**Government Property Agency (GPA)**

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**CCZD22A08 MINOR WORKS AND SMALL PROJECTS (MWSP 2) – SOUTH ENGLAND**

**CALL OFF AGREEMENT (INCORPORATING THE NEC3 TERM SERVICE CONTRACT LONG), CONTRACT DATA AND Z CLAUSES**

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**FORM OF AGREEMENT**

**Incorporating the NEC3 Term Service Contract**

**Between**

**GOVERNMENT PROPERTY AGENCY (GPA)**

**And**

**KIER SERVICES LIMITED**

**for the provision of**

**Minor Works and Small Projects 2**

# TERM SERVICE CONTRACT ANNEX A - FORM OF AGREEMENT

**THIS AGREEMENT BY DEED is made the 19th day of August 2022**

**PARTIES:**

1. **GOVERNMENT PROPERTY AGENCY (GPA)** whose offices are located at 10 Victoria St, London, SW1 0NN (the "**Employer**"); and

2. **KIER SERVICES LIMITED** which is a company incorporated in and in accordance with the laws of **England and Wales** Company No. **02651873** whose registered office address is at 2nd Floor Optimum House, Clippers Quay, Salford, England M50 3XP(the "**Contractor**").

**BACKGROUND**

1. The Minister for the Cabinet Office (the "**Cabinet Office**"), the "**Authority**"), established a framework for Construction Works and Associated Services RM6088 for the benefit of public sector bodies.
2. The *Contractor* was appointed to the framework and executed the framework agreement (with reference number **RM6088**) which is dated *31 October 2019* (the “**Framework Agreement**”).
3. On the ***04th day of April 2022***the *Employer* invited the *Contractor* along with other framework suppliers to tender for the *Employer’s* Minor Works and Small Projects services requirements in accordance with the Call Off Procedure (as defined in the Framework Agreement).
4. On the ***27th day of April 2022***the *Contractor* submitted a tender response and was subsequently selected by the *Employer* to provide the *services*.
5. The *Contractor* has agreed to provide the *services* in accordance with this agreement and the Framework Agreement.

**IT IS AGREED AS FOLLOWS:**

1. **Definitions and Interpretation**

**This agreement (the “Call Off Contract”) incorporates the conditions set out below of:**

* The core clauses of the:

NEC3 Term Service Contract (April 2013)

the clauses for main Option A

dispute resolution Option W2

secondary Options X19

Y(UK)2

and option Z (being the amendments identified in the Contract Data),

which are supplemented and amended in accordance with such information and supplementary provisions as are provided in the Contract Schedules.

Together the “Conditions”

**The “Contract Schedules” means any one, or all, of the annexes appended to this Call Off Contract.**

1. **Entire Agreement**

2.1. This Call Off Contract is the entire agreement between the parties in relation to the *services* and supersedes and extinguishes all prior arrangements, understandings, agreements, statements, representations or warranties (whether written or oral) relating thereto.

2.2 Neither party has been given, nor entered into this Call Off Contract in reliance on any arrangements, understandings, agreements, statements, representations or warranties other than those expressly set out in this Call Off Contract.

2.3 Nothing in this Clause 2 shall exclude liability in respect of misrepresentations made fraudulently.

1. **Documents**

3.1 The documents forming part of this Call Off Contract are:

1. this form of agreement duly executed by the Parties as a deed
2. the Conditions
3. the Contract Data
4. the Service Information
5. Annex H. Cyber Essentials Scheme
6. GPA Design GuidesAppendixes 1, 2 and 3
7. Appendix 4 - GPA History Buildings Guidelines
8. Appendix 5 - Healthy building standards for government hubs
9. Appendix 6 - Physical security standards and guidance
10. Appendix 7 - FFE Specification requirements
11. Appendix 8 - Preliminaries

**Delivered** as a deed on the date of this document.

|  |  |
| --- | --- |
| Executed as a deed by Government Property Agency Contracting Authority acting by: |  |
|  | Director or Authorised Signatory |
| REDACTED TEXT under FOIA Section 40, Personal Information |  |
| Date |  |
|  | Director/Secretary or Authorised Signatory |
| REDACTED TEXT under FOIA Section 40, Personal Information |  |
| Date |  |
| Executed as a deed by Kier Services Limited acting by: |  |
|  | Director |
| REDACTED TEXT under FOIA Section 40, Personal Information |  |
| Date |  |
|  | Director/Secretary |
| REDACTED TEXT under FOIA Section 40, Personal Information |  |
| Date |  |

# **TERM SERVICE CONTRACT ANNEX B – CONDITIONS OF CONTRA**CT

**NEC3 Term Service Contract (April 2013) Core Clauses**

The core clauses of the NEC3 Term Service (TSC) Contract main Option A are subject to the alterations or additions set out below against the clauses to which they refer. These alterations and additions shall be deemed to form part of the Call Off Contract and should a conflict arises between these alterations and additions and the NEC3 Term Service Contract, these alterations and additions shall prevail.

|  |  |
| --- | --- |
| Clause |  |
|  | |
| The *Contractor's* main responsibilities | |
| 20.1 | Before the full stop insert "and the contract". |
| 20.3 | Insert a new clause 20.3 as follows:  "The *Contractor* shall obtain the necessary approvals of the relevant local authority to the Affected Property in providing the Service including those approvals set out in the Service Information." |
| 20.4 | Insert a new clause 20.4:  "In performing its obligations and exercising its powers and discretions under this contract the *Contractor* shall provide the level of skill, care, foresight, diligence, and technical ability normally exercised by a competent, duly qualified and experienced person providing services similar to each part of the *service* and all workmanship shall be of good quality and reasonably suited for its purpose." |
| 20.5 | Insert a new clause 20.5 as follows:  "All Plant and Materials used or to be used by the *Contractor* shall be pf a good quality and unless instructed otherwise in writing by the *Service Manager*, new. |
| 20.6 | Insert a new clause 20.6:  "The *Contractor* shall not use or permit to be used any materials which:   * do not conform with British or European Standards (where appropriate or any relevant codes of practice; or * do not comply with the guidance set out in the "Good Practice in the Selection of Construction Materials 2011" published by the British Council for Offices; and/or * are specifically prohibited by the contract. |
| 23.2 | Insert a new clause 23.2:  "Where the *Contractor* is responsible for the design of any element of the *service*, such design is carried out using all the skill, care and diligence to be expected of a professionally qualified and competent designer experienced in providing services similar in size, scope, nature, type and complexity of the *service*." |
| 25.1 | After the final sentence insert "The *Contractor* shall carry out its obligation under the contract so as to minimise disruption to, or interference with Others and shall (at its own expense) co-operate with and render all reasonable assistance to Others in performing their respective obligations and shall consult on matters affecting the Others' performance of their obligations under their contracts. Such assistance shall include, without limitation, the provision of information in response to a reasonable request made by an Other and to afford such rights of access as an Other may reasonably require to comply with its obligations under its contract." |
| 27.1 | Before the full stop insert "or as required in the Service Information" |
| 3 Time | |
| 31.1 | Delete "allows" and insert "uses reasonable endeavours to provide or procure" |
| 5 Payment | |
| 50.2 | After "retained" in the third bullet point, |
| X19 | 1. Task Order Pre-Conditions means:  * Agreement of the Task Order Programme by the *Employer* * Completion and distribution of the pre- construction information and the construction phase plan and confirmation that the *Employer* is satisfied that the requirements of Regulation 22 (1) (c ) of the CDM Regulations have been met * Completion of pre-commencement site surveys and investigations required by the *Employer* * Grant of any required planning permission satisfactory to the *Employer* and any other pre-commencement regulatory approvals * Development of an integrated design, supply and construction process * Selection and approval of supply chain members by the *Employer* * Finalisation and agreement of the Price * Provision and evidence of all insurances required under the Contract * Finalisation and satisfactory progress against KPIs * Completion by the *Employer* of any required funding; and * Agreement to all remaining details set out in the Task Order   (7) Framework Contractor means another contractor selected by the *Employer* following a mini-competition under the CCS Construction Works and Associated Services RM6088 Framework  Agreement |
|  | Delete X19.2 and replace with X19.2 as follows:   1. A Task Order includes  * a detailed description of the work in the Task, a priced list of items of work in the Task in which items taken from the Price List are identified, the starting and completion dates for the Task, the amount of delay damages for the late completion of the Task and . the total of the Prices for the Task when Option A is used.   The Service Manager shall not issue a Task Order unless the Task Order Pre-Conditions are satisfied  When a Task Order is issued   * the priced list of items for the Task is inserted in the Price List, and the work involved is added to the Service information.   An instruction to carry out a Task is not a compensation event.  In the event that the Task Order Pre- Conditions are not satisfied the *Employer* reserves the right not to place a Task Order with the *Contractor*  In the event that a Task Order is not placed and if  requested by the *Employer* the *Contractor* shall grant an irrevocable, non exclusive royalty free licence to copy and use the designs prepared in respect of a Task Order to the *Employer* which shall be transferrable to another Framework *Contractor* undertaking the Tasks. The Employer will pay reasonable and demonstrable costs when the X19 Clause is applied.  The *Employer* does not guarantee that any minimum value or type of Task Orders shall be issued to the *Contractor* and the *Employer* shall have no liability in respect of any expenditure of any kind incurred by the *Contractor* in expectation of a Task Order. |

# TERM SERVICE CONTRACT ANNEX C - CONTRACT DATA PARTS ONE AND TWO

**Contract Data**

**Part 1 – Data provided by the Employer**

|  |  |
| --- | --- |
| Part one – Data provided by the *Employer* | |
| 1 General | * The conditions of contract are the core clauses and the clauses for main Option A, dispute resolution Option W2 and secondary Options X19 of the NEC3 Term Service Contract April 2013 and the Z clauses. |
|  | * The service is construction, design and advisory services for engineering work including pre-construction activities. |
|  | * The *Employer* is Government Property Agency of 10 Victoria Street, London, SW1H 0NN (GPA). |
|  | * The Service Manager is to be appointed by GPA on a project by project basis. |
|  | * The Supervisor is to be appointed by GPA on a project by project basis |
|  | * The *Adjudicator* is the person chosen by the Parties from the list of *Adjudicator*s published by the Institution of Civil Engineers. |
|  | * The Affected Propertyis to be confirmed on a project by project basis. |
|  | * The Service Informationis to be provided to the *Contractor* on a project by project basis. |
|  | * The *language of this contract* is English. |
|  | * The *law of the contract* is the law of England and Wales |
|  | * The *period* *for reply* is 2 weeks |
|  | * The *Adjudicator nominating body* is to be nominated in accordance with the Technology and Construction Solicitors Association |
|  | * The *tribunal* is […TBC.] |
|  | * The matters to be included in the Risk Register will be provided on a project by project basis. |
| 3 Time | * *The starting date* is to be agreed on a project by project basis. * The *service period* is 3 years with a maximum of 2 12 month extensions +12 months +12 months) up to a maximum 5 year period |
| 5 Payment | * The *assessment interval* is 4-5 weeks (not more than five). * The *currency* of this contract is pounds sterling (GBP) * The *interest rate* is 8 % above base rate |
| 8 Indemnity, insurance and liability | * The minimum amount of cover for insurance against loss of or damage caused by the *Contractor* to the *Employer’s* property is defined in Task Order. * The minimum amount of cover for insurance in respect of loss of or damage to property (except the *Employer’s* property, 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’s* Providing the Service for any one event is ten million pounds (£10,000,000) in respect of any one occurrence, the number of occurrences being unlimited, but ten million pounds (£10,000,000) any one occurrence and in the aggregate per annum in respect of products and pollution liability. * 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 is (£10,000,000). |
| Optional Statements | If the *tribunal* is arbitration   * The *arbitration procedure* is the Institution of Civil Engineers Chartered institute of Arbitrators procedure. * The place where the arbitration is to be held is to be agreed by the parties as required. * The person or organisation who will choose an arbitrator is the Institution of Civil Engineers Chartered institute of Arbitrators   + if the Parties cannot agree a choice   + if the *arbitration procedure* does not state who selects an arbitrator is   If no plan is identified in part two of the Contract Data   * The *Contractor* submits a first plan for acceptance for a Task Order within 5 working days of date of issue where instructed.   If the period in which payments are made is not three weeks and Y(UK)2 is not used   * The period within which payments are made is 28 days   If there are additional *Employer's* risks   * These are additional *Employer's* risks will be confirmed on a project by project basis.   If the *Employer* is to provide Plant and Materials   * The insurance against loss of or damage to Plant and Materials is to include cover for Plant and Materials provided by the *Employer* for an amount of [….] agreed on a individual task order basis.   If the *Employer* is to provide any of the insurances stated in the Insurance Table   * The *Employer*  provides these insurances from the Insurance Table  1. Insurance against [….]   Cover/indemnity is [….]  The deductibles are [….]   1. Insurance against [….]   Cover/indemnity is [….]  The deductibles are [….]   1. Insurance against [….]   Cover/indemnity is [….]  The deductibles are [….]  If additional insurances are to be provided   * The *Employer* provides these additional insurances  1. Insurance against [….]   Cover/indemnity is [….]  The deductibles are [….]   1. Insurance against [….]   Cover/indemnity is [….]  The deductibles are[….]   * The *Contractor* provides these additional insurances  1. Insurance against [….]   Cover/indemnity is [….]  The deductibles are [….]   1. Insurance against [….]   Cover/indemnity is [….]  The deductibles are[….] |
| If Option A is used | The *Contractor* prepares forecasts of the final total of the Prices for the whole of the *service* at intervals no longer than 4 weeks on an individual Task Order basis. . |
| If Option C is used | * The *Contractor's* share percentages and the share ranges are  |  |  |  |  |  | | --- | --- | --- | --- | --- | | *share range*  less than |  | % | *Contractor's share percentage*  ........................... | % | | from | % to | % | ........................... | % | | from | % to | % | ........................... | % | | greater than |  | % | ........................... | % |  * *The* *Contractor's* share is assessed on (dates) [….] |
| If Option C or E is used | * The *Contractor* prepares forecasts of the total Defined Cost for the whole of the service at intervals no longer than [….] * The exchange rates are those published in [ ] on [….] (date) |
| If Option X1 is used | Not applicable |
| If Option X3 is used | *Not applicable* |
| If Option X12 is used | * The *Client* is [ as determined in the task order ].   Name……………………  Address………………… |
|  | * The *Client’s objective* is [as determined in the task order]. |
|  | * The Partnering Information is in [as determined in the task order]. |
| If Option X13 is used | * Not applicable |
| Option X17 | * The *service level table* is on an individual Task Order basis. |
| Option X18 | * The *Consultant’s* liability to the *Employer* for indirect or consequential loss is £10,000,000 per Task Order. * For any one event, the *Contractor’s* liability to the *Employer* for loss of or damage to the *Employer’s* property is £10,000,000 per Task Order. * The *Contractor’s* liability for Defects due to his design of an item of Equipment is £10,000,000 per Task Order. * The *Contractor’s* total liability to the *Employer* for all matters arising under or in connection with this contract, other than the excluded matters, is unlimited but will be capped at £10,000,000 for any one liability event; if the Employer determines a project (Task Order) requires a higher level of liability cover, the Employer will seek to agree this with the Contractor prior to a work package (Task Order) being issued. In this instance, if a reasonable liability cap cannot be agreed between the parties, the Employer will offer the work to the next Contractor on the taxi rank, or reserve the right to tender the work via procurement competition. * The *end of liability* date is 12 years after the end of the *service period for the Task Order*. |
| Option X19 is used | * The *Contractor* submits a Task Order programme to the *Service Manager* within [5] days of receiving the Task Order. |
| If Option X20 is used | * The *incentive schedule*  for Key Performance Indicators is in Annex I MWSP2 KPI Process * A report of performance against each Key Performance Indicator is provide at intervals of agreed on an individual Task Order basis. |
| If Option Y(UK)1 is used and the *Employer* is to pay any charges made and is paid any interest paid by the *project bank* | * The *Employer*  is to pay any charges made and is paid any interest paid by the *project bank.* |
| If Option Y(UK)3 is used | |  |  | | --- | --- | | * term   [ ]  [ ]  [ ] | * person or  organization   [ ]  [ ]  [ ] | |
| Options Y(UK) 1 and Y (UK) 3 both used | |  |  | | --- | --- | | * term | person or organization | | [The provisions of Option Y(UK)1]  [Fair Payment] | [Named Suppliers]  [Subcontractors] | |
| Contract Data relating to Z Clauses | If Clause Z28 is used   * the *extension period* is [ ] [Total duration cannot exceed 7 years including any extensions] |
|  | If Clause Z32 is used   * the *failure level* is [ ] |
|  | If Clause Z44 is used   * the required level of *professional indemnity insurance is [ ]* |
|  | If Clause Z48 long form (IPR enhanced software) is used:   * The *relevant services* and the *relevant service conditions* are  |  |  |  | | --- | --- | --- | | *relevant service* | | *relevant service condition* | | reference | Reference sections of the Service Information | |  |  |  | |  |  |  |   If clauses Z27, Z54 & Z55 are used:   * The *credit ratings* at the Contract Date and the rating agencies issuing them are  |  |  |  | | --- | --- | --- | | Party | rating agency | *credit rating* | | [*Contractor*] | ………………..….. | ……………………… | | {Consortium Member} | …………………… | ……………………… | | [Guarantor] | …………………… | ……………………… | |
|  | If Clause Z51 is used:   * the *Contractor* provides collateral warranty agreementsin favour of [ ]. * the *Contractor* procures collateral warranty agreements from the following Subcontractors: * [ ]   in favour of the following parties [ ] |
| Option Z | * The *additional conditions of contract* are [….] |

