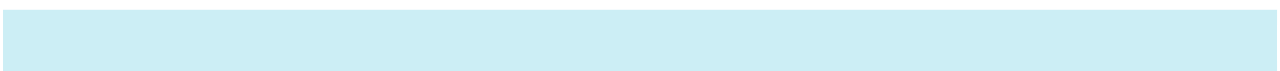


Lots 1 to 3 (P23)

Schedule 04A Call Off Procedures

This schedule applies to Lots 1 to 3 (P23) and not schedule 04



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1. Framework Call Off

- 1.1 If a Client wishes to purchase Works and Services under this Framework Agreement, it may do so in accordance with one of the following call-off procedures:
- 1.1.1 for any Works and Services that are within the scope of this Framework Agreement, by way of conducting a Further Competition in accordance with the Further Competition Procedure;
 - 1.1.2 for certain additional Works and/or Services where the circumstances set out in paragraph 3 of this Schedule 4A (Call off Procedures) apply, by way of directly awarding a Project Agreement to the relevant PSCP in accordance with the relevant requirements set out in paragraph 3 of this Framework Schedule 4A (Call off Procedures);
 - 1.1.3 where the circumstances described in paragraph 4 of this Framework Schedule 4A (Call off Procedures) apply and a replacement contractor is needed on an urgent basis to carry out certain Works and Services covered by an Existing Scheme Agreement, by way of directly awarding a Scheme Agreement or Project Agreement to another PSCP in accordance with the relevant requirements set out in paragraph 4 of this Framework Schedule 4A (Call off Procedures);
 - 1.1.4 where the circumstances of extreme urgency described in paragraph 5 of this Framework Schedule 4A (Call off Procedures) apply, by way of directly awarding a Scheme Agreement or Project Agreement to a PSCP in accordance with the relevant requirements set out in paragraph 5 of this Framework Schedule 4A (Call off Procedures);
 - 1.1.5 when a Client awards a contract pursuant to this Framework Schedule 4A (Call off Procedures) it shall at all times be required to comply with the requirements under PCR 2015 (including the requirement to provide the necessary feedback to the Bidders in accordance with those regulations), as well as the provisions set out herein.
- 1.2 For the avoidance of doubt:-
- 1.2.1 where the PSCP's appointment under the Framework Agreement has been suspended in accordance with Clause 14.14 of the Framework Agreement (including any such suspension which arises from a failure to meet KPI Performance Standards or from any failure that might give rise to a right of termination for the Authority under Framework Schedule 8 (Financial Distress)), the PSCP shall not be eligible to participate in any call-off procedure under this Framework Schedule 4A (Call off Procedures) which is initiated during the period of the relevant suspension;
 - 1.2.2 nothing in this Framework Schedule 4A (Call off Procedures) is intended to prevent a Client from choosing to award a contract to a PSCP via a procedure conducted outside the scope of this Framework Agreement where the Client is permitted to do so under the PCR, including in any exceptional circumstances of the kind contemplated by regulation 32 of the PCR.

- 1.3 Unless and to the extent expressly stated otherwise in any Client ITT Brief or similar documents issued by a Client in respect of a particular call-off procedure, all PSCPs who participate in any call-off procedure conducted pursuant to this Framework Schedule (Call off Procedures) 4A shall be fully responsible for all costs and expenses (including the fees and disbursements of any external advisors) incurred in relation to such participation (including in relation to the preparation, submission and/or negotiation of any relevant tenders) and the Client shall not have any responsibility for payment or reimbursement of any such costs, expenses, fees and disbursements (including in circumstances where the Client, having initiated a particular call-off procedure, then decides at its discretion to terminate that procedure without awarding any contract under it).
- 1.4 All information supplied by a Client in connection with any call-off procedure shall be treated as being the Client's confidential information to which the provisions of Schedule 6 Part 1 shall apply, without prejudice to any additional confidentiality terms which may be specified by the Client in a Client ITT Brief or other documents issued by the Client in connection with the relevant procedure.
- 1.5 Where explicitly stated in the Project Brief, the PSCPs can collaborate and form a consortium or a non-incorporated special purpose vehicle in order to bid on call-off tender (see framework Schedule 18) for Lot 3 only.

