|  |  |  |  |
| --- | --- | --- | --- |
|  | | | |
|  | **DATED** | **2021** |  |
|  | | | |
|  | **THE SECRETARY OF STATE FOR WORK AND PENSIONS**  **AND**  **KIER CONSTRUCTION LIMITED** | | **(1)**  **(2)** |
|  | **CONTRACT FOR THE APPOINTMENT OF A CONTRACTOR RELATING TO THE RAPID ESTATES EXPANSION PROGRAMME IN NORTH ENGLAND AND INCORPORATING THE NEC4 ENGINEERING AND CONSTRUCTION CONTRACT** | |  |

**THIS CONTRACT** is made on                                                    2021 **BETWEEN:**

1. **THE SECRETARY OF STATE FOR WORK AND PENSIONS** acting as part of the Crown (the “**Client**”) (which expression shall include any successors in title and assigns); and
2. **KIER CONSTRUCTION LIMITED, trading as Kier Construction North & Scotland**  (company number 2099533) whose registered office is at 81 Fountain Street, Manchester, M2 2EE (the “**Contractor**”),

together, the Parties.

**WHEREAS:**

1. The Client wishes to enter into a contract with the Contractor on the terms set out in this Contract for the carrying out and completion of the Works.
2. The Client wishes to retain the Contractor to carry out certain additional works at the Sites which may be notified to the Contractor from time to time during the Delivery Term.
3. In the event that the Client requires the Contractor to carry out work in relation to any part of the Project such works will be carried out under a Task Order.
4. The Client and Contractor accept and agree that this Contract does not guarantee that any work will be given by the Client to the Contractor or oblige the Client to instruct the Contractor to carry out any particular scope of work.

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

1. Introduction
   1. In this Contract the following words and expressions have the following meanings unless the context otherwise requires:
2. “**Business Days**” means a day (other than a Saturday or Sunday or Bank Holiday) on which banks are open for domestic business in the City of London;
3. “**CDM Regulations**” means the CDM Regulations 2015;
4. “**Contract Data**” means that contract data applicable for each Task Order and as set out at Appendix 2;
5. “**Contract Month**” means each calendar month during the Delivery Term;
6. "**Critical Failure Event**" a failure to provide any Works in accordance with the terms of this Contract and/or any relevant Task Order and where such failure results in or may result in:
   1. imminent risk of danger to persons;
   2. imminent risk of full or partial loss of a Task Site; and/or
7. a material adverse effect upon the Client’s business within the relevant Task Site (where applicable);
8. “**Client’s Policies**” means the policies and directives or other regulations of the Client from time to time copies of which are provided and updated by the Client from time to time;
9. “**Delivery Term**” means the period of 6 months from 29th April 2021 as may be extended in accordance with the terms of this Contract and subject to early termination pursuant to the relevant Terms and Conditions;
10. “**Fee Percentage**” means the fee percentage set out in the Tender Rates and Prices;
11. “**Framework** **Rates** **and** **Prices**” means those rates and prices that apply to the Crown Commercial Service framework reference RM 6088, Lot 2;

“**Law**” is any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgement or a relevant court of law, or directives of any regulatory body with which the Contractor is bound to comply;

1. “**Management Services**” means those services set out in Appendix 4;

“**Necessary Consents**” means are all permits, licences, permissions, consents, approvals, certificates and authorisations (whether statutory or otherwise) which are required for the performance of any of the Contractor’s obligations under this Contract or any Task Order, whether required in order to comply with Law or as a result of the rights of any third party;

“**Notifiable Event**” means:

* 1. there is an adverse change in the financial circumstances of the Contractor, the Contractor becomes aware of an adverse change in the financial circumstances of the Guarantor or the Contractor has (or anticipates that it may have) insufficient funding to adequately resource its obligations under this Contract;
  2. the Contractor becomes aware of any circumstances relating to the Contractor or any subcontractor which shall or may bring into disrepute and/or diminish the trust that the public places in the Client and/or the carrying out of the Works;
  3. the Contractor is under investigation and/or subject to regulatory enforcement by any relevant Client and such investigation and/or enforcement shall or may be material to the Contractor’s ability to provide the Works;
  4. in the event that the Contractor commits a material default of this Contract and/or any Task Order that is capable of remedy;

;

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

"**Objectives**" means:

* 1. to deliver a high quality Works;
  2. to minimise disruption to any occupants of the Task Site;
  3. to act in a collaborative manner and in the spirit of mutual trust and respect;
  4. to adopt and demonstrate open book accounting techniques; and
  5. to achieve value for money;

1. “**Other Consultants**" means any other consultants appointed by the Client in connection with the Project and shall include those other consultants' employees, agents and sub-consultants;
2. “**Parent Company**” means Kier Limited;
3. “**Parent Company Guarantee**” means the parent company guarantee executed as a deed by the Parent Company and as attached at Appendix 6;
4. “**Price List**” means the price list attached at Appendix 5 and incorporating the Tender Rates and Prices where applicable;
5. “**Performance Credit**” means £200 per Performance Failure Point;
6. “**Performance Credit Cap**” means the equivalent of 5% of the total of the Prices (as defined in the Terms and Conditions) for each Task Order as at the date of issue of each Task Order;
7. “**Performance Failure**” means a failure by the Contractor to meet the relevant Performance Level for a Performance KPI;
8. “**Performance Failure Point**” means the points that are set out in Appendix 6 of this Contract and which shall accrue to the Contractor in the event of any Performance Failure;
9. “**Performance** **KPI**” means a KPI set out at Appendix 7;
10. “**Performance Level**” the levels that are set out in Appendix 6 of this Contract;
11. “**Performance Monitoring Report**” means the monthly performance report prepared by the Contractor in accordance clause 6.7;
12. “**Performance Review Meeting**” the regular meeting between the Contractor and the Client to discuss the Performance Monitoring Report, as set out in clause 6.9;
13. “**Project**” means the refurbishment and fit out of the Sites;
14. “**Project** **Participants**” means the Client, the Contractor and (as relevant) the Other Consultants and any other consultant, sub-contractor and supplier appointed by the Client or the Contractor in relation to the Works and any obligations under this Contract;
15. “**Project Programme**” means the programme prepared by or on behalf of the Client for the Project as a whole, as updated from time to time;
16. “**Project** **Risk Register**” means the risk register created and updated in accordance with Part B of Appendix 4;

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

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

1. “**Rates and Prices**” means the rates and prices set out in the Price List and where applicable calculated in accordance with Appendix 5;
2. “**Region**” means North England;
3. “**Required Insurances**” means those insurances required for any Proposed Task and as further set out in the Task Order Proposal;

“**Senior Representatives**” means those persons noted at Clause 9.3:

“**Service Quarter**” means the first three months and each subsequent three month period (or reduced period immediately prior to the end of this Contract) which shall be defined as Jan – Mar inclusive, Apr – Jun inclusive, Jul – Sep inclusive and Oct – Dec inclusive in a calendar year;

1. “**Sites**” means the sites in the Region as further identified at Appendix 3and any further sites instructed by the Client to the Contractor;
2. “**Task Order**” means an appointment on the terms of which the Contractor will carry out Works at the Task Site and the terms of this Contract, the approved Task Order Proposal, the Terms and Conditions and the relevant Contract Data shall be incorporated into the Task Order;

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

“**Task Site**” means the site, being any one or more of the Sites, to which the Task Order relates;

“**Tender Rates and Prices**” means the rates and prices submitted by the Contractor for the Project and taking into account but not exceeding the Framework Rates and Prices;

“**Terms and Conditions**” means the NEC4 Engineering and Construction Contract (Option A) and incorporating the schedule of amendments issued by the Crown Commercial Service under the framework agreement reference; and

