

**Dated**

**April 2021**

- (1) EMPLOYER: The Government Property Agency (GPA)**
- (2) PRINCIPAL CONTRACTOR: BAM Construction Ltd**

**Pre-Construction Services Agreement**

**For the delivery of Pre-Construction Services in relation to the fit-out of CAT-A and CAT-B Refurbishment of GPA offices at Temple Quay House 13,000m<sup>2</sup> located over 6 floors with basement parking using the JCT Design and Build Contract Standard Building Contract Without Quantities (SBC XQ), 2016 edition.**

## PRE CONSTRUCTION SERVICES AGREEMENT

THIS AGREEMENT is made the                      day of                      2021

### BETWEEN:

(1)     **The Government Property Agency** of 10 Victoria Street, London, SW1H 0NN of the one part (hereinafter called the “Employer”);

(2)     **BAM Construction Ltd** which is a company registered in England under company number [insert company no.] and whose registered offices is at **Redacted Under FOIA, Section 40, Personal Information** of the other part (hereinafter called the “Contractor”).

Collectively referred to as the “Parties”.

### BACKGROUND

(A)     The Contractor is a party to the Framework Agreement and the Employer is entitled to enter into Underlying Contracts pursuant to the Framework Agreement.

(B)     The Employer has accepted the First Stage Tender submitted by the Contractor for the provision of the Pre-Construction Services for the Project and the Parties agree the Contractor shall carry out the Pre-Construction Services in accordance with the terms of this Agreement.

(C)     The Employer may wish to appoint the Contractor to carry out the Works and wishes to secure agreement on the terms on which that appointment may be made.

### AGREED TERMS

#### 1     INTERPRETATION

- 1.1     In this agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Framework Agreement and the Proposed Contract Documents except that the following words and expressions shall have the following meanings.

##### Definitions:

- 1.1.1     Additional Services: services performed by the Contractor under this agreement, in connection with the Project or the Works, that are additional to the Pre-Construction Services.
- 1.1.2     BIM Information Manager: the person having responsibility for managing and maintaining the Project’s building information model, as identified.
- 1.1.3     BIM Protocol: the building information model protocol document attached at Schedule 6.
- 1.1.4     CDM Regulations: the Construction (Design and Management) Regulations 2015 (SI 2015/51).
- 1.1.5     Construction Products Regulations: the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products

Regulation (305/2011/EU), the Construction Products Regulations 1991 (SI 1991/1620) and the Construction Products Directive (89/109/EC).

- 1.1.6 Contract: the final contract (if any) to be entered into between the Employer and the Contractor in relation to the Works and the Project in the form of (or based on) the Proposed Contract Documents.
- 1.1.7 Contract Sum: the sum to be agreed by the parties under this agreement and included as the contract sum in the Contract.
- 1.1.8 Deleterious: materials, equipment, products or kits that are generally accepted, or generally suspected, in the construction industry at the relevant time as:
  - (a) posing a threat to the health and safety of any person; or
  - (b) posing a threat to the structural stability, performance or physical integrity of the Works or any part or component of the Works; or
  - (c) reducing, or possibly reducing, the normal life expectancy of the Project or any part or component of the Works; or
  - (d) not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément; or
  - (e) having been supplied or placed on the market in breach of the Construction Products Regulations.
- 1.1.9 Employer's Agent: AECOM Ltd or such other person as may be appointed by the Employer to act as employer's agent in connection with the Contract from time to time.
- 1.1.10 Employer's Requirements: the drawings, Project Cost Plan, details and specifications of materials, goods and workmanship and other related documents that have been prepared or will be prepared by or on behalf of the Employer in relation to the requirements of the Works, as referred to in Schedule 5.
- 1.1.11 First Stage Tender: the Contractor's tender for the Pre-Construction Services contained in Schedule 5;
- 1.1.12 First Stage Tender Documents: the Mini-Competition Information and the First Stage Tender which are contained in Schedule 5;
- 1.1.13 Framework Agreement: the framework agreement entered into between the Contractor and the Employer dated 19<sup>th</sup> June 2017;
- 1.1.14 Key Personnel: the persons identified in Paragraph 4 of Schedule 1, or as otherwise agreed under Clause 3.3.