2. Further Competition Procedure

- 2.1 The procedure and other requirements set out in the following parts of paragraph 2 of this Framework Schedule 4A (Call off Procedures) shall be followed and complied with in relation to any Further Competition conducted by a Client. By way of overview:-
 - 2.1.1 each Further Competition shall in all cases incorporate a formal invitation to tender stage in which Initial Tenders are provided by the relevant PSCPs invited to participate in that stage and those Initial Tenders are then evaluated by the Client according to specified quality and price related criteria (as further described in paragraphs 2.4.4 and 2.5 below);
 - 2.1.2 the Client shall have the option, following the receipt of Initial Tenders provided in response to a formal invitation to tender of the kind described in paragraph 2.1.1 above, to incorporate one or more additional negotiation stages into the procedure and with or without provision for down-selection of participating PSCPs prior to or during these stages, before then inviting remaining PSCPs to submit Final Tenders for the purposes of the Client making its final award decision;
 - 2.1.3 the Client shall have the option, prior to commencing any of the stages described in paragraphs 2.1.1 and 2.1.2 above, to incorporate an initial down-selection stage into the Further Competition in accordance with the requirements described in paragraph 2.2 below.
- 2.2 If the Client wishes, at its option, to incorporate an initial down-selection stage into the Further Competition, the following requirements shall apply:-

- 2.2.1 the Client shall identify, by applying the rules set out in paragraph 8 below, the relevant Lot or Sub-Lot from which a call-off should be made for the purposes of the Scheme in question;
- 2.2.2 the Client shall identify all of the PSCPs in the relevant Lot Sub-Lot(as identified under paragraph 2.2.1 above) respect of the Scheme in question to provide a response, by way of an expression of interest in participating in the relevant Further Competition, which the Client shall then evaluate and score for down-selection purposes (such response being an **EOI Response**);
- 2.2.3 for the purposes of inviting relevant PSCPs to provide an EOI Response, the Client shall prepare and issue to the relevant PSCPs a document which includes the following information:-
- (i) sufficient outline information about the Scheme to enable the relevant PSCPs to understand the nature of the opportunity represented by the Further Competition and inform their decision on whether or not they wish to participate in the Further Competition, such information to be proportionate, in terms of the level of detail provided, to the value and complexity of the Scheme;
 - (ii) indicative information about the likely further stage(s) of the Further Competition, including an indication of high level quality and price evaluation criteria likely to be applied in respect of such further stage(s);
 - (iii) specific questions to which each PSCP will be required to provide a response for the purposes of the EOI Response, together with information about how these responses will be evaluated and score by the Client for down-selection purposes;
 - (iv) the Client shall specify whether or not (at its option) the relevant down-selection decision will be based on an evaluation and scoring of responses to specified qualitative questions only or a combination of an evaluation and scoring of responses to specified qualitative questions, together with an evaluation and scoring of pricing information based either on relevant Tendered Rates and Fees or (at the Client's option) revised pricing submissions requested as part of the EOI Response. Where the Client chooses to apply a combination of qualitative and price related criteria, the relevant quality/price weighting ratio shall be within the range referred to in paragraph 2.5 below and, once established for the purpose of this EOI Response stage of the Further Competition, shall then be applied in respect of the Initial Tender and (if applicable) any subsequent stages of the Further Competition;
 - (v) information about the format and timescales within which the relevant responses are to be provided by the relevant PSCPs.

- 2.2.4 where, having received an invitation to submit an EOI Response, a PSCP does not wish to participate in the relevant Further Competition, it shall respond to the Client to this effect as soon as reasonably practicable. Where any PSCP responds in these terms and/or fails to provide any EOI Response by the relevant deadline for doing so, that PSCP shall then be excluded from further participation in the Further Competition;
- 2.2.5 following the relevant deadline for submission of EOI Responses, the Client shall evaluate and score all those EOI Responses received by such deadline by applying the evaluation criteria set out in the relevant invitation issued under paragraph 2.2.3 above;
- 2.2.6 according to the outcome of the evaluation process set out in paragraph 2.2.5 above, the Client shall identify by reference to the highest scoring EOI Responses the shortlist of PSCPs who will be invited to participate in the next stage of the Further Competition by way of being issued with a Client ITT Brief, together with those PSCPs (if any) who will not be shortlisted and who will accordingly be excluded from further participation in the Further Competition;
- 2.2.7 the Client shall promptly notify those PSCPs (if any) who are to be excluded from further participation in the Further Competition;
- 2.2.8 the next stage of the Further Competition, for those PSCPs shortlisted to participate in that stage, shall involve the preparation and issue of a Client ITT Brief in accordance with paragraph 2.4 below.
- 2.3 If the Client chooses not to incorporate an initial down-selection stage into the Further Competition, the following initial requirements shall apply:-
- 2.3.1 the Client shall identify, by applying the rules set out in paragraph 8 below, the relevant Lot Sub-Lot from which a call-off should be made for the purposes of the Scheme in question;
- 2.3.2 the Client shall [invited identify](#) all of the PSCPs in the relevant Lot or Sub-Lot (as identified under paragraph 2.3.1 above) ~~who are capable of meeting the Client's requirements in respect of the Scheme in question, these being the PSCPs~~ to whom the Client shall then issue a Client ITT Brief.
- 2.4 As the second stage of a Further Competition following an initial down-selection stage in accordance with paragraph 2.2 above or (as the case may be, where no such initial down-selection stage occurs) as the initial stage of a Further Competition, the Client shall prepare and issue to relevant PSCPs (as referred to in paragraphs 2.2.6 or 2.3.2, as applicable) a Client ITT Brief which, at a minimum, contains the following:-
- 2.4.1 information relating to the proposed Scheme, including a description of the Project(s) included in the Scheme, the Further Competition Requirements, the relevant Minimum Requirements and any existing design or estimated pricing information in respect of the Scheme;

