

DATED _____ **2022**

THE SECRETARY OF STATE FOR (1)
WORK AND PENSIONS

AND

KIER CONSTRUCTION LIMITED (2)

**CONTRACT FOR THE APPOINTMENT
OF A CONTRACTOR RELATING TO
THE CONSTRUCTION WORKS AND ASSOCIATED
SERVICES IN
SCOTLAND AND INCORPORATING
THE NEC4 ENGINEERING AND
CONSTRUCTION CONTRACT
LOT C**

THIS CONTRACT is made on

2022 **BETWEEN:**

- (1) **THE SECRETARY OF STATE FOR WORK AND PENSIONS** acting as part of the Crown (the “**Client**”) (which expression shall include any successors in title and assigns); and
- (2) **KIER CONSTRUCTION LIMITED** (company number 2099533 whose registered office is at 2nd Floor, Optimum House, Clippers Quay, Salford, England, M50 3XP (the

“Contractor”),

together, the Parties.

WHEREAS:

- (A) 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.
- (C) 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;

“Capital Works Fee Percentage” means the fee percentage in relation to capital works as set out in the Capital Works Tender Rates and Prices;

“Capital Works Price List” means the price list relating to capital works attached at Appendix 5, incorporating the Capital Works Tender Rates and Prices, where applicable and setting out the Fee Percentage;

“Capital Works Tender Rates and Prices” means the rates and prices submitted by the Contractor in relation to capital works for the Project, which shall be priced with reference to the Estates Expansion Programme Schedule of Rates referred to in the ITT, and taking into account but not exceeding the applicable CCS Framework Rates and Prices;

“CDM Regulations” means the CDM Regulations 2015;

“CCS Framework Rates and Prices” means those rates and prices that apply to the Crown Commercial Service framework reference RM 6088, Lot 2.4

“Confidential Information” means all confidential information (however recorded or preserved) disclosed by the Client or the Contractor to the other party whether before or after the date of this Contract in connection with the Works, including but not limited to:

- (a) the terms of this Contract;
- (b) the fact that discussions and negotiations are taking place concerning the Works and/or the Site and the status of those discussions and negotiations;
- (c) any information that would be regarded as confidential by a reasonable businessperson relating to:
 - (i) the business, affairs, customers, clients, suppliers, or plans, intentions, or market opportunities of the Client and the Contractor; and
 - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the opportunities of the Client or the Contractor; and
 - (iii) any information developed by the parties in the course of carrying out this Contract.

“Contract Data” means that contract data as applicable to the relevant Works 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:

- (a) imminent risk of danger to persons.
- (b) imminent risk of full or partial loss of a Task Site; and/or
- (c) a material adverse effect upon the Client's reputation and/or 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;

“Client's Schedules” means the following documents which are included at Appendix 11 within this document:

- (a) Part A: Appendix G (Collateral Warranty); (b)

Part B: Appendix K (TUPE).

“Contractor's Tender Submission” means the Contractor's tender submitted to the Client for the Works attached at Appendix 13;

“CWAS Framework” means the CCS Framework Reference RM6088 in relation to “Construction Works and Associated Services”;

“Delivery Term” means the period of two years and six months from the date of this contract as may be extended in accordance with the terms of this Contract and subject to early termination pursuant to the relevant Terms and Conditions.

“Earn Back Points” means the earn back points set out in column L of the table set out in Part B of Appendix 8 of this Contract and which shall accrue to the Contractor in where it exceeds the relevant Performance Level in a Service Period;

“Fee Percentage” means the Capital Works Fee Percentage and/or the Life Cycle Fee Percentage (as appropriate);

“ITT” means the invitation to tender issued by the Client as part of the procurement process relating to the CWAS Framework pursuant to which the Contractor was selected to enter into this Delivery Agreement;

“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;

“Life Cycle Fee Percentage” means the fee percentage in relation to life cycle works as set out in the Life Cycle Tender Rates and Prices;

“Life Cycle Price List” means the price list relating to life cycle works attached at Appendix 5, incorporating the Life Cycle Tender Rates and Prices, where applicable and setting out the Fee Percentage;

“Life Cycle Tender Rates and Prices” means the rates and prices submitted by the Contractor in relation to life cycle works for the Project, which shall be priced with reference to the relevant PSA Schedules of Rates referred to in the ITT, and taking into account but not exceeding the applicable CCS Framework Rates and Prices;

“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, Statutory Requirements or as a result of the rights of any third party;

“Notifiable Event” means:

- (a) 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 Contractor has (or anticipates that it may have) insufficient funding to adequately resource its obligations under this Contract;
- (b) 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;

- (c) the Contractor is under investigation and/or subject to regulatory enforcement by any relevant Client and such investigation and/or enforcement shall or may be material to the Contractor's ability to provide the Works;
- (d) in the event that the Contractor commits a material default of this Contract and/or any Task Order that is capable of remedy;
- (e) the occurrence or likelihood of the occurrence of a Critical Failure Event;
- (f) the occurrence or likelihood of the occurrence of a Repeat Failure;
- (g) where the Contractor has been selected to take part in the Pricing Process (as defined in Appendix 1) and on three consecutive occasions:
 - (i) the Contractor has failed to submit a Task Order Proposal in accordance with Part B of Appendix 1; and/or
 - (ii) the Client is not able to approve the Contractor's Task Order Proposal in accordance with paragraph 2.2 of Part B of Appendix 1; and/or
- (h) where the Contractor receives a RED Score under Appendix 8; and/or
- (i) the Contractor fails to provide a Parent Company Guarantee in accordance with clause 23 of this Contract;

"NUTS Codes" means the Primary NUTS Codes and Secondary NUTS Codes;

"Objectives" means:

- (a) to deliver high quality Works;
- (b) to minimise disruption to any occupants of the Task Site;
- (c) to act in a collaborative manner and in the spirit of mutual trust and respect;
- (d) to adopt and demonstrate open book accounting techniques;
- (e) to achieve value for money and comply with Appendix 4 of this Contract;
- (f) to adopt innovative and sustainable working practices;
- (g) to promote practices that encourage a positive contribution to social value; and
- (h) to achieve continuous improvement.

"Other Consultants" means any other consultants appointed by the Client in connection with the Project and shall include those other consultants' employees, agents and sub-consultants;

"Parent Company" means the parent company nominated by the Contractor and approved by the Client;

"Parent Company Guarantee" means the form of guarantee attached at Appendix 9 with such amendments as the Client and the Contractor may agree, both acting reasonably;

“Performance Bond” means the form of performance bond attached at Appendix 10 with such amendments as the Client and the Contractor may agree, both acting reasonably;

“Price List” means the either the Capital Works Price List and/or the Life Cycle Price List (as appropriate);

“Prices” means the prices set out in any Task Order;

“Primary NUTS Codes” means the NUTS Codes identified as such in Appendix 3;

“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 column P of the table in Part B of Appendix 8 of this Contract and which shall accrue to the Contractor in the event of any Performance Failure in a Service Period;

“Performance KPI” means a key performance indicator as set out at Part B of Appendix 8 and as may be updated from time to time in accordance with paragraph 5.1 of Part A of Appendix 8;

“Performance Level” the levels that are set out in Appendix 8 of this Contract;

“Performance Monitoring Report” means the monthly performance report prepared by the Contractor in accordance paragraph 4.1 of Part A of Appendix 8;

“Performance Review Meeting” the regular meeting between the Contractor and the Client to discuss the Performance Monitoring Report, as set out in clause 5.3;

“Pipeline 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” means the Works comprising new building works and/or works of fit out, repair, replacement and/or refurbishment, including small works, minor works, intermediate works and/or life cycle works and related operations being undertaken at an office, shop, bureau, kiosk or other permanent or temporary building or unit used for the delivery of over-the-counter, telephone or consultant room style public services and advice and/or of commercial office and retail character envisaged under the CWAS Framework at the Sites which are carried out pursuant to Task Orders issued in accordance with Scope of Requirements;

“Project Participants” means the Client, the Contractor and (as relevant) the Delivery Contractors (as identified in Appendix 1), 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 Risk Register” means the risk register created and updated in accordance with Part B of Appendix 4;

“Project Team” means the Client, the Contractor, and any other consultant, subcontractor and supplier appointed by the Client or the Contractor in relation to the Works and any obligations under this Contract;

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

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

“Region” means Scotland;

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

“Scope of Requirements” means the Client’s scope document setting out the scope of requirements for the Works attached at Appendix 12;

“Senior Representatives” means at the Employer: REDACTED, Associate Commercial Specialist, Estates Category; For the Contractor, REDACTED

“Service Period” means the service period for the relevant Performance KPI as set out in column G of the table set out in Part B of Appendix 8.

“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;

“Short Schedule of Cost Components” or **“SSCC”** means the short schedule of cost components which forms part of the Terms and Conditions;

“SSCC Tender Rates and Prices” means any rates and prices in relation to the Short Schedule of Cost Components submitted by the Contractor as part of the Capital Works Tender Rates and Prices and/or the Life Cycle Tender Rates and Prices (as appropriate);

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

“Statutory Requirements” means:

- (a) any statute, regulation or subordinate legislation, the common law and any treaty or European Union law which relates to the protection of the environment or health and safety whether administrative, civil or criminal;
- (b) any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the Works or the performance of any of the obligations under this Contract and/or any Task Order;
- (c) any regulation or byelaw of any local authority, statutory undertaker or similar body or organisation which has any jurisdiction with regard to the Works or with whose systems the Works are, or are to be, connected, including any statutory provisions and any decision of a relevant authority under them which controls the right to develop any of the Sites; and

- (d) the consents of all persons who have rights or interests in or over the Works or the Sites who by the lawful exercise of their powers in the absence of such consents could delay or disrupt the carrying out or progress of the Works or the use or enjoyment of any of the Sites;

“Secondary NUTS Codes” means the NUTS Codes identified as such in Appendix 3;

“Task Order” means an appointment on the terms of which the Contractor will carry out works and/or services at the Task Site(s) and the terms of this Contract, the Terms and Conditions and the Contract Data shall be incorporated into the Task Order;

“Task Order Proposal” means a proposal issued by the Contractor to the Client following issue by the Client of a Project Instruction in accordance with Appendix 1 and in the format set out in Annex 1 of Appendix 1;

“Task Site(s)” means the site(s), being any one or more of the Sites (in the event that Works at multiple Sites are bundled into the same Task Order), to which the Task Order relates;

“Tender Rates and Prices” means the Capital Works Tender Rates and Prices, Life Cycle Tender Rates and Prices and/or the SSCC Tender Rates and Prices (as appropriate);

“Terms and Conditions” means the NEC4 Engineering and Construction Contract (Option A) and incorporating:

- (a) the schedule of amendments issued by the Crown Commercial Service under the framework agreement reference RM6088; and
- (b) those amendments set out in Appendix 1;

“Transparency Information” means the content of this Contract and any Task Order in their entirety but excluding the Contractor’s Confidential Information, and any other information that would be exempt from disclosure:

- (c) under the CWAS Framework; and/or
- (d) under the FOIA and/or the EIR; and

“Works” means the works and/or services subsequently referred to in any Task Order (to include any works procured on a design and build basis).

- 1.2 Words importing the singular only shall also include the plural and vice versa, and where the context requires, words importing persons shall include firms and corporations.
- 1.3 The headings to the clauses of this Contract shall not affect its interpretation.
- 1.4 In this Contract, save as where set out in this Contract, words and expressions shall have the same meanings as are assigned to them in the Terms and Conditions.
- 1.5 Reference in this Contract to any Act of Parliament, statute or statutory instrument shall include and refer to any statutory amendment thereto from time to time and for the time

being in force and any successor to such Act of Parliament, statute and statutory instrument.