1. “**Works**” means the Initial Works and any works subsequently referred to in any Task Order (to include any works procured on a design and build basis).
   1. Words importing the singular only shall also include the plural and vice versa, and where the context requires, words importing persons shall include firms and corporations.
   2. The headings to the clauses of this Contract shall not affect its interpretation.
   3. In this Contract, save as where set out in this Contract, words and expressions shall have the same meanings as are assigned to them in the Terms and Conditions.
   4. Reference in this Contract to any Act of Parliament, statute or statutory instrument shall include and refer to any statutory amendment thereto from time to time and for the time being in force and any successor to such Act of Parliament, statute and statutory instrument.
   5. Defined terms set out in the NEC4 Engineering and Construction Contract shall have effect in this Contract save where expressly set out.
2. Conditions
   1. The terms and conditions of the NEC4 Engineering and Construction Contract Option A have effect as modified by this Contract, the Terms and Conditions and the Appendices.
   2. Where a reference is made to a clause of the NEC4 Engineering and Construction Contract Option A (April 2013 Edition) contract it shall be read and construed to be a reference to that clause as amended by this Contract, the Terms and Conditions and Appendix 1.
   3. The Client may appoint the Contractor to carry out certain services under a Task Order for a Site (a “**Services Task Order**”). Once a Task Order is instructed in relation to the works for that same Site (a “**Works Task Order**”), the Services Task Order shall be subsumed into that Works Task Order and any monies paid to the Contractor in respect of the Services Task Order shall be treated as payments on account in respect of the relevant Works Task Order. The Contractor agrees that it does not have any entitlement to any extension of time, compensation and/or any relief whatsoever under or pursuant to the Works Task Order in relation to any of the services carried out pursuant to the Services Task Order and the Contractor waives its entitlement to any extension of time, compensation and/or any relief whatsoever in relation to the Services Task Order once the Works Task Order has been instructed in accordance with this Contract.
3. Delivery of Works
   1. The Contractor shall carry out and complete the Works (to include any Works instructed by way of a Task Order) in accordance with the terms and conditions of the NEC4 Engineering and Construction Contract Option A and as modified by this Contract.
   2. The Parties’ obligations in relation to the identification, approval and delivery of the Works are contained in Appendix 1.
   3. All Task Order Proposals shall be proposed by the Contractor in accordance with the provisions of Appendix 1
   4. Where a Task Order Proposal has been approved by the Client pursuant to Appendix 1, then the Client and the Contractor shall enter into a Task Order in respect of those Works on the basis of the Terms and Conditions.
   5. The Client makes no representations regarding the level of Works it may appoint the Contractor to carry out during the Delivery Term.
4. Contractor’s Duties
   1. The Contractor shall perform the Works in accordance with each Task Order (as relevant), all Law and good industry practice having at all times due regard and so far as is reasonably practical to comply with the Project Programme as issued by the Client to the Contractor from time to time.
   2. The Contractor shall carry out the Management Services in accordance with the provisions of Appendix 4.
5. Notifiable Event
   1. In the event that a Notifiable Event occurs, the Contractor shall notify the Client of the Notifiable Event as soon as practicable but in any event within three (3) Business Days of becoming aware of the Notifiable Event, detailing the actual or anticipated effect of the Notifiable Event.
   2. If:
      1. the Contractor notifies the Client pursuant to Clause 5.1 that a Notifiable Event has occurred; or
      2. the Client notifies the Contractor that it considers acting reasonably that a Notifiable Event has occurred (setting out sufficient detail so that it is reasonably clear what the Contractor has to rectify),

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

* + 1. at the Client's option, give the Contractor the opportunity (at the Contractor's expense) to remedy the Notifiable Event together with any damage resulting from such Notifiable Event (where such Notifiable Event is capable of remedy) or to carry out any other necessary work to ensure that the terms of this Contract and/or any relevant Task Order are fulfilled, in accordance with the Client's instructions;
    2. where:
       1. the option to remedy has been provided but the Contractor failed to remedy the Notifiable Event within a period specified by the Client acting reasonably; or
       2. where the Notifiable Event is incapable of remedy,

the Client may:

* + - 1. suspend (for any period) all or part of this Contract and/or any relevant Task Order; or
      2. terminate all or part of this Contract and/or any relevant Task Order (and such termination shall be deemed to be an R11 termination event under the relevant Task Order).
  1. Where the Client exercises any of its rights under Clause 5.2.4:
     1. the Contractor shall be liable for any reasonably foreseeable and fully mitigated costs and expenses reasonably incurred by the Client (including any reasonable administration costs) in respect of:
        1. managing and implementing the step-in, suspension and/or termination (as the case may be);and
        2. the carrying out of all or part of this Contract and/or any relevant Task Order by the Client and/or a third party;
     2. the Contractor shall not be obliged to provide the relevant Works to the extent that they are subject to any rights exercised by the Client under Clause 5.2.4; and
     3. any event in relation to the Client exercising its rights under Clause 5.2 shall not be deemed to be a compensation event for the purposes of any Task Order and the Contractor shall not be entitled to any addition to any Prices or additional costs and/or an extension of time under any Task Order:

1. Performance KPIs

Performance Levels

* 1. The objectives of the Performance KPIs, Performance Failure Points and Performance Credits are to:
     1. ensure that the Works carried out under a Task Order meet the requirements of the Client and that each Task Order is administered in accordance with the provisions of that Task Order;
     2. provide a mechanism whereby the Client can attain meaningful recognition of inconvenience and/or loss resulting from the Contractor's failure to deliver the Works for which it has contracted to deliver and/or administer the Task Order in accordance with the provisions of that Task Order; and
     3. incentivise the Contractor to meet and exceed the requirements set out in a Task Order and to remedy any Performance Failure expeditiously.
  2. Without prejudice to the Client’s other rights and remedies under this Contract and/or any Task Order, if the level of performance of the Contractor of any element of a Task Order during a Service Period:
     1. achieves the Performance Level in respect of each Performance KPI, no Performance Failure Points will accrue to the Contractor in respect of that Performance KPI; or
     2. is below the Performance Level in respect of each Performance (i.e. a Performance Failure arises), the appropriate number of Performance Failure Points will accrue to the Contractor in respect of that Performance KPI.
  3. If a Performance Failure occurs during two (2) consecutive months or during two (2) months in any four (4) month period, the second such failure shall be a "**Repeat Failure**". Any subsequent failure by the Contractor to achieve that same Performance Level shall also be a Repeat Failure.
  4. If any Repeat Failure occurs, the number of Performance Failure Points that shall accrue to the Contractor in respect of such Repeat Failure shall be the number of Performance Failure Points that would normally accrue in respect of an initial failure of that Performance Level multiplied in accordance with the following:
     1. initial failure: 1;
     2. 1st Repeat Failure: 1.5;
     3. 2nd Repeat Failure: 2.0; and
     4. 3rd and subsequent Repeat Failures: 2.5.

Performance Credits

* 1. Subject to clause 6.6, without prejudice to the Client’s other rights and remedies under this Contract and/or any Task Order, within 30 Business Days of the end of each Service Quarter, the Contractor shall pay or allow to the Client a sum equal to the total Performance Credits accrued in respect of the Service Quarter just ended. .
  2. The Contractor’s liability for Performance Credits under each Task Order shall be limited to the relevant Performance Credit Cap.

Excusing cause

* 1. Where a compensation event occurs under any Task Order that results in a Performance Failure, then provided that the Contractor has complied with its obligations under the Task Order to notify the Client of that event and act in accordance with the conditions of Contract, no Performance Failure Points or Performance Credits shall accrue for that event.

Performance Monitoring Reports

* 1. Within 30Business Days of the end of each Service Quarter, the Contractor shall provide a Performance Monitoring Report to the Client. The Performance Monitoring Report shall be in the format agreed between the Parties and shall contain, as a minimum, the following information in respect of the Service Quarter just ended:
     1. a summary of all Performance Failures that occurred during the Service Period;
     2. which Performance Failures remain outstanding and progress in resolving them;
     3. for any Performance Failure, the cause of the fault and any action being taken to reduce the likelihood of recurrence;
     4. for any Repeat Failures, actions taken to resolve the underlying cause and prevent recurrence;
     5. the number of Performance Failure Points awarded to each Performance Failure in that Service Period;
     6. the Performance Credits to be applied in respect of that Service Period indicating the Performance Failure(s) to which the Performance Credits relate;
     7. a rolling total of the number of Performance Failures that have occurred and the amount of Performance Credits that have been incurred by the Contractor; and
     8. such other details as the Client may reasonably require from time to time.
  2. The draft Performance Monitoring Report shall be reviewed, and its contents agreed by the parties at the Performance Review Meeting which immediately follows the issue of such report.
  3. The parties shall attend Performance Review Meetings in each Service Quarter (unless otherwise agreed). The Performance Review Meetings will be the forum for the review by the Contractor and the Client of the Performance Monitoring Reports. The Performance Review Meetings shall take place at a date and time agreed by the Contractor and Client in the Service Quarter following the Service Quarter to which the Performance Monitoring Report pertains and shall be fully minuted.
  4. The Contractor shall provide to the Client such supporting documentation as the Client may reasonably require in order to verify the level of the performance by the Contractor and the calculations of the amount of Performance Failure Points and Performance Credits for any specified period.