- 2.4.2 the relevant proposed form of Scheme Agreement and proposed form(s) of Project Agreement that will apply to (each of) the Project(s) included in the Scheme (each of which forms shall be substantially in the form of the relevant template documents set out in Framework Schedule 4 (Call off contracts etc.) but supplemented, refined and tailored for the purposes of the Scheme in such manner as the Client reasonably considers appropriate), together with instructions explaining the extent to which (if at all) participating PSCPs are permitted to propose any changes to such forms of agreement as part of their tender submissions;
- 2.4.3 details of the procedure which the Client proposes to follow in respect of the Further Competition including in particular:-
- (i) whether or not the Client proposes to engage with the market prior to tender and the nature and extent of such pre market engagement including any “Bidder Conference” session to which one or more representatives of each relevant PSCP will be able to attend for the purposes of being provided with information about the Further Competition and of raising questions with the Client on an open forum basis;
 - (ii) whether or not the Client reserves a right to make an award decision on the basis of its evaluation of Initial Tenders. Where the Client does not reserve such a right, then the Client shall reserve a right in accordance with sub-paragraph (iv) below to incorporate one or more additional negotiation stages into the Further Competition and then base its final award decision on Final Tenders submitted after the conclusion of such negotiation stage(s);
 - (iii) whether or not the Client reserves a right to require relevant PSCPs to attend one or more interviews, following submission of their Initial Tenders, for the purposes of assisting with the moderation of scores to be awarded to each PSCP in respect of their Initial Tenders, Where the Client chooses (at its option) to incorporate an interview stage of this kind into the process, the Client shall specify in a clear and transparent manner how information communicated during the relevant interviews will be used for the purposes of moderating scores awarded in respect of Initial Tenders;
 - (iv) whether or not (having regard to sub-paragraph (ii) above) the Client reserves a right, following the receipt and evaluation of Initial Tenders, to incorporate one or more additional negotiation stages into the Further Competition and, if so, whether or not the Client reserves the right to make one or more further down-selections of participating PSCPs before then inviting the remaining PSCPs to submit Final Tenders;
- 2.4.4 details of the evaluation criteria and scoring methodology which will be applied for the purposes of evaluating and scoring Initial Tenders, being details which shall include:-

- (i) details of the relevant quality related questions to which each PSCP must provide a response, having regard to the requirements of paragraph 2.5 below; and
- (ii) details of the pricing submissions to be made by each PSCP, having regard to the requirements of paragraphs 2.5 and 7 below;

- 2.4.5 where applicable, having regard to paragraph 2.4.3 above, details of the high level evaluation criteria likely to be applied in respect of tender submissions applicable to any subsequent down-selection or Final Tender stages of the Further Competition;
- 2.4.6 details of the format in which Initial Tenders must be submitted and the nature and extent of any supporting documentation, such as drawings, models or 3D images, which each PSCP is required or (as the case may be) permitted to provide;
- 2.4.7 details of any relevant page or word limit cap which will apply to Initial Tenders or particular elements of the Initial Tender;
- 2.4.8 details of the timetable for the submission of Initial Tenders, being a timetable which takes account of factors such as the complexity of the subject matter of the Client ITT Brief and the time PSCPs could reasonably be expected to need for the purposes of preparing their Initial Tenders;
- 2.4.9 other general instructions and requirements applicable to the Further Competition.