- 1.6 Defined terms set out in the NEC4 Engineering and Construction Contract shall have effect in this Contract save where expressly set out.

2 Conditions

- 2.1 The terms and conditions of the NEC4 Engineering and Construction Contract Option A have effect as modified by this Contract, the Terms and Conditions and the Appendices.

- 2.2 Where a reference is made to a clause of the NEC4 Engineering and Construction Contract Option A (June 2017 Edition) contract it shall be read and construed to be a reference to that clause as amended by this Contract, the Terms and Conditions and Appendix 1.

- 2.3 The Client 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 that the Services Task Order relates to (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.

- 2.4 Where the Client appoints the Contractor in relation to the Works which are the subject of a Services Task Order, the Parties agree that the provisions of Part A of Appendix 1 shall not apply to the appointment of the Contractor in relation to the relevant Works Task Order.

- 2.5 In all matters in connection with this Contract, the Contractor and the Client shall act in good faith with due regard to the provisions of this Contract and the delivery of the Services and shall act reasonably and fairly with honest intention and without any intention to act maliciously or to defraud.

3 Delivery of Works

- 3.1 The Contractor shall carry out and complete the Works (to include any Works instructed by way of a Task Order) in accordance with the Terms and Conditions.

- 3.2 The Parties’ obligations in relation to the identification, approval and delivery of the Works are contained in Appendix 1.

- 3.3 All Task Order Proposals shall be proposed by the Contractor in accordance with the provisions of Appendix 1.

- 3.4 Where a Task Order Proposal has been approved by the Client pursuant to Appendix 1, then the Client and the Contractor shall enter into a Task Order in respect of those Works on the basis of the Terms and Conditions.

3.5 The Client has no obligation to issue Task Orders to the Contractor and reserves the right to have any Works carried out or supplied by other contractors. The Client makes no representations regarding the level of Works it may appoint the Contractor to carry

out during the Delivery Term and does not guarantee minimum or maximum amounts of work under a particular Task Order or in total and no form of exclusivity is granted by the Client to the Contractor in relation to the Works.

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 any Pipeline Programme as may be issued by the Client to the Contractor from time to time.

4.2 The Contractor shall support the Client to ensure that all applicable parties comply with all Statutory Requirements and Necessary Consents in relation to health and safety across the Sites.

4.3 The Contractor shall obtain and maintain all relevant Necessary Consents required in order to carry out and complete the Works.

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

4.5 Without prejudice to any other or related obligations in a Task Order, the Contractor shall, in complying with this Contract, any Task Order and its performance of the Works, act in a way which promotes the protection of the environment, sustainable construction and development and energy efficiency.

4.6 Without prejudice to any other or related obligations in a Task Order, the Contractor shall, in complying with this Contract, any Task Order and its performance of the Works, comply with the Statutory Requirements and Necessary Consents.

4.7 The Contractor shall comply with Appendix 8.

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 If:

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

5.2.2 the Client notifies the Contractor that it considers that a Notifiable Event has occurred (setting out sufficient detail so that it is reasonably clear what the Contractor has to rectify),

then, without prejudice to any other right or remedy of the Client howsoever arising under this Contract and/or any relevant Task Order:

5.2.3 at the Client's option, give the Contractor the opportunity (at the Contractor's expense) to remedy the Notifiable Event together with any damage resulting from such Notifiable Event (where such Notifiable Event is capable of remedy) or to carry out any other necessary work to ensure

that the terms of this Contract and/or any relevant Task Order are fulfilled, in accordance with the Client's instructions;

5.2.4 where:

- (i) the option to remedy has been provided but the Contractor failed to remedy the Notifiable Event within a reasonable period specified by the Client; or
- (ii) where the Notifiable Event is incapable of remedy, the Client may:
- (iii) 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;
- (iv) suspend (for any period) 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 R11 termination event under the relevant Task Order).

5.3 Where the Client exercises any of its rights under Clause 5.2.4:

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

- (i) managing and implementing the step-in, suspension and/or termination (as the case may be);
- (ii) the carrying out of all or part of this Contract and/or any relevant Task Order by the Client and/or a third party; and
- (iii) 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;

5.3.2 the Contractor shall not be obliged to provide the relevant Works to the extent that they are subject to any rights exercised by the Client under Clause 5.2.4; and

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 Limitation

- 6.1 Notwithstanding that the Task Order may be executed under hand, either party may bring a claim, action or proceedings against the other after six years from the date of completion of Works 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 relevant Works unless such claim, action or proceedings were notified in writing to the Contractor prior to such date.

7 Extending this Contract

- 7.1 The Client can extend this Contract by giving no less than 1 month written notice prior to the expiry of the Delivery Term. More than one notice can be issued provided that this Contract is not extended by more than 6 months.

8 Senior Representatives

- 8.1 The Contractor shall appoint the Contractor's Senior Representative from the date of this Contract and throughout the Delivery Term the Contractor's Senior Representative shall be the Client's main point of contact in relation to the Contractor's engagement under any Task Order and in connection with all matters arising under or in connection with this Contract.
- 8.2 The Contractor's Senior Representative shall not be replaced without the Client's consent to the replacement in writing. The Client shall be entitled to withhold its consent where the proposed replacement is not of a similar level, qualification and with equivalent experience as his predecessor and/or for any other reasonable reason.

9 Performance review and meetings

- 9.1 The Contractor shall attend meetings no more than once every Service Quarter with the Client and the Delivery Contractors (as defined in Appendix 1) in order to share best practice and improve and development the performance of this Contract as a whole as and when reasonably requested to do so by the Client.
- 9.2 The Client and Contractor shall attend a meeting on the first anniversary of the Delivery Term (the "**Annual Meeting**") and at this meeting the Contractor may request, together with such supporting information as the Client may require, the selection of any Secondary NUTS Codes (where applicable). Where the Client agrees to such request, it shall take that into account when applying any subsequent Rotational Procedure.
- 9.3 At the Annual Meeting, the Contractor and the Client shall review the Pipeline Programme and any other relevant information to enable the Contractor to provide recommendations on bundling of certain works and/or packages in order to benefit from economies of scale, to reduce the number of individual Task Orders and/or to minimise disruption to the Client's core business.
- 9.4 The Contractor's Senior Representative shall attend all meetings required by this clause at no cost to the Client and shall at all times ensure that it is in possession of up to date information regarding the Contractor's performance on Task Orders.

10 Termination

- 10.1 The Client shall be entitled to suspend or terminate this Contract (with or without terminating any Task Orders let hereunder pursuant to its terms and the decision whether to so terminate both Task Orders and this Contract shall be at the Client's sole discretion) at any time by giving not less than 10 Business Days' prior written notice to the Contractor.
- 10.2 Termination shall be without prejudice to any accrued rights or remedies or any continuing obligations of either party and without prejudice to the continuation of any Task Orders that are not co-terminated with this Contract.
- 10.3 Notwithstanding any provision of this Contract or the terms of any Task Order the Contractor shall not be entitled to claim any loss of profit, loss of contracts, loss of opportunity or other indirect and/or consequential losses upon termination of its employment under this Contract or any Task Order.
- 10.4 The Contractor's obligations under clauses 5.3, 6 and 11 – 25 (inclusive) shall survive any termination of this Contract and/or of any Task Order.

11 Disclosure of Information

Freedom of Information

- 11.1 Subject to Clauses 11.4, 11.5, 11.8, 11.9 and 11.11 the Contractor:
- 11.1.1 shall treat in confidence all Confidential Information it receives from the other;
 - 11.1.2 shall not disclose any of that Confidential Information to any third party without the prior written consent of the other party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Confidential Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the Contract;
 - 11.1.3 shall not use any of that Confidential Information otherwise than for the purpose of the Contract; and
 - 11.1.4 shall not copy any of that Confidential Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the Contract.
- 11.2 The Contractor shall take all reasonable precautions necessary to ensure that all Confidential Information disclosed to the Contractor by or on behalf of the Client under or in connection with the Contract:
- 11.2.1 is disclosed to its employees and subcontractors, only to the extent necessary for the performance of the Contract; and
 - 11.2.2 is treated in confidence by them and not disclosed except with prior written consent or used otherwise than for the purpose of performing work or having work performed for the Client under the Contract.

11.3 The Contractor shall ensure that his employees are aware of his arrangements for discharging the obligations at Clauses 11.1 and 11.2 before they receive Confidential Information and take such steps as may be reasonably practical to enforce such arrangements.

11.4 Clauses 11.1 and 11.2 shall not apply to any Confidential Information to the extent that either party:

11.4.1 exercises rights of use or disclosure granted otherwise than in consequence of, or under, the Contract;

11.4.2 has the right to use or disclose the Confidential Information in accordance with other conditions of the Contract; or

11.4.3 can show:

(i) that the Confidential Information was or has become published or publicly available for use otherwise than in breach of any provision of the Contract or any other agreement between the parties;

(ii) that the Confidential Information was already known to it (without restrictions on disclosure or use) prior to it receiving it under or in connection with the Contract;

(iii) that the Confidential Information was received without restriction on further disclosure from a third party who lawfully acquired it and who is himself under no obligation restricting its disclosure; or

(iv) from its records that the same information was derived independently of that received under or in connection with the Contract,

provided the relationship to any other Confidential Information is not revealed.

11.5 Neither party shall be in breach of this Clause where it can show that any disclosure of Confidential Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the party making the disclosure shall ensure that the recipient of the Confidential Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the parties under this Clause.

11.6 The Contractor:

11.6.1 transfers to the Client all requests for information that it receives as soon as practicable and in any event within two (2) Business Days of receiving a request for information;

11.6.2 provides the Client with a copy of all Confidential Information in its possession, or power in the form that the Client requires within five (5) Business Days (or such other period as the Client may specify) of the Client's request; and

- 11.6.3 provides all necessary assistance as reasonably requested by the Client to enable the Client to respond to the request for information within the time for compliance set out in section 10 of the Freedom of Information Act 2000 (“**FOIA**”) or regulation 5 of the Environmental Information Regulations (“**EIR**”).
- 11.7 The Contractor does not respond directly to a request for information unless authorised to do so by the Client.
- 11.8 The Client may disclose the Confidential Information:
- 11.8.1 on a confidential basis to any central government body for any proper purpose of the Client or of the relevant central government body, which shall include: disclosure to the Cabinet Office and/or HM Treasury for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes;
 - 11.8.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - 11.8.3 to the extent that the Client (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - 11.8.4 on a confidential basis to a professional adviser;
 - 11.8.5 on a confidential basis for the purpose of the exercise of its rights under the Contract; or
 - 11.8.6 on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract,
- and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Client under this provision.
- 11.9 Before sharing any Confidential Information in accordance with Clause 11.8 above, the Client may redact the Confidential Information. Any decision to redact information made by the Client shall be final.
- 11.10 The Contractor ensures that all Confidential Information is retained for disclosure throughout the period for retention and permits the Client to inspect such records as and when reasonably requested from time to time.
- 11.11 The Client shall not be in breach of the Contract where it can show that any disclosure of Confidential Information is made solely and to the extent necessary to comply with the FOIA or the EIR. To the extent permitted by the time for compliance under FOIA or the EIR 2004, the Client shall consult the Contractor where the Client is considering the disclosure of Confidential Information under FOIA or the EIR 2004 and, in any event, shall provide prior notification to the Contractor of any decision to disclose the Confidential Information. The Contractor acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Confidential Information in order to comply with FOIA

or the EIR 2004 is a matter in which the Client shall exercise its own discretion, subject always to the provisions of FOIA or the EIR 2004. For the avoidance of doubt, nothing in this Clause shall affect the Contractor's rights at law.