1. Limitation
   1. Notwithstanding that the Task Order may be executed under hand, either party may bring a claim, action or proceedings against the other after six years from the date of completion of a Project provided that no claim, action or proceedings may be issued or brought against the Contractor after twelve years from the date of completion of the Project unless such claim, action or proceedings were notified in writing to the Contractor prior to such date.
2. Extending this Contract
   1. The Client can extend this Contract by giving no less than 1 month written notice prior to the expiry of the Delivery Term. More than one notice can be issued provided that this Contract is not extended by more than 6 months.
3. Notices
   1. Any notices sent under this Contract must be in writing and in accordance with this clause 9.
   2. The following table sets out the method by which notices may be served under this Contract and the respective deemed time and proof of service:

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

* 1. Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this Contract:

|  |  |  |
| --- | --- | --- |
|  | Contractor | Client |
| Contact | REDACTED | REDACTED |
| Address | Unit 2180, Century Way, Thorpe Park, Leeds, LS15 8ZB | Department for Work and Pensions, Finance Group, Commercial Directorate, Quarry House, Leeds, LS2 7UA |
| Email | REDACTED | REDACTED |

1. Miscellaneous
   1. This Contract and each Task Order embody the complete and entire agreement between the Client and the Contractor in relation to the Project and supersede all other oral and/or written communications. The parties shall not be bound by, or be liable for, any statement, representation, promise, inducement or understanding not set forth herein.
   2. Save for any Task Orders issued in accordance with this Contract, no amendments of or modifications to this Contract shall be valid unless reduced to writing and executed as a deed by both parties.
   3. Save where expressly stated, the Contracts (Rights of Third Parties) Act 1999 is excluded from applying to this Contract and nothing herein, save where expressly stated, confers or purports to confer to any third party any benefit or any right to enforce any term and/or condition of this Contract.
   4. This Contract shall be governed by and construed and interpreted in accordance with English law and be subject to the jurisdiction of the courts of England and Wales.
   5. This Contract is executed as a deed and was delivered when it was dated.

|  |  |  |
| --- | --- | --- |
| The corporate seal of Secretary of State for ) Work and Pensions is hereunto )  affixed and authenticated by: )  ) )  )  )  SEAL OF **SECRETARY OF STATE FOR WORK AND PENSIONS**  **REDACTED** | | |
| Signed as a deed by Kier Construction Limited**, trading as Kier Construction-North & Scotland** acting by two attorneys |  |
|  |  |
| REDACTED |  |
|  |  |
|  |  |
|  |  |
|  |  |

**Appendix 1**

Task Orders

**The following shall be incorporated as part of the conditions of contract and in the event of a conflict with any other term, the terms of this Appendix shall take precedence:**

The purpose of this Appendix 1 is to confirm when and how the Contractor will prepare a Task Order Proposal and how the approvals process for a Proposed Task will operate.

Z102: Add new clause Z102 as follows:

1. Preparation of Task Order Proposal
   1. The Client shall submit a written request (the “**Project Instruction**”) for the Contractor to produce outline proposals for the Proposed Task. The Client shall provide such information (including arrangements to access the Site) as may be reasonably required by the Contractor to enable it to develop a Task Order Proposal, provided that the Client shall not be obliged to provide such information where this may cause the Client to be in breach of Law and/or where such information is otherwise confidential to the Client.
   2. Within 10 Business Days (or such other period as is agreed by the Parties) of receipt by the Contractor of a Project Instruction, the Contractor shall submit a Task Order Proposal in respect of the Proposed Task and containing, as a minimum, the information set out in paragraph 1.3 together with such additional information/documentation as is required.
   3. Each Task Order Proposal issued pursuant to paragraph 1.2 shall include a full description of the Proposed Task, including (without limitation):
      1. an assessment of the fee for the Proposed Task calculated in accordance with the Rates and Prices (the “**Task Order Fee**”), together with the assumptions behind these costings and a commentary as to how the risks and assumptions used in preparing the Task Order Fee might be managed in later or during the Proposed Task; and
      2. any other information requested by the Client from time to time.
2. Approval of Task Order Proposals and the Proposed Task
   1. Following receipt of a Task Order Proposal issued pursuant to paragraph 1, the Client shall be entitled to request any reasonable additional information and/or any reasonable assistance (as the case may be) from the Contractor which the Client considers appropriate to enable it to decide whether to approve the relevant Task Order Proposal and the Contractor shall provide such information and/or any assistance (as the case may be) within 3 Business Days (or such other period agreed between the Parties) of receipt of the relevant request for such further information and/or and assistance (as the case may be). The Contractor acknowledges and agrees that the costs incurred by the Contractor in responding to such requests and/or entering into any communications with the Client and/or incurring any expenditure of whatever nature in relation to such requests shall not entitle the Contractor to any payment of whatever nature and any such costs shall be borne by the Contractor unless:
      1. such expenditure relates to a material third party cost; and/or
      2. the Client agrees otherwise in writing.
   2. In deciding whether to approve a Task Order Proposal the Client shall be entitled to take into account all relevant factors which it considers would affect whether the relevant Task Order Proposal is acceptable, including, without limitation:
      1. whether the Task Order Proposal is, in the sole opinion of the Client, affordable and/or offers value for money;
      2. whether the Task Order Proposal, in the sole opinion of the Client, contains sufficient information to enable the Client to approve the relevant Task Order Proposal; and/or
      3. whether the potential impact of the implementation of the Task Order Proposal would, in the sole opinion of the Client, adversely impact on the business and/or activities of the Client (including, without limitation, any of the Client’s statutory duties); and/or
      4. whether the implementation of the Task Order Proposal would breach any Law, any Client’s Policies or any wider government strategy or government policy.
   3. Within 10 Business Days (or such longer period to be agreed by the Parties) of the later of the submission to the Client of a Task Order Proposal and the receipt by the Client of any additional information requested by the Client pursuant to paragraph 2.1, the Client shall notify the Contractor whether:
      1. the Client approves the Task Order Proposal, whereupon the provisions of paragraph 2.7 shall apply and the Contractor shall carry out the Proposed Task as part of a Task Order in accordance with the terms of the approved Task Order Proposal; or
      2. the Client rejects the Task Order Proposal and the provisions of paragraph 2.4 shall apply.
   4. The Contractor acknowledges and agrees that where the Client elects to reject any Task Order Proposal then the Contractor's costs in relation to the proposal shall be borne by the Contractor unless the Client has agreed otherwise in writing.
   5. The Client may appoint a third party to provide the whole or any part of the Task Order where:
      1. the Contractor is in material breach of its obligations under this Contract or any Task Order;
      2. the Client rejects a Task Order Proposal;
      3. the Contractor confirms that it does not intend to submit a Task Order Proposal or fails to submit a Task Order Proposal following receipt of a Project Instruction within the time period specified in and in accordance with the provisions of this clause Z102; and/or
      4. the Parties have been unable to agree the whole or any part of a Task Order Proposal.
   6. In the event that the Client appoints a third party in accordance with paragraphs 2.5.1, 2.5.3 and/or where it is reasonable for the Client to reject the whole or part of any Task Order Proposal and/or the Client shall be able to recover from the Contractor any reasonable costs and expenses incurred by the Client as a result of appointing an alternative contractor. The Contractor acknowledges and agrees that the Contractor shall not be entitled to any payment, compensation, damages, costs, losses and/or expenses arising out of or in connection with the circumstances set out in paragraph 2.5.
   7. Where a Task Order Proposal has been approved by the Client (to incorporate any amendments agreed between the Parties), the Client may sign the Task Order Proposal and issue to the Contractor and such signed Task Order Proposal shall be deemed to form the Task Order. On receipt of a Task Order pursuant to this paragraph, the works to be carried out and performed by the Contractor as set out in the Task Order shall be deemed to become part of the Works.
   8. The parties agree that if the Task Order Proposal is approved and any Task Order is issued by the Client and accepted by the Contractor under this clause Z102, then the provisions of:
      1. this Contract; and
      2. the relevant Task Order,

shall together govern the carrying out of any Works to be performed by the Contractor. In the event of any conflict between the documents referred to in this paragraph 2.8, then the order of precedence shall be:

* + 1. the relevant Task Order; then
    2. this Contract.
  1. This Contract shall be binding on the parties for the Delivery Term and shall govern any Works provided to the Client in relation to any Task Order for the entire duration of the Delivery Term, regardless of whether such Works were performed prior to the date of this Contract.
  2. At any time, the Client may set off any liability of the Contractor to the Client against any liability of the Client to the Contractor, whether either liability:
     1. is liquidated or unliquidated; or
     2. arises under this Contract and/or any Task Order.
  3. Without prejudice to any other rights or remedies which the Client may have, whether under this Contract or under any Task Order, the obligations for the Client and/or the Contractor to make payments in respect of any Task Orders shall be continuing obligations notwithstanding the termination of this Contract or any individual Task Order.