2.5 The approach to be adopted by the Client, and then described in the Client ITT Brief, in relation to the evaluation and scoring of Initial Tenders shall be consistent with the following requirements:-

- 2.5.1 evaluation shall be based on a mix of quality and price related criteria, with the quality/price criteria weighting ratio to be within the following range and (where applicable) the same as that established at the EOI Response stage of the Further Competition:-

80/20 (quality/price) to 60/40 (quality/price)

- 2.5.2 in respect of quality related criteria, the Client devise an appropriate series of quality related questions by reference to certain of the sub-criteria topics set out in the table below and shall determine the respective sub-weightings applicable to each of these sub-criteria topics together with an appropriate methodology to be applied in scoring responses to each of the relevant questions:-

Sub- Criterion Number	Quality Criteria
1	Client satisfaction

2	Health and Safety
3	Strength of team and leader
4	Net Zero Carbon and Sustainability
5	Working with your supply chain
6	Relevant experience
7	Delivery confidence
8	Governance
9	Working with us
10	Care, Quality and Productivity
11	Design and standardisation
12	Cost management
13	Stakeholder engagement
14	BIM
15	Innovation and sharing information
16	Smart Infrastructure and Modern Methods of Construction
17	Social Value
18	Whole life costing

- 2.5.3 in respect of price related criteria, the Client shall determine the relevant pricing submissions which are to be provided and the scoring methodology to be applied in relation to these, but shall ensure that the approach which it adopts in this respect is (to the extent required under the PCR) consistent with the basis on which relevant Tendered Rates and Fees were originally established;
- 2.5.4 for the purposes of maintaining a record of the basis on which quality and price related scores are determined and calculated in relation to each Initial Tender, the Client may use the “P23 Call-off Tool”, being a spreadsheet developed by the Authority for these purposes (and for the purposes of the call-off procedure generally).

- 2.6 In respect of all compliant Initial Tenders submitted in response to the Client ITT Brief, the Client shall evaluate and score such Initial Tenders in accordance with the relevant evaluation criteria and scoring methodology set out in the Client Brief.
- 2.7 Where the Client indicated in the Client ITT Brief that it reserved the right to make its final award decision on the basis of its evaluation of Initial Tenders and the Client then wishes to exercise this right, it shall award the Scheme Agreement to the PSCPs whose Initial Tender received the highest score through the Client's evaluation exercise.
- 2.8 Where the Client does not award a Scheme Agreement in accordance with paragraph 2.7 above, it shall proceed to negotiate with relevant PSCPs in relation to aspects of their Initial Tenders through one or more structured negotiation stages of the Further Competition. For these purposes:-
- 2.8.1 where the Client indicated in the Client ITT Brief that it may carry out a down-selection exercise on the basis of its evaluation and scoring of Initial Tenders, the Client may limit participation in the relevant negotiation stages of the Further Competition to the relevant number of highest scoring PSCPs specified in the Client ITT Brief;
- 2.8.2 prior to initiating any negotiation stage, the Client shall provide to all relevant participating PSCPs such further written instructions in relation to the conduct of that stage as may be appropriate at the time, including instructions relating to the following matters:-
- (i) those aspects of each PSCP's Initial Tender in respect of which the Client wishes to negotiate and the basis (including the format and timetable for any negotiation sessions and confirmation of the confidentiality rules that will apply in relation to these sessions) on which those negotiations are to be conducted;
 - (ii) details of any further written submissions which participating PSCPs may be required to make prior to the Final Tender stage of the Further Competition;
 - (iii) detail of any further down-selection exercises which the Client may wish to conduct prior to the Final Tender stage of the Further Competition and the basis on which relevant written submissions will be evaluated for the purposes of any such exercise. All evaluation criteria applied for these purposes shall be consistent with, and represent a refinement of, the evaluation criteria applied in relation to the evaluation of Initial Tenders;
- 2.8.3 following the conclusion of the negotiation stage(s) of the Further Competition, the Client shall prepare and issue to all PSCPs who are still participating in the Further Competition an invitation to submit Final Tenders, such invitation to include details of the evaluation criteria and scoring methodology which will be applied for the purposes of evaluating and scoring Final Tenders. All such evaluation criteria shall be consistent with, and

represent a refinement of, the evaluation criteria applied in relation to the evaluation of Initial Tenders.

- 2.9 In respect of all compliant Final Tenders submitted in response to the invitation issued by the Client in accordance with paragraph 2.8.3 above, the Client shall evaluate and score such Final Tenders in accordance with the relevant evaluation criteria and scoring methodology set out in the relevant invitation documents. Where the Client then wishes to award a Scheme Agreement via the relevant Further Competition (and nothing in this Framework Schedule 4A (Call off Procedures) shall require a Client to do so), the Client shall award the Scheme Agreement to the PSCP whose Final Tender received the highest score through the Client's evaluation exercise.
- 2.10 The Client shall design and implement each Further Competition in a manner which is appropriate and proportionate to the Scheme in question and the particular Works and/or Services which the Client wishes to procure in relation to that Scheme.
- 2.11 The Client shall ensure that every Further Competition that it conducts is compliant with relevant Laws.