- 1.1.15     Material: all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Pre-Construction Services, the Project and the Works and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Pre-Construction Services, the Project and the Works.
- 1.1.16     Mini-Competition Information: the mini competition information contained in Schedule 5;
- 1.1.17     Notice to Proceed: a notice to proceed issued by the Employer to the Contractor under Clause 6.1 in the form set out in Schedule 4.
- 1.1.18     PCSA Key Performance Indicators or PCSA KPIs: means the performance measurements and targets set out in Schedule 12.
- 1.1.19     PCSA KPI Target: means the acceptable performance level for a PCSA KPI as set out in relation to each PCSA KPI.
- 1.1.20     PCSA Retention: the amount which may be deducted by the Employer in accordance with paragraph 10 of Schedule 3.
- 1.1.21     PCSA Retention Percentage: 0%
- 1.1.22     Permitted Uses: the tendering, re-tendering, design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, building information modelling and repair of the Works (and the completed Works), whether or not those Works are carried out by the Contractor.
- 1.1.23     Pre-Construction Fee: the sum set out in Part 1 of Schedule 3 to be paid in accordance with the schedule of payments set out in Part 1 of Schedule 3.
- 1.1.24     Pre-Construction Period: that period of the Project up to and including the date of issue of any Notice to Proceed.
- 1.1.25     Pre-Construction Services: the services required to be performed by the Contractor as set out in Part 1 of Schedule 2.
- 1.1.26     Principal Designer: the Contractor or such other person as may be appointed by the Employer to act as principal designer under the CDM Regulations.
- 1.1.27     Professional Consultants: the professional consultants listed in Paragraph 3 of Schedule 1 and any other professional consultants from time to time engaged by the Employer in connection with the Project.

- 1.1.28 Programme: the programme at Schedule 8.
- 1.1.29 Project: the development of the Property for the purposes identified in Paragraph 2 of Schedule 1.
- 1.1.30 Project Cost Plan: the budget for the Project prepared by the Quantity Surveyor and agreed by the Employer.
- 1.1.31 Property: the property identified in Paragraph 1 of Schedule 1.
- 1.1.32 Proposed Contract Documents: the first stage tender documents listed in and attached at Schedule 5 together with any amendments, alterations or variations to them agreed between the parties.
- 1.1.33 Quantity Surveyor: AECOM Ltd or such other person as may be appointed by the Employer to act as quantity surveyor in connection with the Project or the Works from time to time.
- 1.1.34 Relevant Consents: any approval, permission or consent required under Statutory Requirements in order to undertake and complete the Project.
- 1.1.35 Standard of Care: all the reasonable skill, care and diligence to be expected of a qualified and experienced architect (or other appropriate professional designer) undertaking the design of works similar in scope and character to the Works.
- 1.1.36 Standards: any standards, policies and procedures applicable to the Pre-Construction Services as specified by the Employer in the Material;
- 1.1.37 Underlying Contracts: those contracts for the delivery of Fit Out Works called-off under the Framework Agreement;
- 1.1.38 Works: the works and the services required for the design, construction, completion and commissioning of the Project.
- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the schedules.
- 1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 This agreement shall be binding on, and ensure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to a party shall include that party's personal representatives, successors and permitted assigns.
- 1.9 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.10 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.11 Any reference to a party's consent or approval being required is to a consent or approval in writing, which must be obtained before the relevant action is taken or event occurs.
- 1.12 Any obligation on a party not to do something includes an obligation not to agree that thing to be done.
- 1.13 A reference to writing or written includes fax and email, save that the following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or Royal Mail Signed For™ 1<sup>st</sup> Class:
- 1.13.1 any termination notice under Clause 11;
  - 1.13.2 any notice in respect of suspension (Clause 10); and
  - 1.13.3 any notice of dispute.
- Failure to send any original notice by personal delivery or recorded delivery as set out above shall invalidate the service of the related e-mail transmission.
- 1.14 References to clauses and schedules are to the clauses and schedules of this agreement and references to paragraphs are to paragraphs of the relevant schedule.
- 1.15 A reference to this agreement or to any other agreement or document referred to in this agreement is a reference to this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.
- 1.16 Unless this agreement expressly provides otherwise, a reference to the Property or the Project is to the whole and any part of it.
- 1.17 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.18 Terms defined in the Proposed Contract Documents have the same meaning in this agreement as in the Proposed Contract Documents unless the meaning