1. General
   1. Amend clause 11.1 to add a new sentence at the end: “The Contractor and the Client agree that the Activity Schedule, Scope, Site Information and Accepted Programme attached to any Task Order shall be deemed to be the Task Order Activity Schedule, Scope, Site Information and Accepted Programme relevant to the works instructed under the relevant Task Order.”
2. Compensation events
   1. Add to the end of the seventh bullet point in clause 61.4: “and the Contractor is not entitled to a compensation event to the extent that the Contractor is entitled to a compensation event under a different Task Order for the same event. The Contract agrees there shall be no double counting in respect of any compensation event entitlement”.
   2. Add new bullet point in clause 61.4 after the seventh bullet point: “relates to the carrying out of the Management Services under this Contract between the Client and the Contractor the Contractor shall not be entitled to a compensation event save where the Client issues an instruction to vary the Management Services.”
3. Termination
   1. Amend clause 90.2 to add at the beginning “Subject to the Corporate Insolvency and Governance Act 2020”
   2. Amend the table at 90.2 reason column for The Contractor. Delete ‘R10’. Add ‘R10B’
   3. Amend the table in clause 90.2 reason column for the Client to add in “R23” after “R22”.
   4. Add new R23:

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

* R1-R15,
* R18; or
* R22”.
  1. Amend clause 91.1:
     1. to add at the beginning “Subject to the Corporate Insolvency and Governance Act 2020”; and
     2. in the second bullet point:

after (R10) delete the full stop and add

“,or

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

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

* 1. Amend clause 91.4 to add at the beginning “Subject to the Corporate Insolvency and Governance Act 2020”
  2. Amend clause 91.5 to add at the beginning “Subject to the Corporate Insolvency and Governance Act 2020”
  3. Amend clause 91.6 to add at the beginning “Subject to the Corporate Insolvency and Governance Act 2020”
  4. Y2.5 (NEC4) To the extent that the Corporate Insolvency and Governance Act 2020 is deemed to apply to the Housing Grants, Construction and Regeneration Act 1996, add at the beginning “Subject to the Corporate Insolvency and Governance Act 2020”

Annex 1

Task Order Proposal Template

| **Project Title and Address:** | |
| --- | --- |
| **Task Order Proposal Details** | **Description** |
| Task |  |
| Detailed description of the Works required to be undertaken by the Contractor in connection with the Task Order including the methodology as to how the Works will be carried out[[1]](#footnote-2) |  |
| Details of the Contractor’s key personnel involved in the delivery of the Task Order (such as the Contractor’s project manager, quantity surveyor and supervisor) | Name:  Job:  Responsibilities:  Qualifications:  Experience: |
| Details of the Contractor’s Sub-Contractors involved in the delivery of the Task Order |  |
| Definition of the Task Site for the Task Order, include details of any access that the Contractor believes will be required to enable the implementation of the Task Order |  |
| Details of all Necessary Consents that the Contractor will and/or should obtain and maintain for the Task Order |  |
| Any other relevant Task information |  |
| Details of any proposed advance payments and performance bond (if any) |  |
| Details of any actual or anticipated impact on the Client’s statutory duties arising as a result of the implementation of the Task Order |  |
| The total of the Prices for this Task Order which shall be based upon the Rates and Prices together with the assumptions behind these costings |  |
| The Provisional Sum Items are |  |
| Any compensation events shall be assessed in accordance with clause 63. 2 (where applicable) of the Terms and Conditions and the Rates and Prices shall be deemed to be the “rates or lump sums” referred to in that clause. | |
| Details of the proposed Task Order *fee percentage* |  |

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

* Activity Schedule
* Scope
* Site Information
* Accepted Programme
* Cash flow profile
* Completed Contract Data

|  |
| --- |
| Signed by **THE SECRETARY OF STATE**  **FOR WORK AND PENSIONS** |
| REDACTED |
| Authorised Signatory |

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

|  |  |
| --- | --- |
| Signed by Kier Construction Limited, trading as Kier Construction-North & Scotland acting by an Attorney |  |
| REDACTED |  |
| Attorney |  |