3. Direct award for Additional works and Services

- 3.1 A Client may directly award a Project Agreement to a PSCP in respect of certain additional Works and Services (the **Additional Works and Services**) if all of the following conditions are met:
- 3.1.1 the PSCP is party to an Existing Scheme Agreement;
 - 3.1.2 the Works and Services under the Existing Scheme Agreement are on-going as at the date of the direct award under this paragraph 3 of Framework Schedule 4A (Call off Procedures);
 - 3.1.3 the form of Project Agreement governing the Additional Works and Services will be in substantially the same form (including as to pricing terms) as the form of Project Agreement which is applicable to Projects carried out under the Existing Scheme Agreement, save only for any Necessary Modifications in respect of the Additional Works and Services. For these purposes, where the Existing Scheme Agreement provides for different forms of Project Agreement to apply to different Projects, the form of Project Agreement which governs the Additional Works and Services shall be the form that is the most appropriate in all the circumstances, as determined by the Client according to the nature and value of the Additional Works and Services, as compared to the nature and value of the different Projects governed by the Existing Scheme Agreement;
 - 3.1.4 the value of the relevant Project Agreement governing the Additional Works and Services (the **Additional Project Agreement**) does not exceed more than 50% of the value of the Existing Scheme Agreement;

- 3.1.5 the aggregate of the value of the Additional Project Agreement and the value of the Existing Scheme Agreement does not exceed the value threshold of the relevant Lot or Sub-Lot under which the Existing Scheme Agreement was awarded; and
 - 3.1.6 either or both of the further conditions described in (respectively) paragraph 3.2 below (the **Economic and/or Technical Reasons Condition**) and paragraph 3.3 (the **Unanticipated Circumstances Condition**) apply.
- 3.2 For the purposes of paragraph 3.1.6 above, the Economic and/or Technical Reasons Condition is that for economic and/or technical reasons and to avoid any significant inconvenience or substantial duplication of costs for the Client, the Client reasonably consider that it is not appropriate for the Additional Works and Services to be carried out by an alternative contractor, including (but without limitation) where:-
- 3.2.1 the Additional Works and Services are a repetition of, and so substantially similar to, Works and Services (to be) carried out under the Existing Scheme Agreement and the Client reasonably considers that substantial additional cost and/or delays would be incurred if the Additional Works and Services were carried out by an alternative contractor;
 - 3.2.2 the Client reasonably considers that the Additional Works and Services need to be carried out at the same time as other Works and Services carried out under the Existing Scheme Agreement and technical difficulties and/or adverse costs consequences would arise in co-ordinating the Additional Works and Services if carried out by an alternative contractor; and/or
 - 3.2.3 the Client reasonably considers that the Additional Works and Services will need to interface and/or be integrated with other Works and Services carried out on the same site under the Existing Scheme Agreement and risk allocation difficulties would arise if the Additional Works and Services were carried out by an alternative contractor.
- 3.3 For the purposes of paragraph 3.1.6 above, the Unanticipated Circumstances Condition is that:-
- 3.3.1 the need for the Additional Works and Services was not anticipated by the Client at the time of conducting the Further Competition that led to the award of the Existing Scheme Agreement, including (but without limitation) where the Additional Works and Services are needed in respect of a new site only acquired by the Client after such time; and
 - 3.3.2 the overall nature of the Additional Works and Services is substantially similar to the overall nature of the Works and Services governed by the Existing Scheme Agreement.
- 3.4 Where paragraph 3.1 applies, the Client shall award the relevant Additional Project Agreement to the relevant PSCP in accordance with paragraphs 6 and 7. Below.

- 3.5 The Client shall ensure that every Direct Award that it makes is compliant with relevant Laws.

4. Direct award for replacement contractor

- 4.1 Subject to paragraphs 4.2 and 4.3 below, the Client may award a Scheme Agreement or (as applicable) a Project Agreement (in either case, a **Replacement Agreement**) directly to a PSCP in the following circumstances:

- 4.1.1 another PSCP who is a party to an Existing Scheme Agreement is the subject of an event that would constitute an Insolvency Event under this Framework Agreement (had it occurred in relation to a Party);
- 4.1.2 an Existing Scheme Agreement or Existing Project Agreement is terminated by the Client on the grounds of a breach or other event of default on the part of the relevant other PSCP who is party to that Existing Scheme Agreement or Existing Project Agreement; and/or
- 4.1.3 the Client has become entitled to exercise step-in rights in respect of any Existing Scheme Agreement and/or Existing Project Agreement,

and in each case the Client consequently needs to appoint a replacement contractor to carry out particular Works and Services, whether relating to the delivery of all remaining elements of the relevant Scheme or Project or just certain elements only (as determined by the nature of the circumstances which have arisen) and such appointment needs to be made as a matter of urgency.