given in the Proposed Contract Documents is different to, or conflicts with, the meaning given in this agreement, in which case the meaning given in this agreement prevails.

## **2 DURATION AND EFFECT OF THIS AGREEMENT**

- 2.1 The Parties' obligations under this agreement start on the date of this agreement or, if earlier, the date on which the Contractor commenced performance of the Pre-Construction Services until the earlier of:
  - 2.1.1 the execution and completion of the Contract; or
  - 2.1.2 the Contractor or Employer issuing a notice of termination of this agreement under Clause 11.
- 2.2 Before execution and completion of the Contract, the rights and obligations of the Parties in relation to the Works shall be governed by the provisions of this agreement supplemented by the Proposed Contract Documents. If there is any conflict or difference between this agreement and the Proposed Contract Documents, this agreement prevails.
- 2.3 On the execution and completion of the Contract, the Parties' respective rights and liabilities in respect of all matters with which this agreement is concerned (including any design performed or any work carried out or order placed under Clause 4.3) shall be subsumed into and be subject to the Contract.
- 2.4 The following documents shall be deemed to form and be read and construed as part of this Agreement:
  - 2.4.1 These terms and conditions of this Agreement;
  - 2.4.2 Schedules 1 - 12.
- 2.5 Should there be any ambiguity or conflict in or between the documents comprising this Agreement, the priority of the documents is in accordance with the following sequence:
  - 2.5.1 The terms and conditions of the Framework Agreement
  - 2.5.2 These terms and conditions of this agreement;
  - 2.5.3 The Proposed Contract Documents;
  - 2.5.4 First Stage Tender Documents; and
  - 2.5.5 Any other Schedule forming part of this Agreement and the order of precedence of such documents shall be decided by the Employer.
- 2.6 Subject to Clause 2.5 above, the Parties agree that they will comply with the terms of the Framework Agreement.

### 3 PRE-CONSTRUCTION PERIOD

- 3.1 The Contractor warrants and undertakes that it shall:
  - 3.1.1 comply with this agreement and the Proposed Contract Documents;
  - 3.1.2 carry out and fulfil, in all respects, the duties of a principal contractor under the CDM Regulations;
  - 3.1.3 ensure that the Key Personnel maintain a material involvement in the Pre-Construction Services;
  - 3.1.4 allocate personnel of sufficient numbers and qualifications to perform the Pre-Construction Services, deploying as a minimum the personnel and resources listed in Part 2 of Schedule 2;
  - 3.1.5 perform all of its obligations under this agreement in a timely manner and shall provide the Pre-Construction Services in accordance with the Programme (including, but not limited to, the agreed cashflow forecast within that Programme), the outputs and due dates identified in the Specification or as agreed by the Parties and meet or exceed the Minimum Standards of Reliability and Standards; and
  - 3.1.6 not specify for use anything Deleterious at the time of specification.
- 3.2 The Contractor warrants and undertakes that it shall exercise the Standard of Care:
  - 3.2.1 when performing the Pre-Construction Services; and
  - 3.2.2 to comply with the BIM Protocol.
- 3.3 So far as is reasonably possible, the Contractor shall not change the identity of the Key Personnel without the Employer's prior consent.
- 3.4 Nothing in this agreement shall prevent or restrict the Employer from entering into negotiations or contracting with any other contractor at any time in relation to the Project.
- 3.5 The Employer shall within a reasonable time:
  - 3.5.1 comply with any reasonable request from the Contractor for information in the Employer's possession or control, which is relevant to the Contractor's obligations under this agreement (including the Pre-Construction Services) and which has not previously been provided to the Contractor; and
  - 3.5.2 give instructions or approvals and make decisions (or procure that the Employer's Agent or the Professional Consultants give instructions or approvals and make decisions) as reasonably requested by the Contractor, to allow the Contractor to comply



with its obligations under this agreement (including performing the Pre-Construction Services).