|  |  |
| --- | --- |
| Part two – Data provided by the *Contractor* | |
| 1 Statements given in all contracts | * The *Contractor* is   Name [….]  Address [….]   * The *direct fee* *percentage* is [….] % * The *subcontracted fee percentage* is [….] % * The key people are:  |  |  |  | | --- | --- | --- | | Job |  | . | | Responsibilities |  | . | | Qualifications | ' | . | | Experience |  | . |  |  |  |  | | --- | --- | --- | | Job |  | . | | Responsibilities |  | . | | Qualifications | ' | . | | Experience |  | . |  * The following matters will be included in the Risk Register   [ ]   * The Quality Statement is in [ ] |
|  | The following matters will be included in the Risk Register  …………………………………. |
| 2 Optional statements | If the *Contractor* is to provide Service Information for his plan   * The Service Information for the *Contractor’s plan* is inprojects individual Task Order   If a plan is identified in the Contract Data   * The plan identified in the Contract Data is in projects individual Task Order   If Option A, C or E is used   * The *price list* is in Annex F bidders tender pricing, if rates outside of tender pricing are required the contractors RM6088 Lot 1.1.2 South England framework rates apply.   If Option A or C is used   * The tendered total of the Prices is in projects individual Task Order   If Option Y(UK) 1 is used   * The *project bank* is [….] * *named suppliers* are [….] |
| Contract Data relating to Z Clauses | If Clause Z48 (IPR long form enhanced for software):  The *software schedule* is in the document called the “the Software Schedule”. |
|  | If Clause Z44 is used:   * the required level of *professional indemnity insurance* is included in projects individual Task Order |
|  | If Clause Z51 is used:   * the *Contractor* provides collateral warranty agreementsin favour of the Government Property Agency . * the *Contractor* procures collateral warranty agreements from the following Subcontractors: * [ ] in projects individual Task Orders   in favour of the following parties the Government Property Agency |