- 4.2 A Client may directly award a Replacement Agreement to a PSCP under this paragraph 4 if all of the following conditions are met:
- 4.2.1 the Replacement Agreement is (for the avoidance of doubt) for the continuation and (if applicable) completion of the Works and Services governed by the relevant Existing Scheme Agreement or Existing Project Agreement in respect of which one or more of the circumstances described in paragraph 4.1 above apply;
- 4.2.2 the PSCP meets the relevant Minimum Requirements of the Client in respect of the Existing Scheme Agreement or Existing Project Agreement, being those Minimum Requirements specified by the Client for the purposes of the original Further Competition relating to the Scheme or Project in question (the **Original Competition**);
- 4.2.3 the Replacement Agreement is in substantially the same form as the relevant Existing Scheme Agreement or Existing Project Agreement (as applicable) in respect of which one or more of the circumstances described in paragraph 4.1 above apply, save that the relevant pricing details included in the Replacement Agreement shall be those established in accordance with paragraph 7.2 below; and

- 4.2.4 the Replacement Agreement is directly awarded under the same Lot or Sub-Lot as the Existing Agreement.
- 4.3 The relevant PSCP to whom a Replacement Agreement may be awarded by the Client shall be determined according to the following procedure:-
 - 4.3.1 the Client shall first identify the PSCP who was awarded the second highest score in the Original Competition and offer to enter into the Replacement Agreement with that PSCP;
 - 4.3.2 if such PSCP refuses to confirm that it is willing to enter into the Replacement Agreement within a reasonable timeframe specified by the Client, the Client may proceed to approach the PSCP with the next highest score in the Original Competition and so on until it identifies a PSCP who confirms that it would be willing to enter into the Replacement Agreement.
- 4.4 Where paragraph 4.1 applies, the Client shall award the relevant Replacement Agreement to the relevant PSCP (as determined under paragraph 4.3 above) in accordance with paragraphs 6 and 7.

5. Emergency Response

- 5.1 The Client may award a Scheme Agreement or Project Agreement to any PSCP, by way of directly awarding the relevant Scheme Agreement or Project Agreement in accordance with paragraph 5.2, where such direct award is permitted by regulation 32 of the PCR, including where such direct award is permissible under regulation 32 of the PCR as a response to an emergency situation which has arisen, such as (but without limitation):
 - 5.1.1 the occurrence of a major public health crisis; or
 - 5.1.2 where critical infrastructure has been damaged or destroyed by fire, explosion or other circumstances requiring an urgent response by way of disaster recovery.
- 5.2 Where the circumstances described in paragraph 5.1 apply:
 - 5.2.1 the Client may approach any PSCP (appointed to any of the Lots or Sub-Lots) who the Client considers may be capable of meeting its requirements in respect of the relevant Scheme Agreement or Project Agreement;
 - 5.2.2 where any such PSCP approached by the Client is willing and able to meet such requirements (and for the avoidance of doubt, the Client may approach multiple PSCPs, either concurrently or consecutively, for these purposes), the Client and the PSCP shall, acting reasonably and in good faith, seek to agree without delay an appropriate form of Scheme Agreement and related Project Agreement(s) or (as applicable) just an appropriate form of Project Agreement, which (in each case) shall be substantially in the form of the relevant template agreement set out in Framework Schedule 4 (Call off

contracts etc.) and shall include pricing details established in accordance with paragraph 7.2.

- 5.3 Where paragraph 5.1 applies and the Client is then able to agree with a particular PSCP under paragraph 5.2 a form of Scheme Agreement (and related Project Agreement(s)) or (as applicable) just a Project Agreement with a particular PSCP, the Client shall award the relevant Scheme Agreement or Project Agreement to the relevant PSCP in accordance with paragraphs 6 and 7.

6. Formation of Contract

- 6.1 If the Client proceeds with the award of a Scheme Agreement under paragraph 2, an Additional Project Agreement under paragraph 3, a Replacement Agreement under paragraph 4 or a relevant Scheme Agreement or Project Agreement under paragraph 5, it shall issue the relevant agreement to the relevant PSCP and invite it to sign and return such agreement to the Client.
- 6.2 On being issued with a relevant agreement under paragraph 6.1 above, the PSCP shall be required to sign such agreement in the form issued to it, and so without any further modification. No contract shall be formed between the relevant PSCP and the Client until the relevant agreement is subsequently signed and completed by the Client.