**Appendix 2**

Contract Data

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **PART ONE – DATA PROVIDED BY THE *CLIENT*** | | | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| 1. **General** | | | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| The *conditions of contract* are the core clauses and the clauses for the following main Option, the Option for resolving and avoiding disputes and secondary Options of the NEC4 Engineering and Construction Contract June 2017 including amendments dated January 2019. | | | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| Main Option | | A | | | | | Option for resolving and avoiding disputes | | | | | | | | W2 | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| Secondary Options | | Y(UK)2, and any Secondary Options X5, X7, X8 X9, X15, X16, X18, with such amendments as set out in a Task Order where such Secondary Options shall apply to that Task Order only. | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| The *works* are | | and as set out in the relevant Task Order | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| The *Client* is | | The Secretary of State for Work and Pensions | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| Address for electronic communications | |  | | | | | | | | | | | | | | | | | | |
| The *Project Manager* is | | | | | | | | | | | | | | | | | | | | |
| Name | |  | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| Address for communications | |  | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| Address for electronic communications | |  | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| The *Supervisor* is | | | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| Name | |  | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| Address for communications | |  | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| Address for electronic communications | |  | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| The Scope is in | | As attached to the relevant Task Order | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| The Site Information is in | | As attached to the relevant Task Order | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| The *boundaries of the site* are | | As set out in the relevant Task Order | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| The *language of the contract* is | | English | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| The *law of the contract* is the law of | | England, subject to the jurisdiction of the Courts of England | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| The *period for reply* is | | two weeks | | | |  | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| The following matters will be included in the Early Warning Register | | | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| Early warning meetings are held at intervals no longer than | | | | | | | | | | | | | | | one month | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| 1. **The *Contractor’s* main responsibilities** | | | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| If the *Client has* identified work which is set to meet a stated *condition* by a *key date.* | | | | | | | | | | | | | | | | | | | | |
| The *key dates* and *conditions* to be met are[[2]](#footnote-3) | | | | | | | | | | | | | | | | | | | | |
|  | | *condition* to be met | | | | | | | | | | | | | |  | | *key date* | | |
| (1) | |  | | | | | | | | | | | | | |  | |  | | |
|  | | | | | | | | | | | | | | | | | | | | |
| (2) | |  | | | | | | | | | | | | | |  | |  | | |
|  | | | | | | | | | | | | | | | | | | | | |
| (3) | |  | | | | | | | | | | | | | |  | |  | | |
|  | | | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| 1. **Time** | | | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| The *starting date* is | | |  | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| The access *dates* are | | | | | | | | | | | | | | | | | | | | |
| part of the Site | | | | | | | | | | |  | date | | | | | | | | |
| 1 | | | | | | | | | | |  |  | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| 2 | | | | | | | | | | |  |  | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| 3 | | | | | | | | | | |  |  | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| The *Contractor* submits revised programmes at intervals no longer than | | | | | | | | | | | | | | | | | fortnightly | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| The *completion date* for the whole of the *works* is | | | | | | | | | | | | | | | | |  | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| The *Client* [is/~~is not~~] | | | willing to take over the *works* before the Completion Date | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| The period after the Contract Date within which the *Contractor* is to submit a first programme for acceptance is | | | | | | | | | | | | | | | | |  | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| 1. **Quality Management** | | | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| The period after the Contract Date within which the *Contractor* is to submit a quality policy statement and quality plan is | | | | | | | | | | | | | | | | | 2 | | | wks |
|  | | | | | | | | | | | | | | | | | | | | |
| The period between Completion of the whole of the *works* and the *defects date* is | | | | | | | | | | | | | | | | | 52 from the Completion of each Task Order | | | wks |
|  | | | | | | | | | | | | | | | | | | | | |
| The *defect correction period* is four weeks except that: | | | | | | | | | | | | | | | | | | | | |
| The *defect correction period* for | | | | | | | | Emergency Defects | | | | | | is | | | 24 | | | hours |
|  | | | | | | | | | | | | | | | | | | | | |
| The *defect correction period* for | | | | | | | | Serious Defects | | | | | | is | | | 1 | | | wk |
| An Emergency Defect (Level 1 (Urgent)): is defined as defects where there is a danger to users, visitors, buildings, property, including, without limitation, water leak, gas leak, loss of lighting/power/life safety system, dangerous structure. 'Emergency' defects may be reclassified as 'Serious' or 'Routine' when immediate dangers and/or risks have been addressed  Serious Defects (Level 2 Serious): defects which may cause the Client to incur expense or material inconvenience and/or disruption; | | | | | | | | | | | | | | | | | | | | |
| 1. **Payment** | | | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| The *currency of the contract* is the | | | | | | | | | | | | | pound sterling (£) | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| The *assessment interval* is | | | | | | | | | one | | | | calendar month | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| The *interest rate* is, unless the provisions of the Late Payment of Commercial Debts (Interest) Act 1998 otherwise require, | | | | | | | | | 2 | | | | % per annum above the Bank of England base rate in force from time to time | | | | | | | |
|  | | | |
|  | | | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| 1. **Compensation events** | | | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| The place where weather is to be recorded is | | | |  | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| The *weather measurements* to be recorded for each calendar month are | | | | | | | | | | | | | | | | | | | | |
| * the cumulative rainfall (mm) * the number of days with rainfall more than 5 mm * the number of days with minimum air temperature less than 0 degrees Celsius * the number of days with snow lying at 9AM hours GMT | | | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| and these measurements: | | | | | | | | | | | | | | | | | | | | |
| The relevant hours where the*Windspeed exceeds the limits stated in a crane’s duty charts that prevent the crane from working (as measured on the site by the crane’s anemometer) or windspeed exceeding HSE guidelines for operations on site.* | | | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| The *weather measurements* are supplied by | | | | | The Met Office | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| The *weather data* are the records of past *weather measurements* for each calendar month | | | | | | | | | | | | | | | | | | | | |
| which were recorded at | | | | |  | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| and which are available from | | | | |  | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| Assumed values for the ten year return *weather data* for each *weather measurement* for each calendar month are | | | | | | | | | | | | | | | | | | | | |
| N/A | | | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| The *value engineering percentage* is 50%, unless another percentage is stated here, in which case it is | | | | | | | | | | | | | | | | | 50 | | % | |
|  | | | | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| These are additional compensation events | | | | | | | | | | | | | | | | | | | | |
| 1. A Pandemic Event (as defined at Clause Z A1)   Add a new clause 60.1 ( 22):   1. "A Pandemic Event."   Add a new clause 63.12:   1. "Notwithstanding any other provision in this contract, any increase to the Prices as a result of a compensation event of the type referred to in clause 60.1(22) shall be reduced by 50%. Within an Assessment for a Pandemic Event the Contractor shall be entitled to its direct costs incurred in managing its sub-contractors due to a Pandemic Event"   2. Brexit  Where a delay to the Completion Date of the Works is caused by;   * any delay to the arrival of, or shortage of Plant, Materials and Equipment being incorporated into the Works or used to Provide the Works and which are being procured from the European Union (a Brexit Event)   Where and to the extent such delay or shortage is caused by the United Kingdom ceasing to be a member of the European Union and ceasing to be subject to any transitional arrangements which substantively treat the United Kingdom as a member of the European Union (“Brexit”), provided always that the Contractor has constantly used all reasonable endeavours to mitigate such consequences which a Contractor experienced in carrying out Works of a similar size, scope, type and complexity to the Works would be reasonably expected to have made, including (without limitation), demonstrating that appropriate alternative materials or labour could not be sourced from the United Kingdom.  A Brexit Event does not entitle the Contractor to any increase in the Prices or to any other monetary claim, right, demand, entitlement or set-off of whatever nature whether or not presently known to the Contractor or to the law arising out of or in connection with Brexit.  3. Provisional Sum Items  The Client may issue instructions for the expenditure of Provisional Sum Items.    Where an instruction in relation to the expenditure of Provisional Sum Items is given on or before the relevant Provisional Sum Key Date such instruction shall be assessed as follows:   * the Contractor shall not be entitled to any adjustment to the Completion Date or to any Key Date; and * the Contractor shall be permitted to recover its direct on-site costs and any design costs relating to the expenditure of such Provisional Sum Item and the Fee in relation to such direct on-site costs and design costs, but shall not be entitled to recover any other costs associated with the expenditure of such Provisional Sum Item including without limitation overhead and profit, prolongation and/or disruption costs.     A Project Manager’s instruction to expend any Provisional Sum Item is given after the Provisional Sum Key Date, such instruction shall be deemed to be a compensation event and shall be assessed in accordance with this contract.  4. Specified Perils  In this part of the Contract Data Specified Perils means: fire, lightning, explosion, storm, flood, escape of water from any water tank, apparatus or pipe, earthquake, aircraft or other aerial devices or articles dropped therefrom, riot and civil commotion).  The assessment of any compensation event in relation to a Specified Peril shall be completed in accordance with the provisions of the contract save that:   * the Contractor shall be entitled to an adjustment to the Completion Date and/or to any Key Date; * the effect on the Prices shall be assessed at nil.   5. Ground conditions  For the purpose of clause 60.1(12) “physical conditions” includes (but is not limited to): ground conditions and/or contamination (all or any pollutants or contaminants, including any asbestos containing material, chemical or industrial, radioactive, dangerous, toxic or hazardous substance, waste or residue (whether in solid, semi-solid or liquid form or a gas or vapour). | | | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| 1. **Liabilities and insurance** | | | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| These are additional *Client’s* liabilities | | | | | | | | | | | | | | | | | | | | |
| (1) | Insurance for all existing buildings and property existing within the Site which the Client may elect to ‘self-insure’ and in doing so accepts all of the *Client’s* associated risks arising out of or in relation to such ‘self-insurance’ and provided that the Contractor shall be responsible for the first £10,000,000 of any claim in relation to loss or damage to the existing buildings and property existing within the Site . | | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| (2) | N/A | | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| (3) | N/A | | | | | | | | | | | | | | | | | | | |
| * + The minimum amount of cover for insurance against loss of or damage to property (except the works, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the Contractor) arising from or in connection with the Contractor Providing the Works for any one event is: £10,000,000.   + The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with this contract for any one event £10,000,000   + The Contractor shall also be required to take out and maintain those insurances identified in the relevant Task Order.   + Additional clause   + The minimum level of indemnity for insurance for claims made against him arising out of the Contractor’s failure to use the skill and care normally used by professionals providing services similar to the Services in respect of each claim is £10 million for any one event. | | | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| **Resolving and avoiding disputes** | | | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| The *tribunal* is | | | | N/A | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| The *arbitration procedure* is | | | | N/A | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| The place where *arbitration* is to be held is | | | | | | | | | N/A | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| The person or organisation who will choose an arbitrator if the Parties cannot agree a choice or if the *arbitration procedure* does not state who selects an arbitrator is | | | | | | | | | | | | | | | | | | | | |
| N/A | | | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| The *Senior Representatives* of the *Client* are | | | | | | | | | | | | | | | | | | | | |
| Name (1) | | | | [     ] | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| Address for communications | | | | [     ] | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| Address for electronic communications | | | | [     ] | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| Name (2) | | | | [     ] | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| Address for communications | | | | [     ] | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| Address for electronic communications | | | | [     ] | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| The *Adjudicator* is the person chosen by | | | | | | | | | | | | | | | | | | | | |
| The Parties | | | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| The person or organisation who will choose an *Adjudicator* if the Parties cannot agree a choice is | | | | | | | | | | | | | | | | | | | | |
| The Chairman for the time being of the Technology and Construction Solicitors Association | | | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | |
| The *Adjudicator nominating body* is | | | | | | | | | | The Technology and Construction Solicitors Association | | | | | | | | | | |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | | | | |
| **Option X5: Sectional Completion** | | | | |
|  | | | | |
| The *completion date* for each *section* of the *works* is | | | | |
|  | | | | |
| *Section* | Description | | *completion date* | |
| (1) |  |  | |  |
|  | | | | |
| (2) |  |  | |  |
|  | | | | |
| (3) |  |  | |  |
|  | | | | |
| (4) |  |  | |  |
|  | | | | |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Option X5/ X7: Delay damages** | | | | |
|  | | | | |
| Delay damages for Completion of the whole of the *works* are | | | £[1,000] | per day or part thereof |
| **If Options X5 and X7 are used together**  Delay damages for each *section* of the *works* are  *section* description amount per day  1 . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .  2 . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .  3 . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .  4 . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .  Remainder of the works. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . | | | | |
| |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | | |  |  |  | | --- | --- | --- | | **Option X8: Undertakings to the *Client* or Others** | | | |  | | | | The undertakings to Others are provided to | | | |  | | | |  | | | |  | | | |  | | | | The *Subcontractor undertaking to Others* are | | | | works |  | provided to | |  |  |  | |  |  | | |  |  |  | |  | | | | The *Subcontractor undertaking to the Client* are | | | | works | | | |  | | | |  | | | |  | | | | | | | **Option X15: The *Contractor’s* design** | | | |  | | | | The *period for retention* following Completion of the whole of the *works* or earlier termination is | 12 | years | | | | | |
| |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | | |  | | --- | | **Option X16: Retention** | | The retention free amount is: REDACTED  The retention percentage is: REDACTED  The Contractor **may/may not** give the Client a retention bond (delete as applicable) | | | | | | **Option X18: Limitation of liability** | | | | |  | | | | | The *Contractor’s* liability to the *Client* for indirect and consequential loss is limited to | | | 120% of the Prices | |  | | | | | For any one event, the *Contractor’s* liability to the *Client* for loss of or damage to the *Client’s* property is limited to | | | The reinstatement value of the Client’s property | |  | | | | | The *Contractor’s* liability for Defects due to its design which are not listed on the Defects Certificate is limited to | | | 120% of the Prices | |  | | | | | The *Contractor’s* total liability to the *Client* for all matters arising under or in connection with the contract, other than excluded matters listed in X18.5, is limited to | | | 120% of the Prices | |  | | | | | The *end of liability date* is | 12 | years after Completion of the whole of the *works*. | | | | | | |
|  | | | | |
| **Option Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996** | | | | |
|  | | | | |
| The first *invoice date* is |  | | | |
|  | | | | |
| Later *invoice dates* occur on the same day of each calendar month after the first *invoice date* until all amounts due to the *Contractor* under the contract have been paid. | | | | |
|  | | | | |
|  | | | | |
| **Option Z: Additional conditions of contract** | | | | |
| 1. ZA1 Add a new clause 11.2 (12A): 2. "A Pandemic Event means: 3. i) any pandemic (including, but not limited to, the COVID-19 coronavirus outbreak and/or any mutation thereof and any other outbreak of an infectious human disease), 4. 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 5. 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 or the Contractor being unable to reasonably adequately resource the works." 6. ZA2. **Suspension/termination** 7. In the termination table in clause 90.2, insert R17A i) after R21 in the row regarding termination by the Client and ii) after Rl 7 in the row regarding termination by the Contractor . 8. Add a new clause 91.5A: 9. "Either Party may terminate if the works have been suspended for at least 60 days due to a Pandemic Event (R17 A”) . | | | | |
| The *additional conditions of contract* are the following clauses | | Clauses Z2 to Z101 in the NEC4 schedule of amendments contained within CCS Framework Reference RM6088  The clauses contained within Appendix 1 to this Contract | | |
|  | | | | |

