P23 Framework Agreement Schedule 05A.E

Project Agreement NEC4 Engineering and Construction Short Contract

Project Name: XXXXXXXXXXXXXX

Project Reference: P23.XXXX

Project Agreement

Between

Client: XXXXXXXXXXXXXXXXXXXXXXX

and

Contractor: XXXXXXXXXXXXXXXXXXXXXXXX

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## 1. The *Client’s* Contract Data

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| * The *Client* is: | | | | |
| Name | [XXXXXXXX] | | | |
| Address for communications | [XXXXXXXX] | | | |
| Address for electronic communications | [XXXXXXXX] | | | |
| * The *works* are [XXXXXXXXX], as described in the Scope | | | | |
| * The *site* is [XXXXXXXXXXX] | | | | |
| * The *starting date* is | | | [XXXXXXXX] | |
| * The *completion date* is | | | [XXXXXXXX] | |
| * The *delay damages* are | | | £[X] per day | |
| * The *period for reply* is | | | [2] weeks | |
| * The *defects date* is | | | [X] weeks after Completion | |
| * The *defect correction period* is | | | [2] weeks | |
| * The *assessment day* is the | | | [X] of each month | |
| * The *retention* is | | | [XXX]% | |
| * The United Kingdom Housing Grants, Construction and Regeneration Act (1996) **[does/does not]** apply | | | | |
| * The *Adjudicator* is: | | | | |
| Name | [XXXXXXXX] | | | |
| Address for communications | [XXXXXXXX] | | | |
| Address for electronic communications | [XXXXXXXX] | | | |
| * The interest rate is [8%] above the rate of the Bank of England base rate. Base rate for a debt falling due between 1 January and 30 June is calculated by reference to the Bank of England base rate on 31 December of the previous year. Base rate for a debt falling due between 1 July and 31 December is calculated by reference to the Bank of England base rate on or 30 June of that year. | | | | |
| * For any one event, the liability of the *Contractor* to the *Client* for loss of or damage to the *Client’s* property is limited to | | | £[X] | |
| * The *Client* provides this insurance [XXXXXXXX]   **Only enter details here if the *Client* is to provide insurance.** | | | | |
| * The minimum amount of cover for the third insurance stated in the Insurance Table is, for any one event | | | | £[X] |
| * The minimum amount of cover for the fourth insurance stated in the Insurance Table is, for any one event | | | | £[X] |
| The *Adjudicator nominating body* is | | [XXXXXXXX] | | |
| The *tribunal* is | | [litigation] | | |
| If the *tribunal* is arbitration, the arbitration procedure is | | [XXXXXXXX] | | |
| The *conditions of contract* are the NEC4 Engineering and Construction Short Contract June 2017 and the *additional conditions of contract* set out below as the "Z Clauses". | | | | |