- 3.6 The Contractor shall act as the BIM information manager for the Project, as more fully set out in the [BIM Protocol GPA-FG-ZZ-XX-RP-IM-0003\_Briefing Note\_PO2].
- 3.7 The Contractor shall at all times meet the Standards during the term of this agreement and the term of any subsequent Contract between the Parties in connection with the Works and the Project.

#### **4 ADDITIONAL SERVICES, WORKS AND ORDERS**

- 4.1 In placing orders, executing work, delegating or sub-contracting the Pre-Construction Services or the Works, or carrying out any other function under this agreement, the Contractor shall comply with the Employer's instructions and the procedures and obligations referred to in the Pre-Construction Services and the Proposed Contract Documents.
- 4.2 The Employer may instruct the Contractor to carry out Additional Services. The Contractor shall perform those Additional Services. As a condition precedent to the Contractor's entitlement to any additional payment in connection with those Additional Services, the Contractor shall notify the Employer if it will require additional payment for those services within ten Business Days of receipt of the Employer's notice. That notice shall state the total sum the Contractor requires to perform those Additional Services. On receiving such a notice from the Contractor, the Employer may cancel its instruction, at no cost to the Employer, the Contractor shall not be paid for those Additional Services nor the preparation of providing the notice, and the Contractor shall not perform those Additional Services.
- 4.3 The Contractor may (with the prior consent of the Employer) and shall (if so instructed by the Employer or the Employer's Agent) place a specific order or perform a specific item of work comprising part of the Works (including any design of the Works) before the issue of any Notice to Proceed provided that, unless the Employer expressly so directs, the Contractor shall not place an order or commence any item of work until the sum forming part of the Contract Sum in respect of that order or item has been agreed in writing between the Employer and the Contractor.
- 4.4 Any order or item of work referred to in Clause 4.3 shall be carried out in accordance with the Proposed Contract Documents.
- 4.5 Where the Contractor wishes to sub-contract any of the Pre-Construction Services, it must obtain the prior written consent of the Employer Organisation. The decision of the Employer to consent or not shall be at its entire discretion, acting in its interest only.
- 4.6 Without affecting the Contractor's obligations under the Proposed Contract Documents, the Contractor shall:
  - 4.6.1 be responsible for the acts and activities of its Sub-Contractors, and its liability to the Employer shall not in any way be reduced,

qualified, released or diminished by the Employer's approval of any list, design, document, material, programme, sub-contract, supply agreement, order, sub-contractor or supplier;

- 4.6.2 ensure that any Sub-Contractor appointed during the Pre-Construction Period in relation to any element of the design of the Works shall provide a collateral warranty or shall grant third party rights as provided for, and in favour of the parties identified in, the Proposed Contract Documents;
  - 4.6.3 ensure that any Sub-Contract entered into in relation to the Works during the Pre-Construction Period contains a clause that permits its termination if the Employer does not issue a Notice to Proceed;
  - 4.6.4 itself, and shall procure that any Sub-Contractor appointed by it in relation to the Works during the Pre-Construction Period shall, on any termination of this agreement by the Employer, consent to and (if requested by the Employer or the Contractor) effect the novation of their respective Sub-Contract and any other similar document to the Employer or any person that the Employer nominates; and
  - 4.6.5 give the Employer a copy of any Sub-Contract, and any other similar document within three Business Days of the Employer's request to do so.
- 4.7 The Contractor shall where required participate in joint initiatives with other contractors and third parties to establish a common and harmonised supply chain. The common and harmonised supply chain may be designed to secure:
- 4.7.1 a clear methodology for surveys, design (as applicable), manufacture, supplies, installation, delivery and other activities including achieving sustainability;
  - 4.7.2 best value, improved prices, warranties and other added value;
  - 4.7.3 integrated briefs and a consistent approach to ordering;
  - 4.7.4 structures of joint performance reviews agreed KPIs and targets;
  - 4.7.5 long-term commitments in the achievement of agreed KPI targets;
  - 4.7.6 the operation of full processes and procedures for continuous improvement for the Works;
  - 4.7.7 terms and conditions reasonably acceptable to the Contractor and other third parties including without limitation any suppliers;
  - 4.7.8 reduced number of material components used and move towards standardisation to reduce subsequent maintenance
  - 4.7.9 the application of any discount that the Contractor may receive in relation to any project or Works carried out in its Lot, to all works carried out by the Contractor in another Lot; and