# TERM SERVICE CONTRACT ANNEX D – OPTIONAL Z CLAUSES

**Term Service Contract**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Clause Z1 | | | Interpretation and the law  Z1.1 In this contract, except where the context shows otherwise:   * references to a document include any revision made to it in accordance with this contract; * references to a statute or statutory instrument include any amendment or re-enactment of it from time to time and any subordinate legislation or code of practice made under it; * references to a British, European or International standard include any current relevant standard that replaces it; * references to persons or organisations will be construed so as to include bodies corporate, unincorporated associations, partnerships and any other legal entity; and * the words “includes” or “including” are construed without limitation. | | |
| Clause Z2 | | | Corrupt practices  Z2.1 The *Contractor* does not   * offer or give to any person in the service of the *Employer* any gift or consideration of any kind as an inducement or reward in relation to the obtaining or execution of this contract or any other contract with the *Employer* or for showing favour or disfavour to any person in relation to this contract or any other contract with the *Employer* or * enter into this contract or any other contract with the *Employer* if, in connection with this contract or any such other contract, commission has been paid or an agreement for the payment of commission has been made by him or on his behalf or to his knowledge.   Z2.2 A failure to comply with this clause is treated as the *Contractor* having substantially hindered the *Employer* or Others. | | |
| Clause Z3 | | | Recovery of sums due from *Contractor*  Z3.1 Where under this contract or any other contract between the *Contractor* and the *Employer* any sum of money is recoverable from or payable by the *Contractor*, such sum may be deducted from or reduced by the amount of any sum or sums then due or which at any time after may become due to the *Contractor* under this contract or any other contract with the *Employer*. | | |
| Clause Z4 | | | Assignment  Z4.1 The *Contractor* does not assign, transfer or charge the benefit of this contract or any part of it or any benefit or interest under it without the prior agreement of the *Employer*.  Z4.2 The *Employer*’s ability to assign this contract or any part of it or any benefit or interest under it is unrestricted.  Z4.3 If requested by the *Employer*, the *Contractor* executes a novation agreement transferring the benefit and burden of this contract to   * another Department or Office of Her Majesty's Government, * a local authority, * an organisation established to take over the *Employer*’s functions or part of his functions or * any other body (including private sector body) exercising similar functions   The novation agreement is in the form set out in the Service Information of such other form as the *Employer* may reasonably require. | | |
| Clause Z5 | | | Discrimination  Z5.1 The *Contractor* does not discriminate directly or indirectly or by way of victimisation or harassment against any person contrary to the Equality Act 2010, any predecessor statute of it or any amendment or re-enactment of it from time to time (the “Discrimination Acts”).  Z5.2 In Providing the Service, the *Contractor* co-operates with and assists the *Employer* to satisfy his duty under the Discrimination Acts to eliminate unlawful discrimination and to promote equality of opportunity between persons of different racial groups and between disabled people and other people.  Z5.3 Where any employee or Subcontractor employed by the *Contractor* is required to carry out any activity alongside the *Employer*’s [or *Service Manager*’s] employees in any premises, the *Contractor* ensures that each such employee or Subcontractor complies with the *Employer*’s employment policies and codes of practice relating to discrimination and equal opportunities.  Z5.4 The *Contractor* notifies the Service Manager in writing as soon as he becomes aware of any investigation or proceedings brought against the *Contractor* under the Discrimination Acts in connection with this contract and   * provides any information requested by the investigating body, court or tribunal in the timescale allotted, * attends (and permits a representative from the *Employer* to attend) any associated meetings, * promptly allows access to any relevant documents and information and * cooperates fully and promptly with the investigatory body, court or tribunal.   Z5.5 The *Contractor* indemnifies the *Employer* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Employer* arising out of or in connection with any investigation or proceedings under the Discrimination Acts resulting from any act or omission of the *Contractor*.  Z5.6 The *Contractor* includes in the conditions of contract for each Subcontractor obligations substantially similar to those set out above. | | |
| Clause Z6 | | | Conflict of interest  Z6.1 The *Contractor* does not take an action which would cause a conflict of interest to arise in connection with this contract. The *Contractor* notifies the *Employer* if there is any uncertainty about whether a conflict of interest may exist or arise.  Z6.2 The *Contractor* immediately notifies the *Employer* of any circumstances giving rise to or potentially giving rise to conflicts of interest relating to the *Contractor* and/or the *Employer* (including without limitation its reputation and standing), of which it is aware or anticipates may justify the *Employer* taking action to protect its interests. | | |
| Clause Z7 | | | Merger, take-over or change of control  Z7.1 In clauses Z7, Z54 [Financial Distress], Z55 [Change of Control – new guarantee], and Z29 [Parent Company Guarantee]  Change of Control is an event where a single person (or group of persons acting in concert)   * acquires Control of the *Contractor* or * acquires a direct or indirect interest in the relevant share capital of the *Contractor* and as a result holds or controls the largest direct or indirect interest in (and in any event more than 25% of) the relevant share capital of the *Contractor*,   Consortium Member is an organisation or person which is a member of a group of economic operators comprising the *Contractor*, whether as a participant in an unincorporated joint venture or a shareholder in a joint venture company,  Control has the meaning set out in section 1124 of the Corporation Tax Act 2010,  Controller is the single person (or group of persons acting in concert) that   * has Control of the *Contractor* or a Consortium Member or * holds or controls the largest direct or indirect interest in the relevant share capital of the *Contractor* or a Consortium Member,   Credit Rating Threshold means the minimum credit rating for the Consultant, a Consortium Member or a proposed guarantor, such credit rating being set out at Annex 2 to Schedule 16 of the Framework Agreement  Guarantor is a person who has given a Parent Company Guarantee to the *Employer* and  Parent Company Guarantee is a guarantee of the *Contractor’s* performance in the form set out in the Service Information.  Z7.2 A Change of Control does not happen without the prior agreement of the *Service Manager* and if a Change of Control occurs without the *Service Managers* prior consent, then the *Employer* may treat the Change of Control as the *Contractor* having substantially hindered the *Employer* or Others.  Z7.3 The *Contractor* notifies the *Service Manager* immediately if a Change of Control has occurred or is expected to occur.  Z7.4 If the Change of Control will not allow the *Contractor* to perform its obligations under this contract, the *Employer* may treat the Change of Control as having substantially hindered the *Employer* or Others.  Z7.5 The *Contractor* notifies the *Service Manager* immediately of any material change in   * the direct or indirect legal or beneficial ownership of any shareholding in the *Contractor*. A change is material if it relates directly or indirectly to a change of 3% or more of the issued share capital of the *Contractor*, or * the composition of the *Contractor*. A change is material if it * directly or indirectly affects the performance of this contract by the *Contractor* or * is considered substantial in accordance with Regulation 72(8) of the Public Contract Regulations 2015.   Z7.6 The *Contractor* notifies the *Service Manager* immediately of any change or proposed change in the name or status of the *Contractor*.  Z7.7 If the *Contractor* fails to notify the *Service Manager* as required by clauses Z7.5 or Z7.6, the *Employer* may treat that failure as the *Contractor* having substantially hindered the *Employer* or Others.  Z7.8 In this clause Z7 a   * Change of Control in relation to * material change in the ownership of shares in, or * change in the name or status of   a Consortium Member is treated as a change relating to the *Contractor*. | | |
| Clause Z8 | | | Appointment of *Adjudicator*  Z8.1 The *Adjudicator*’s appointment under the NEC3 Adjudicator’s Contract (April 2013) includes the following additional condition of contract  “The *Adjudicator* complies, and takes all reasonable steps to ensure that any persons advising or aiding him comply, with the Official Secrets Act 1989. Any information concerning the Contract obtained either by the *Adjudicator* or any person advising or aiding him is confidential, and may not be used or disclosed by the *Adjudicator* or any such person except for the purposes of this Agreement.” | | |
| Clause Z9 | | | Not used | | |
| Clause Z10 | | | Prevention of fraud and bribery  Z10.1 The *Contractor* represents and warrants that neither it, nor to the best of its knowledge any of its employees, have at any time prior to the Contract Date:   * committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or * been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.   Z10.2 During the *services period* the *Contractor* does not:   * commit a Prohibited Act; and/or * do or suffer anything to be done which would cause the *Employer* or any of the *Employer’s* employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements   Z10.3 During the *services period* the *Contractor*:   * establishes, maintains and enforces, and requires that its Subcontractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; * keeps appropriate records of its compliance with this contract  and make such records available to the *Employer* on request; * provides and maintains and where appropriate enforces an anti-bribery policy (which shall be disclosed to the *Employer* on request) to prevent it and any *Contractor’s* employees or any person acting on the *Contractor's* behalf from committing a Prohibited Act.   Z10.4 The *Contractor* immediately notifies the *Employer* in writing if it becomes aware of any breach of clause Z10.1, or has reason to believe that it has or any of the its employees or Subcontractors have:   * been subject to an investigation or prosecution which relates to an alleged Prohibited Act; * been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or * received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this contract or otherwise suspects that any person or Party directly or indirectly connected with this contract has committed or attempted to commit a Prohibited Act.   Z10.5 If the *Contractor* makes a notification to the *Employer* pursuant to clause Z10.4, the *Contractor* responds promptly to the *Employer's* enquiries, co-operates with any investigation, and allows the *Employer* to audit any books, records and/or any other relevant documentation in accordance with this contract.  Z10.6 If the *Contractor* breaches Clause Z10.3, the *Employer* may by notice require the *Contractor* to remove from Providing the Service any *Contractor* employee whose acts or omissions have caused the *Contractor*’s breach.  Z10.7 In this Clause Z10, Prohibited Act meansany of the following:   * 1. to directly or indirectly offer, promise or give any person working for or engaged by the *Employer* a financial or other advantage to:      1. induce that person to perform improperly a relevant function or activity; or      2. reward that person for improper performance of a relevant function or activity;   2. to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this contract;   3. committing any offence:      1. under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or      2. under legislation creating offences concerning fraud; or      3. at common law concerning fraud; or   committing (or attempting or conspiring to commit) fraud.] | | |
| Clause Z11 | | | | *Employer*’s Codes of Conduct  Z11.1 The *Contractor* and anyone employed by him or acting on his behalf complies with the *Employer*’s Anti Bribery Code of Conduct and the *Employer*’s Anti Fraud Code of Conduct, collectively the “Codes”. The *Contractor* complies with the Codes throughout the *service period* and with:   * paragraph 4 of the *Employer*’s Anti Bribery Code of Conduct and * paragraph 3 of the *Employer*’s Anti Fraud Code of Conduct   for a period of not less than 12 years after the end of the *service period*.  Z11.2 A failure to comply with this condition is treated as the *Contractor* having substantially hindered the *Employer* or Others. | |
| Clause Z12 | | | Not used | | |
| Clause Z13 | | | Fair payment  Z13.1 The *Contractor* assesses the amount due to a Subcontractor without taking into account the amount assessed under this contract.  Z13.2 The *Contractor* includes in the contract with each Subcontractor   * a period for payment of the amount due to the Subcontractor not greater than 19 days after the date on which payment becomes due under this contract. The amount due includes, but is not limited to, payment for work which the Subcontractor has completed from the previous assessment date up to the current assessment date in this contract, * a provision requiring the Subcontractor to include in each subsubcontract the same requirement, except that the period for payment is to be not greater than 23 days after the date on which payment becomes due under this contract and * a provision requiring the Subcontractor to assess the amount due to a subsubcontractor without taking into account the amount paid by the *Contractor*.   Z13.3 The *Contractor* notifies non-compliance with the timescales for payment through the Efficiency and Reform Group Supplier Feedback Service. The *Contractor* includes this provision in each subcontract, and requires Subcontractors to include the same provision in each subsubcontract.  Z13.4 A failure to comply with this condition is treated as the *Contractor* having substantially hindered the *Employer* or Others. | | |
| Clause Z14 | | | Confidentiality  Z14.1 A new clause 70.3 is added as follows:  “The *Contractor* keeps (and ensures that anyone employed by him or acting on his behalf keeps) confidential and does not   * disclose to any person the terms of this contract nor * use (except for the purposes of this contract) or disclose to any person any confidential or proprietary information (including Personal Data) provided to or acquired by the *Contractor* in the course of Providing the Service   except that the *Contractor* may disclose information   * to his legal or other professional advisers, * to his employees and Subcontractors as needed to enable the *Contractor* to Provide the Service, * where required to do so by law or by any professional or regulatory obligation or by order of any court or governmental agency, provided that prior to disclosure the *Contractor* consults the Service Manager and takes full account of the Service Manager’s views about whether (and if so to what extent) the information should be disclosed, * which he receives from a third party who lawfully acquired it and who is under no obligation restricting its disclosure, * which is in the public domain at the time of disclosure other than due to the fault of the *Contractor* or * with the consent of the *Service Manager*.   Z14.2 The *Contractor* may only disclose the *Employer*’s confidential information to its personnel who are directly involved in Providing the Service and who need to know the information, and shall ensure that such personnel are aware of and shall comply with these obligations as to confidentiality.  Z14.3 The *Contractor* may only disclose the *Employer*’s confidential information to its personnel who need to know the information, and shall ensure that its personnel are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any default, act or omission of any of the *Contractor*’spersonnel causes or contributes (or could cause or contribute) to the *Contractor* breaching its obligations as to confidentiality under or in connection with this contract, the *Contractor* shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any of the *Contractor’s* personnel, the *Contractor* shall provide such evidence to the *Employer* as the *Employer* may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the *Contractor* is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from the *Contractor’*s personnel, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with the *Contractor*’s personnel in connection with obligations as to confidentiality.  Z14.4 At the written request of the *Employer*, the *Contractor* shall procure that those members of the *Contractor*’s personnel identified in the *Employer*’s notice signs a confidentiality undertaking prior to commencing any work in accordance with this contract.  Z14.5 Where the *Employer* supplies the *Contractor* with press cuttings provided to the *Employer* under the terms of the *Employer*’s licence with the Newspaper Licensing Agency (“NLA”), the *Contractor* does not reproduce the cuttings or forward them to any third party unless the *Contractor* has first entered into an agreement with NLA authorising it to do so. | | |
| Clause Z15 | | | Security Requirements  Z15.1 The *Contractor* complies with, and procures the compliance of its personnel, with:   * the Security Policy; * the Security Management Plan produced pursuant to the Security Provisions contained within the Service Information ; and * the Security Provisions contained within the Service Information.   Z15.2 The *Contractor* shall ensure that the Security Management Plan produced by the *Contractor* fully complies with the Security Policy. | | |
| Clause Z16 | | | Official Secrets Act  Z16.1 The Official Secrets Act 1989 applies to this contract from the starting date until the end of the service period or earlier termination.  Z16.2 The *Contractor* notifies his employees and Subcontractors of their duties under the Official Secrets Act 1989.  Z16.3 A failure to comply with this clause is treated as a substantial failure by the *Contractor* to comply with his obligations.  [Z16.4 The *Contractor* complies with the staff vetting and training requirements stated in the Service Information.] *[Include if applicable]* | | |
| Clause Z17 | | | Data protection  Z17.1 In this Clause Z17, the following terms take the following meanings:  Contractor Personnel​: means all directors, officers, employees, agents, consultants and contractors of the *Contractor* and/or of any Sub-*Contractor* engaged in the performance of its obligations under this Agreement  Controller takes the meaning given in the 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: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iiii) all applicable Law about the processing of personal data and privacy;  Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.  Data Protection Officer takes the meaning given in the Data Protection Legislation.  Data Subject takes the meaning given in the Data Protection Legislation.  Data Subject Access Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.  DPA 2018: means the Data Protection Act 2018  GDPR: the General Data Protection Regulation (*Regulation (EU) 2016/679*)  Law: means any law, 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, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the *Contractor* is bound to comply;  LED:  Law Enforcement Directive (*Directive (EU) 2016/680*)  Party: a Party to this Agreement ;  Personal Data takes the meaning given in the Data Protection Legislation.  Personal Data Breach takes the meaning given in the Data Protection Legislation.  Processor takes the meaning given in the Data Protection Legislation.  Protective Measures: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.  Sub-processor: any third party appointed to process Personal Data on behalf of the *Contractor* under this Contract  Z17.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the *Employer* is the Controller and the *Contractor* is the Processor. The only processing that the *Contractor* is authorised to do is listed in this Clause Z17.2 by the *Employer* and may not be determined by the *Contractor*.  Z17.2.1 Subject matter of the processing;  *[This should be a high level, short description of what the processing is about i.e. its subject matter]*  Z17.2.2 Duration of the processing;  *[Clearly set out the duration of the processing including dates]*  Z17.2.3 Nature and purposes of the processing;  *[Please be as specific as possible, but make sure that you cover all intended purposes.]*  Z17.2.4 Type of Personal Data;  *[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.]*  Z17.2.5 Categories of Data Subject;  *[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, Contractors, members of the public]*  Z17.2.6 Plan for Destruction of Data;  *[Describe how long the data will be retained for, how it be returned or destroyed]*  Z17.3 The *Contractor* shall notify the *Employer* immediately if it considers that any of the *Employer*'s instructions infringe the Data Protection Legislation.  Z17.4 The *Contractor* shall provide all reasonable assistance to the *Employer* in the preparation of any Data Protection Impact Assessment prior to commencing any processing.  Such assistance may, at the discretion of the *Employer*, include:  Z17.4.1 a systematic description of the envisaged processing operations and the purpose of the processing;  Z17.4.2 an assessment of the necessity and proportionality of the processing operations;  Z17.4.3 an assessment of the risks to the rights and freedoms of Data Subjects; and  Z17.4.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.  Z17.5 The *Contractor* shall, in relation to any Personal Data processed in connection with its obligations under this Contract:  Z17.5.1 process that Personal Data only in accordance with Clause Z17.2 unless the *Contractor* is required to do otherwise by Law. If it is so required the *Contractor* shall promptly notify the *Employer* before processing the Personal Data unless prohibited by Law;  Z17.5.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the *Employer* as appropriate to protect against a Data Loss Event having taken account of the:   * + - * 1. nature of the data to be protected;         2. harm that might result from a Data Loss Event;         3. state of technological development; and         4. cost of implementing any measures;   Z17.5.3 ensure that :   * + - * 1. the *Contractor* Personnel do not process Personal Data except in accordance with this Contract (and in particular Clause Z17.2);         2. it takes all reasonable steps to ensure the reliability and integrity of any *Contractor* Personnel who have access to the Personal Data and ensure that they:  1. are aware of and comply with the *Contractor*’s duties under this clause; 2. are subject to appropriate confidentiality undertakings with the *Contractor* or any Sub-processor; 3. 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 *Employer* or as otherwise permitted by this Contract; and 4. have undergone adequate training in the use, care, protection and handling of Personal Data; and   Z17.5.4 not transfer Personal Data outside of the European Economic Area unless the prior written consent of the *Employer* has been obtained and the following conditions are fulfilled:   * + - * 1. the *Employer* or the *Contractor* has provided appropriate safeguards in relation to the transfer;         2. the Data Subject has enforceable rights and effective legal remedies;         3. the *Contractor* complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and         4. the *Contractor* complies with any reasonable instructions notified to it in advance by the *Employer* with respect to the processing of the Personal Data;   Z17.5.5 at the written direction of the *Employer*, delete or return Personal Data (and any copies of it) to the *Employer* on termination of the Contract unless the *Contractor* is required by Law to retain the Personal Data.  Z17.6. Subject to clause Z17.7, the *Contractor* shall notify the *Employer* immediately if it:  Z17.6.1. receives a Data Subject Access Request (or purported Data Subject Access Request);  Z17.6.2 receives a request to rectify, block or erase any Personal Data;  Z17.6.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;  Z17.6.4 receives any communication from the Information Commissioner or any other regulatory *Employer* in connection with Personal Data processed under this Contract;  Z17.6.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or  Z17.6.6 becomes aware of a Data Loss Event.  Z17.7 The *Contractor*’s obligation to notify under clause Z17.6 shall include the provision of further information to the *Employer* in phases, as details become available.  Z17.8 Taking into account the nature of the processing, the *Contractor* shall provide the *Employer* with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause Z17.6. (and insofar as possible within the timescales reasonably required by the *Employer*) including by promptly providing:  Z17.8.1 the *Employer* with full details and copies of the complaint, communication or request;  Z17.8.2 such assistance as is reasonably requested by the *Employer* to enable the *Employer* to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;  Z17.8.3 the *Employer*, at its request, with any Personal Data it holds in relation to a Data Subject;  Z17.8.4 assistance as requested by the *Employer* following any Data Loss Event;  Z17.8.5 assistance as requested by the *Employer* with respect to any request from the Information Commissioner’s Office, or any consultation by the *Employer* with the Information Commissioner's Office.  Z17.9 The *Contractor* shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the *Contractor* employs fewer than 250 staff, unless:  Z17.9.1 the *Employer* determines that the processing is not occasional;  Z17.9.2 the *Employer* determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and  Z17.9.3 the *Employer* determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.  Z17.10 The *Contractor* shall allow for audits of its Data Processing activity by the *Employer* or the *Employer*’s designated auditor.  Z17.11 The *Contractor* shall designate a Data Protection Officer if required by the Data Protection Legislation.  Z17.12 Before allowing any Sub-processor to process any Personal Data related to this Contract, the *Contractor* must:  Z17.12.1 notify the *Employer* in writing of the intended Sub-processor and processing;  Z17.12.2 obtain the written consent of the *Employer*;  Z17.12.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause Z17 such that they apply to the Sub-processor; and  Z17.12.4 provide the *Employer* with such information regarding the Sub-processor as the *Employer* may reasonably require.  Z17.13 The *Contractor* shall remain fully liable for all acts or omissions of any Sub-processor.  Z17.14 The *Employer* may, at any time on not less than 30 Working Days’ notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).  Z17.15 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner’s Office publishes guidance. The *Employer* may on not less than 30 Working Days’ notice to the *Contractor* amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner’s Officer. | | |