## 2. Additional Conditions - Z Clauses

|  |  |
| --- | --- |
| Option Z is used | |
| Z1 | Identified and Defined Terms – clause 11  11.1 Add the following words to the end of clause 11.1:  “and are defined in clause 11.2 or 11.3 unless derived from the CWAS2/P23 Framework Alliance Contract (P23 FA) in which case they have the meaning given in the P23 FA unless the context infers otherwise.”  11.2(4) Before “Scope” add the words “contract and/or the”. |
| Z2 | Insert new clause 11.3 additional defined terms.  “11.3(1) P23 FA is the Framework Agreement that has been entered into between the Crown Commercial Services and the *Contractor*.” |
| Z3 | Interpretation and the law – clause 12  12.4 after “contract” insert “and the P23 FA”. |
| Z4 (BP) | Corrupt Acts – clause 17  “17.4.1 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 date of this contract   * committed a Corrupt Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Corrupt 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 Corrupt Act.” |
| Z5 | Insert new clause 51A  51A         VAT  51A.1        In this clause ‎51A, the following definitions shall apply:  51A.1.1     **HMRC** means HM Revenue & Customs;  51A.1.2     **Order** means the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019 (SI 2019 No. 892);  51A.1.3     **Reverse Charge** means, in relation to a supply, that under section 55A(6) of the Value Added Tax Act 1994 it is for the recipient, on the supplier's behalf, to account for and pay VAT on the supply and not for the supplier; and  51A.1.4     **Supply** means a supply made for VAT purposes under or in connection with this contract by the *Contractor* and Supplies shall be construed accordingly.  51A.2        The Parties agree and confirm that the procedure for the payment of VAT (if any) by either Party to the other shall be governed entirely and exclusively by the provisions of this clause 51A notwithstanding any other provision of this contract.  51A.3        Any consideration (whether monetary consideration or non-monetary consideration) paid or provided under or in connection with this contract is to be treated as exclusive of any VAT.  If the person making the supply (or the representative member of the VAT group of which it is a member) is required to account for VAT on any supply, the recipient of the supply shall pay (in addition to paying or providing any other consideration) an amount equal to the amount of that VAT upon the later of:  51A.3.1     the time for payment or provision of the consideration; and  51A.3.2     the receipt by the recipient of the supply of a VAT invoice in respect of that VAT.  51A.4        The *Client* confirms that the requirements specified in article (8)(1)(b) of the Order will be satisfied in respect of any Supply and the Parties consider that the Reverse Charge will not apply to the Supplies so that it is for the *Contractor* to account for and pay VAT to HMRC.  51A.5        Where the *Contractor* has accounted for VAT on Supplies (on the understanding that the Reverse Charge did not apply) but HMRC notifies the *Client* in writing that:  51A.5.1     the Reverse Charge did apply in respect of those Supplies, and  51A.5.2     notwithstanding that the *Contractor* has accounted for VAT to HMRC in respect of those Supplies, the *Client* has to account for VAT under the Reverse Charge on those Supplies, the *Contractor* shall, within two days of receipt of a copy of such notice, issue a credit note to the *Client* in respect of those Supplies and at the same time pay to the *Client* the amount of VAT included in such credit note. |
| Z6 | Fair payment – clause 52  Insert a new clause 52:  “52.1 The *Contractor* assesses the amount due to a subcontractor without taking into account the amount certified by the *Client*.  52.2 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 day* up to the current *assessment day* in this contract, * a provision requiring the subcontractor to include in each sub-subcontract 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 sub-subcontractor without taking into account the amount paid by the *Contractor.”* |
| Z7 | Prompt Payment – clause 53  Insert a new clause 53:  53.1 Where the *Contractor* submits an application for payment (including an electronic invoice) to the *Client* in accordance with clause 50, the *Client* will assess that application for payment in accordance with clause 51.  53.2 The *Client* shall pay the *Contractor* any sums due under such an application for payment no later than the final date for payment. If the application for payment is in the format of an electronic invoice it must comply with the standard on electronic invoicing. For these purposes “electronic invoice” means an invoice which has been issued transmitted and received in a structured electronic format which allows for its automatic and electronic processing. An electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.  53.3 Where the *Client* fails to comply with clause 53.1 and there is an undue delay in assessing the application for payment, the application for payment shall be regarded as valid and undisputed for the purposes of clause 53.2 14 days after the relevant assessment date.  57.4 Where the *Contractor* enters into a Sub-Contract, the *Contractor* shall include in that Sub-Contract:   * provisions having the same effect as clauses 53.1 to 53.3 of this contract; and * a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clauses 53.1 to 53.3 of this contact.   in this clause 53, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the *Client* in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this contract. |
| Z8 | Insurance cover – clause 83  83.2 after “stated in the Insurance Table” add “and in clause 83.4”.  Add new clause 83.4:  “The *Contractor* provides insurance for claims made against it arising out of its failure to use the skill and care normally used by professionals designing works similar to the *works*. The minimum amount of this insurance is £10,000,000.00 ten million pounds). This insurance provides cover from the *starting date* until 12 (twelve) years after the date of Completion.” |
| Z9 | Termination and reasons for termination – clause 90  90.5 In the second bullet point, insert “(Reason 7).” after “thirteen weeks”  Delete remainder of clause from “and which” to the end. |
| Z10 | Insert new clause 94  “Incorporation of specific terms of the P23 FA  The *Contractor* shall comply with such obligations set out in the P23 FA and its schedules (and any supporting documents referred to therein) which expressly or impliedly confer a benefit on the Client or require performance by the *Contractor* as if the *Client* was named in place of the Authority wherever referred to in those clauses (including without prejudice to the generality of the foregoing clauses 1.7, 2.1.3, 4.4, 4.7.3, 6, 7, 8 and 9 and Schedules 2, 3, 5, 6, 7, [14] and 18. The *Contractor* acknowledges it owes the same obligations to the *Client* pursuant to those clauses as it owes to the Authority under the P23 FA.” |

## 3. The *Contractor’s* Contract Data

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| * The *Contractor* is | | | | |
| Name | [XXXXXXXX] | | | |
| Address for communications | [XXXXXXXX] | | | |
| Address for electronic communications | [XXXXXXXX] | | | |
| * The *fee percentage* is | | | | [X]% |
| * The *people rates* are | | | | |
| Category of person | | Unit | Rate | |
|  | |  |  | |
|  | |  |  | |
|  | |  |  | |
|  | |  |  | |
|  | |  |  | |
| * The *published list of Equipment* is | | | [XXXXXXXX] | |
| * The *percentage for adjustment for Equipment* is | | | [X]% (state plus or minus) | |

## 4. The *Contractor’s* Offer and *Client’s* Acceptance

|  |  |
| --- | --- |
| The *Contractor* offers to Provide the Works in accordance with these *conditions of contract* for an amount to be determined in accordance with these *conditions of* *contract.* | |
| * The offered total of the Prices is |  |
| **Enter the total of the Prices from the Price List.** | |

|  |  |
| --- | --- |
| * Signed on behalf of the *Contractor* | |
| Name |  |
| Position |  |
| Signature |  |
| Date |  |

|  |  |
| --- | --- |
| The *Client* accepts the Contractor’s Offer to Provide the Works | |
| * Signed on behalf of the *Client* | |
| Name |  |
| Position |  |
| Signature |  |
| Date |  |

## 5. Price List

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Entries in the first four columns in this Price List are made either by the *Client* or the tenderer.**  **If the *Contractor* is to be paid an amount for the item which is not adjusted if the quantity of work in the item changes, the tenderer enters the amount in the Price column only; the Unit, Quantity and Rate columns being left blank.**  **If the *Contractor* is to be paid an amount for the item of work which is the rate for the work multiplied by the quantity completed, the tenderer enters the rate which is then multiplied by the expected quantity to produce the Price, which is also entered.** | | | | | |
| Item Number | Description | Unit | Quantity | Rate | Price |
|  |  |  |  |  |  |
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|  |  |  |  |  |  |
|  |  |  |  |  |  |
| * The total of the Prices | | |  | | |
| * The method and rules used to compile the Price list are:   [XXXXXXXX] | | | | | |

## 6. Scope

See Template 2

## 7. Site Information

See Template 2