- 11.12 Nothing in this Clause shall affect the parties' obligations of confidentiality where information is disclosed orally in confidence.

12 Data protection

- 12.1 In this clause 12 and where used elsewhere in this Contract, the following terms shall have the following meanings:

"Contractor Staff" all directors, officers, employees, agents, Contractors and contractors of the Contractor and/or any Sub-Processor engaged in the performance of its obligations under this Contract;

"Controller" the same meaning as given in Data Protection Legislation; **"Data Loss Event"** any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach; **"Data Protection Legislation"**

- (a) the Data Protection Act 2018;
- (b) Regulations made under the Data Protection Act 2018;
- (c) the UK GDPR; and
- (d) all applicable Laws and regulations relating to Processing of Personal Data, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation, in

each case as amended from time to time;

"Data Subject" the meaning given to it in the Data Protection Legislation, as amended from time to time;

"Data Subject Access Request" a request made by a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

"Personal Data" any information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

"Personal Data Breach" the meaning as given in the Data Protection Legislation;

“Processing” the meaning given to it in the Data Protection Legislation but, for the purposes of this Contract, it shall include both manual and automatic processing and **“Process”** and **“Processed”** shall be interpreted accordingly;

“Processor” the meaning given to it in the Data Protection Legislation, as amended from time to time;

“Protective Measures” appropriate technical and organisational measures which shall be sufficient to secure that the Processor will meet the requirements of the Data Protection Legislation and ensure the protection of the rights of the Data Subject and may include (without limitation):

- (a) Pseudonymisation and encrypting Personal Data;
- (b) ensuring on-going confidentiality, integrity, availability and resilience of systems and services used for data processing;
- (c) measures to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident;
- (d) ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident; and
- (e) regularly assessing and evaluating the effectiveness of such measures adopted by it;

“Pseudonymisation” the same meaning as given in Data Protection Legislation;

“Restricted Country” any country which:

- (a) is outside the United Kingdom;
- (b) is not covered by UK adequacy regulations issued under section 17A of the Data Protection Act 2018 or paragraphs 4 and 5 of Schedule 21 of the Data Protection Act 2018; and
- (c) has not been confirmed by the Client as a non-Restricted Country in writing from time-to-time;

“Special Categories of Personal Data” the meaning given in the Data Protection Legislation;

“Sub-Processor” any third party appointed to Process Personal Data on behalf of the Contractor related to this Contract; and

“UK GDPR” the retained European Union law version of the General Data Protection Regulation (EU) 2016/679 as modified by Schedule 1 to the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 as in force in the UK from time to time.

12.2 Where any Personal Data is Processed in connection with the exercise of the Parties’ rights and obligations under this Contract, the Parties acknowledge that the Client is the Controller and that the Contractor is the Processor.

12.3 The Contractor shall:

- 12.3.1 ensure that it and the Contractor Staff comply with all of the applicable requirements of the Data Protection Legislation and shall not knowingly or negligently by any act of omission, place the Client in breach or potential breach of Data Protection Legislation;
- 12.3.2 process the Personal Data only to the extent and in such manner as is necessary for the purposes specified in this Contract and in accordance with instructions from the Client to perform its obligations under this Contract in accordance with Schedule 6 (Personal Data and Data Subjects), unless otherwise required by Law. In such case, the Contractor shall inform the Client of that legal requirement unless the Law prevents such disclosure on the grounds of public interest;
- 12.3.3 notify the Client immediately if it considers that any of the Client's instructions infringe the Data Protection Legislation;
- 12.3.4 maintain complete and accurate records and information to demonstrate its compliance with its Processor obligations under this clause 12;
- 12.3.5 keep a record of any Processing of Personal Data it carries out on behalf of the Client including the records specified in Article 30(2) of the UK GDPR and upon request provide a copy to the Client;
- 12.3.6 ensure that at all times it has in place appropriate Protective Measures to guard against a Data Loss Event, which the Client may reasonably reject (but failure to reject shall not amount to approval by the Client of the adequacy of the Protective Measures) and which shall be implemented at the Contractor's own expense and at no cost to the Client;
- 12.3.7 not disclose or transfer the Personal Data to any third party or Contractor Staff unless necessary for the provision of the service and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Client (save where such disclosure or transfer is specifically authorised under this Contract);
- 12.3.8 take reasonable steps to ensure the reliability and integrity of any Contractor Staff who have access to the Personal Data and ensure that the Contractor Staff:
 - (i) are aware of and comply with the Contractor's duties under this Contract;
 - (ii) 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 Client or as otherwise permitted by this Contract; and
 - (iii) have undergone adequate training in the use, care, protection and handling of Personal Data;
- 12.3.9 notify the Client immediately if it becomes aware of a Data Loss Event or if it receives:

- (i) from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request) a request to rectify, block or erase any Personal Data or any other request, complaint or communication relating to the Client's obligations under the Data Protection Legislation;
- (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
- (iii) 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;

12.3.10 provide the Client with full co-operation and assistance (within the timescales reasonably required by them) in relation to any complaint, communication or request made (as referred to at Clause 12.3.9) at no cost to the *Client* including by promptly providing:

- (i) the Client with full details and copies of the complaint, communication or request;
- (ii) where applicable, such assistance as is reasonably requested by the Client to enable them to comply with the Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation; and
- (iii) the Client, on request, with any Personal Data it holds in relation to a Data Subject;

12.3.11 if requested by the Client, provide a written description of the measures that the Contractor has taken and the Protective Measures in place, for the purpose of compliance with its obligations pursuant to this Clause 12.3 and provide to the Client copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals; and

12.3.12 at the written direction of the Client, delete or return Personal Data (and any copies of it) using a secure method of transfer to the Client on expiry or earlier termination of this Contract unless the Contractor is required by Law to retain Personal Data.

12.4 The Contractor shall not Process or otherwise transfer any Personal Data in or to a Restricted Country. If, after the Commencement Date, the Contractor or any Subcontractor wishes to Process and/or transfer any Personal Data in or to any Restricted Country, the following provisions shall apply:

- 12.4.1 the Contractor shall give a written request in accordance with Clause 12.4.1 ("**Third Country Processing Request**") to the Client which the Client shall consider in its absolute discretion;
- 12.4.2 the Contractor shall set out in its proposal to the Client for a Third Country Processing Request details of the following:

- (i) the Personal Data which will be transferred to and/or Processed in or to any Restricted Countries;
- (ii) the Restricted Countries to which the Personal Data will be transferred and/or Processed;
- (iii) any Subcontractor or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries; and
- (iv) how the Contractor will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries (in accordance with Article 46 of the UK GDPR and/or Data Protection Legislation) so as to ensure the Client's compliance with the Data Protection Legislation;

12.4.3 in providing and evaluating the Third Country Processing Request, the Parties shall ensure that they have regard to and comply with the Data Protection Legislation and then-current Client, Contracting Authority and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and

12.4.4 the Contractor shall comply with such other instructions and shall carry out such other actions as the Client may notify in writing, including:

- (i) incorporating standard and/or model clauses (which are approved as offering adequate safeguards under the Data Protection Legislation) into this Contract or a separate data processing agreement between the Parties; and
- (ii) procuring that any Subcontractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:
 - (A) a direct data processing agreement with the Client on such terms as may be required by the Client; or
 - (B) a data processing agreement with the Contractor on terms which are equivalent to those agreed between the Client and the Subcontractor relating to the relevant Personal Data transfer, and

in each case which the Contractor acknowledges may include the incorporation of model contract provisions (which are approved as offering adequate safeguards under the Data Protection Legislation) and technical and organisation measures which the *Client* deems necessary for the purpose of protecting Personal Data.

12.5 The Contractor shall use reasonable endeavours to assist the Client to comply with any obligations under the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Client to breach any of

their obligations under the Data Protection Legislation to the extent the Contractor is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

- 12.6 The Contractor shall allow for audits of its Processing activity by the Client or the Client's designated auditor and comply with all reasonable requests or directions by the Client to enable the Client to verify that the Contractor is in full compliance with its obligations under this Contract.
- 12.7 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 12.8 Before allowing any Sub-Processor to process any Personal Data related to this Contract, the Contractor shall:
 - 12.8.1 notify the Client in writing of the intended Sub-Processor and processing;
 - 12.8.2 obtain the written consent of the Client; and
 - 12.8.3 enter into a written agreement with the Sub-Processor which gives effect to the terms set out in this clause 12 such that they apply to the SubProcessor; and provide the Client with such information regarding the SubProcessor as they may reasonably require.
- 12.9 The Contractor shall remain fully liable for all acts or omissions of any Sub-Processor.
- 12.10 The Contractor indemnifies the Client against all costs, charges, expenses (including legal and administrative expenses) and payments made by the Client arising out of or in connection with any claim or proceedings under any Data Protection Legislation resulting from any act or omission of the Contractor or any Sub-Processor.
- 12.11 Within thirty (30) Working Days of the date of termination or expiry of this Contract, the Contractor shall return to the *Client* any Personal Data that are Processed in connection with the exercise of the Parties' rights and obligations under this Contract (unless applicable Law requires storage of the Personal Data) and data belonging to the *Client* that is in the Contractor's possession, power or control, either in its then current format or in a format nominated by *Client*, save that it may keep one (1) copy of any such data or information for a period of up to twelve (12) months to comply with its obligations under this Contract, or such period as is necessary for such compliance.

13 Modern slavery, child labour and inhumane treatment

- 13.1 In performing its obligations under this Contract, the Contractor shall at all times:
 - 13.1.1 comply with all applicable anti-slavery and human trafficking laws and regulations from time to time in force including the Modern Slavery Act 2015 and all related guidance issued by the UK government;
 - 13.1.2 comply with the ethical labour policy of the Client or, alternatively, have and maintain its own policies and procedures which achieve, as a minimum, those standards described in the ethical labour policy;
 - 13.1.3 comply with the modern slavery compliance obligations notified to the Contractor by the Client; and

- 13.1.4 include in its contracts with all of its subcontractors and suppliers obligations equivalent to those set out in this Clause 13.
- 13.2 The Contractor shall implement full and appropriate due diligence processes and procedures for its Subcontractors, suppliers and other participants in its supply chains so as to ensure that there is no slavery, human trafficking or otherwise forced or coerced labour in its supply chains.
- 13.3 The Contractor shall deliver to the Client on or around each anniversary of this Contract:
- 13.3.1 written confirmation of its continued compliance with all of the requirements of this Clause 13; and
- 13.3.2 if requested by the Client, a report setting out the steps it has taken to ensure that modern slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.
- 13.4 The Contractor shall notify the Client immediately it becomes aware of any actual or suspected slavery, human trafficking, forced or coerced labour in a supply chain that has a connection with this Contract or any breach, or potential breach, of any of the requirements of this Clause 13.
- 13.5 If the Client identifies or becomes aware of any potential or actual breach of this Clause 13, the Client shall raise this with the Contractor and the Contractor will immediately implement a remedial plan to ensure that there are no further breaches of this Clause 13. Notwithstanding this, it is acknowledged and agreed that the Client may, at its option and in its absolute discretion, terminate this Contract with immediate effect by giving written notice to the Contractor.