| Clause Z18 | | | Disclosure of information  Z18.1 A Disclosure Request is a request for information relating to this contract received by the *Employer* pursuant to the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or otherwise.  Z18.2 The *Contractor* acknowledges that the *Employer* may receive Disclosure Requests and that the *Employer* may be obliged (subject to the application of any relevant exemption and, where applicable, the public interest test) to disclose information (including commercially sensitive information) pursuant to a Disclosure Request. Where practicable, the *Employer* consults with the *Contractor* before doing so in accordance with the relevant [Code of Practice]. The *Contractor* uses his best endeavours to respond to any such consultation promptly and within any deadline set by the *Employer* and acknowledges that it is for the *Employer* to determine whether or not such information should be disclosed.  Z18.3 When requested to do so by the *Employer*, the *Contractor* promptly provides information in his possession relating to this contract and assists and co-operates with the *Employer* to enable the *Employer* to respond to a Disclosure Request within the time limit set out in the relevant legislation.  Z18.4 The *Contractor* promptly passes any Disclosure Request which it receives to the *Employer*. The *Contractor* does not respond directly to a Disclosure Request unless instructed to do so by the *Employer*.  Z18.5 The *Contractor* acknowledges that the *Employer* is obliged to publish the provisions of this contract in accordance with the Cabinet Office Efficiency Reform Group Guidance Note entitled “Transparency – Publication of New Central Government Contracts” dated December 2010 (or any later revision) except to the extent that any information in it is exempt from disclosure pursuant to the Freedom of Information Act 2000. The *Employer* consults with the *Contractor* before deciding whether information is exempt, but the *Contractor* acknowledges that the *Employer* has the final decision. The *Contractor* co-operates with and assists the *Employer* to publish this contract in accordance with the *Employer*’s obligation. | | |
|  | Clause Z19 | Intellectual Property Rights  Z19.1 Intellectual Property Rights are any current and future legal and equitable interests in patents, trademarks, design rights, copyright, know-how and other similar rights, whether or not registered or capable of registration.  Z19.2 All Intellectual Property Rights in documents and other materials created by or on behalf of the *Employer* in connection with the contract are the property of the *Employer* or the Crown.  Z19.3 The *Contractor* hereby assigns to the *Employer* all present and future Intellectual Property Rights in all documents and other materials created by or on behalf of the *Contractor* or any Subcontractor in performing its obligations under, or otherwise in connection with, the contract.  The *Contractor* obtains from Subcontractors equivalent rights over the documents and other materials prepared by the Subcontractors.  This assignment takes effect either on the Contract Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Intellectual Property Rights, as appropriate.  Z19.4  Background IPR means Intellectual Property Rights owned by the *Contractor*, a Subcontractor or a third party and which are not assigned to the *Employer* pursuant to clause Z19.3.  In respect of Background IPR, the *Contractor* grants a non-exclusive, world-wide, perpetual, irrevocable, royalty free licence (including the right to sub-licence) to the *Employer* to use the Background IPR for all purposes of the *Employer*.  Each licence granted under this clause Z19.4 by the *Contractor* survives the termination or expiry of this contract and cannot be terminated by the *Contractor* or its assignees.  The *Contractor* obtains from the Subcontractors or third parties equivalent rights over Background IPR owned by the Subcontractors or third parties.  Z19.5 The *Employer* grants to the *Contractor*, or procures the direct grant to the *Contractor* of, a non-exclusive, non-transferable, revocable licence to use all Intellectual Property Rights and Background IPR owned (or capable of being so licensed or procured without cost) by the *Employer* and reasonably required by the *Contractor* in order to Provide the Service.  Any such licence is granted for the duration of this contract solely to enable the *Contractor* to comply with its *obligations under the contract* | | | |
| Clause Z20 | | | Records and Audit Access  Z20.1 The *Contractor* keeps documents and information obtained or prepared by the *Contractor* or any Subcontractor in connection with the contract for a period of 12 years after the service period.  Z20.2 The *Contractor* permits the *Employer*, Comptroller, Auditor General and any other auditor appointed by the *Employer* to examine documents held or controlled by the *Contractor* or any Subcontractor.  Z20.3 The *Contractor* provides such oral or written explanations as the *Employer* or Comptroller and Auditor General considers necessary.  Z20.4 The *Contractor* acknowledges that, for the purpose of examining and certifying the *Employer’*s accounts or any examination pursuant to Section 6(1) of the National Audit Act 1983, the Comptroller and Auditor General or any other auditor appointed by the *Employer* may examine documents held or controlled by the *Contractor* or any Subcontractor and may require the *Contractor* to provide such oral or written explanations as he considers necessary. The *Contractor* promptly complies with any such requirements at his own cost. This clause does not constitute a requirement or agreement for the purposes of section 6(3)(d) of the National Audit Act 1983 for the examination, certification or inspection of the accounts of the *Contractor* and the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the *Contractor* is not a function exercisable under this contract. The *Contractor* permits the Comptroller and Auditor General to examine documents held or controlled by the *Contractor* or any Subcontractor. The *Contractor* provides such oral or written explanations as the Comptroller and Auditor General considers necessary. | | |
| Clause Z21 | | | | Reporting: Small and Medium Enterprises  Z21.1 In this clause Z21 SME is   * a Subcontractor or * a subcontractor to a Subcontractor   and   * is autonomous, * is a European Union enterprise not owned or controlled by a non-European Union parent company, * for a medium sized enterprise (medium class) employs fewer than 250 staff, has turnover no greater than 50 million Euros and does not have a balance sheet greater than 43 million Euros, * for a small sized enterprise (small class) employs fewer than 50 staff, has turnover no greater than 10 million Euros and does not have a balance sheet greater than 10 million Euros and * for a micro sized enterprise (micro class) employs fewer than 10 staff, has turnover no greater than 2 million Euros and does not have a balance sheet greater than 2 million Euros.   Z21.2 For each SME employed on the *service*, the *Contractor* reports to the *Service Manager* each quarter from the *starting date* and throughout the *service period:*   * the name of the SME, * the class of SME (medium, small or micro), * the value of the contract undertaken by the SME, * the monthly amounts paid to each SME in the quarter and * the aggregated value paid to paid to each SME since the *starting date*.   Z21.3 The *Contractor* acknowledges that the *Employer* may   * publish the information supplied in accordance with Z21.1, along with the names of the SMEs, the *Contractor*’s name and this contract name and * pass this information supplied under this clause to any Government Department who may then publish it along with the names of the SMEs, the *Contractor*’s name and this contract name.   Z21.4 The *Contractor* ensures that the conditions of contract for each Subcontractor who is an SME include   * a term allowing the *Employer* to publish the information supplied under Z21.2 and * obligations substantially similar to those set out in this clause Z21.   Z21.5 The *Contractor* further ensures that the conditions of contract for each Subcontractor include a requirement that the conditions of contract for any subsubcontractor engaged by the Subcontractor who is an SME include obligations substantially similar to those set out in clause Z21.4.  Z21.6 The *Contractor* keeps accounts and records of his charges and expenses and allows the *Employer* to inspect them at any time within working hours. | |
| Clause Z22 | | | | Not used | |
|  | Clause Z23 | | | | Not used |
| Clause Z24*]* | | | | Not used | |
| Clause Z25 | | | | The *Employer*’s liability  Z25.1 The *Employer*'s total liability to the *Contractor* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to £[ ], and applies in contract, tort or delict or otherwise to the extent allowed under the law of the contract.  Z25.2 The excluded matters are any items which cannot be excluded by law, for example death and personal injury, and the amounts payable to the *Contractor* as stated in this contract for   * the total of the Prices if Option A applies, * the Price for the Service Provided to Date and the *Contractor*'s share if Option C applies and * the Price for the Service Provided to Date if Option E applies.   Z25.3 The *Employer*'s liability to the *Contractor* is limited to that proportion of the *Contractor*'s losses for which the *Employer* is responsible under this contract. | |
| Clause Z26 | | | | Tax Non-Compliance  Z26.1  (1) Tax Non-Compliance is where a tax return submitted by the *Contractor* to a Relevant Tax Authority on or after 1 October 2012   * is found on or after 1 April 2013 to be incorrect as a result of * a Relevant Tax Authority successfully challenging the *Contractor* under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rule or legislation with similar effect or * the failure of an avoidance scheme in which the *Contractor* was involved which was (or should have been) notified to a Relevant Tax Authority under the DOTAS or a similar regime or * gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax-related offences which is not spent at the Contract Date or to a civil penalty for fraud or evasion.   (2) DOTAS are the Disclosure of Tax Avoidance Schemes rules contained in Part 7 of the Finance Act 2004 and in secondary legislation made pursuant to it, as extended to National Insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012 (SI 2012/1868).  (3) General Anti-Abuse Rule is   * the legislation in Part 5 of the Finance Act 2013 and * any future legislation introduced to counteract tax advantages arising from abusive arrangements to avoid National Insurance contributions.   (4) Halifax Abuse Principle is the principle explained in the CJEU case C-255/02 Halifax and others.  (5) Relevant Tax Authority is HM Revenue & Customs or, if the *Contractor* is established in another jurisdiction, the tax authority in that jurisdiction.  Z26.2 The *Contractor* warrants that he has notified the *Employer* of any Tax Non-Compliance or any litigation in which he is involved relating to any Tax Non-Compliance prior to the Contract Date.  Z26.3 The *Contractor* notifies the *Employer* within one week of any Tax Non-Compliance occurring after the Contract Date and provides details of   * the steps the *Contractor* is taking to address the Tax Non-Compliance and to prevent a recurrence, * any mitigating factors that he considers relevant and * any other information requested by the *Employer*.   Z26.4 The *Contractor* is treated as having substantially hindered the *Employer* or Others if   * the warranty given by the *Contractor* under clause Z26.2 is untrue, * the *Contractor* fails to notify the *Employer* of a Tax Non-Compliance or * the *Employer* decides that any mitigating factors notified by the *Contractor* are unacceptable. | |
| Clause Z27 | | | Z26: Building Information Modelling (BIM)  21A.1 A BIM Protocol applies/  21A.2 When a BIM Protocol applies it is detailed in the Employer’s Information Requirements  21A.3 When the CIC Building Information Modelling Protocol applies clauses 21.A.4 to 21.A.6 shall apply  21A.4 In this clause, the Protocol is the CIC Building Information Modelling Protocol, second edition 2018. Terms used in this clause are those defined in the Protocol. Standard ‘boilerplate’ amendments  16  21A.5 Clauses 1, 2, 5, 6, 7 of the Protocol are *additional conditions of contract*. Clauses 3 and 4 and Appendices 1 and 2 of the Protocol are Scope.  21A.6: The following are compensation events:   The *Contractor* encounters an event which is outside its reasonable control and which prevents it from carrying out the work specified in clause 4.1.2 of the Protocol.   The *Client* revokes a licence granted under clause 6.6 of the Protocol.  . | | |
| Clause Z28 | | | | Extension of the *service period*  Z28.1 Subject to clause Z28.3, the *Employer* may notify the *Contractor* that the service period is to be extended by the extension period or such lesser period as the *Employer* may specify.  Z28.2 If the service period is extended by less than the extension period, the *Employer* may further extend the service period so that the total period of extension does not exceed the extension period.  Z28.3 The *Employer* does not notify the *Contractor* of any extension or further extension to the *service period* later than [6 months] before the expiry of the *service period* | |
| Clause Z29 | | | Parent Company Guarantee  Z29.1 Not Used. ~~If required by the~~ *~~Service Manager~~*~~, the~~ *~~Contractor~~* ~~gives to the~~ *~~Employer~~* ~~a Parent Company Guarantee. If the Parent Company Guarantee was not given by the Contract Date, it is given to the~~ *~~Employe~~*~~r within four weeks of the Contract Date. Parent Company Guarantees are given by~~   * ~~for a standalone company – the Controller,~~ * ~~for an unincorporated JV (“more than one party”) – the Controller of each Consortium Member or~~ * ~~for an incorporated JV – the Controller of each Consortium Member.~~   ~~In all cases it is for the~~ *~~Employer~~* ~~to decide (in its discretion) whether it will accept a Parent Company Guarantee from a company other than the Controller.~~  Z29.2 Not Used. ~~A failure to comply with this condition is treated as the~~ *~~Contractor~~* ~~having substantially hindered the~~ *~~Employer~~* ~~or Others.~~ | | |
| Clause Z30 | | | Illegal and impossible requirements  Z30.1 Delete clause 18.1 and replace with the following:  “18.1 The *Contractor* notifies the *Service Manager* as soon as he considers that the Service Information requires him to do anything which is illegal or impossible. If the *Service Manager* requests, the *Contractor* submits proposals for overcoming the illegality or impossibility to the *Service Manager* within the *period for reply*. The *Service Manager* decides how the illegality or impossibility is to be overcome and what (if any) changes are required to the Service Information and the *Service Manager* gives an instruction to change the Service Information appropriately.” | | |
| Clause Z31 | | | Use of equipment, Plant and Materials  Z31.1 *Employer’s* Stocks are   * the items of equipment and Plant and Materials listed in the Service Information provided free of charge by the *Employer* to the Service Manager for use by the *Contractor* in Providing the Service [and * any items which replace those items referred to above when the items referred to above are used to Provide the Service, such replacement being by the *Employer* in accordance with the Service Information].   Z31.2 Delete clause 70.1 and replace with:  “The *Contractor* has the right to use the *Employer*’s Stocks only to Provide the Service. ….  Z31.2 Delete the first bullet of clause 70.2 and replace with:  “returns to the *Employer* all unused *Employer*’s Stocks,” | | |
| Clause Z32 | | | Termination and omission of work  Z32.1 If the *Service Manager* instructs a change to the Service Information which involves the omission of part of the *service*, the *Employer* may engage other people to carry out the part omitted. The instruction is assessed as a compensation event, except that if the instruction is given for insolvency or a default by the *Contractor*, the assessment includes a deduction of the forecast additional cost to the *Employer* of completing the *service*.  Z32.2 The following are treated as a the *Contractor*  having hindered the *Employer* or Others:   * a key resource needed by the *Contractor* to Provide the Service is no longer available and the *Contractor* does not propose an alternative resource acceptable to the *Employer*, | | |
| Clause Z33 | | | Not Used | | |
| Clause Z34 | | | Termination – PCRs, Regulation 73  Z34.1 The *Employer* may terminate the *Contractor*’s obligation to Provide the Service if one of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applied to the *Contractor* at the Contract Date. This is treated as a termination because of a substantial failure of the *Contractor* to comply with his obligations.  Z34.2 The *Employer* may terminate the *Contractor*‘s obligation to Provide the Service if   * this contract has been subject to substantial modification which would have required a new procurement procedure pursuant to regulation 72 of the Public Contracts Regulations 2015 or * the Court of Justice of the European Union declares, in a procedure under Article 258 of the Treaty on the Functioning of the European Union, that a serious infringement of the obligations under the European Union Treaties and the Public Contracts Directive has occurred.   If the modification or infringement was due to a default by the *Contractor*, this is treated as a termination because of the *Contractor* having substantially hindered the *Employer* or Others. | | |
| Clause Z35 | | | Value Added Tax (VAT) Recovery  Z35.1 Where under this contract any amount is calculated by reference to any sum which has been or may be incurred by any person, the amount shall include any VAT in respect of that amount only to the extent that such VAT is not recoverable as input tax by that person (or a member of the same VAT group) whether by set off or repayment. | | |
| Clause Z36 | | | Tax Arrangements of Public Appointees  Z36.1 For the purposes of this clause   * Associated Company is any company, corporation, partnership, joint venture or other entity which directly or indirectly controls, is controlled by or is under common control with the *Contractor*.  The word “control” in this context means the ability or entitlement to exercise, directly or indirectly, at least 50 per cent of the voting rights attributable to the shares or other interest in the controlled company, corporation, partnership, joint venture or other entity. * Staff are individuals (other than direct employees of the *Contractor*, an Associated Company or any Subcontractor) made available by the *Contractor* to the *Employer* for the purpose of Providing the Service.   Z36.2‘Where any Staff are liable to be taxed in the United Kingdom in respect of consideration received under this contract, the *Contractor* complies, and procures that the Staff comply, with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration.  Z36.3 Where any Staff are liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, the *Contractor* complies, and procures that the Staff comply, with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration.  Z36.4 The *Employer* may, at any time during the term of this contract, request the *Contractor* to provide information to demonstrate either how any member of Staff is complying with clauses Z36.2 and Z36.3 or why those clauses do not apply to it.  Z36.5 If the *Contractor* fails to provide information in response to a request under clause Z36.4   * within the period for reply or * which adequately demonstrates either how any member of Staff is complying with clauses Z36.2 and Z36.3 or why those clauses do not apply to it   the *Employer* may   * treat such failure as a substantial failure by the *Contractor* to comply with his obligations or * instruct the *Contractor* to replace the relevant member of Staff   Z36.6 If the *Employer* receives or identifies information through any means which demonstrates that a member of Staff is not complying with clauses Z36.2 and Z36.3, the *Employer* may treat such non-compliance as a substantial failure by the *Contractor* to comply with his obligations.  Z36.7 The *Contractor* acknowledges that the *Employer* may   * supply any information which it receives under clauses Z36.4 or Z36.6 or * advise the non-supply of information   to the Commissioners of Her Majesty’s Revenue & Customs [or Revenue Scotland][[1]](#footnote-1)[1] for the purpose of the collection and management of revenue for which they are responsible. | | |
| Clause Z37 | | | Not used | | |
| Clause Z38 | | | Clause Z38 is not used | | |
| Clause Z39 | | | Audit, Quality Management Points and Correction of Nonconformities  Z39.1 The *Contractor* carries out a programme of internal audits in accordance with the requirements of ISO 9001. The *Contractor* notifies the Service Manager of the internal audit dates and makes provision for the Service Manager and *Employer* to attend. The *Contractor* supplies the Service Manager with copies of all internal audit documentation including reports and action plans.  Z39.2 The *Employer* or Service Manager may carry out audits of the *Contractor*’s quality management system from time to time. The *Contractor* allows access at any time within working hours to any place where he or any Subcontractor carries out any work that relates to this contract for the *Employer* or Service Manager to carry out audits, to inspect work and materials and generally to investigate whether the *Contractor* is performing his obligations under this contract. The *Contractor* provides all facilities and assistance necessary to allow such audits and inspections to be carried out.  Z39.3 Additional audits may be carried out when the number of Quality Management Points in effect exceeds 25. The location, frequency and extent of additional audits will be determined by the *Employer* in his absolute discretion having regard to the root causes for the accrual of Quality Management Points in effect. The *Contractor* pays the cost of the additional audits.  Z39.4 Following notification of a non-conformity, the *Contractor* submits to the Service Manager for acceptance the corrective and preventative action that he proposes to take to deal with the non-conformity. The *Contractor* does not take action to deal with the non-Conformity until the Service Manager has accepted his proposals  Z39.5 Within one week of the *Contractor* submitting the proposed corrective and preventative action to him for acceptance, the *Service Manager* either accepts the proposal or notifies the *Contractor* of his reason for not accepting it. A reason for not accepting the proposed action is that   * it does not take action required to ensure that non-conformities do not recur, * it does not comply with this contract or * the time for completing the corrective and preventative action is unreasonable or will hinder the *Employer* or Others.   Z39.6 If the Service Manager does not accept the proposed action, the *Contractor* submits a revised proposal to the Service Manager for acceptance within one week.  Z39.7 The *Contractor* corrects non-conformities and takes action to eliminate the causes of actual or potential non-conformities within a time which minimises the adverse affect on the *Employer* or Others and in any event before carrying out any operation the same or similar as that in respect of which the non-conformity occurred.  Z39.8 The *Contractor* notifies the Service Manager when the proposed actions have been taken and provides with his notification verification that the defective part of the service has been corrected  Z39.9 Quality Management Points are points accrued by the *Contractor* in accordance with the Quality Table below. Quality Management Points accrue for the failures listed on the Quality Table whether arising from an audit by the *Contractor*, the *Employer* or the relevant accreditation body.  Z39.10 If the *Contractor* fails to comply with his quality management system, the *Contractor* accrues Quality Management Points from the date when the failure is identified in accordance with the Quality Table. The number of Quality Management Points is reduced in accordance with the Quality Table. If in the opinion of the *Employer* the *Contractor* has failed to properly accrue Quality Management Points, the Service Manager instructs the *Contractor* to accrue the applicable number of Quality Management Points calculated in accordance with the Quality Table and they are deemed to have accrued from the date of the Service Manager’s instruction.  Z39.11 The *Contractor* maintains a register of the number of Quality Management Points in effect, showing when Quality Management Points accrue and are removed.  Z39.12 If the number of Quality Management Points in effect at any time is more than 25 points, the *Contractor*, the *Service Manager* and *Employer* meet within one week to consider ways of reducing the number of Quality Management Points in effect to 25 or less and to avoid accruing further Quality Management Points. The *Contractor* submits a report to the *Service Manager* within one week of the meeting setting out   * the actions agreed at the meeting and * any other actions which the *Contractor* proposes to take immediately to reduce the number of Quality Management Points in effect to 25 or less and to avoid accruing further Quality Management Points.   Z39.13 If the Service Manager does not accept the *Contractor*’s proposals or the *Contractor* does not take the agreed actions, the Service Manager serves a quality warning notice on the *Contractor*. Within one week of receipt of the quality warning notice, the *Contractor* submits a report to the Service Manager setting out the actions which the *Contractor* has taken and what further or alternative actions he proposes to take to reduce the number of Quality Management Points in effect to 25 or less.  Z39.14 Until the number of Quality Management Points in effect is reduced to 25 or less, the *Contractor* takes the actions detailed in his reports and submits weekly up date reports to the Service Manager setting out the actions he has taken, the results of those actions and the actions which are still to be taken by him.  Z39.15 Failure to take actions to reduce the number of Quality Management Points in effect to 25 or less is treated as the *Contractor* having substantially hindered the *Employer* or Others.  Quality Table   | Failure | Quality Management Points | Period of effect | | --- | --- | --- | | Failure to have a complete [Quality Plan] in place and operating | 25 | Until audit confirms that  [Quality Plan] complete  and operating | | The [Quality Plan] does not comply with the requirements of this contract | 10 per failure | Until audit confirms that  [Quality Plan] complies | | Failure to raise a [non-conformity report] | 5 per [non-conformity] | 6 months | | Failure to raise a [corrective action report] | 5 per [non-conformity] | 6 months | | Failure to correct [Quality Plan] in manner set out in a [corrective action report]  (see note 1 below) | 10 per failure | Until failure corrected | | Failure to implement recommendations in [audit report]  (see note 1 below) | 5 per recommendation | Until audit confirms  that recommendation implemented | | Failure to carry out internal audit | 25 per audit | Until audit carried out | | Carrying out work without [release of hold point] | 10 per item | 6 months | | Failure to make records available for inspection by the *Employer* | 10 per failure | Until the records are  made available | | Failure to allow access for *Employer* audits | 10 per failure | Until *Employer* audit is carried  out | | Failure by *Contractor* to accrue Quality Management Points that should have been accrued | The number of Quality Management Points that should have been accrued | Applicable to the failure  that should have accrued  Quality Management Points | | plus an additional number of Quality Management Points equivalent to the Quality Management Points that should have been accrued | 6 months | | Note 1: For these failures additional Quality Management Points  are accrued at each audit until an audit confirms  that rectification/correction/implementation/action has taken place. | | | | | |