4.7.10 the delivery of efficiency savings.

In order to further the objectives in this Clause 4.7 the Contractor shall provide and share such reasonably necessary information regarding its own supply chain (subject always to the duty of confidentiality).

## **5 PRE-CONSTRUCTION FEE AND PAYMENT**

5.1 The Employer shall pay the Contractor the Pre-Construction Fee in accordance with the procedure set out in Schedule 3.

5.2 If the Contractor has notified the Employer that it will require additional payment for Additional Services under Clause 4.2 and the Employer has not cancelled its instruction to carry out those Additional Services under Clause 4.2, the Employer shall pay the Contractor the sum set out in the Contractor's notice or such other sum agreed between the parties for those Additional Services. If the parties do not agree a sum, the Employer shall pay the Contractor a fair and reasonable sum taking into account any rates and prices agreed between the parties for any Additional Services and any rates and prices used to calculate the Pre-Construction Fee. The Contractor shall be entitled to claim payment, by reference to the proportion of Additional Services carried out in accordance with this PCSA, from the next payment date following commencement of those Additional Services for payment of an instalment of the Pre-Construction Fee, as referred to in Part 1 of Schedule 3.

5.3 Subject to the provisions of Schedule 3 paragraph 10, the Employer shall pay the Contractor for any order or item of work referred to in Clause 4.3 under the payment provisions of the Proposed Contract Documents.

5.4 If the Employer issues a Notice to Proceed under Clause 6.1:

5.4.1 the Employer's obligations to pay the Contractor under this agreement (including its obligations under Clause 5.1 to Clause 5.3 inclusive) shall be replaced by an obligation to pay the Contractor the sums due under the Proposed Contract Documents and all payments under this agreement (including the Pre-Construction Fee) shall be included within and treated as paid on account of the Contract Sum under the Proposed Contract Documents; and

5.4.2 when the Contract has been executed and completed the Employer shall make no further payments under this agreement and all payments made under this agreement (including the Pre-Construction Fee) shall be included within and treated as paid on account of the Contract Sum under the Contract.

5.5 If the Employer does not pay a sum due under this agreement on or before the final date for payment the Employer shall pay interest on that sum to the Contractor as if that sum was due under the Proposed Contract Documents..

## **6 NOTICE TO PROCEED AND CONTRACT**

6.1 The Employer shall have absolute discretion, acting in its own interests, whether or not to proceed with the Works, with or without the Contractor.

- 6.2 Provided that the Contractor has delivered the Contractor's Proposals and Contract Sum Analysis, the Employer may, by issuing a Notice to Proceed, at its sole option and discretion appoint the Contractor to perform the Works and the Contractor agrees to accept that appointment on the basis set out in this agreement. On receipt of the Notice to Proceed, the Contractor shall:
- 6.2.1 execute (or procure the execution of) the Proposed Contract Documents and return the executed Proposed Contract Documents to the Employer (without amendment other than the correction of errors in a manner agreed between the parties);
  - 6.2.2 commence, carry out and complete the Works in accordance with the Proposed Contract Documents and, when executed and completed, the Contract; and
  - 6.2.3 comply in all respects with the Proposed Contract Documents and, when executed and completed, the Contract.
- 6.3 If the Employer issues a Notice to Proceed, the Contract will be on the terms of the Proposed Contract Documents, incorporating the particulars set out in Paragraph 5 of Schedule 1 (subject to any changes to those particulars agreed by the parties) and incorporating the Contract Sum agreed between the parties, as referred to in the Pre-Construction Services.