14 Corrupt gifts and payments of commission

- 14.1 The Contractor shall not do, and warrants that in entering this Contract it has not done any of the following (hereafter referred to as 'prohibited acts'):
- 14.1.1 offer, promise or give to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward;
- 14.1.2 doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this or any other contract with the Crown;
- 14.1.3 for showing or not showing favour or disfavour to any person in relation to this or any other contract with the Crown; or
- 14.1.4 enter into this or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge, unless before this Contract is made particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Client.
- 14.2 If the Contractor, its employees, agents or any subcontractor (or anyone acting on its behalf or any of its or their employees) does any of the prohibited acts or commits any offence under the Bribery Act 2010 with or without the knowledge or authority of the

Contractor in relation to this Contract or any other contract with the Crown, the Client shall be entitled:

14.2.1 to terminate this Contract and recover from the Contractor the amount of any loss resulting from the termination;

14.2.2 to recover from the Contractor the amount or value of any such gift, consideration or commission; and

14.2.3 to recover from the Contractor any other loss sustained in consequence of any breach of this Clause, where this Contract has not been terminated.

14.2.4 In exercising its rights or remedies under this Clause, the Client shall:

14.2.5 act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act or committing of any offence under the Bribery Act 2010;

14.2.6 give all due consideration, where appropriate, to action other than termination of this Contract, including (without being limited to):

(i) requiring the Contractor to procure the termination of a subcontract where the prohibited act or committing of any offence under the Bribery Act 2010 is that of a Subcontractor or anyone acting on its or their behalf;

(ii) requiring the Contractor to procure the dismissal of an employee (whether its own or that of a Subcontractor or anyone acting on its behalf) where the prohibited act or committing of any offence under the Bribery Act 2010 is that of such employee.

14.3 Recovery action taken against any person in Her Majesty's service shall be without prejudice to any recovery action taken against the Contractor pursuant to this Clause.

15 Conflicts of interest

15.1 The Contractor shall take appropriate steps to ensure that the Contractor is not placed in a position where, in the reasonable opinion of the Client:

15.1.1 there is or may be an actual conflict or potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Client under the provisions of this Contract or any Task Order; or

15.1.2 the behaviour of the Contractor is not in the Client's best interests or might adversely affect the Client's reputation.

15.2 The Contractor shall as soon as reasonably practicable disclose to the Client full particulars of any behaviour or relationship which might give rise to an actual or potential conflict.

15.3 The Client may terminate this Contract by notice in writing and/or take such other steps it deems necessary where, in the reasonable opinion of the Client, there is or may be an actual conflict or potential conflict, between the financial or personal interests of the Contractor and the duties owed to the Client under the provisions of this Contract. The

actions of the Client pursuant to this Clause do not prejudice or affect any right of action or remedy which has accrued or will accrue to the Client.

16 Transparency

16.1 Notwithstanding any other term of this Contract (including Clause 11) where applicable and subject to 16.2 and 16.2, the Contractor understands that the Client may publish the Transparency Information to the general public. The Contractor shall assist and co-operate with the Client to enable the Client to publish the Transparency Information.

16.2 Before publishing the Transparency Information to the general public in accordance with Clause 16.1 above the Client shall redact any information (which may include the Contractor's Confidential Information) that would be exempt from disclosure if it was the subject of a request for information under the FOIA or the EIR.

16.3 The Client may consult with the Contractor before redacting any information from the Transparency Information in accordance with Clause 16.2 above. The Contractor acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact information is a

matter in which the Client shall exercise its own discretion, subject always to the provisions of the FOIA or the EIR.

16.4 For the avoidance of doubt, nothing in this Clause 16 shall affect the Contractor's rights at law.

17 Publicity

17.1 The Contractor may only publicise the Works and/or this Contract with the Client's written agreement.

18 Retention and supply of records and data

18.1 The Contractor shall maintain all records specified in and connected with this Contract (expressly or otherwise) and make them available to the Client when requested on reasonable notice.

18.2 The Contractor shall also permit access to relevant records that relate to the contractual obligations to provide Works under this Contract, held by or controlled by them and reasonably required by the Comptroller and Auditor General, its staff and any appointed representative of the National Audit Office, and provide such explanations and information as reasonably necessary for the following purposes to enable the National Audit Office to carry out:

18.2.1 the Client's statutory audits and to examine and/or certify the Client's annual and interim report and accounts; and

18.2.2 an examination pursuant to Part II of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Client has used its resources.

18.3 With regard to the records made available to the Client under Clause 18.1 of this Clause, and subject to the provisions of Clause 11 of this Contract (Disclosure of Information),

the Contractor shall permit records to be examined and if necessary copied, by the Client, as the Client may require.

18.4 Unless this Contract specifies otherwise the records referred to in this Clause shall be retained for a period of at least 6 years from the:

18.4.1 end of this Contract term;

18.4.2 termination of this

Contract; or 18.4.3 final payment,

whichever occurs latest.

19 Change of control of the Contractor

19.1 The Contractor shall notify the Client, as soon as practicable, in writing of any intended, planned or actual change in control of the Contractor. The Contractor shall not be required to submit any notice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the conduct of the Contractor in the UK or other jurisdictions where the Contractor may be subject to legal sanction arising from issuing such a notice.

19.2 For the purposes of this Clause “**control**” means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person by:

19.2.1 means of the holding of shares, or the possession of voting powers in, or in relation to, the Contractor; or

19.2.2 virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Contractor,

and a change of control occurs if a person who controls the Contractor ceases to do so or if another person acquires control of the Contractor.

19.3 The Client shall consider the notice of change of control and advise the Contractor in writing of any concerns the Client may have.

20 Equality

20.1 The Contractor shall not unlawfully discriminate either directly or indirectly on the grounds of age, disability, gender (including re- assignment), sex or sexual orientation, marital status (including civil partnerships), pregnancy and maternity, race, or religion or belief.

20.2 Without prejudice to the generality of the obligation in Clause 20.1 above, the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (or any statutory modification or re- enactment thereof) or other relevant or equivalent legislation in the country where the contract is being performed.

20.3 The Contractor agrees to take reasonable efforts to secure the observance of the provisions of this Clause by any of its employees, agents or other persons acting under its direction or control who are engaged in the performance of this Contract.

20.4 The Contractor agrees to take reasonable efforts to reflect this Clause in any subcontract that it enters into to satisfy the requirements of this Contract and to require its subcontractors to reflect this Clause in their subcontracts that they enter into to satisfy the requirements of this Contract.

21 Dispute resolution

21.1 The provisions of Secondary Option W2 shall apply to any dispute resolution proceedings under this Contract.

22 Notices

22.1 Any notices sent under this Contract must be in writing and in accordance with this clause 22.

22.2 The following table sets out the method by which notices may be served under this Contract and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of service
Email	9.00am on the first Business Day after sending.	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Business Day. Otherwise, delivery will occur at 9.00am on the next Business Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt.
Prepaid, Royal Mail Signed For™ 1st Class or other prepaid, next working day service providing proof of delivery	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Business Day. Otherwise, delivery will occur at 9.00am on the same Business Day (if delivery before 9.00am) or on the next Business Day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt.

22.3 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	Kier House Windward Drive Estuary Park Speke Liverpool L24 8QR	DWP, Caxton House Tothill Street London SW1H 9NA
Email	REDACTED	REDACTED

23 **Parent Company Guarantee and Performance Bond**

23.1 The Contractor shall provide the Parent Company Guarantee, duly executed by the Parent Company, within fifteen (15) Business Days of any request made the Client.

23.2 If so requested by the Client in relation to any Task Order, the Contractor shall provide the Performance Bond, duly executed by the bondsman, within fifteen (15) Business Days of any such request made the Client.

24 **Client's Schedules**

24.1 To the extent relevant to this Contract and any Task Order, the Contractor shall comply with the Client's Schedules.

25 **Miscellaneous**

25.1 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.

25.2 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.

25.3 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.

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

25.5 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**

Signed as a deed by

as attorney for Kier Construction Limited

trading as Kier Construction-North and trading as Kier Construction-North and

Scotland

in the presence of

Signature

Address 2nd Floor, Optimum House,

Clippers Quay, Salford, M50 3XP

Signed as a deed by

as attorney for Kier Construction Limited

trading as Kier Construction-North and trading as Kier Construction-North and

Scotland

in the presence of

Signature

Address 2nd Floor, Optimum House,

Clippers Quay, Salford, M50 3XP

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.

Part A

1 Definitions

1.1 In paragraphs 1 to 7 the following definitions shall apply:

- (a) **“Allocation Order”** means the order in which the Delivery Contractors are ranked as a result of the Procurement Process, as set out in Part C of this Appendix 1 and as may be amended from time to time in accordance with the provisions of Part A of this Appendix 1;
- (b) **“Delivery Contractors”** means the delivery contractors identified in Appendix 7 that the Client has entered into a Lot Contract with to deliver the construction works and associated services in Scotland including the Contractor and any other contractors more particularly specified by the Client and any Replacement Delivery Contractor (each a **“Delivery Contractor”**);
- (c) **“Extraordinary Event”** means where the Client exercises its rights under clause 5.2.4 of any Lot Contract in relation to a Notifiable Event (as defined therein) in relation to any relevant Task Order;
- (d) **“Extraordinary Identification Procedure”** means the process of selecting a Delivery Contractor to participate in the Pricing Process where an Extraordinary Event arises in accordance with paragraph 4 of this Part A; and
- (e) **“Identification Procedure”** means either the Rotational Procedure, the Extraordinary Identification Procedure or the Run Off Identification Procedure;
- (f) **“Ineligible Delivery Contractor”** means for each Task Order where the Rotational Procedure applies, a Delivery Contractor:
 - (i) that has not selected the relevant NUTS Code(s) for that Task Order and/or the Client has not approved the selection of a NUTS Code pursuant to paragraph 1.28 of Appendix 4; or
 - (ii) where a Suspension Event applies to a Delivery Contractor at the time such Task Order is placed and the Client, in its sole discretion, chooses not to waive such Suspension Event;
- (g) **“Lot Contract”** means any lot contract entered into by the Client with a Delivery Contractor pursuant to the Procurement Process;

- (h) **"Pricing Process"** means the pricing of a Task Order to a Delivery Contractor in accordance with the provisions of Part B of this Appendix 1;
- (i) **"Procurement Process"** means the procurement process relating to the CWAS Framework pursuant to which the Delivery Contractors are selected to enter into a Lot Contract;
- (j) **"Replacement Delivery Contractor"** means a replacement Delivery Contractor appointed in accordance with paragraph 3.6 of Part A of this Appendix 1;
- (k) **"Rotational Procedure"** means the procedure of identifying a Delivery Contractor to participate in the pricing of a Task Order in accordance with paragraph 3 of this Part A;
- (l) **"Run Off Delivery Contractor"** means a Delivery Contractor that previously provided works or services to the Client at the relevant Site;
- (m) **"Run Off Identification Procedure"** means the process of selecting a Delivery Contractor to participate in the Pricing Process where a Task Order relates to Run Off Works, in accordance with paragraph 3 of this Part A;
- (n) **"Run Off Longstop Date"** means the date 3 months after the date of this Contract;
- (o) **"Run Off Period"** means the period of 3 months immediately preceding the date of this Contract;
- (p) **"Run Off Task Order"** means any Task Order for any Run Off Works;
- (q) **"Run Off Works"** means any works or services to be instructed under any Task Order which directly relate to any works or services that a Delivery Contractor previously provided to the Client at a Site during the Run Off Period;
- (r) **"Suspension Event"** means where:
 - (i) a Critical Failure Event occurs; and/or
 - (ii) either the Client or the Delivery Contractor refers a dispute under this Contract and/or any Task Order to the Adjudicator in accordance with clause W2.2 of Secondary Option W2; and
- (s) **"Worked Example"** means the worked example set out at in Part D of this Appendix 1.