| Clause Z40 | | | Quality Statement  The *Contractor* Provides the Service in accordance with the Quality Statement. The Quality Statement is the statement of that name referred to in the Contract Data setting out the *Contractor’s* proposals for the management and resourcing of the *service*. | | |
| Clause Z41 | | | Objects and Materials within the Affected Property  Z41.1 The *Contractor* takes all reasonable steps (by way of sale, re-use or otherwise) to maximise the value to the *Employer* of any waste equipment and/or Plant and Materials to which the *Employer* has title arising in the course of Providing the Service. Any amount received by the *Contractor* from the sale of such waste equipment and/or Plant and Materials is paid to the *Employer* in accordance with clause 50.2. | | |
| Clause Z42 | | | | Construction Industry Scheme  Z42.1 In this clause Z42 (but not otherwise)   * the Act is the Finance Act 2004 and * the Regulations are the Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045).   Z42.2 This contract falls within the scope of the Construction Industry Scheme provided for by Chapter 3, Part 3 of the Act.  Z42.3 The *Contractor* provides the information required by the Regulations to enable the *Employer* to verify (in accordance with paragraph 6 of the Regulations) whether the *Contractor* under the Act   * is registered for gross payment, * is registered for payment under deduction, * is exempt from registration as a local authority or other public body or * is neither registered nor exempt from registration.   Z42.4 If the *Contractor* is registered for payment under deduction or is neither registered nor exempt from registration   * the *Contractor* submits an application for payment which separately identifies the cost of labour and * the *Employer* deducts the relevant percentage from the payment in accordance with the Act and the Regulations. | |
| Clause Z43 | | | | Insurance cover  Z43.1 All insurances required to be effected and maintained under this contract are placed with reputable insurers, to whom the other party has no reasonable objection and upon customary and usual terms prevailing for the time being in the insurance market. The said terms and conditions do not include any term or condition to the effect that any insured must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930, Third Parties (Rights Against Insurers) Act 2010 or the Third Parties (Rights Against Insurers) Act (Northern Ireland) Order 1930 as amended by the Insolvency (Northern Ireland) Order 1989.  Z43.2 Nothing in this clause relieves the *Contractor* from any of its obligations and liabilities under this contract. | |
| Clause Z44 | | | | Professional indemnity insurance  Z44.1 If required to obtain professional indemnity insurance, the *Contractor* obtains and maintains the professional indemnity insurance upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business on the basis and in an amount not less than that stated in the Contract Data, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions do not include any term or condition to the effect that the *Contractor* must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930 or the Third Parties (Rights Against Insurers) Act (Northern Ireland) 1930 as amended by the Insolvency (Northern Ireland) Order 1989.  Z44.2 The *Contractor* does not without the prior written approval of the *Employer* settle or compromise with the insurers any claim which the *Contractor* may have against the insurers and which relates to a claim by the *Employer* against the *Contractor*, nor by any act or omission lose or prejudice the *Contractor*’s right to make or proceed with such a claim against the insurers.  Z44.3 The *Contractor* immediately informs the *Employer* if the professional indemnity insurance ceases to be available at rates and on terms that the *Contractor* considers to be commercially reasonable. Any increased or additional premium required by insurers by reason of the *Contractor*’s own claims record or other acts, omissions, matters or things particular to the *Contractor* is deemed to be within commercially reasonable rates.  Z44.4 The *Contractor* co-operates fully with any measures reasonably required by the *Employer* including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the *Employer* undertakes in writing to reimburse the *Contractor* in respect of the net cost of such insurance to the *Contractor* above commercially reasonable rates or, if the *Employer* effects such insurance at rates at or above commercially reasonable rates, reimbursing the *Employer* in respect of what the net cost of such insurance to the *Employer* would have been at commercially reasonable rates.  Z44.5 The above obligation in respect of professional indemnity insurance continues notwithstanding termination of the *Contractor*’s employment under this contract for any reason whatsoever, including (without limitation) breach by the *Employer.* | |
| Clause Z45 | | | | Consortia  Z45.1 Where two or more Consortium Members comprise the *Contractor,* each Consortium Member is jointly and severally liable to the *Employer* for the performance of the *Contractor’s* obligations under this contract.  Z45.2 If the joint venture arrangement is terminated for any reason, the *Employer* may   * terminate this contract with immediate effect and * treat the termination of this contract as the *Contractor* having substantially hindered the *Employer* or Others.   Z45.3 Clause 91.1 of the *conditions of contract* is amended by inserting after “the other Party” in each place where it appears (three times) the words “(or, in the case of the *Contractor*, any Consortium Member)”. | |
| Clause Z46 | | | | Subcontracting  Z46.1 Before:   * appointing a proposed Subcontractor or * allowing a Subcontractor to appoint a proposed subsubcontractor * the *Contractor* submits to the *Employer* for acceptance * a European Single Procurement Document (as described in regulation 59 of the Public Contracts Regulations 2015) in respect of the proposed Subcontractor or subsubcontractor or * other means of proof that none of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applies to the proposed Subcontractor or subsubcontractor.   Z46.2 The *Contractor* does not appoint the proposed Subcontractor (or allow the Subcontractor to appoint the proposed subsubcontractor) until the *Employer* has accepted the submission. A reason for not accepting the submission is that it shows that there are grounds for excluding the proposed Subcontractor or subsubcontractor under regulation 57 of the Public Contracts Regulations 2015.  Z46.3 If requested by the *Employer*, the *Contractor* provides further information to support, update or clarify a submission under clause Z46.1.  Z46.4 If, following the acceptance of a submission under clause Z46.2, it is found that one of the grounds for excluding the Subcontractor or subsubcontractor under regulation 57 of the Public Contracts Regulations 2015 applies, the *Employer* may instruct the *Contractor* to   * replace the Subcontractor or * require the Subcontractor to replace the subsubcontractor. | |
| Clause Z47 | | | | Not used | |
| Clause Z48 | | | | Compliance with statutory requirements  Z48.1 The *Contractor* Provides the Service in compliance with all relevant:   * acts of parliament and any instruments, rules, orders, regulations, notices, directions, bye-laws, permissions and plans for the time being made under or deriving validity from them; * European Directives or Regulations legally enforceable in England and Wales; * rules, regulations, building regulations, orders, bye-laws or codes of practice or similar of any local or other competent authority or of any statutory undertaker; and * permissions, consents, approvals, licences, certificates and permits as may be necessary lawfully to commence, carry out, complete and maintain the *service*. | |
| Clause Z49 | | | | Negotiation  Z49.1 Without prejudice to either Party’s right to refer a dispute to the *Adjudicator* in accordance with clause W1 or W2 (as appropriate), any dispute or difference between the Parties arising out of or relating to this contract is referred by either Party initially to representatives of the *Employer* and *Contractor* for negotiation and resolution.  Z49.2 If any dispute is not resolved within ten working days after it has been referred to the Parties’ representatives (or such longer period as the Parties may agree), it is referred to an authorised senior officer of the *Employer* and an authorised senior officer of the *Contractor* for negotiation and resolution.  Z49.3 If any dispute cannot be resolved within ten working days after it has been referred to the authorised senior officers of the *Employer* and *Contractor* (or such longer period as the Parties may agree) either Party may decline to continue to participate in the negotiation. | |
| Clause Z50 | | | | Mediation  Z50.1 Without prejudice to either Party’s right to refer a dispute to the *Adjudicator* in accordance with clause W1 or W2 (as appropriate), any dispute or difference between the Parties arising out of or relating to this contract and which has not been resolved by negotiation is referred to mediation in accordance with the provisions of this clause.  Z50.2 The procedure and associated provisions for mediation pursuant to this clause are as follows:   * a neutral adviser or mediator (‘the Mediator’) is chosen by agreement between the *Employer* and the *Contractor* or, if they are unable to agree upon the identity of the Mediator within ten working days after a request by one Party to the other, or if the Mediator agreed upon is unable or unwilling to act, either Party may within ten working days from the date of the proposal to appoint a Mediator or within ten working days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (“CEDR”) to appoint a Mediator; and * the Parties meet with the Mediator within ten working days of his appointment in order to agree the programme for exchange of all relevant information and the procedure under which negotiations will be held. The Parties may at any stage seek guidance from CEDR regarding a suitable procedure.   Z50.3 Unless otherwise agreed by the Parties, all negotiations connected with the dispute and any settlement agreement relating to it are confidential and without prejudice to the rights of the Parties in any future proceedings.  Z50.4 In the event that the Parties reach agreement on the resolution of the dispute, the agreement is reduced to writing and is binding on both Parties once it is signed by a duly authorised senior officer of the *Employer* and a duly authorised senior officer of the *Contractor*.  Z50.5 Failing agreement, the *Employer* and *Contractor* may agree to invite the Mediator to provide a non-binding but informative opinion in writing. No such invitation is made without the written consent of both Parties. If it is agreed that such an invitation is to be made, the opinion is provided on a without prejudice basis and is not used in evidence in any proceedings relating to this contract without the written consent of both Parties.  Z50.6 The *Employer* and the *Contractor* each bears their own costs in relation to any reference made to the Mediator and the fees and all other costs of the Mediator are borne jointly in equal proportions by both Parties unless otherwise directed by the Mediator.  Z50.7 In the event that the *Employer* and the *Contractor* fail to reach agreement within forty working days after the Mediator’s appointment, or such longer period as may be agreed, the dispute may be referred to the *tribunal*. | |
| Clause Z51 | | | | Collateral Warranty Agreements  Z51.1 The *Contractor* enters into the *collateral warranty agreements* in the formats appended in the Service Information in favour of the parties identified in the Contract Data and delivers executed copies in duplicate to the *Employer* no later than ten working days after the *Employer* has provided the *Contractor* with appropriate collateral warranty agreements suitable for execution.  Z51.2 The *Contractor* procures from the Subcontractors identified in the Contract Data collateral warranty agreements in the formats appended in the Service Information in favour of the parties identified in the Contract Data and delivers executed copies in duplicate to the *Employer* no later than fifteen working days after the *Employer* has provided the *Contractor* with appropriate collateral warranty agreements suitable for execution.  Z51.3 If the *Contractor* fails to deliver the required collateral warranty agreements in the manner and within the time stipulated by this contract, one quarter (1/4) of the Price for the Service Provided to Date is retained in assessments of the amount due until the *Contractor* has remedied the failure. | |
| Clause Z52 | | | | Not used | |
| Clause 54 | | | | Financial Distress  Z54.1 In this clause Z54 Credit Rating is the credit rating or any revised long term credit rating issued by a rating agency accepted by the Service Manager in respect of the *Contractor*, a Consortium Member or any Guarantor.  Z54.2 The *Contractor* notifies the *Service Manager* within one week if any of the following events occurs in relation to the *Contractor*, a Consortium Member or a Guarantor   * its Credit Rating falls below the relevant credit rating, * a further fall in its Credit Rating below the relevant credit rating, * it issues a profits warning to a stock exchange or makes any other public announcement about a material deterioration in its financial position or prospects, * it is subject to a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety, * it commits a material breach of its covenants to its lenders or * its financial position or prospects deteriorate to such an extent that it would not meet the Credit Rating Threshold.   Z54.3 If any of the events listed in clause Z54.2 occurs, the *Service Manager* may require the *Contractor* to give to the *Employer* a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Contractor* and accepted by the *Service Manager* who (in either case)   * meets the Credit Rating Threshold and * has a Credit Rating at least equal to the *credit rating* for the person to whom the event listed in clause Z54.2 has occurred.   Z54.4 The Service Manager may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Contractor* who does not comply with clause Z54.3 if the *Contractor* gives to the Service Manager an assurance that the Controller or the alternative guarantor will so comply within [18] months of the Service Manager‘s acceptance. If so, the Parties agree a process for reviewing the financial standing of the Controller or the alternative guarantor during that period in order to demonstrate to the Service Manager that it will so comply by the end of that period.  Z54.5 If   * the *Contractor* fails to notify the Service Manager that an event listed in clause Z54.2 has occurred, * neither the Controller nor any alternative guarantor proposed by the *Contractor* complies with clause Z54.3, * the *Contractor* does not give to the *Employer* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the Service Manager within four weeks of a request from the Service Manager to do so or * the *Contractor* fails to demonstrate to the *Service Manager* that the Controller or the alternative guarantor accepted by the Service Manager will comply with clause Z54.3 within [18] months of the *Service Manager‘s* acceptance   the *Employer* may treat such failure as the *Contractor* having substantially hindered the *Employer* or Others. | |
| Clause 55 | | | | Change of Control – new guarantee  Z55.1 If a Change of Control occurs, the *Contractor* provides to the *Service Manager*   * certified copies of the audited consolidated accounts of the Controller for the last three financial years, * a certified copy of the board minute of the Controller confirming that it will give to the *Employer* a Parent Company Guarantee if so required by the Service Manager and * any other information required by the Service Manager in order to determine whether the Controller * meets the Credit Rating Threshold and * has a Credit Rating at least equal to the *credit rating* for the original Guarantor (if there is one) or the *Contractor* (if there is not).   Z55.2 If the Controller does not comply with the tests in clause Z55.1 or (if applicable) does not provide the legal opinion required in clause Z55.6, the *Contractor* may propose an alternative guarantor to the Service Manager for acceptance. The *Contractor* provides to the Service Manager the details set out in clause Z55.1 and (if applicable) the legal opinion required in clause Z55.6 in relation to the proposed alternative guarantor. A reason for not accepting the proposed alternative guarantor is that he does not comply with the tests in clause Z55.1 or (if applicable) does not provide the legal opinion required in clause Z55.6.  Z55.3 If so required by the Service Manager, the *Contractor* within four weeks gives to the *Employer* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the Service Manager.  Z55.4 The Service Manager may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Contractor* who does not comply with the tests in clause Z55.1 if the *Contractor* gives to the Service Manager an assurance that the Controller or the alternative guarantor will so comply within [18] months of the Service Manager‘s acceptance. If so, the Parties agree a process for reviewing the financial standing of the Controller or the alternative guarantor during that period in order to demonstrate to the Service Manager that it will so comply by the end of that period.  Z55.5 If   * neither the Controller nor any alternative guarantor proposed by the *Contractor* complies with the tests in clause Z55.1 or provides the legal opinion required by clause Z55.6, * the *Contractor* does not give to the *Employer* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the Service Manager within four weeks of a request from the Service Manager to do so or * the *Contractor* fails to demonstrate to the *Service Manager* that the Controller or the alternative guarantor accepted by the *Service Manager* will comply with the tests in clause Z55.1 within [18] months of the *Service Manager‘s* acceptance   the *Employer* may treat such failure as the *Contractor* having substantially hindered the *Employer* or Others.  Z55.6 If the Controller, or any alternative guarantor proposed by the *Contractor*, is not a company incorporated in and subject to the laws of England and Wales, the *Contractor* provides a legal opinion from a lawyer or law firm which is   * *qualified and registered to practise in the jurisdiction in which the Controller or guarantor is incorporated and* * *accepted* by the *Service Manager.*   The legal opinion is addressed to the *Employer* on a full reliance basis and the liability of the lawyer or law firm giving the opinion is not subject to any financial limitation unless otherwise agreed by the *Service Manager.*  The legal opinion confirms that the method of execution of the Parent Company Guarantee is valid and binding under applicable local law and in particular covers the matters listed in the Service Information | |
| Clause 56 | | | | Z56 A Pandemic Event  Z56.1 “A Pandemic Event means:  Z56.1 i) any pandemic (including, but not limited to, the COVID-q9 coronavirus outbreak and/or any mutation thereof and any other outbreak of an infectious human disease),  Z56.1 ii) any measures, recommendations, regulations and legislation issued by the government and/or public authorities in relation to any pandemic from time to time, and/or  Z56.1 iii) any consequences of any pandemic which are outside the reasonable control of the Contractor, which affects the works including without limitation the Contractor being unable to reasonably access the Site, delay in or non-delivery of any materials required for the works, the Contractor being unable to reasonably adequately resource the works.”  Z56.2 Notwithstanding any other provision in this contract, there shall be no change to the Prices where and to the extent that a compensation event is an event of the type referred to in clause Z26 | |
| Clause 57 | | | | Z57 Admittance to site  Z57.1 The *Contractor* submits to the *Project Manager* details of people who are to be employed by it and its Subcontractors in connection with the *works*. The details include a list of names and addresses, the capabilities in which they are employed, and other information required by the *Project Manager*.  Z57.2 The *Project Manager* may instruct the *Contractor* to take measures to prevent unauthorised persons being admitted to *si*te. The instruction is a compensation event if the measures are additional to those required by the Scope.  Z57.3 Employees of the *Contractor* and its Subcontractors are to carry a *Client’s* pass and comply with all conduct requirements from the *Client* whilst they are on the parts of the *site* identified in the Scope.  Z57.4 The *Contractor* submits to the *Project Manager* for acceptance a list of the names of the people for whom passes are required. On acceptance, the *Project Manager* issues the passes to the *Contractor*. Each pass is returned to the *Project Manager* when the employee no longer requires access to that part of the *site* or after the *Project Manager* has given notice that the employee is not to be admitted to the *site*.  Z57.5 The *Contractor* does not take photographs of the *site* or of work carried out in connection with the *works* unless it has obtained the acceptance of the *Project Manager*.  Z57.6 The *Contractor* takes the measures needed to prevent its and its Subcontractors’ people taking, publishing or otherwise circulating such photographs. | |
| Clause 58 | | | | Z58 The Housing Grants, Construction and Regeneration Act 1996  Z58.1 If Option Y(UK)2 is said to apply then notwithstanding that this contract relates to the carrying out of construction operations other than in England or Wales or Scotland, the Act is deemed to apply to this contract. | |
| Clause 59 | | | | Z59 Small Medium Sized Enterprises (SMEs)  Z59.1 The *Contractor* is required to take all reasonable steps to engage SMEs as Subcontractors and to seek to ensure that no less than the percentage of the Subcontractors stated in the Contract Data (the “SME Percentage”) are SMEs or that a similar proportion of the Defined Cost of the *works* is undertaken by SMEs.  Z59.2 The *Contractor* is required to report to the *Client* in its regular contract management monthly reporting cycle the numbers of SMEs engaged as Subcontractors and the value of the Defined Cost of the *works* that has been undertaken by SMEs.  Z59.3 Where available, the *Contractor* is required to tender its Subcontracts using the same online electronic portal as was provided by the *Client* for the purposes of tendering this contract.  Z59.4 The *Contractor* is to ensure that the terms and conditions used to engage Subcontractors are no less favourable than those of this contract. A reason for the *Project Manager* not accepting subcontract conditions proposed by the *Contractor* is that they are unduly disadvantageous to the Subcontractor. | |
| Clause 60 | | | | Z60 Apprenticeships  Z60.1 The *Contractor* takes all reasonable steps to employ apprentices, and reports to the *Client* the numbers of apprentices employed and the wider skills training provided, during the delivery of the *works*.  Z60.2 The *Contractor* takes all reasonable steps to ensure that no less than the percentage of its employees stated in the Contract Data (the “Apprenticeship Percentage”) are on formal apprenticeship programmes or that a similar proportion of hours worked in delivering the *works,* (which may include support staff and Subcontractors) are provided by employees on formal apprenticeship programmes.  Z60.3 The *Contractor* makes available to its employees and Subcontractors working on the contract, information about the Government’s Apprenticeship programme and wider skills opportunities.  Z60.4 The *Contractor* provides any further skills training opportunities that are appropriate for its employees engaged in carrying out the *works*.  Z60.5 The *Contractor* provides a written report detailing the following measures in its regular contract management monthly reporting cycle and is prepared to discuss apprenticeships at its regular meetings with the *Project Manager*:  Z60.5.1 the number of people during the reporting period employed on the contract, including support staff and Subcontractors;  Z60.5.2 the number of apprentices and number of new starts on apprenticeships directly initiated through the procurement process;  Z60.5.3 the percentage of all employees taking part in an apprenticeship programme;  Z60.5.4 if applicable, an explanation from the *Contractor* as to why it is not managing to meet the specified percentage target;  Z60.5.5 actions being taken to improve the take up of apprenticeships;  Z60.5.6 other training/skills development being undertaken by employees in relation to this contract, including:  (a) work experience placements for 14 to 16 year olds;  (b) work experience /work trial placements for other ages;  (c) student sandwich/gap year placements;  (d) graduate placements;  (e) vocational training;  (f) basic skills training; and  (g) on site training provision/ facilities. | |
| Clause 61 | | | | Z61 Cyber Essentials  Z61.1 The *Client* and the *Contractor* shall comply with the provisions of Annex H | |
|  | | | |  | |