|  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **PART TWO –** | **DATA PROVIDED BY THE *CONTRACTOR*** | | | | | | | | | | | |
|  | | | | | | | | | | | | |
| Completion of the data in full, according to the Options chosen, is essential to create a complete contract. | | | | | | | | | | | | |
|  | | | | | | | | | | | | |
| 1. **General** | | | | | | | | | | | | |
|  | | | | | | | | | | | | |
| The *Contractor is* | | | | | | | | | | | | |
| Name | | | [     ] | | | | | | | | | |
|  | | | | | | | | | | | | |
| Address for communications | | | [     ] | | | | | | | | | |
|  | | | | | | | | | | | | |
| Address for electronic communications | | | [     ] | | | | | | | | | |
|  | | | | | | | | | | | | |
|  | | | | | | | | | | | | |
| The *fee percentage* is | | [     ] | | % | | | | | | | | |
|  | | | | | | | | | | | | |
| The *working areas* are | |  | | | | | | | | | | |
|  | | | | | | | | | | | | |
| The key persons are those identified in the *key persons schedule* in | | | | | | | | | |  | | |
|  | | | | | | | | | | | | |
| The following matters will be included in the Early Warning Register | | | | | | | | | | | | |
|  | | | | | | | | | | | | |
|  | | | | | | | | | | | | |
| 1. **The *Contractor’s* main responsibilities** | | | | | | | | | | | | |
|  | | | | | | | | | | | | |
| The Scope for the *Contractor’s* design is in | | | | | | | As attached to the relevant Task Order | | | | | |
|  | | | | | | | | | | | | |
| 1. **Time** | | | | | | | | | | | | |
|  | | | | | | | | | | | | |
| The programme identified in the Contract Data is in | | | | | | | As attached to the relevant Task Order | | | | | |
|  | | | | | | | | | | | | |
| The *completion date* for the whole of the *works* is | | | | | | | As attached to the relevant Task Order | | | | | |
|  | | | | | | | | | | | | |
|  | | | | | | | | | | | | |
| **5 Payment** | | | | | | | | | | | | |
|  | | | | | | | | | | | | |
| The *activity schedule* is in | | | | | | | As attached to the relevant Task Order | | | | | |
|  | | | | | | | | | | | | |
|  | | | | | | | | | | | | |
| The tendered total of the Prices is | | | | | | | and as set out in the relevant Task Order | | | | | |
|  | | | | | | | | | | | | |
| Resolving and Avoiding Disputes | | | | | | | | | | | | |
|  | | | | | | | | | | | | |
| The *Senior Representatives* of the *Contractor* are | | | | | | | | | | | | |
| Name (1) | | | | [     ] | | | | | | | | |
|  | | | | | | | | | | | | |
| Address for communications | | | | [     ] | | | | | | | | |
|  | | | | | | | | | | | | |
| Address for electronic communications | | | | [     ] | | | | | | | | |
|  | | | | | | | | | | | | |
| Name (2) | | | | [     ] | | | | | | | | |
|  | | | | | | | | | | | | |
| Address for communications | | | | [     ] | | | | | | | | |
|  | | | | | | | | | | | | |
| Address for electronic communications | | | | [     ] | | | | | | | | |
|  | | | | | | | | | | | | |
|  | | | | | | | | | | | | |
| Data for the Shorter Schedule of Cost Components[[3]](#footnote-4) | | | | | | | | | | | | |
|  | | | | | | | | | | | | |
| The *people rates* are | | | | | | | | | | | | |
| category of person | | | | | | | |  | unit | |  | rate |
|  | | | | | | | |  |  | |  |  |
|  | | | | | | | | | | | | |
|  | | | | | | | |  |  | |  |  |
|  | | | | | | | | | | | | |
|  | | | | | | | |  |  | |  |  |
|  | | | | | | | | | | | | |
|  | | | | | | | |  |  | |  |  |
|  | | | | | | | | | | | | |
| The published list of Equipment is the edition current at the Contact Date of the list published by | | | | | | | | | | | | |
|  | | | | | | | | | | | | |
|  | | | | | | | | | | | | |
| The percentage for adjustment for Equipment in the published list is | | | | | | | |  | | | % (state plus or minus) | |
|  | | | | | | | | | | | | |
| The rates for other Equipment are | | | | | | | | | | | | |
| Equipment | | | | |  | rate | | | | | | |
|  | | | | |  |  | | | | | | |
|  | | | | | | | | | | | | |
|  | | | | |  |  | | | | | | |
|  | | | | | | | | | | | | |
|  | | | | |  |  | | | | | | |
|  | | | | | | | | | | | | |
|  | | | | |  |  | | | | | | |
|  | | | | | | | | | | | | |
| The rates for Defined Cost of manufacture and fabrication outside the Workings Areas by the *Contractor* are | | | | | | | | | | | | |
| category of person | | | | |  | rate | | | | | | |
|  | | | | |  |  | | | | | | |
|  | | | | | | | | | | | | |
|  | | | | |  |  | | | | | | |
|  | | | | | | | | | | | | |
|  | | | | |  |  | | | | | | |
|  | | | | | | | | | | | | |
|  | | | | |  |  | | | | | | |
|  | | | | | | | | | | | | |
| The rates for Defined Cost of design outside the Workings Areas are | | | | | | | | | | | | |
| category of person | | | | |  | rate | | | | | | |
|  | | | | |  |  | | | | | | |
|  | | | | | | | | | | | | |
|  | | | | |  |  | | | | | | |
|  | | | | | | | | | | | | |
|  | | | | |  |  | | | | | | |
|  | | | | | | | | | | | | |
|  | | | | |  |  | | | | | | |