2 Identification Procedure

2.1 An Identification Procedure shall be used to select a Delivery Contractor to participate in the Pricing Process.

3 Rotational Procedure

3.1 On the commencement of the Delivery Term, the Allocation Order shall apply.

3.2 Subject to paragraph 3.7 of this Appendix 1, where the Client issues a Works

Task Order provided that the Works Task Order relates to the Works set out in that Services Task Order, the Rotational Procedure applies to the allocation of Task Orders.

3.3 For each Task Order where the Rotational Procedure applies, the Client shall use the Allocation Order to select a Delivery Contractor to participate in the Pricing Process for that Task Order.

3.4 Subject to paragraph 3.4 of Part A of this Appendix 1, where Rotational Procedure applies:

3.4.1 for the first Task Order issued under this Lot, the Client shall select the Delivery Contractor listed first on the Allocation Order to participate in the Pricing Process;

3.4.2 for each subsequent Task Order issued under this Lot, the Client shall select the next applicable listed Delivery Contractor to participate in the Pricing Process; and

3.4.3 the Client shall not be required to select an Ineligible Delivery Contractor,

as illustrated in the Worked Example.

3.5 A Delivery Contractor may be excluded by the Client from participating in the Rotational Procedure:

3.5.1 for the next applicable Task Order following receipt of a YELLOW Score; and

3.5.2 all applicable Task Orders:

(i) following receipt of a RED Score until such time as the Delivery Contractor demonstrates to the Client's reasonable satisfaction that the Delivery Contractor has successfully addressed the underlying cause(s) of the RED Score; and

(ii) following the occurrence of a Suspension Event for such time as the Suspension Event persists.

3.6 If the Client terminates a Lot Contract, the Client may remove that Delivery Contractor from the Allocation Order and it shall be entitled to enter into a Lot Contract with a replacement contractor (a "**Replacement Delivery Contractor**"). Where a Replacement Delivery Contractor is appointed, then that Replacement Delivery Contractor shall be added to the bottom of the Allocation Order and the Client shall issue a revised Allocation Order to each Delivery Contractor and such revised Allocation Order shall supersede any previous version for the purposes of the Rotational Procedure.

3.7 The Rotational Procedure shall not apply to a Task Order issued following the allocation of a Services Task Order to a Delivery Contractor or any Task Order to which the Extraordinary Identification Procedure or the Run Off Identification Procedure applies.

4 Extraordinary Identification Procedure and Run Off Identification Procedure

4.1 Where an Extraordinary Event arises the Client shall, at its discretion, be entitled to identify the Delivery Contractor it considers to be the most suitable for the procurement irrespective of the Allocation Order.

4.2 Where a Task Order relates to Run Off Works, the Client may, at its discretion, be entitled to allocate the Run Off Works to the appropriate Run Off Delivery Contractor provided that:

4.2.1 the Client can demonstrate that this may be of benefit to the Client (including but not limited to enable the Client to receive the benefit of cost savings); and

4.2.2 the Identification Procedure for the relevant Task Order takes place on or before the Run Off Longstop Date.

5 Alternative Lot Contracts

5.1 For any Extraordinary Event and/or Task Order where:

5.1.1 no Delivery Contractor wishes to be selected for the Pricing Process or to undertake the Works that are the subject of the Extraordinary Event; and/or

5.1.2 the Client determines that each applicable Delivery Contractor:

(i) is an Ineligible Delivery Contractor; and/or (ii) has received a YELLOW score and/or a RED score,

so that they are excluded from participating in the Rotational Procedure for that Task Order,

the parties agree that the Client, at its discretion, shall be entitled to select a delivery contractor from an alternative Lot Contract and the Client shall apply the applicable identification procedure set out within that Lot Contract.

5.2 For any extraordinary event and/or task order which occurs under another Lot Contract where:

5.2.1 no delivery contractor under that other Lot wishes to be selected to undertake the works that are the subject of the extraordinary event; and/or

5.2.2 the Client determines that each applicable delivery contractor appointed under a Lot Contract in relation to that other Lot: (i) is an ineligible delivery contractor; and/or

(ii) has received a YELLOW score and/or a RED score,

so that they are excluded from participating in the rotational procedure under that other Lot Contract for that Task Order,

the parties agree that the Client, at its discretion, shall be entitled to use the applicable identification procedure under this Lot to select a Delivery Contractor to deliver the applicable works.

6 Pricing Process

- 6.1 Following the completion of the relevant Identification Procedure which results in a Delivery Contractor being eligible to participate in the Pricing Process, the Client shall undertake the Pricing Process with that Delivery Contractor.

Part B

1 Preparation of Task Order Proposal

- 1.1 The Client shall submit a written request (the “**Project Instruction**”) for the Delivery 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 Delivery 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 ten (10) Business Days (or such other period as is agreed by the Parties) of receipt by the Delivery Contractor of a Project Instruction, the Delivery Contractor shall submit a Task Order Proposal in respect of the Proposed Task together with such additional information/documentation as is required.

2 Approval of Task Order Proposals and the Proposed Task

- 2.1 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 Delivery Contractor which the Client considers appropriate to enable it to decide whether to approve the relevant Task Order Proposal and the Delivery Contractor shall provide such information and/or any assistance (as the case may be) within three (3) Business Days of receipt of the relevant request for such further information and/or and assistance (as the case may be). The Delivery 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 Delivery Contractor to any payment of whatever nature and any such costs shall be borne by the Delivery Contractor unless the Client agrees otherwise in writing.

- 2.2 In deciding whether to approve a Task Order Proposal the Client shall be entitled to take into account all relevant factors which it considers would affect whether the relevant Task Order Proposal is acceptable, including, without limitation:

2.2.1 whether the Task Order Proposal is, in the sole opinion of the Client, affordable and/or offers value for money;

2.2.2 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

- 2.2.3 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
 - 2.2.4 whether the implementation of the Task Order Proposal would breach any Law, any Client's Policies or any wider government strategy or government policy.
- 2.3 Within ten (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 Delivery Contractor whether:
- 2.3.1 the Client approves the Task Order Proposal, whereupon the provisions of paragraph 2.7 shall apply and the Delivery Contractor shall carry out the Proposed Task as part of a Task Order in accordance with the terms of the approved Task Order Proposal; or
 - 2.3.2 the Client rejects the Task Order Proposal and the provisions of paragraph 2.4 shall apply.
- 2.4 The Delivery Contractor acknowledges and agrees that where the Client elects to reject any Task Order Proposal then the Delivery Contractor's costs in relation to the proposal shall be borne by the Delivery Contractor unless the Client agrees otherwise in writing.
- 2.5 The Client may appoint a third party, any other Delivery Contractor and/or any other delivery contractor from an alternative Lot Contract to provide the whole or any part of the Task Order where the Delivery Contractor:
- 2.5.1 is in material breach of its obligations under this Contract or any Task Order;
 - 2.5.2 fails to provide and/or the Client rejects a Task Order Proposal;
 - 2.5.3 confirms that it does not intend to submit a Task Order Proposal or fails to submit a Task Order Proposal following receipt of a Project Instruction within the time period specified in and in accordance with the provisions of this paragraph 2;
 - 2.5.4 the Parties have been unable to agree the whole or any part of a Task Order Proposal; and/or
 - 2.5.5 where the Delivery Contractor has not and/or all of the Delivery Contractors have not selected the relevant NUTS Codes for the whole or any part of a Task Order.
- 2.6 The Client may appoint any Delivery Contractor from this Lot Contract to provide the whole or any part of a task order which occurs under another Lot Contract where the delivery contractor under that Lot Contract:

- 2.6.1 is in material breach of its obligations under that Lot Contract or any task order occurring under that Lot Contract;
- 2.6.2 fails to provide and/or the Client rejects a task order proposal provided under that Lot Contract;
- 2.6.3 confirms that it does not intend to submit a task order proposal or fails to submit a task order proposal following receipt of a project instruction within the time period specified in and in accordance with the provisions of that Lot Contract;
- 2.6.4 the Parties have been unable to agree the whole or any part of a task order proposal; and/or
- 2.6.5 where, under that Lot Contract, the delivery contractor has not and/or all of the delivery contractors have not selected the relevant NUTS codes for the whole or any part of a task order.
- 2.7 The Delivery Contractor acknowledges and agrees that the Delivery 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.
- 2.8 Where a Task Order Proposal has been approved by the Client (to incorporate any amendments the Client deems necessary), the Client may sign the Task Order Proposal (as amended, if necessary) and issue to the Delivery 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 Delivery Contractor as set out in the Task Order shall be deemed to become part of the Works.
- 2.9 The parties agree that if the Task Order Proposal is approved and any Task Order is issued by the Client and accepted by the Delivery Contractor under this paragraph 2, then the provisions of:
- 2.9.1 this Contract; and 2.9.2 the
- relevant Task Order,
- shall together govern the carrying out of any Works to be performed by the Delivery Contractor. In the event of any conflict between the documents referred to in this paragraph 2.8, then the order of precedence shall be:
- 2.9.3 the relevant Task Order; and
- 2.9.4 this Contract.
- 2.10 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.
- 2.11 At any time, the Client may set off any liability of the Delivery Contractor to the Client against any liability of the Client to the Delivery Contractor, whether either liability:

2.11.1 is liquidated or unliquidated; or

2.11.2 arises under this Contract and/or any Task Order.

2.12 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 Delivery 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.

Part C – Allocation Order – Lot C Scotland

REDACTED
REDACTED
REDACTED
REDACTED
REDACTED
REDACTED
REDACTED

Part D – Worked Example

REDACTED

Worked Example.XLSX

Part E – Amendments to the NEC4 ECC

3 General

3.1 Amend clause 11.1 to add a new sentence at the end: “The Contractor and the Client agree that the Activity Schedule, Scope, Site Information and Accepted Programme attached to any Task Order shall be deemed to be the Activity Schedule, Scope, Site Information and Accepted Programme relevant to the works instructed under the relevant Task Order.”

3.2 Amend clause 11.2(16) to add at the end, on a new line after the third and fourth bullet points, “including the Part A Scope and the Part B Scope.”.

3.3 Add new clause 11.2(21):

“11.2(21) The Part A Scope means the scope of requirements attached to the delivery agreement entered into between the *Client* and the *Contractor* dated the date of this contract’ [INSERT DATE upon signature].”

3.4 Add new clause 11.2(22):

“11.2(22) The Part B Scope means the scope of works referred to in the Task Order.”

3.5 Add new clause 11.2(23):

“11.2(23) Delivery Agreement means the delivery agreement dated [DATE] entered into between the Client and the *Contractor*.”

3.6 Add new clause 11.2(24):

“11.2(24) Task Order means a task order issued by the Client to the Contractor under the Delivery Agreement, such Task Order to comprise the contract.

4 The Contractor's design.

4.1 At the end of clause 21.1 delete the full stop and add: “and in the provision of its design and carrying out of due diligence on the Part B Scope acts as a competent and experienced contractor and uses all the reasonable skill, care and diligence and the best up-to-date practice to be expected of a fully qualified and competent designer experienced in designing and performing and carrying out design for projects of a similar size, scope, nature, complexity and timescale to the works.”