# TERM SERVICE CONTRACT ANNEX E – THE SERVICE INFORMATION

**As per the issued Attachment 3 – Statement of Requirements in the published ITT bid pack, inserted here in its original published form as Annex E:**

1. **PURPOSE**
   1. The purpose of this procurement is to let up to five contracts for an initial 3 year term, with up to two 12 month extensions, via the RM6088 Construction Works and Associated Services (CWAS) framework, under Lot 1.1.2: Building Works & Minor Associated Civil Engineering Works & Services – South England.
   2. The estimated total aggregate value of the call off contracts will be £100 million (excluding VAT) for the initial three year term of the contracts. The two 12 month extension options will be a proportionate amount of the original contract value.
   3. The total procurement value of the Minor Works 2 Programme for South England, including all contract extension options, is £166,000,000 (excluding VAT). Contractors must note funding for the contract extensions will not be confirmed until 2025. Please also refer to Attachment 1 of the Bid Pack.
   4. Potential Bidders are advised that the awarded contracts will be call off contracts and as such the Contracting Authority cannot guarantee minimum volumes of work and spend.
   5. Work commissioned via the five contracts will be via a Taxi Rank system as described in Section 5 of this Statement of Requirements.
   6. The contracts will service the Government Property Agency’s, LCR, NCZ, CRP and Capital project requirements (See Section 4 Definitions Table).
2. **BACKGROUND TO THE CONTRACTING AUTHORITY**
   1. The Government Property Agency (GPA) is an Executive Agency of the [Cabinet Office](https://www.gov.uk/government/organisations/cabinet-office). The Sponsor Team is based within the [Office of Government Property](https://www.gov.uk/government/groups/office-of-government-property-ogp), in the Cabinet Office. GPA is a national organisation, working with client departments across the country. In addition to London, GPA currently has a presence in Birmingham, Swindon, Coventry, Newport, Manchester, Leeds, and Norwich.
   2. The GPA delivers property and workplace solutions across the government estates. GPA is introducing a Portfolio-led approach to managing central government general purpose property as a strategic asset. GPA will drive benefits through more efficient and effective use of the estate. GPA will do this through:

* Owning and operating the central government general purpose estate
* Partnering with client departments to realise best value outcomes for the taxpayer, great workplaces and ways of working for civil servants  
  1. GPA is an enabler for the delivery of Civil Service transformation, and Government’s priorities for regional growth and strengthening the Union.
  2. The GPA will transform the way property is managed in Government. It will do this by:
* Partnering with departments as property professionals and trusted advisors to bring innovation and solutions that position real estate as an enabler of business delivery.
* Taking a strategic portfolio approach to the non-specialist assets that are transferred to the agency from departments, through maximising utilisation and reducing costs, developing and delivering place-based strategies.
* Deploying commercial property expertise in Contractor negotiations to enhance value for Government and the taxpayer.
* Delivering an effective fully integrated corporate real estate service, including estates and facilities management.
* Developing and sharing specialist asset management and commercial advisory services with departments.
* Improving the quality and transparency of data on the asset portfolio managed by GPA to better inform asset management and commercial decision-making.

* 1. GPA priorities are:
* Improving the efficiency and effectiveness of the government estate.
* Managing the central government general purpose property portfolio strategically to realise benefits that departments cannot achieve on their own.
* Enhancing commercial expertise within government property to maximise capital receipts from the disposal of surplus assets and releasing land for productive use including housing.
* Providing innovative and flexible property solutions to support departments in business change and workforce transformation.
* Improving working environments on the government estate, supporting new ways of working, driving productivity and engagement.
  1. Further GPA information can be found at:

<https://www.gov.uk/government/organisations/government-property-agency/about>

1. **BACKGROUND TO THE REQUIREMENT**
   1. GPA requires minor works and associated services in its LCR, NCZ, CRP and Capital Projects functions in South England.
   2. Existing Minor Works contracts are in place for the Scottish and Welsh regions and are out of scope for this requirement.
   3. A tender process for minor works and associated services in the North of England is live, it is a separate geographic region and therefore out of scope for this requirement.
   4. An original Minor Works and Projects suite of contracts, managed via a taxi rank system, was tendered in 2020. The contracts have worked well; however the contract value was capped at £5m per annum. GPA has since received significantly higher amounts of funding via the Strategic Review 21 and the Government continues to embrace environmentally friendly solutions across the estate. The new Minor Works contracts for South England are required to deliver the funded SR21 projects, hence the need for larger value contracts.
   5. GPA are adopting two social value themes as part of the requirements, which are:
      1. **Theme 3: Fighting climate change:**

**Model Award Criteria 4.1** Deliver additional environmental benefits in the performance of the contract including working towards net zero greenhouse gas emissions.