## **7 COPYRIGHT**

- 7.1 The Contractor grants to the Employer, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by or on behalf of the Contractor for any purpose relating to the Works and the Project including any of the Permitted Uses.
- 7.2 This licence allows the Employer to use the Material in connection with any extension of the Works or the Project, but not to reproduce the designs contained in the Material in any such extension.
- 7.3 This licence carries the right to grant sub-licences and is transferable to third parties without the Contractor's consent.
- 7.4 The Contractor shall have no liability for use of the Material for any purpose other than that for which it was prepared and/or provided.
- 7.5 The Employer may, at any time (whether before or after completion of the Pre-Construction Services, or after termination of this agreement), request one or more copies of some or all of the Material from the Contractor. On the Employer's payment of the Contractor's reasonable charges for providing those copies, the Contractor shall provide those copies to the Employer.

## **8 COLLATERAL WARRANTY**

- 8.1 Within 14 days of a request from the Employer, the Contractor shall execute and deliver a collateral warranty in favour of any Funder in accordance with the Proposed Contract Documents, amended to refer to this agreement in place of the building contract.

- 8.2 Where the Contractor fails to provide any collateral warranty under clause 8.1, the Employer may withhold payment in accordance with clause 15.3.

## **9 LIMIT OF EMPLOYER'S LIABILITIES**

- 9.1 Unless the Employer has issued a Notice to Proceed, the Employer's liability, however that liability arises (including a liability arising by breach of contract, arising by tort, including the tort of negligence, or arising by breach of statutory duty), shall be limited to the following:
- 9.1.1 a fair and reasonable proportion of the Pre-Construction Fee, which shall be commensurate with the Pre-Construction Services performed by the Contractor to the date of issue of any notice of termination of this agreement, but which shall not in any event exceed the Contractor's cumulative entitlement to the Pre-Construction Fee at the date of issue of any notice of termination, as set out in Part 1 of Schedule 3;
  - 9.1.2 a fair and reasonable proportion of any payment due under Clause 5.2 for any Additional Services;
  - 9.1.3 the value of work actually executed and orders actually placed under Clause 4.3, calculated in accordance with the Proposed Contract Documents (as referred to in Clause 5.3); and
  - 9.1.4 any interest due under Clause 5.5.
- 9.2 The parties acknowledge and agree that unless the Employer has issued a Notice to Proceed the Employer shall be under no obligation to the Contractor other than as set out in this agreement (including being under no obligation with respect to any tender, further contract or other appointment to carry out part or all of the Project or the Works) and the Contractor shall have no claim against the Employer for:
- 9.2.1 loss of profit, loss of contract, loss of business, loss of chance or other similar loss; or
  - 9.2.2 any indirect or consequential loss.
- 9.3 Nothing in this Clause 9 or elsewhere in this agreement shall exclude or limit either party's liability for death or personal injury caused by that party's negligence.

## **10 SUSPENSION**

- 10.1 The Employer may, at any time, suspend performance of part or all of the Pre-Construction Services, any Additional Services and any order or item of work referred to in Clause 4.3 by giving notice to the Contractor. Subject to Clause 11.2, the Contractor shall resume performance of that part or all of the Pre-Construction Services, any Additional Services and any order or item of work referred to in Clause 4.3 as soon as reasonably practicable after receiving a notice from the Employer to do so.
- 10.2 If the Employer does not pay a sum due under this agreement on or before the final date for payment the Contractor may suspend the performance of

any or all of its obligations under this agreement as if the Employer had not paid a sum due under the Proposed Contract Documents, by giving notice as required by the Proposed Contract Documents.