4.2 Add new clause 21.4:

“21.4 The Contractor accepts entire responsibility for the Part A Scope.”

5 Requirements for Instructions

5.1 Add to the start of 17.1 and 17.2: “Subject to clause 17.3”

5.2 Add new clause 17.3: “If the ambiguity, discrepancy, omission, mistake or inconsistency referred to in clause 17.1 is within the Part A Scope, an instruction issued under clause 17.2 relating to such ambiguity, discrepancy, omission, mistake or inconsistency does not give rise to a compensation event and the Contractor is fully responsible for such ambiguity, discrepancy, omission, mistake or inconsistency and there is no effect upon, Defined Cost, Completion and/or meeting a Key Date and the Contractor is not entitled to relief from any of its obligations under the contract and/or the Delivery Agreement.”

6 Compensation events

6.1 Add new bullet point to the end of clause 60.1(1): “an instruction relating to an ambiguity, discrepancy, omission, mistake or inconsistency referred to in clause 17.3.”

6.2 Add to the end of the seventh bullet point in clause 61.4: “and the Contractor is not entitled to a compensation event to the extent that the Contractor is entitled to a compensation event under a different Task Order for the same event or Lot.

The Contract agrees there shall be no double counting in respect of any compensation event entitlement”

- 6.3 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.”

7 Termination

- 7.1 Amend clause 90.2 to add at the beginning “Subject to the Corporate Insolvency and Governance Act 2020”

- 7.2 Amend the table at 90.2 reason column for The Contractor. Delete ‘R10’. Add ‘R10A and R10B’

- 7.3 Amend the table in clause 90.2 reason column for the Client to add in “R23” after “R22”.

- 7.4 Amend clause 91 to add a new clause 91.9:

“91.9 The Client may terminate if the Client terminates the Delivery Agreement and/or any other Task Order (R23).”

- 7.5 Amend clause 91.1 to add at the beginning “Subject to the Corporate Insolvency and Governance Act 2020”,

- 7.5.1 In the second bullet point:

- (i) after (R10) delete the full stop and add

“,or

provided or taken any step in relation to a Scheme of Arrangement under Part 26 or Part 26A of the Companies Act 2006 but excluding a Scheme of Arrangement as a solvent company for the purposes of amalgamation or reconstruction (R10A), or

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

- 7.6 Amend clause 91.4 to add at the beginning “Subject to the Corporate Insolvency and Governance Act 2020”

- 7.7 Amend clause 91.5 to add at the beginning “Subject to the Corporate Insolvency and Governance Act 2020”

- 7.8 Amend clause 91.6 to add at the beginning “Subject to the Corporate Insolvency and Governance Act 2020”

- 7.9 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"

X18 Limitation on Liability

Delete the entirety of clause X18 and insert the following wording:

"X18.1 Nothing in this contract shall exclude or limit the Contractor's liability for:

X18.1 death or personal injury;

X18.2 fraud or fraudulent misrepresentation; or

X18.3 any negligence of the Contractor or its personnel, agents or subcontractors.

X18.2 The Contractor's liability to the Client for the Client's indirect or consequential loss is limited to the total of the Prices.

X18.3 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 £10,000,000.

X18.4 The Contractor's liability to the Client for Defects due to its design which are not listed or the Defects Certificate is limited to the sum set out in the Contract Data¹ any one claim.

X18.5 Subject to clause X18.1 and other than the excluded matters identified in clause X18.3, the Contractor's liability under or in connection with this Contract, whether for breach of contract, in tort or for breach of statutory duty, shall be limited to the sum set out in the Contract Data claimed in respect of each claim or series of claims arising from the same originating or underlying cause.

X18.6 The excluded matters are:

X18.6.1 amounts payable by the Contractor as stated in the contract for:

(i) loss of or damage to the Client's property; and

(ii) delay damages if Option X7 applies."

Annex 1

Task Order Proposal Template

Project Title and Address:	
Task Order Proposal Details	Description
Task	

¹ 1 Lot A: £5m, Lot B: £5m and Lot C: £10m.

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 ²	
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 <i>boundaries of the site</i>	
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 <i>key dates and conditions</i> to be met	
Task Order <i>starting date</i>	
Task Order <i>access dates</i>	

² 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.

Project Title and Address:	
Task Order Proposal Details	Description
Task Order <i>completion date</i> for the whole of the <i>works</i>	
If X5 is used, the suggested <i>completion date</i> for each <i>section of the works</i>	
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/or Performance Bond (if any)	
Details of any retention percentage and/or retention free amount	
Additional Client’s risks relevant to the Task (if any)	
All insurances to be provided by the Contractor in connection with the <i>works</i> 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	£[XXX ³] per day or part thereof
Task Order <i>defects correction period</i>	
Applicable dispute resolution procedure option	NEC4 ECC Option W2
Details of the <i>working areas</i>	
The <i>key persons</i> are those identified in the <i>key persons schedule</i> in	
The total of the Prices for this Task Order which shall be based upon the Rates and Prices together with the assumptions behind these costings	
Details of the cash flow profile for the payment of the Prices.	Any compensation events shall be assessed in accordance with clause 63.12 of the Terms and Conditions.
Details of the proposed Task Order <i>fee percentage</i>	

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

³ DWP to confirm rate and if different rates will apply to different Lots. Where appropriate, the rate shall be agreed with reference to a percentage of the Prices.

- Activity Schedule
- Scope
- Site Information
- Accepted Programme • Cash flow profile

Signed by **THE SECRETARY OF STATE FOR
WORK AND PENSIONS**

.....
Authorised Signatory

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

Signed as a deed by
as attorney for Kier Construction Limited
trading as Kier Construction-North and
Scotland in the presence of

Signature

Address 81 Fountain Street
Manchester M2 2EE

Signed as a deed by
as attorney for Kier Construction Limited
trading as Kier Construction-North and
Scotland in the presence of

Signature

Address 81 Fountain Street

Manchester M2 2EE

Appendix 2

Contract Data

All gaps to be completed during Task Order process

PART ONE – DATA PROVIDED BY THE *CLIENT*

1 General

The *conditions of contract* are the core clauses and the clauses for the following main Option, the Option for resolving and avoiding disputes and secondary Options of the NEC4 Engineering and Construction Contract June 2017 including amendments dated January 2019.

Main Option

A

Option for
resolving and
avoiding disputes

W2

Secondary X5 (Sectional Completion), X7 (Delay Damages) X18 (Limitation of Liability), X13 Options (Performance Bond), X14 (X), X16 (Retention) X20 (Key Performance Indicators)

Y(UK)2, and any Secondary Options set out in a Task Order and such Secondary Options shall apply to that Task Order only.

The *works* are As set out in the relevant Task Order

The *Client* is The Secretary of State for Work and Pensions

Address for
electronic
communications []

The *Project Manager* is

Name

[]

Address for
communications

[]

Address for
electronic
communications

[]

The *Supervisor* is

Name

[]

Address for
communications

[]

Address for []
electronic communications

The Scope is in For any Works instructed under a Task Order: as attached to the relevant Task
Order together with any other documents identified in the relevant Task Order⁴

The Site For any Works instructed under a Task Order: as attached to the relevant Task Information
is in Order

The *boundaries of the site* are For any Works instructed under a Task Order, as set out in the relevant Task Order

The *language of the contract* is English

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

⁴ This is likely to include the scope attached to the Task Order and all other relevant design documents where the works are full design and build (Part B Scope).

The *period for reply* one week except that is

~~The *period for reply* for weeks~~ [...] is [...]

~~The *period for reply* for weeks~~ [...] is [...]

The following matters will be included in the Early Warning Register

For any Works instructed under a Task Order, as set out in the relevant Task Order

Early warning meetings are held at intervals no longer than one month

2 **The *Contractor's* main responsibilities**

If the *Client* has identified work which is set to meet a stated *condition* by a *key date*. The *key dates* and *conditions* to be met are

	<i>condition to be met</i>	<i>key date</i>
(1)	For any Works instructed under a Task Order, as set out in the relevant Task Order	For any Works instructed under a Task Order, as set out in the relevant Task Order
(2)	For any Works instructed under a Task Order, as set out in the relevant Task Order	For any Works instructed under a Task Order, as set out in the relevant Task Order
(3)	For any Works instructed under a Task Order, as set out in the relevant Task Order	For any Works instructed under a Task Order, as set out in the relevant Task Order

3 Time

The *starting date* is

For any Works instructed under a Task Order, as set out in the relevant Task Order

The access *dates* are

part of the Site

date

1 For any Works instructed under a Task Order, as set out in the relevant Task Order

For any Works instructed under a Task Order, as set out in the relevant Task Order

2 For any Works instructed under a Task Order, as set out in the relevant Task Order

For any Works instructed under a Task Order, as set out in the relevant Task Order

3 For any Works instructed under a Task Order, as set out in the relevant Task Order

For any Works instructed under a Task Order, as set out in the relevant Task Order

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

fortnightly

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

For any Works instructed under a Task Order, as set out in the relevant Task Order

The *Client* ~~is~~ is not] willing to take over the *works* before the Completion Date

The period after the Contract Date within which the *Contractor* is to submit a first programme for acceptance is

For any Works instructed under a Task Order, as set out in the relevant Task Order

4 Quality Management

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

2 wks

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

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

The *defect correction period* for is wks

The *defect correction period* for is wks

5 Payment

The *currency of the contract* is the

The *assessment interval* is calendar month

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

6 Compensation events

The place where weather is to be recorded is

The *weather measurements* to be recorded for each calendar month are

- the cumulative rainfall (mm)
- the number of days with rainfall more than 5 mm
- the number of days with minimum air temperature less than 0 degrees Celsius
- the number of days with snow lying at 9AM

and these measurements:

The *weather measurements* are supplied by

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

were recorded at

and which are available from

For any Works instructed under a Task Order, as set out in the relevant Task Order

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

[]

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

50

These are additional compensation events

- N/A

8 Liabilities and insurance

These are additional *Client's* liabilities

(1)

N/A

(2)

N/A

(3)

N/A

- The minimum amount of cover for insurance against loss of or damage to property (except the works, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the Contractor) arising from or in connection with the Contractor Providing the Works for any one event is: £10,000,000.
- The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with this contract for any one event £10,000,000
- The Contractor shall also be required to take out and maintain those insurances identified in the relevant Task Order.