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

**Appendix 3**

**The Sites (to the extent known)**

*Blyth:*

*Carlisle:*

*York:*

*Durham(X2):*

*TBC*

*Lincoln:*

*TBC*

*Hamilton*

*TBC*

**Appendix 4**

Management Services

1. Working together
   1. In relation to the carrying out of the Works and any obligations under this Contract, the Parties shall work together in order to achieve the Objectives. To that end the Client and the Contractor agree they shall each give to, and welcome from, the other, and the other Project Participants, feedback on performance and shall draw each other's attention to any difficulties and shall share information openly, at the earliest practicable time. They shall support collaborative behaviour and address behaviour that does not comply with the Objectives.
   2. During the Delivery Term the Contractor shall:
      1. collaborate with the Client and the Project Team to achieve the Objectives;
      2. work with the Client in a supportive manner;
      3. produce such reports and documentation as may reasonably be requested from time to time by the Client;
      4. work collectively with the Client and the Project Team to support the delivery of the Works on a best for project basis;
      5. develop and use common systems and processes with the Client and the Project Participants;
      6. discuss costings of the Works on an open-book basis;
      7. work with the Client to agree acceptable processes for demonstrating value for money and understand the key drivers for value for money; and
      8. give advice, information and opinion fully, openly and objectively to the Client and the Project Team.
   3. The role of the Project Team is to guide the successful delivery of the Project and the Works. The Project Team will meet at regular intervals to share information relating to the Project and the Works, to consider the risks and opportunities affecting the Project and the Works, to consider how best to coordinate and manage the Project and the Works, to review progress and to make any decisions necessary for the successful delivery of the Project and the Works which are then communicated to all relevant Project Participants.
   4. In the event of any dispute between the Parties and/or the members of the Project Team, it is the intention that any court or adjudicator or other forum to which the dispute is referred shall take account of the Objectives and of the Parties' adherence to it when making any award.
   5. The Client and the Contractor shall co-operate with the other members of the Project Team in the provision of information with a view to ensuring that relevant information is provided to all Project Participants needing this information in a timely fashion and with a view to ensuring that all relevant dates in the Project Programme will be met.
   6. Subject always to the terms of any Task Order, if the Contractor identifies any ambiguities or discrepancies in any information provided by the Client or any other member of the Project Team, the Contractor shall agree how to resolve them after consultation, if appropriate, with the Project Team. If no agreement is reached, the Client shall issue an instruction.
   7. The Client hereby elects to be treated as the only client in respect of the Works for the purposes of the CDM Regulations.
   8. The Contractor shall act as “principal contractor” in respect of the Works for the purposes of the CDM Regulations.
2. Allocation of risks
   1. The Project Team shall carry out, complete and populate the Project Risk Register to identify:
      1. potential risks relating to the delivery of the Project, the occurrence of which are capable of adversely affecting the time for completion, cost or quality of the Project;
      2. the probability of these risks occurring;
      3. a financial estimate of the most likely consequences of each risk occurring; and
      4. the actions agreed to be taken to mitigate, manage or remove each risk and the individual responsible for reporting on the progress of the actions agreed.
   2. The Project Team shall regularly update and amend the Project Risk Register (seeking the assistance of other Project Participants as considered appropriate) and shall arrange regular meetings with the Client and members of the Project Team to review and update the Project Risk Register and to consider:
      1. any new risks that have arisen since the date of the last review;
      2. the steps taken to prevent/mitigate previously identified risks;
      3. risks which have been successfully prevented/mitigated (which can be removed from the Project Risk Register); and
      4. the prioritisation of all continuing risks and agreement of an action plan in respect of, and risk owners for, all risks prioritised as serious risks.
3. Problem solving
   1. Without prejudice to option W2, as soon as a Party is aware of any difference or dispute with the Client and the Contractor arising out of or in connection with the Works (a “**Difference**”) such Party will give notice to the other.
   2. Upon receipt of the notice in paragraph 4.1, there shall be a meeting between respective representatives of the Client and the Contractor having authority to settle the matter. Where such meeting achieves a solution acceptable to the Client and the Contractor, such solution shall be implemented by the Client and the Contractor.
   3. If such meeting fails to achieve a solution acceptable to the Client and the Contractor, the Difference shall be escalated to the Senior Representatives and within 10 Business Days of the meeting referred to in paragraph 7.2 the Senior Representatives shall meet to discuss the Difference. Where such meeting achieves a solution acceptable to the Client and the Contractor, such solution shall be implemented by the Client and the Contractor.
4. Fee
   1. The Contractor agrees that the fee for the Management Services shall be deemed to be included within the Fee.

**Appendix 5**

Rates and Prices

1. Rates and Prices where are is no analogous rate
   1. Where the Contractor has, in its Task Order Proposal for a relevant Proposed Task, identified that there are no analogous Rates and Prices for any element of the Works, then the Parties shall seek to agree new Rates and Prices as follows:
      1. the Parties shall, within five (5) Business Days of receipt by the Client of the relevant Task Order Proposal, meet to discuss whether there is any sufficiently detailed cost element within the Price List to derive new Rates and Prices for the whole or the relevant part of the Works;
      2. where the Parties:
         1. agree that there is no sufficiently detailed cost element contained within the Price List to derive new Rates and Prices; or
         2. fail to agree a new set out Rates and Prices,

then the provisions of paragraph 2 shall apply to determine the applicable price(s) for the whole or the relevant part of such relevant Works; and

* + 1. any new Rates and Prices agreed or determined pursuant to this Appendix shall:
       1. include pricing for all risks associated with the relevant Works; and
       2. exclude any costs in respect of which the Contractor is entitled to recover under any other provision of this Contract.
  1. Where any new Rates and Prices are agreed or determined pursuant to this Appendix, such new Rates and Prices and shall be incorporated into the Price List and shall apply to the calculation of the costs for the whole or the relevant part (as the case may be) of the relevant Works for all subsequent Task Order Proposals.

1. Determining new Rates and Prices
   1. The Client shall be entitled to propose that the rates and charges charged by third party suppliers for analogous tasks undertaken under its contractual arrangements with such third party suppliers (from time to time) be used.
   2. Where the Contractor does not agree to the rates and charges proposed by the Employer pursuant to paragraph 2.1 within five (5) Business Days of receipt of such proposed rates, then the Parties may either:
      1. agree to refer the matter for determination by the Adjudicator pursuant option W2; or
      2. follow the competitive tendering procedure set out in paragraph 3,

in either case to set the new Rates and Prices for the whole or the relevant part of the relevant Works.

1. Procedure
   1. The following principles are to govern each tendering exercise initiated pursuant to this paragraph 3:
      1. the object of the tender is to obtain open-market rates and prices;
      2. the process is to be genuinely competitive;
      3. the evaluation of tenders is to be fair, robust and transparent; and
      4. tendered prices are to be presented in a form that demonstrates value for money for the Works to which they relate.
   2. The Contractor shall be responsible for the carrying out of the tendering procedure in accordance with this paragraph 3.
   3. The Contractor shall procure that tenderers will be invited by open invitation or from no fewer than three (3) suitably qualified, experienced and willing contractors.
   4. The Contractor shall discuss and agree with the Client those contractors who it proposes to invite to tender and the Client may require other potential contractors to be invited to tender as part of such discussions.
   5. The Contractor will provide the Client with all relevant background information on the tenderers it proposes pursuant to paragraph 3.4, in order to demonstrate such tenderers' capability (including technical and financial capability) and capacity to undertake the relevant work or supply.
   6. The Contractor shall:
      1. prepare all necessary tender documentation;
      2. provide copies to the Client for review and comment before despatch, allowing the Client a reasonable time for review prior to such proposed despatch; and
      3. where applicable, revise such tender documentation to take into account the Client's comments pursuant to paragraph 3.6.2.
   7. The Contractor shall:
      1. prepare a tender evaluation methodology prior to the tender issue date and issue such methodology to the Client for review and comment, allowing the Client a reasonable time for review prior to such proposed despatch; and
      2. where applicable, revise such evaluation methodology to take into account the Client's comments pursuant to paragraph 3.7.1.
   8. The Contractor shall ensure that all prices submitted as part of any tender submission will be calculated (to the extent practicable) on the same basis and using the same assumptions as applied to derive the Unit Rates.
   9. The Contractor shall invite the Client to attend at all tender openings and any subsequent interviews, value engineering workshops or other meetings with all or any (as applicable) of the tenderers.
   10. The Contractor shall provide copies of all issued tenders and submissions received from tenderers, together with copies of all relevant supporting information, minutes of meetings and reports in respect of each tender, (such copies to be delivered to the Client as soon as possible from the date the Contractor produced, issued or received the same (as the case may be)).
   11. The Contractor shall prepare a report on each submitted tender response, disclosing the basis upon which the evaluation was carried out (including details of scoring), and including a recommendation as to the tender which represents, having regard to the relevant agreed tender evaluation criteria, fair open market rates and which, in the Contractor's opinion offers value for money and why it should be utilised in order to determine the relevant Rates and Prices for the relevant Works for the purposes of this Appendix.
   12. The Contractor and the Client shall discuss such tender report and shall agree which tender should be utilised in order to determine the relevant Rates and Prices for the relevant Works for the purposes of this Appendix.
   13. If the Contractor and the Client cannot agree which tender should be utilised in order to determine the relevant Rates and Prices for the relevant Works, the matter may be referred by either party to the dispute resolution procedure set out in option W2.
   14. Following agreement to a tender by the Contractor and the Client (as referred to in paragraph 3.12) or, if paragraph 3.13 applies, upon determination pursuant to the dispute resolution procedure, the relevant Rates and Prices for the relevant Works shall become the relevant Rates and Prices for the purposes of this Appendix.
   15. Without prejudice to any other provision of this Appendix, the Contractor shall provide to the Client:
       1. market advertisements proposed for any tender exercise;
       2. technical specifications relevant to any tender;
       3. copies of all documentation and communications submitted by a tenderer relating to a tender; and
       4. the tender evaluation records and reports prepared by the Contractor,

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

* 1. The Client may enter onto any premises of the Contractor (which any of them own/use for the purposes of their businesses) at all reasonable times to observe, inspect and satisfy itself as to the adequacy of the carrying out of any tender in accordance with the procedure set out in this Appendix.
  2. The Contractor shall indemnify and keep the Client fully indemnified at all times from and against all legally enforceable claims, demands or notices which may be brought against the Client and from and against all losses and fines which the Client may suffer or incur in relation to any such claims, demands or notices which occur as a result of a breach of this Appendix by the Contractor and/or any claim made by any person (including, without limitation, a tenderer or prospective tenderer) that is not awarded a contract pursuant to any tender governed by the procedure set out in this Appendix.