* + 1. **Theme 4: Equal Opportunity,**

**Model Award Criteria 6.3**: Identifying and managing the risks of modern slavery

Guidance on social value can be found at:

* <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/940827/Guide-to-using-the-Social-Value-Model-Edn-1.1-3-Dec-20.pdf>
* <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/940826/Social-Value-Model-Edn-1.1-3-Dec-20.pdf>

1. **DEFINITIONS**

|  |  |
| --- | --- |
| Expression or Acronym | Definition |
| CCS | Means Crown Commercial Service |
| CRP | Means Client Requested Projects |
| CWAS | Means the Crown Commercial Service Commercial Agreement Framework Construction Works and Associated Services (RM6088) |
| Contractor | Means the contracted Contractor(s) |
| GPA | Means Government Property Agency, who is the Contracting Authority |
| KPIs | Means Key Performance Indicators |
| LCR | Means Life Cycle Replacement |
| MoU | Means Memorandum of Understanding |
| MWSP 2 | Means the scope of Minor Works and Services requirements under this requirement. |
| NCZ | Means Net Carbon Zero |
| Rotation | Means a Taxi Rank rotation as described under the taxi rank model at 5.11 to 5.16 of this Statement of Requirements |
| Task Orders | Means projects commissioned by the Contracting Authority to a Contractor under the awarded contract and Taxi Rank system. |

# 

1. **SCOPE OF REQUIREMENT** 
   1. The deliverables scope of the contracts will be the full scope of Lot 1.1.2 of the RM6088 framework. Contractors must be able to provide all of the Lot 1.1.2 Service Requirements (under Lot 1.1 Building Works and Civil Engineering Works and Associated Services).
   2. This includes the RM6088 Lot 1.1 Architectural and related services, including design services.
   3. This includes delivery of general office fit out which means the supply and installation of Cat B tenant’s layouts throughout which includes (in whole or part) the following works:

|  |  |
| --- | --- |
| # | Works |
| 1 | Demolitions and alterations |
| 2 | Bunding and waterproofing |
| 3 | Partitioning; modular, glazed, full height, folding |
| 4 | Passive fire protection |
| 5 | Sound attenuation; floor and ceiling voids, acoustic panels |
| 6 | Plasterboard linings to walls |
| 7 | New doors & ironmongery |
| 8 | Joinery; bespoke works, kitchen units and worktops, architraves and skirtings |
| 9 | Wall finishes; specialist wall finishes and tiling |
| 10 | Raised access floor; alterations and new installations |
| 11 | Floor finishes; carpet tile/sheet, vinyl tile/sheet/coving, barrier matting, all sundries |
| 12 | Ceilings; suspended new installations/alterations |
| 13 | Decorations; wall, ceiling, joinery |
| 14 | Adaptations to make inclusive environments |
| 15 | Sanitary installations |
| 16 | Mechanical and electrical and data services; new installations and adaptations |
| 17 | Drainage |
| 18 | Formation of; server rooms, meeting and office spaces, breakout and collaboration areas |
| 19 | Security systems; access control and surveillance |
| 20 | Windows; dressing, obscuration |
| 21 | Works in landlord areas |
| 22 | Asbestos abatement work |
| 23 | Works necessitated by leasehold dilapidation liabilities |

* 1. Additionally, GPA requires Contractors to deliver asset replacement schemes pertaining to NCZ interventions and LCR works, which currently consists of:

|  |  |
| --- | --- |
| # | Works |
| 1 | BMS upgrades |
| 2 | HVAC plant replacements |
| 3 | Energy efficiency led renewals; i.e. LED Lighting, Photovoltaic systems, ground source heat pumps |
| 4 | Health, Safety and compliance driven improvements |
| 5 | Energy generation, including provision of associated access (temporary and permanent) |
| 6 | Building fabric renewals |
| 7 | Installation of Photovoltaic systems |

## 

* 1. **Out of Scope:**
     1. Requirements outside of the NUTS codes UK H-K listed for Lot 1.1.2: Building Works & Minor Associated Civil Engineering Works & Services are out of scope.
     2. A separate procurement has been run for the procurement of MWSP 2 contracts for North England.
     3. Works and Services that do not fall within the scope of RM6088 Lot 1.1 are out of scope for this requirement.
  2. The contract's operating model is to award individual contracts for Minor Works on a non-exclusive basis. The contracts will be tied together by the Attachment 5b Memorandum of Understanding (MoU) and work issued via a taxi rank model.
  3. A copy of the MoU is included in the Attachment 5 Contract Terms and Conditions Folder as Attachment 5b.
  4. A copy of the Form of Agreement incorporating the NEC3 Term Service Contract is attached as Attachment 5b in the Attachment 5 Contract Terms and Conditions Folder.
  5. The GPA is seeking to partner with up to five Contractors in South England.
  6. GPA requires Contractors to be able to service all NUTS codes UK H-K listed for Lot 1.1.2: Building Works & Minor Associated Civil Engineering Works & Services – South England in the CWAS RM6088 framework agreement.

**Taxi Rank Model**

* 1. A rotating Contractor operating model (Taxi Rank) will be used, which will initially order each Contractor in a position in the taxi rank. For example, in the case of five Contractors awarded contracts, there will be 1 Contractor starting in position 1, a second Contractor starting in position 2 and so forth.
  2. Taxi Rank positions will be issued in order of the successful Bidder’s total procurement competition evaluation score (ranking position). The Contractor with the highest evaluation score will receive Taxi Rank position 1, the second highest will receive Taxi Rank position 2, and so on. Please refer to Attachment 2 of the Bid Pack for the procurement’s evaluation scoring methodology.
  3. Task orders (projects) will then be issued on a rotational basis. The first Rotation will be known as Rotation 1. Rotation 1 will consist of task orders being offered to Contractors in Taxi Rank order. Once all Contractors have been offered a task order, whether they accept it or not, a new rotation will begin, this will be known as Rotation 2 and so on.
  4. The taxi rank order will be the same for each Rotation, and task orders will be issued in the following order:
     1. Position 1 - Contractor A
     2. Position 2 - Contractor B
     3. Position 3 - Contractor C
     4. Position 4 - Contractor D
     5. Position 5 - Contractor E
  5. Exceptions to 5.12 are:
     1. The Contractor is missing (suspended) from a Rotation due to poor performance as described in the Annex H KPI Process. In this instance a new rotation will begin once all eligible (active) Contractors have been offered a task order under the current Rotation.
     2. Additional works to a previously issued task order or property is required and there is a justifiable reason for supplier continuity, GPA reserves the right to issue the work out of Taxi Rank order however the work will count for the supplier's turn on the rotation.
  6. Once GPA has identified a suitable project (task order) in a Rotation, the Contractor starting in Position 1 will be issued the Contracting Authority's work information (eg. outline design and specification) to develop and return the contractor’s work information to GPA and offer on a Fixed Lump Sum basis. The contractor shall use the rates provided at tender in developing their offer and if new rates are to be proposed, the Contractor shall outline the reasons why they differ and provide justification for the increase.
  7. Items not priced in a rate card at contract award will be subject to a market cost review.
  8. Preliminaries are charged at the agreed rates submitted at tender.
  9. All non prelim prices are open book with Contractors' overhead and profit added as a separate cost, at the contracted rate.
  10. Following receipt of the contractor's offer, GPA will then carry out a cost analysis exercise to determine value for money. Once GPA has satisfied itself in the entirety of the offer, the Contractor will then be able to commence delivery of the project.
  11. In the event that GPA does not consider the Contractor’s offer to be value for money and is able to substantiate that assertion, GPA reserves the right to issue the project scope and specification and invite a Fixed Lump Sum offer to the next Contractor in the Taxi Rank.  In the event that GPA cannot reach an agreement with any of the Contractors in the Taxi Rank (or at any point in the process and at the sole discretion of GPA) GPA will procure the project through an alternative procurement method. GPA as such warrants no exclusivity to Contractors via this arrangement.
  12. In the event a Contractor does not accept an invitation to deliver a project and is able to substantiate that assertion that is acceptable to GPA, the Contractor will not be suspended from the taxi rank under the Annex H KPI Process.. However, the project invitation will then be issued to the Contractor next in order under the taxi rank. For example, if Contractor A declines the project commission, then Contractor B will be ordered to the commission.
  13. If a Contractor declines a commission in a Rotation, they will not be offered a commission until the following Rotation. For example; If Contractor A declines their first commission under Rotation 1, they will next be offered a commission under Rotation 2. This approach is to ensure a consistent and objective approach to the taxi rank system.
  14. Where possible, prior to a financial year commencing, GPA will package work into equal sizes (containing multiple task orders), both financial and scheme sizes and offer them to the contracted Contractors. In order of their position in the taxi rank.

1. **KEY MILESTONES AND DELIVERABLES**
   1. To be completed on a project by project basis, but to specifically include:
      1. Master programme
      2. Cash flow forecast
      3. Construction Phase H&S plan
      4. O&M’s and Health and Safety file
      5. Final account
   2. The following initial Contract milestones/deliverables shall apply:

|  |  |  |
| --- | --- | --- |
| Milestone Deliverable | Description | Timeframe or Delivery Date |
| 1 | Contract including Memorandum of Understanding signed | Within week 1 of Contract Award |
| 2 | Key Account Manager meeting to take place | Within week 1 of Contract Commencement |
| 3 | Attendance at first monthlyTaxi Rank Level | 30 calendar days after Contract Commencement |

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1. **MANAGEMENT INFORMATION/REPORTING**
   1. The Contractor shall not pass through or recharge to, or otherwise recover from the Contracting Authority the cost of the Framework Management Charge. This charge should not be itemised in your Pricing Schedule/Cost plan.
2. **VOLUMES**
   1. The budget for LCR, NCZ, CRP works over the initial 3 year contract period is £100m (£100,000,000) excluding VAT across all five Contractor contracts. The task order ( project) value range is expected to be between £300,000 to £700,000 (excluding VAT). Taking £500,000 (excluding VAT) as the average task order ( project) price, the Contracting Authority is expecting to raise in the region of 12 task orders per annum, which will be issued using the taxi rank system. This volume is not guaranteed.
   2. The number of task orders a Contractor will receive is dependent on the task order values. Each Contractor’s contract will have a maximum value of £20m (£20,000,000) excluding VAT for the initial three year term, with an average project value of £500,000 (excluding VAT) (not guaranteed).
   3. If a contractor's contract limit exceeds the full £20m contract value and allowable overspend limits within PCR2015 regulations or subsequent amendments within the initial 3 year period, the contractor will be suspended from the taxi rank until an extension option is issued. Extension options will be subject to the same maximum contract value process.
   4. If less than five contractors are awarded a place on the taxi rank, the £100m total will be shared equally between contractors, i.e. four contractors are awarded a position, each contractor will receive a contract for the value of upto £25m.
   5. Capital project work is likely to be between £1million and £3million, which may impact on volumes, as will the frequency and volume of Client requested projects which are funded by GPA clients.
   6. As the contracts will be call-off contracts there will be no guarantee of project volumes or minimum spend. Work will be commissioned to Contractors using the taxi rank system order.
3. **CONTINUOUS IMPROVEMENT**
   1. The Contractor will be expected to continually improve the way in which the required Services are to be delivered throughout the Contract duration.
   2. The Contractor should present new ways of working to the Authority during the Contract review meetings.
   3. Changes to the way in which the Services are to be delivered must be brought to the Authority’s attention and agreed prior to any changes being implemented.
4. **SUSTAINABILITY**
   1. The Contractor shall comply with sustainability and environmental protection requirements set out in the contract.
   2. The Contractor will meet the deliverables submitted as part of their Social Value submission to the Model Award Criteria 4.1 - Deliver additional environmental benefits in the performance of the contract including working towards net zero greenhouse gas emission.
5. **QUALITY**
   1. The building services design, testing and commissioning of components and systems shall take account of all statutory requirements and necessary approvals.  All facilities shall comply with current Building Regulations, Statutory Requirements, European Standards, British Standards and Codes of Practice, DFES ‘Building Bulletin’ standard specifications / guides, ESFA Output Specifications, Health and Safety Regulations, and Fire Officer requirements.
   2. Facilities shall also be designed and installed to accept good industry practice and be fit for purpose.  Any deviations are to be submitted with the design proposals
   3. Contractor’s designs and works must conform with:
      1. the Government Workplace Design Guide\_Part1\_V2.0\_211123 and subsequent versions. (Annex A )
      2. the GPA inclusive design guide (Annex B)
      3. the GPA net zero design guide (Annex C)
      4. the GPA historic buildings guidelines. (Annex D)
      5. the Healthy building standards for government hubs (Annex E)
      6. the Physical security standards and guidance (Annex F)
      7. the FFE Specification requirements (Annex G)

11.4 Design guides will be amended and developed over the life of the MWSP2 contracts.

1. **PRICE**
   1. Prices are to be submitted via the e-Sourcing Suite Attachment 4 – Price Schedule Folder according to the instructions detailed therein.
   2. The pricing evaluation scoring methodology is outlined in Attachment 2 - How to Bid document.
   3. Prices and preliminary percentage fees are to be held for the duration of the contract, including extension options.
   4. All prices are to be submitted excluding VAT and including all other expenses relating to Contract delivery.
2. **STAFF AND CUSTOMER SERVICE**
   1. The Contractor shall provide a sufficient level of resource throughout the duration of the Contract in order to consistently deliver a quality service.
   2. The Contractor’s staff assigned to the Contract shall have the relevant qualifications and experience to deliver the Contract to the required standard.
   3. The Contractor shall ensure that staff understand the Authority’s vision and objectives and will provide excellent customer service to the Authority throughout the duration of the Contract.
3. **SERVICE LEVELS AND PERFORMANCE**
   1. The Authority will measure the quality of the Contractor’s delivery by the KPIs listed in Annex H KPI Process.
   2. GPA reserves the right to change any or all KPI’s and associated KPI values prior to a task order being issued.
   3. KPIs will be used as a Contractor performance mechanism; failure to meet acceptable KPI scores may result in the contractor missing rotations on the taxi rank system. Full details are outlined in Annex H.
   4. If a Contractor triggers the relevant poor performance criteria in Annex H, they will be informed that they are permanently suspended from the Taxi Rank system; no further task orders will be offered to the Contractor.
4. **SECURITY AND CONFIDENTIALITY REQUIREMENTS**
   1. Contractors shall be familiar with and operate within HMG Security policy framework, May 2018:

<https://www.gov.uk/government/publications/security-policy-framework/hmg-security-policy-framework>