Resolving and avoiding disputes

The *tribunal* is

N/A

The *arbitration procedure* is

N/A

The place where *arbitration* is to be held is

N/A

The person or organisation who will choose an arbitrator if the Parties cannot agree a choice or if the *arbitration procedure* does not state who selects an arbitrator is

N/A

The *Senior Representatives* of the *Client* are

Name (1)

[]

Address for communications

[]

Address for electronic communications

Name (2)

[]

Address for communications

[]

Address for electronic communications

[]

The *Adjudicator* is the person chosen by

The Parties

[]

The person or organisation who will choose an *Adjudicator* if the Parties cannot agree a choice is

The Chairman for the time being of the Technology and Construction Solicitors Association

The *Adjudicator nominating body* is

The Technology and Construction Solicitors Association

Option X5: Sectional Completion

Option X5 is used The *completion date* for each *section* of the works is

<i>section</i>	<i>description</i>	<i>completion date</i>
(1)	<input type="text"/>	<input type="text"/>
(2)	<input type="text"/>	<input type="text"/>
(3)	<input type="text"/>	<input type="text"/>
(4)	<input type="text"/>	<input type="text"/>

Option X7: Delay damages

Delay damages for Completion of the whole of the *works* are part

For any Works
instructed under a Task
Order, as set out in the
relevant Task Order

per day or
thereof

Option X13: Performance Bond

If Option X13 is used The amount of the performance bond
is

Option X14: Advanced payment to the *Contractor*

If Option X14 is used The amount of the advanced payment
is

The period after the Contract Date
from which the *Contractor* repays the
instalments in assessments is

The instalments are
(either an amount or a percentage of
the payment otherwise due)

Advance payment An
(Delete as required.

advanced payment bond **is/is not**
applicable) bond

Option X16: Retention (not used with Option F)

If Option X16 is used The **retention free** amount is

The **retention percentage** is

%

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

Option X18: Limitation of Liability

Refer to the schedule of amendments contained within CCS Framework Reference RM6088 and as attached at Appendix 6 and the clauses contained within Part E of Appendix 1 to this Contract.

Where the parties agree that Option X18 shall apply:

The Contractor's liability for Defects under X18.4 is limited, in respect of any one claim, to⁵:

The Contractor's liability under or in connection with this Contract under X18.5 is limited, in respect of each claim or series of claims arising from the same originating or underlying cause, to:

Option X20: Key Performance Indicators

The incentive schedule for Key Performance Indicators is in

Attached at Appendix 8 of the
Delivery Agreement

A report of performance against each Key Performance Indicator is provided at intervals of

Monthly

☐

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

⁵ 5 Lot A: £1m, Lot B: £5m and Lot C:
£10m.

The first *invoice date* is

For any Works instructed under a Task Order, as set out in the relevant Task Order

Later *invoice dates* occur on the same day of each calendar month after the first *invoice date* until all amounts due to the *Contractor* under the contract have been paid.

Option Z: Additional conditions of contract

The *additional conditions of contract* are the following clauses

Clauses Z2 to Z101 in the NEC4 schedule of amendments contained within CCS Framework Reference RM6088 and as attached at Appendix 6 of the Delivery Agreement.

The clauses contained within Part E of Appendix 1 of the Delivery Agreement.

PART TWO – DATA PROVIDED BY THE CONTRACTOR

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

1 General

The *Contractor is*

Name

[]

Address for communications

[]

Address for electronic
communications

[]

The *fee percentage* is %

[]⁶

For any Works instructed under a Task Order, as set out in the relevant

The *working areas* are

Task Order

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

For any Works instructed
under a Task Order, as set
out in the relevant Task
Order

The following matters will be included in the Early Warning Register

For any Works instructed under a Task Order, as set out in the relevant Task Order

2 The *Contractor's* main responsibilities

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

For any Works instructed under a Task Order: The Scope of Requirements attached to the Delivery Agreement, and [insert]⁷

⁶ As set out in the Capital Works/Life Cycle Tender Rates and Prices (as appropriate).

⁷ This will be the Part B Scope.

3 Time

The programme identified in the Contract Data is in For any Works instructed under a Task Order, as set out in the relevant Task Order

The *completion date* for the whole of the *works* is For any Works instructed under a Task Order, as set out in the relevant Task Order

5 Payment

The *activity schedule* is in

For any Works instructed under a Task Order, as set out in the relevant Task Order

The tendered total of the Prices is

For any Works instructed under a Task Order, as set out in the relevant Task Order

Resolving and Avoiding Disputes

The *Senior Representatives* of the *Contractor* are

Name (1)

[]

Address for communications

[]

Address for electronic communications

[]

Name (2)

Address for communications

[]

Address for electronic communications

[]

[]

Data for the Short Schedule of Cost Components⁶

The *people rates* are
category of person

	unit	rate

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

The percentage for adjustment for Equipment in the published list
is minus)

% (state plus or

The rates for other Equipment are

Equipment

rate

⁶ To be completed using either the Tender Schedule of Cost Components or, if no schedule is submitted by the Contractor, the rates in the CCS framework.

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

category of person	rate

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

category of person	rate

The categories of design people whose travelling expenses to and from the Working Areas are included in Defined Cost are

--

Appendix 3

NUTS Codes – Lot C

Scotland				
M				
M5	M6	M7	M8	M9

Appendix 4

Part A - Management Services

1 Working together

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;

1.2.2 work with the Client in a supportive manner;

1.2.3 produce such reports and documentation as may reasonably be requested from time to time by the Client;

1.2.4 work collectively with the Client and the Project Team to support the delivery of the Works on a best for project basis;

1.2.5 work collectively with the Client and the Project Team to discuss the Pipeline Programme and whether certain works and/or packages should be bundled into appropriate Task Orders;

1.2.6 develop and use common systems and processes with the Client and the Project Participants;

1.2.7 discuss costings of the Works on an open-book basis;

1.2.8 work with the Client to determine whether the Contractor should select additional NUTS Codes to those NUTS Codes initially selected by the Contractor;

1.2.9 work with the Client to agree acceptable processes for demonstrating value for money and understand the key drivers for value for money; and

1.2.10 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 and on the first anniversary of the Delivery Term 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.
- 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 Continuous Improvement

- 2.1 The Contractor shall, throughout the Delivery Term, adopt a policy of continuous improvement in relation to the Works pursuant to which it will regularly review with the Client the Works and the manner in which it is providing the Works with a view to reducing the Client's costs (including the Prices and/or the Price List) and/or improving the quality and efficiency of the Works. The Contractor and the Client will provide to each other any information which may be relevant to assisting in fulfilling these objectives.
- 2.2 Without limiting paragraph 2.1 and if the Client so requires at any point during the Delivery Term, the Contractor shall produce a plan for improving the provision of Works and/or reducing the Prices and/or the Price List (without adversely affecting the performance of this Contract and/or any Task Order) ("**Continuous Improvement Plan**") for the Client's approval. The Continuous Improvement Plan shall be in the format agreed between the Parties and shall contain, as a minimum, proposals in respect of the following:
 - 2.2.1 identifying the emergence of relevant new and evolving technologies;
 - 2.2.2 changes in business processes of the Contractor or the Client and ways of working that would provide cost savings and/or enhanced benefits to the Client (such as methods of interaction, supply chain efficiencies, reduction in energy consumption and methods of sale);
 - 2.2.3 new or potential improvements to the provision of the Works including the quality, responsiveness, procedures, benchmarking methods, likely

performance mechanisms and Client support services in relation to the Works; and

- 2.2.4 measuring and reducing the sustainability impacts of the Contractor's operations and supply-chains pertaining to the Works and identifying opportunities to assist the Client in meeting their sustainability objectives.

2.3 The initial Continuous Improvement Plan for the first Service Quarter is attached at Part B of this Appendix 4. As and when required, but at least once each Service Quarter, the Contractor shall review the Continuous Improvement Plan and submit any updates or changes to the Client for the Client's approval.

2.4 The Client shall notify the Contractor of its approval or rejection of the proposed Continuous Improvement Plan or any updates to it within twenty (20) Business Days of receipt. If it is rejected then the Contractor shall, within ten (10) Business Days of receipt of notice of rejection, submit a revised Continuous Improvement Plan reflecting the changes required. If this revised Continuous Improvement Plan is also rejected the Contractor shall provide a second revised Continuous Improvement Plan for approval. Should this second revised Continuous Improvement Plan be rejected ("**Second Rejection**") the Parties may escalate this to the Senior Representatives who shall meet to discuss the Second Rejection within ten (10) Business Days of the notice of rejection. Where such meeting achieves a solution acceptable to the Client and the Contractor, such solution shall be implemented by the Client and the Contractor. Where such meeting does not achieve a solution acceptable to the Client and the Contractor, the process used in W2 shall be followed.

2.5 Where a Continuous Improvement Plan is approved, it shall constitute the Continuous Improvement Plan for the purposes of this Contract.

2.6 The Contractor shall provide sufficient information with each suggested improvement to enable a decision on whether to implement it. The Contractor shall provide any further information as requested.

2.7 All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall have no effect on and are included in the Prices and/or the Price List.

2.8 Should the Contractor's costs in providing the Works to the Client be reduced as a result of any changes implemented, all of the cost savings shall be passed on to the Client by way of a consequential and immediate reduction in the Prices and/or the Price List.

3 Allocation of risks

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

- 3.1.1 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;

- 3.1.2 the probability of these risks occurring;
- 3.1.3 a financial estimate of the most likely consequences of each risk occurring;
and
- 3.1.4 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.

3.2 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:

- 3.2.1 any new risks that have arisen since the date of the last review;
- 3.2.2 the steps taken to prevent/mitigate previously identified risks;
- 3.2.3 risks which have been successfully prevented/mitigated (which can be removed from the Project Risk Register); and
- 3.2.4 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.

4 Problem solving

- 4.1 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.
- 4.2 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.
- 4.3 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 ten (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. Where such meeting does not achieve a solution acceptable to the Client and the Contractor, the process used in W2 shall be followed.

5 Fee

- 5.1 The Contractor agrees that the fee for the Management Services shall be nil.

Part B - Continuous Improvement Plan for the first Service Quarter

As & when requested by client

Appendix 5

Rates and Prices

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1 Rates and Prices where 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:

- (i) agree that there is no sufficiently detailed cost element contained within the Price List to derive new Rates and Prices; or
- (ii) 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:

- (i) 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 shall be incorporated into the Price List and shall apply to the calculation of the costs for the whole or the relevant part (as the case may be) of the relevant Works for all subsequent Task Order Proposals.

1.3 Where paragraph 1.1.2 applies then the Parties may either:

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

1.3.2 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.

2 Indexation of Life Cycle Tender Rates and Prices and SSCC Tender Rates and Prices

- 2.1 Subject to paragraphs 2.3, - 2.8 (inclusive) on each date which is 1 November that occurs during the Delivery Term ("**Framework Anniversary**"), either party may apply to change the applicable SSCC Tender Rates and Prices by multiplying the relevant rates and prices by the percentage changes applicable to the CCS Framework Rates and Prices ("**Framework Index**") published since the date of this Contract. (BCIS CPI Index used).
- 2.2 Subject to paragraphs 2.3, - 2.8 (inclusive), on each anniversary of the date of this Contract ("**Delivery Anniversary**"), either party may apply to change the applicable Life Cycle Tender Rates and Prices by multiplying the relevant figures by the percentage changes in the BCIS All-in Tender Price Index (TPI) ("**Delivery Index**") published since the date of this Contract.
- 2.3 If the Framework Index and/or the Delivery Index has not been published for the relevant month in which the Framework Anniversary or Delivery Anniversary (as appropriate) occurs, then the last published value of that index available at the relevant anniversary shall be used.
- 2.4 Where the Framework Index and/or the Delivery Index is no longer published, the Client and Contractor shall agree a fair and reasonable replacement that will have substantially the same effect.
- 2.5 Any change agreed in accordance with paragraphs 2.1 – 2.4 (inclusive) shall apply to any subsequent Task Orders which are issued after any such change has been agreed.
- 2.6 Any Life Cycle Tender Rates and Prices which are identified in the Life Cycle Price List as being Rates and Prices that are fixed ("**Fixed Rates and Prices**") are not capable of being changed and any change agreed to the Life Cycle Tender Rates and Prices shall not apply to any such Fixed Rates and Prices.
- 2.7 Any uplift agreed in accordance with paragraphs 2.1 – 2.4 (inclusive) shall not exceed the applicable CCS Framework Rates and Prices.
- 2.8 Paragraphs 2.1 – 2.4 (inclusive) shall not apply to:
- 2.8.1 any percentages referred to within the Life Cycle Tender Rates and Prices;
 - 2.8.2 any percentage set out and/or referred to in the Short Schedule of Cost Components; and/or
 - 2.8.3 the Capital Works Tender Rates and Prices,
- and, for the avoidance of doubt, there shall be no change or uplift to any such rates and prices identified in paragraphs 2.8.1 – 2.8.3 (inclusive) of this paragraph 2.