7. Tendered Rates and Fees

- 7.1 For the purposes of any tender submission made by a PSCP pursuant to a Further Competition (including any Initial Tender or Final Tender), any pricing amounts (whether a rate, a fee percentage, an item of cost or otherwise) shall not exceed (but may be lower than) the applicable Tendered Rates and Fees specified in paragraph 7.3.
- 7.2 For the purposes of any Replacement Agreement to be awarded under paragraph 4 or any relevant Scheme Agreement or Project Agreement to be awarded under paragraph 5, relevant pricing amounts to be included in such agreement (whether a rate, a fee percentage, an item of cost or otherwise) shall be those agreed between the Client and the relevant PSCP at the time, provided always that:-
- (a) such amounts shall not exceed the applicable Tendered Rates and Fees specified in paragraph 7.3 below; and
 - (b) in the absence of any agreement at the time to apply any lower amounts, the Client shall be entitled to require that the applicable Tendered Rates and Fees specified in paragraph 7.3 will apply and be included in the relevant agreement.
- 7.3 In any Project Agreement:
- 7.3.1 which uses NEC4 ECC Option A (Priced Contract with Activity Schedule):

- (a) the pricing of staff roles for People included in the Prices shall be based on and derived from rates which do not exceed the rates for such staff roles tendered by the PSCP in the Tendered Option A Rates; and
- (b) the PSCP's Profit and Overhead for all priced activities comprising the Prices shall not exceed the Tendered Option A Fee Percentage; and
- (c) the fee percentage shall not exceed the Tendered Option A Fee Percentage.

7.3.2 which uses NEC4 ECC Option C (Target contract with Activity Schedule):

- (a) the Defined Cost of people who are directly employed by the PSCP shall not exceed the Tendered Option C Rates;
- (b) the fee percentage shall not exceed the Tendered Option C Fee Percentage.

7.3.3 which uses the NEC4 Short Contract:

- (a) rates for staff roles of People included in the Price List and the People Rates shall be based on and derived from rates which do not exceed the corresponding rates for such staff roles in the Tendered Short Contract Rates; and
- (b) the PSCP's Profit and Overhead included in the Prices shall not exceed the Tendered Short Contract Fee Percentage; and
- (c) the fee percentage shall not exceed the Tendered Short Contract Fee Percentage.

8. Rules relating to choice of Lot/Sub-Lot

- 8.1 Acting in accordance with the PCR, the Client shall determine the particular Project or Projects which are to form part of a Scheme in respect of which the Client wishes to call-off a Scheme Agreement by way of conducting a Further Competition.
- 8.2 The particular Lot or Sub-Lot from which a call-off shall be made for the purposes of the relevant Further Competition shall be determined according to the following factors in respect of the Scheme in question:-
 - 8.2.1 the estimated value of each Project that forms part of the Scheme, where value for these purposes refers to the estimated consideration payable by the Client for the relevant Works and Services applicable to the Project in question;
 - 8.2.2 whether or not any of the Projects that form part of the Scheme are "Connected" to each other within the meaning of paragraph 8.3 below; and
 - 8.2.3 for Schemes that, by reference to the factors in sub-paragraphs 8.2.1 and 8.2.2 above, are covered by any of Sub-Lots 1 to 7, the location of the site(s) which are the subject of the relevant Project(s) that form(s) part of the Scheme.

- 8.3 For the purposes of this paragraph 8, a Project that forms part of a Scheme shall be treated as “Connected” to another Project that forms part of the same Scheme if the Client reasonably considers that:
- 8.3.1 fulfilment of any of its “Principal Purposes” (as defined in paragraph 8.4 below) is dependent upon the successful completion of that other Project, such that the Project in question cannot reasonably be expected to meet one or more of its Principal Purposes without the completion of the other Project (and potentially vice versa);
 - 8.3.2 the Client reasonably anticipates that the two Projects will be constructed at the same time or that their planned construction periods will over-lap; and/or
 - 8.3.3 the Client reasonably anticipates that the relevant contractor appointed to carry out works in respect of the two Projects will make use of site set up and welfare facilities which are common to both Projects.
- 8.4 In this paragraph 8, the expression “Principal Purposes” as applied to a particular Project means the clinical or operational end purpose or purposes of that Project (including, where applicable, the purpose or purposes of the relevant new building or facility which is to be constructed or installed as an outcome of the Project), as distinct from the construction methodology or sequence adopted in relation to the Works and Services to be carried out in respect of that Project.
- 8.5 Where the relevant factors applicable to a particular Scheme are that:-
- 8.5.1 none of the Projects that form part of the Scheme have an estimated value equal to or in excess of £20,000,000 (twenty million pounds); AND
 - 8.5.2 none of the Projects that form of part of the Scheme are Connected to each other OR where any two or more Projects that form part of the Scheme are Connected to each other, the aggregate, estimated value of the relevant Connected Projects is not equal to or in excess of £20,000,000 (twenty million pounds,
- then the appropriate Lot or Sub-Lot from which a call-off for that Scheme shall be made shall be the applicable regional Sub-Lot, being the Sub-Lot for the region in which the sites which are the subject of the Projects in question are located. For these purposes, for any proposed Scheme where the relevant estimated values associated with that Scheme are within the thresholds referred to in paragraphs 8.5.1 and 8.5.2 above, the Client shall ensure that all Projects that form part of that Scheme relate to sites that are within the same region (by reference to the description of the regions which are applicable to each Sub-Lot).
- 8.6 Where the relevant factors applicable to a particular Scheme are that:-
- 8.6.1 none of the Projects that form part of the Scheme have an estimated value equal to or in excess of £70,000,000 (seventy million pounds);