Price List

**Appendix F**

**REEP 2 APPENDIX F SCHEDULE OF RATES**

REDACTED

**Appendix 6**

Parent Company Guarantee

This deed is made the day of 2021

Between:

1. Kier Limited (company number 01611136 ) whose registered office is situated at 81 Fountain Street, Manchester, England, M2 2EE (the Guarantor) of the one part; and
2. The Secretary of State for Work and Pensions ofCraxton House, Tothill Street, London, SW1H 9NA acting as part of the Crown (the Client) of the other part.

Background:

1. The Client has entered into a contract dated [●] (**Contract**) with [●] (Contractor) to enable the Client to instruct the Contractor to carry out certain works (the **Works**) as set out in a task order (**Task Order**).
2. The Guarantor as the holding company of the Contractor guarantees inter alia the due performance of all obligations by the Contractor under or in connection with the Contract and/or any Task Order in the terms of this Deed.

It is agreed as follows:

1. The Guarantor irrevocably and unconditionally:
   1. guarantees and covenants to the Client both as guarantor and principal obligor:
      1. the proper and punctual performance and observance by the Contractor of its obligations, undertakings, duties, covenants, warranties and responsibilities under or in connection with the Contract and/or any Task Order (together the Obligations) and payment and discharge of all liabilities due, owing or incurred or payable and unpaid by the Contractor to the Client pursuant to the Contract as a result of any breach; and
      2. that it will within twenty (20) working days of the Client's written demand stating that the Contractor has failed to perform the Obligations proceed or cause to be proceeded with the performance and discharge of the Obligations;
   2. undertakes as a separate and primary obligor to indemnify and keep indemnified the Client, on demand from and against all sums, liabilities, awards, losses, damages, costs, charges, interest and reasonable and properly incurred expenses (including any legal expenses and disbursements plus VAT) suffered or incurred or may suffer or incur by the Client under or arising out of the Contract and/or any Task Order in accordance with its terms or for which the Contractor is otherwise liable to the Client by reason or in consequence of any failure to perform or observe the Obligations;

provided that the Guarantor's liability and obligation under this Deed shall be no greater (either in scope and duration) than those of the Contractor under the Contract and/or any Task Order (except in relation to any costs incurred in enforcing this Deed). For the avoidance of doubt, the Client may not start proceedings against the Guarantor under this Deed in respect of any claim if any proceedings against the Contractor in respect of that claim would be statute-barred.

1. Any demand for payment of a liability under this Deed may be made by the Client and the Guarantor shall pay and discharge such liability (without any set off, lien or counterclaim, deduction or withholding howsoever arising, except for those required by law) within twenty (20) working days of service of such demand by payment to such account as stated in the Client's demand notice.
2. Any notice given to the Guarantor under this Deed shall be in writing and shall be delivered personally or sent by recorded delivery to the registered office of the Guarantor and such notice shall be deemed to have been delivered and received at the actual time of delivery if delivered personally or at the time of receipt if sent by recorded delivery.
3. The obligations of the Guarantor under this Deed shall not be impaired, discharged or released or otherwise affected by:
   * 1. any time, waiver or indulgence granted to the Contractor or any other person;
     2. any termination of, variation of or supplement or amendment to the Contract and/or any Task Order;
     3. any extension to the Contract and/or to the Delivery Term (as defined in the Contract);
     4. the issue of any Task Order in accordance with the Contract;
     5. any composition or arrangement made by the Client with the Contractor or any other person; or
     6. any variation or release of, or the failure or neglect to perfect or enforce, any right, remedy or security from the Contractor or any other person;
     7. any act, omission, matter or thing whatsoever whereby the Guarantor as guarantor only would or might have been released (in whole or in part) or which would or might have afforded the Guarantor any legal or equitable defence;
     8. the Contractor ceasing to exist or the receivership, liquidation, insolvency, administration, reorganisation, dissolution, amalgamation, reconstruction or any analogous matter relating to the Contractor or the Contract and/or any Task Order or any of the liabilities of the Contractor under the Contract and/or any Task Order being disclaimed or any change in constitution or loss of corporate identity by the Contractor, the Guarantor or the Client;
     9. the giving of any consent to assignment, transfer or novation or the making of any assignment, transfer or novation of the Contract (or any part thereof) and/or any Task Order (or any part thereof);
     10. any legal limitation, disability, irregularity, defect or informality or any fact or circumstance on the part of or in relation to the Contractor (whether known to the Client or not) which would or might render any sum of money irrecoverable from the Contractor or all or any of the obligations, undertakings, duties, covenants, warranties and responsibilities under or in connection with the Contract and/or any Task Order unenforceable or any want of power or capacity of or by or on the part of the Client or want of authority of any director, manager, officer or other person appearing to be acting for the Contractor;
     11. any other act, neglect, event, limitation or omission which would or might but for this provision operate to impair, discharge or modify the Guarantor's liability hereunder in whole or in part and, notwithstanding all or any such matters the Obligations shall be and remain enforceable against the Guarantor as principal obligor.
4. From the date or dates upon which any claim is properly made against the Guarantor under this Deed until the amount so claimed is paid under the Contract and/or any Task Order, the Guarantor shall not:
   * 1. exercise any right of contribution, set-off, counterclaim or indemnity between the Guarantor and the Contractor or exercise any other rights or legal remedies, including claiming or recovering by the institution of proceedings or the threat of proceedings or otherwise against the Contractor, any such sum from the Contractor; and/or
     2. claim or prove as creditor or otherwise in competition with the Client in respect of any money owing to it by the Contractor for or on account of the Guarantor's liability under this Deed, in the event of any bankruptcy, liquidation or other insolvency proceedings relating to the Contractor.
5. Any notice given to the Guarantor under this Deed shall be in writing and shall be delivered personally or sent by recorded delivery to the registered office of the Guarantor and such notice shall be deemed to have been delivered and received at the actual time of delivery if delivered personally or at the time of receipt if sent by recorded delivery.
6. Subject always to clause 1.2, the liability and obligation of the Guarantor under this Deed shall be a continuing guarantee and indemnity and shall cease (other than in respect of claims in respect of which legal proceedings whether in court, arbitration or other tribunal have already been commenced by the Client against the Guarantor) upon the expiration of 12 years from the date of Completion (as defined under the Contract) of the final Task Order after which this Deed will be of no further effect.
7. The Guarantor shall be bound by all court judgments or arbitration awards or decisions of any other tribunal relating to the Contract and/or any Task Order or any dispute or matter between the Client and the Contractor in connection with the Contract and/or any Task Order.
8. Nothing in this Deed confers or purports to confer on any third party any benefit or any right to enforce any term of this Deed which that third party would not have had but for the Contracts (Rights of Third Parties) Act 1999.
9. The Client may at its discretion assign or transfer the entire benefit of this Deed without the Guarantor’s consent to any party listed in this clause 10 and any such assignment or transfer shall not release the Guarantor from its liability under this Deed:
   * 1. a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:
        1. Government Department;
        2. Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive or tribunal);
        3. Non-Ministerial department; or
        4. Executive Agency,

together and each a “Central Government Body”); or

* + 1. a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Client.

1. The Client shall be entitled on two occasions only to assign or transfer the entire benefit of this Deed at any time to any person not referred to in clause 10 without the consent of the Guarantor and any such assignment or transfer shall not release the Guarantor from its liability under this Deed. The Client shall provide written notice of any such assignment. Any further assignment requires the Guarantor’s consent (not to be unreasonably withheld or delayed).
2. This Deed shall in all respects be construed or interpreted in accordance with Law of England and Wales and the Guarantor and the Client irrevocably submit to the jurisdiction of the English Courts.

In witness whereof this Deed has been executed delivered on the date of this document.

**Appendix 7**

Performance KPIs

REDACTED

1. Note: if the Task Order is for any design, the description will need to clearly set out what that design is and what it is for. [↑](#footnote-ref-2)
2. M&R note: include any Provisional Sum Key Date. [↑](#footnote-ref-3)
3. To be completed using the rates in the CCS framework. [↑](#footnote-ref-4)