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;
 - 3.1.3 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;
 - 3.6.2 provide copies to the Client for review and comment before despatch, allowing the Client a reasonable time for review prior to such proposed despatch; and
 - 3.6.3 where applicable, revise such tender documentation to take into account the Client's comments pursuant to paragraph 3.6.2.
- 3.7 The Contractor shall:
- 3.7.1 prepare a tender evaluation methodology prior to the tender issue date and issue such methodology to the Client for review and comment, allowing the Client a reasonable time for review prior to such proposed despatch; and
 - 3.7.2 where applicable, revise such evaluation methodology to take into account the Client's comments pursuant to paragraph 3.7.1.
- 3.8 The Contractor shall ensure that all prices submitted as part of any tender submission will be calculated (to the extent practicable) on the same basis and using the same assumptions as applied to derive the Unit Rates.
- 3.9 The Contractor shall invite the Client to attend at all tender openings and any subsequent interviews, value engineering workshops or other meetings with all or any (as applicable) of the tenderers.
- 3.10 The Contractor shall provide copies of all issued tenders and submissions received from tenderers, together with copies of all relevant supporting

information, minutes of meetings and reports in respect of each tender, (such copies to be delivered to the Client as soon as possible from the date the Contractor produced, issued or received the same (as the case may be)).

3.11 The Contractor shall prepare a report on each submitted tender response, disclosing the basis upon which the evaluation was carried out (including details of scoring), and including a recommendation as to the tender which represents, having regard to the relevant agreed tender evaluation criteria, fair open market rates and which, in the Contractor's opinion offers value for money and why it should be utilised in order to determine the relevant Rates and Prices for the relevant Works for the purposes of this Appendix.

3.12 The Contractor and the Client shall discuss such tender report and shall agree which tender should be utilised in order to determine the relevant Rates and Prices for the relevant Works for the purposes of this Appendix.

3.13 If the Contractor and the Client cannot agree which tender should be utilised in order to determine the relevant Rates and Prices for the relevant Works, the matter may be referred by either party to the dispute resolution procedure set out in option W2.

3.14 Following agreement to a tender by the Contractor and the Client (as referred to in paragraph 3.12) or, if paragraph 3.13 applies, upon determination pursuant to the dispute resolution procedure, the relevant Rates and Prices for the relevant Works shall become the relevant Rates and Prices for the purposes of this Appendix.

3.15 Without prejudice to any other provision of this Appendix, the Contractor shall provide to the Client:

3.15.1 market advertisements proposed for any tender exercise;

3.15.2 technical specifications relevant to any tender;

3.15.3 copies of all documentation and communications submitted by a tenderer relating to a tender; and

3.15.4 the tender evaluation records and reports prepared by the Contractor,

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

3.16 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.

3.17 The Contractor shall indemnify and keep the Client fully indemnified at all times from and against all claims, demands or notices which may be brought or alleged or threatened against the Client and from and against all losses and fines which the Client may suffer or incur in relation to any such claims, demands or notices which occur as a result of a breach of this Appendix and/or any claim made by any person (including, without limitation, a tenderer or

prospective tenderer) that is not awarded a contract pursuant to any tender governed by the procedure set out in this Appendix.

4 General

4.1 The Rates and Prices are deemed to include all costs, disbursements, expenses, required accommodation and accommodation costs, personnel rates and charges (including all costs associated with their employer) and other items necessary for the Contractor to fulfil all its obligations and liabilities under or referred to in any Task Order.

4.2 The Rates and Prices shall specify any key personnel and the parties agree that no other persons will be allowed in the establishment of prices under a Task Order unless specifically requested or otherwise agreed by the Client.

4.3 In relation to the Contractor's equipment costs, the Rates and Prices shall specify the accommodation required by the Contractor and the rates for any such accommodation and the parties agree that no other accommodation and/or rates will be allowed in the establishment of prices under a Task Order unless specifically requested or otherwise agreed by the Client.

4.4 The parties agree that the Rates and Prices shall not include any mechanism or rates or prices in relation to:

4.4.1 external scaffolding; and/or

4.4.2 external access equipment (including but not limited to, scaffolding, ladders, tower scaffolds, access platforms, tracked spiders and electric hoists).

4.5 Notwithstanding that any information described in paragraph 4.4 is set out in the Rates and Prices, in breach of paragraph 4.4, the parties agree that this information is to be disregarded for the purposes of establishing the rates and prices for:

4.5.1 external scaffolding; and/or

4.5.2 access information equipment (including but not limited to, scaffolding, ladders, tower scaffolds, access platforms, tracked spiders and electric hoists),

and if the Client or the Project Manager specifies that a Task Order requires any equipment identified in paragraphs 4.5.1 and/or 4.5.2 the Contractor shall follow the process set out in paragraph 3 of this Appendix 5 to obtain, from at least three specialist contractors and/or suppliers, a competitively tendered price for the erection, installation, hire, use, striking and/or dismantling of any such access information equipment.

4.6 The data used for the Short Schedule of Cost Components under any Task Order shall incorporate the applicable SSCC Tender Rates and Prices or, if the Contractor has not provided such rates and prices, then the CCS Framework Rates and Prices shall apply.

Appendix 6 Schedule of Amendments



Standard 'Boilerplate' Amendments - NEC4 -

Appendix 7

Delivery Contractors – Lot C Scotland

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Appendix 8

Performance KPIs

PART A

1 Performance Levels

1.1 The objectives of the Performance KPIs and Performance Failure Points are to:

1.1.1 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;

1.1.2 provide a mechanism whereby the Client can attain meaningful recognition of inconvenience resulting from the Contractor's failure to deliver the Works⁹ for which it has contracted to deliver and/or administer the Task Order in accordance with the provisions of that Task Order; and

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

1.2 Without prejudice to the Client's other rights and remedies under this Contract and/or any Task Order, if the level of performance of the Contractor of any element of a Task Order during a Service Period:

1.2.1 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

1.2.2 is below the Performance Level in respect of each Performance (i.e. a Performance Failure arises), the appropriate number of Performance Failure Points will accrue to the Contractor in respect of that Performance KPI.

1.3 If a Performance Failure occurs for two (2) or more Task Orders, 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.

1.4 If any Repeat Failure occurs, the number of Performance Failure Points that shall accrue to the Contractor in respect of such Repeat Failure shall be the number of Performance Failure Points that would normally accrue in respect of an initial failure of that Performance Level multiplied in accordance with the following:

1.4.1 initial failure: 1;

1.4.2 1st Repeat Failure: 1.5;

1.4.3 2nd Repeat Failure: 2.0; and

1.4.4 3rd and subsequent Repeat Failures: 2.5.

2 Performance Failure Points

- 2.1 Subject to paragraph 3.2, in any Service Quarter, where the Contractor accrues 100 or more Performance Failure Points, the Contractor shall receive a YELLOW Score for the purposes of the Contract.
- 2.2 Subject to paragraph 3.2, in any Service Quarter, where the Contractor accrues 150 or more Performance Failure Points, the Contractor shall receive a RED Score for the purposes of the Contract.
- 2.3 Where the Contractor receives a YELLOW or RED Score, without limitation to the Client's other rights and remedies which are available to it under this Contract, the Client may suspend and/or exclude (as applicable) the Contractor from participating in the Identification Procedure as set out in Part A of Appendix 1.

3 Earn Back Points

- 3.1 Subject to paragraph 4, in any Service Period, where the Contractor meets and/or exceeds the relevant Performance Level, the Contractor shall receive Earn Back Points for the purposes of the Contract.
- 3.2 At the end of each Service Quarter, any Earn Back Points shall be taken into account when determining the amount of Performance Failure Points accrued by the Contractor for any Task Order completed by the Contractor in any Service Quarter.

4 Performance Monitoring Reports

- 4.1 Within twenty (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 relation to each Task Order in respect of the Service Quarter just ended:
 - 4.1.1 a scorecard summarising the Contractor's level of performance in relation to each Performance Level and setting out the detail in relation to the underlying figures;
 - 4.1.2 a summary of all Performance Failures that occurred during the Service Quarter;
 - 4.1.3 which Performance Failures remain outstanding and progress in resolving them;
 - 4.1.4 for any Performance Failure, the cause of the fault and any action being taken to reduce the likelihood of recurrence;
 - 4.1.5 for any Repeat Failures, actions taken to resolve the underlying cause and prevent recurrence;
 - 4.1.6 the number of Performance Failure Points awarded to each Performance Failure in that Service Quarter;

- 4.1.7 any Earn Back Points that the Contractor considers should be taken into account as part of ongoing performing monitoring;
- 4.1.8 a rolling total of the number of Performance Failure Points that have occurred; and
- 4.1.9 such other details as the Client may reasonably require from time to time.
- 4.2 The draft Performance Monitoring Report shall be reviewed and its contents agreed by the parties at the Performance Review Meeting which immediately follows the issue of such report.
- 4.3 The parties shall attend Performance Review Meetings in each Service Quarter (unless otherwise agreed). The Performance Review Meetings will be the forum for the review by the Contractor and the Client of the Performance Monitoring Reports. The Performance Review Meetings shall take place at a date and time agreed by the Contractor and Client in the Service Quarter following the Service Quarter to which the Performance Monitoring Report pertains and shall be fully minuted.
- 4.4 The Contractor shall provide to the Client such supporting documentation as the Client may reasonably require in order to verify the level of the performance by the Contractor and the calculations of the amount of Performance Failure Points for any specified period.
- 4.5 If the Contractor fails to provide any Performance Monitoring Report in accordance with this paragraph 4 then it shall receive a RED Score.

5 Changes to KPIs

- 5.1 The Client may (acting reasonably):

5.1.1 change the weighting of one or more of Performance KPIs; and/or 5.1.2

change one or more of the Performance KPIs,

and the Contractor shall not be entitled to object to, or increase the Prices, as a result of such changes provided that:

- (i) the Client gives the Contractor at least one (1) Service Quarter's notice (or such shorter notice period as may be agreed with the Contractor); and
- (ii) it is reasonable to make such changes, including (without limitation) where:
 - (A) it becomes apparent that a Performance KPI is failing to accurately capture the required output; and/or
 - (B) where it is necessary to reflect changes in the Client's business requirements and/or priorities; and/or
 - (C) where it is necessary to reflect changing industry standards.

5.2 Where a Performance KPIs is changed in accordance with paragraph 5.1, the change shall be effective from the expiry of the notice referred to in paragraph 5.1, or such later date as the parties may agree.

PART B

REDACTED

Appendix 9

Parent Company Guarantee

Project specific basis as & when required

Appendix

10

Performance Bond

Project specific basis as & when required

Appendix
11

Client's Schedules

Part A: Appendix G (Collateral Warranty)

Project specific basis as & when required

Part B: Appendix K (TUPE)

REDACTED

Schedule K -
TUPE.DOCX

Appendix

12

Scope of Requirements

Project specific basis

Appendix
13

Contractor's Tender Submission

REDACTED