* 1. All project related documents and correspondence shall be classified as OFFICIAL. Occasionally some project elements may require SECRET and rarely TOP SECRET classifications.
  2. OFFICIAL information can be managed with good commercial solutions that mitigate the risks faced by any large corporate organisation.
  3. There are three different types of national security vetting clearance in-scope for projects: Counter- Terrorist Check (CTC), Security Check (SC), and Developed Vetting (DV). Before any such clearance is undertaken the requirements of the Baseline Personnel Security Standard (BPSS) must be met.
  4. For GPA projects, contractors, employees and subcontractors must carry a minimum BPSS clearance, and where required by a project must be able to provide staff resources cleared to CTC, SC and DV. Further Information:  <https://www.gov.uk/government/publications/hmg-personnel-security-controls>

1. **PAYMENT AND INVOICING**
   1. Payment can only be made following satisfactory delivery of pre-agreed certified products and deliverables for a commissioned task order.
   2. Before payment can be considered, each invoice must include a detailed elemental breakdown of work completed and the associated costs and a valid purchase order number.
   3. Invoices should be submitted to: [finance@gpa.gov.uk](mailto:finance@gpa.gov.uk).
2. **CONTRACT MANAGEMENT** 
   1. The contract management structure will consist of:
   2. Taxi Rank Level monthly meetings. All Contractors will attend. (Frequency may be reduced as advised by the Authority)
   3. Contract Level Meetings:
      1. Quarterly Contractor meetings (direct with the Contractor)
      2. Project contract management meetings (specific to each contract, set at start of the project)
      3. Project Close Out – KPI Score (at the end of each specific project).
      4. Meetings will be held at the Contracting Authorities Offices in London or GPA Hubs located in the 1.1.2 South geography closest to the Contractor.
   4. For projects the meetings will be held at the Contracting Authority’s office locations or at the project site.
   5. Meetings may be held online using the Google Meet platform.
   6. Attendance at Contract meetings shall be at the Contractor’s own expense.
3. **LOCATION** 
   1. The location of the Services will be carried out at GPA properties and or GPA Client Properties in South England as defined by NUTS Codes UK H-K listed for Lot 1.1.2 Building Works and Minor Associated Civil Engineering Works & Services - South England in the RM6088 CWAS Framework Agreement.
4. **ANNEXES**
   1. The Attachment 3 Annexes referred to within this document are listed below:

|  |  |
| --- | --- |
| Annex A  *(now Contract Appendix 1)* | Government Workplace Design Guide\_Part1\_V2.0\_211123 |
| Annex B  *(now Contract Appendix 2)* | GPA inclusive design guide |
| Annex C  *(now Contract Appendix 3)* | GPA net zero design guide |
| Annex D  *(now Contract Appendix 4)* | GPA historic buildings guidelines |
| Annex E  *(now Contract Appendix 5)* | Healthy building standards for government hubs |
| Annex F  *(now Contract Appendix 6)* | Physical security standards and guidance |
| Annex G  *(Now Contract Appendix 7)* | FFE Specification requirements |
| Annex H  *(Now Contract Annex I)* | KPI Process |

# TERM **SERVICE CONTRACT ANNEX F – PRICE** LIST

The Preliminaries and Price Schedule as published in the ITT Bid pack form part of the Contract and are appended as **Appendix 8.**

Price List is as per the Supplier’s Submitted Tender Response in the procurement:

Where other roles and associated hourly rates are required for a Task Order that are not detailed in this Contract Annex F Price List, the Contractor’s RM6088 Lot 1.1.2 Maximum Framework Rates will apply.

|  |  |
| --- | --- |
| Hourly Rate | |
| Role | £/hour |
| Project Director | £118.13 |
| Senior Project Manager | £80.37 |
| Commercial Manager | £87.31 |
| Principal Designer | £55.22 |
| Design Manager | £81.14 |
| BIM Manger | £41.77 |
| Construction Manager | £66.55 |
| Senior M&E Manager | £35.95 |
| Document Controller | £30.73 |
| Senior Quantity Surveyor | £70.23 |
| Health & Safety Manager | £43.10 |

|  |  |
| --- | --- |
| Design Fee | |
| Expressed as a percentage, to include but limited to staff and design supervisory staff, regulatory charges to create and develop a full design throughout the full RIBA stages, to support the construction. | 15% |
| Overhead, Profit & Fee Additions | |
| The Over Head, Profit & Fee Additions percentage will be firm.      Overhead & Profit Allowance - Expressed as a Percentage | 4% |

# TERM SERVICE CONTRACT ANNEX G - TENDERED RESPONSE

As per the Contractor’s Tendered Proposal Response submitted during the procurement competition:

**REDACTED TEXT under FOIA Section 43 Commercial Interests**

**REDACTED TEXT under FOIA Section 40, Personal Information**

**REDACTED TEXT under FOIA Section 40, Personal Information**

**REDACTED TEXT under FOIA Section 40, Personal Information**

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**REDACTED TEXT under FOIA Section 43 Commercial Interests**

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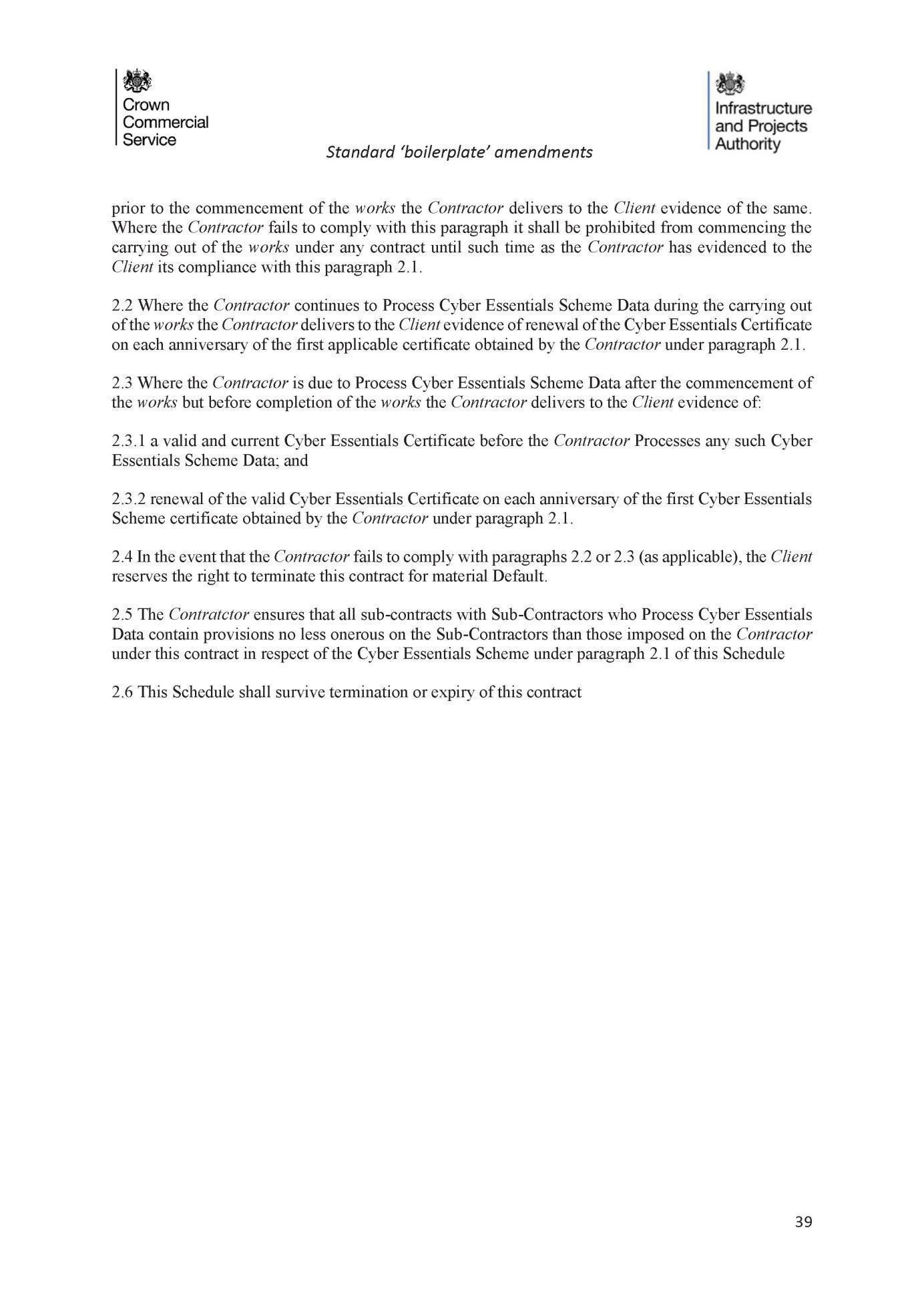
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**REDACTED TEXT under FOIA Section 43 Commercial Interests**

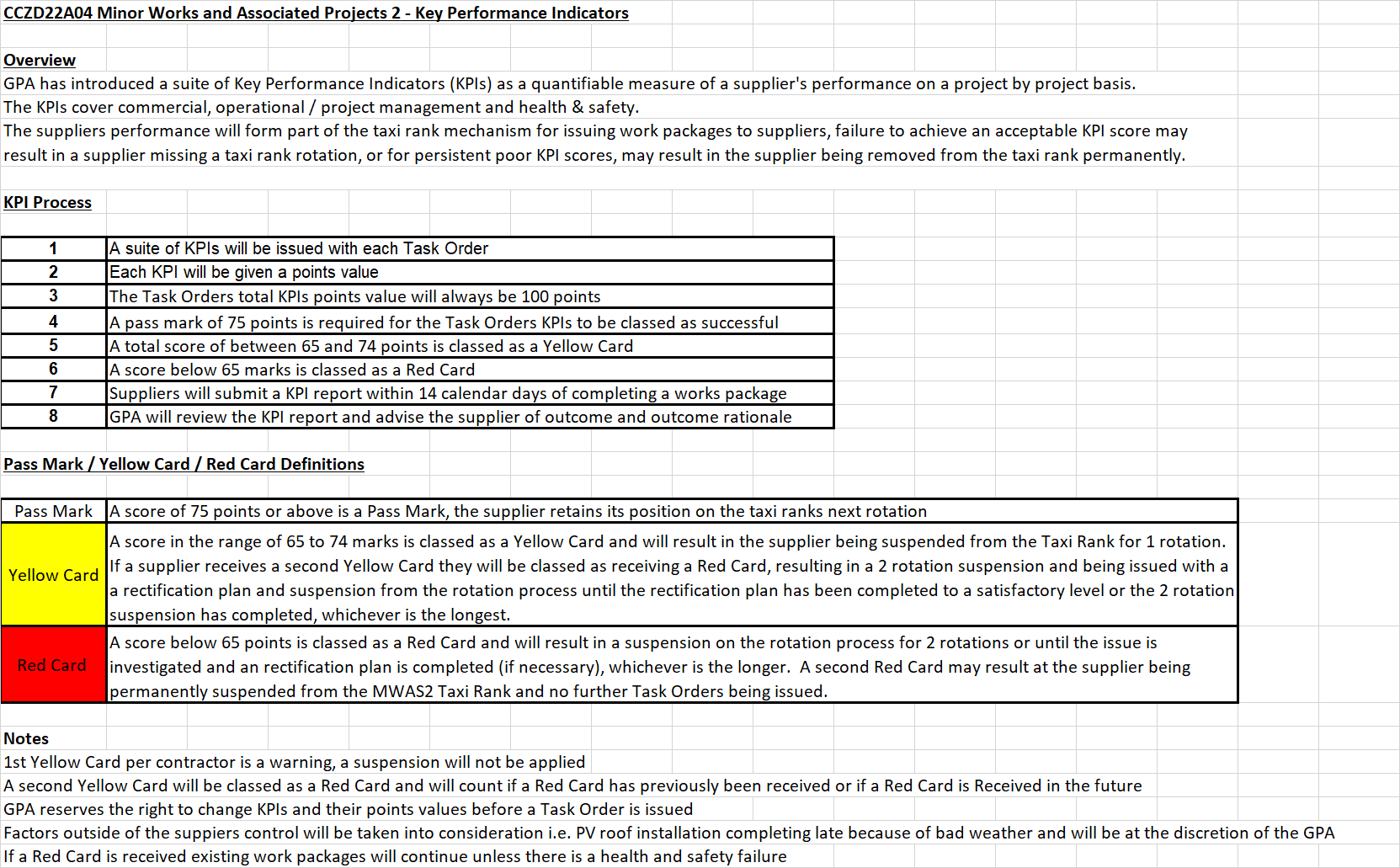
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# CONTRACT ANNEX H **CYBER ESSENTIALS SCHEME**



# CONTRACT **ANNEX I KPI PROCESS:**

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|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| KPI Ref | Area | Sub-Area | Category | Performance Standard | Measure | Failure | Performance Levels | | | |
| TARGET Threshold | KPI Performance Points Assigned | Pass / Fail Status | KPI Performance Points Issued |
| 1 | Commercial | Contract Participation | Responsiveness | Submission of initial contractor proposal when invited to submit using Taxi Rank process, or satisfactory explanation regarding inability to provide a quote | For each project where the Contractor is instructed to submit a price and programme, Contractor submits a programme of work OR expression of interest (with feedback if necessary) in line with pricing process | Programme/EOI submitted or incomplete within 5 working days | 100% of all invitations in quarter responded to within 5 working days | 15 |  |  |
| 2 | Operational/PM | Quality | Adherence to Scope | Where the Contractor undertakes design, Contractor has submitted a proposal that meets GPA Design guidelines/space standards (Attachment 3 Statement of Requirements Annex A - G) | No. of exemptions per project | No. of exemptions per project exceeds threshold | No Exemptions | 15 |  |  |
| 3 | Operational/PM | Quality | Contract Compliance | Number of Defect notices issued | Number of defects notices identified and Issued in relation to project. | Number of defect notices identified and Issued in relation to project or programme above threshold | No Failures | 10 |  |  |
| 4 | Operational/PM | Quality | Contract Compliance | Time to rectify Defects | Percentage of notified defects rectified within the contract timescale | Percentage of notified defects rectified within timescale is below threshold | 100% | 15 |  |  |
| 5 | Operational/PM | Cost | Average time to agree time and cost impact of change | Additional costs agreed as soon as possible after the change event, have been shown to be more accurate and allow for better final cost forecasting | Average time taken to agree cost of changes following issue of variation instructions (less the response time taken by Client/PM) | Average time taken to agree cost of changes following issue of variation instructions is greater than threshold | 2 Weeks | 15 |  |  |
| 6 | Operational/PM | Programme | Effective Handover | Complete handover (refer to Attachment 3 -SOR) | No. of manuals/documents not provided on day of handover. | 100% of documents not handed over on planned day of handover | 100% | 10 |  |  |
| 7 | Health & Safety | Safety | Employee Safety | The reporting of Injuries, Diseases and Dangerous Occurrences Regulation 2013, (RIDDOR). | Reporting on a 28 day basis over the life of the project. | More than 1 RIDDOR Occurrence on a project | 1 or less Riddor Occurrence | 20 |  |  |

1. [↑](#footnote-ref-1)