8.6.2 none of the Projects that form part of the Scheme are Connected to each other OR where any two or more of the Projects that form part of the Scheme are Connected to each other, the aggregate, estimated value of the relevant Connected Projects is not equal to or in excess of £70,000,000 (seventy million pounds); AND

8.6.3 according to the rules set out in paragraph 8.5 above, the appropriate Lot or Sub-Lot is not any of the regional Sub-Lots referred to in paragraph 8.5 above,

then the appropriate Lot from which a call-off for that Scheme shall be made shall be Lot 2.

8.7 Where the relevant factors applicable to a particular Scheme are that:-

8.7.1 one or more of the Projects that form part of the Scheme have an estimated value equal to or in excess of £70,000,000 (seventy million pounds); OR

8.7.2 any two or more of the Projects that form part of the Scheme are Connected to each other and the aggregate, estimated value of the relevant Connected Projects equal to or in excess of £70,000,000 (seventy million pounds);

then the appropriate Lot from which a call-off for that Scheme shall be made shall be Lot 3.

8.8 By way of illustration only, and without limitation:-

Example of “Connected” Projects

A hospital is to undergo renewal in a Scheme under which there will be a phased sequence of Projects involving new build, fit out, refurbishment, M&E and civil engineering works, including refurbished wards, new build ITU and A&E facilities, ambulance bays, car parking and a new entrance hall. Any of these Projects will be Connected if:

- the facilities refurbished or constructed in one Project cannot be fully utilised without completion of another Project (for example, use of new ambulance bays may well be dependent on completion of new A&E facilities); or
- it is reasonably anticipated that the Projects in question will be undertaken at the same time or that their planned construction periods will overlap; or
- it is reasonably anticipated that relevant site set up and welfare facilities will be shared at any point between the Projects in question.

Examples of Schemes involving multiple Projects:

- 4 Projects each with estimated value of £10 million. All 4 Projects relate to the installation of combined solar “carport” and electric vehicle charging facilities (so essentially the same Works and Services) but at four completely different sites and so no dependency between any of them. None of these Projects is

therefore Connected, meaning their respective values do not get aggregated for Lot selection purposes. Appropriate Lot is therefore Lot 1.

- 6 Projects each with estimated value of £5 million. Each Project relates to various new pandemic facilities across a single hospital site but at different locations including e.g. critical care wards, ITU, incineration and additional car parking/ambulance bay. These 6 are Connected Projects because they have the same principal operational purpose. Their aggregate value is £30 million. Appropriate Lot is therefore Lot 2.
- 5 Projects with values ranging from £10 to £65 million. 3 Projects relate to the refurbishment of the main hospital site and are valued at (A) £50, (B) £60 and (C) £65 million each. In order to maintain clinical services, temporary accommodation is provided in two Projects worth (D) £5 million and (E) £10 million. Although the three high value projects are not Connected because their facilities can be fully utilised on Project completion without completion of the other Projects, all three are dependent upon the temporary accommodation projects which means that Connected Projects are (A) + (D) + (E) = £65 million, (B) + (D) + (E) = £75 million and (C) + (D) + (E) = £80 million. Given that the aggregated value of the last two groups of Connected Projects is above £70 million, the appropriate Lot is therefore Lot 3.
- As for the example above, but the temporary accommodation projects (D and E) both have a value of £2 million, so aggregated value of Connected Projects C, D and E is £69 million (and therefore below £70 million threshold for Lot 3). Appropriate Lot is therefore Lot 2. For the purposes of any tender submission made by a PSCP pursuant to a Further Competition (including any Initial Tender or Final Tender), any pricing amounts (whether a rate, a fee percentage

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