC 27001 then the Contractor shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Client in obtaining such audit.

1.6 Breach of Security

1 .6.1 Either party shall give an early warning to the other in accordance with the agreed security incident management process as defined by the ISMS upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.

1.62 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 1.6.1 , the Contractor shall:

1.6.2.1 immediately take all reasonable steps necessary to

* + - * 1. remedy such breach or protect the integrity of the ISMS against any such potential or attempted breach or threat; and
        2. prevent an equivalent breach in the future.

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

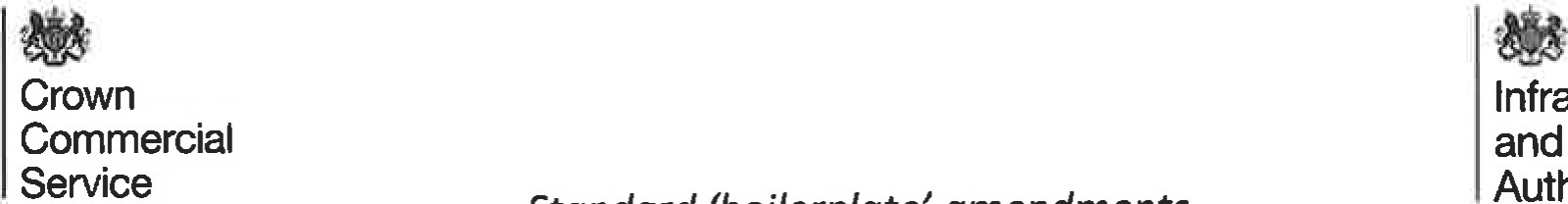
as soon as reasonably practicable provide to the Project Manager full details (using such reporting mechanism as defined by the ISMS) of the Breach of Security or the potential or attempted Breach of Security.

Appendix 1 — Security Policy

[Guidance Note: Append Security Policy]

Appendix 2 — Security Management Plan

[Guidance Note: Append Security Management Plan]



SCHEDULE [Guidance: insert schedule ref here] CYBER ESSENTIALS

## CYBER ESSENTIALS SCHEME

DEFINITIONS

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

"Cyber Essentials Scheme"

"Cyber Essentials Basic

Certificate"

"Cyber Essentials Certificate"

"Cyber Essential Scheme Data"

"Cyber Essentials Plus Certificate"

2. CYBER ESSENTIALS OBLIGATIONS

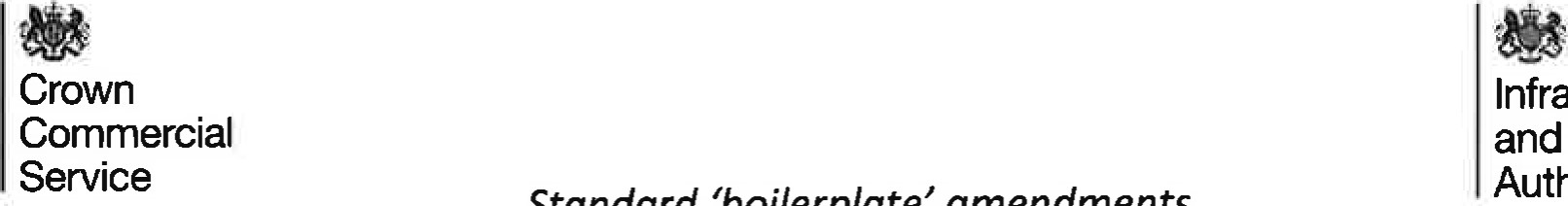
the Cyber Essentials Scheme developed by the Government which provides a clear statement of the basic controls all organisations should implement to mitigate the risk from common internet based threats (as may be amended from time to time). Details of the Cyber Essentials Scheme can be found here: https://www.gov.uk/government/ publications/cyber-essentials scheme-overview;

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

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

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

the certification awarded on the basis of external testing by an independent certification body of the Contractors cyber security approach under the Cyber Essentials Scheme and is a more advanced level of assurance.



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

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

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

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

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

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

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

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)