- 10.3 In the event of a suspension under Clause 10.1, subject to Clause 9, the Employer shall pay the Contractor any sums due under Clause 5 and such payment shall be the Contractor's sole compensation for suspension of the Pre-Construction Services, any Additional Services and any order or item of work referred to in Clause 4.3.
- 10.4 In the event of a suspension under Clause 10.2, subject to Clause 9, the Employer shall pay the Contractor any sums due under Clause 5 and any other sum due and not otherwise provided for in this agreement, which is required to be paid under section 112 of the Housing Grants, Construction and Regeneration Act 1996, and such payment shall be the Contractor's sole compensation for suspension of the Pre-Construction Services, any Additional Services and any order or item of work referred to in Clause 4.3.
- 10.5 The Contractor shall not do anything which:
  - 10.5.1 may place the Employer in breach of any Health and Safety requirement;
  - 10.5.2 may cause the Employer to suffer significant economic loss;
  - 10.5.3 may cause the Employer to suffer damage to its reputation;
  - 10.5.4 may cause the Employer to be in breach of or to suffer delays in meeting its statutory duties

which may occur as a result of the Contractor's or its supply chain's poor performance; delays; non performance; failure to meet services levels or key performance indicators; bad working practices; or Insolvency Event or any other failure to comply with this agreement, Laws or good working practice.

- 10.6 If the Employer, acting reasonably, considers that (1) there is or is likely to be: (a) a breach of Clause 10.5 by the Contractor or its Sub-Contractors; (b) any risk to any person; (c) an accident or other event which in the opinion of the Employer necessitates urgent remedial action; or (2) the Contractor's circumstances or past performance under the Framework Agreement leads to the reasonable conclusion that the Contractor no longer meets the Standards and Minimum Standards relating to financial standing, capacity and reliability, the Employer:
  - 10.6.1 shall be entitled to suspend the performance of Pre-Construction Services or any part thereof. The Contractor shall not resume provision of the Pre-Construction Services until the Employer is satisfied at its absolute discretion, acting in its own interest, that the failure or non-compliance has been or will be rectified. Any such suspension shall not absolve the Contractor from meeting other obligations under any on-going Underlying Contract; and/or
  - 10.6.2 may inform the Contractor in writing what action it requires the Contractor to take to remedy that breach or abate that risk and

may also state any timescales within which such steps are to be taken; and/or

10.6.3 may itself take such steps or remedial action (or pay or employ others to do the same) as may in the reasonable opinion of the Employer be necessary to remedy that breach or abate that risk, provided that it shall tell the Contractor of the action required as soon as it is reasonably practicable to do so. If such steps or remedial action are necessary because of the default of the Contractor then the extra costs incurred by the Employer together with any administration charge will be immediately payable by the Contractor and recovered as a debt or in such other way as the Employer deems fit.

10.7 The powers of the Employer pursuant to clause 10.6 are in addition to its ability to obtain any other remedy for any breach or non-observance of this agreement by the Contractor. The Employer shall be entitled to recover from the Contractor all reasonable extra costs and expenses incurred by the Employer as a result of the Contractor's breach or other non-observance of this agreement.

## **11 TERMINATION**

11.1 The Employer may terminate this agreement at any time by giving the Contractor notice to that effect and such termination shall be effective from the date of issue of that notice.

11.2 The Contractor may terminate this agreement if:

11.2.1 the Employer is Insolvent; or

11.2.2 a suspension of all of the Pre-Construction Services under Clause 10.1 continues for a continuous period of six months and the Employer does not instruct the Contractor to resume those Pre-Construction Services within twenty Business Days of receiving a notice from the Contractor requiring it to do so,

by giving notice to the Employer to that effect and such termination shall be effective from the date of issue of that notice.

11.3 If this agreement is terminated, the parties shall co-operate to bring the Pre-Construction Services, any Additional Services and any order or item of work referred to in Clause 4.3 to an orderly conclusion and to allow the parties to comply with their remaining obligations under this agreement.

11.4 If this agreement is terminated, subject to Clause 9, the Employer shall pay the Contractor any sums due under Clause 5, and that payment shall be the Contractor's sole compensation for termination, save that in no circumstances shall the Contractor be entitled to recover any loss of profit or other direct or indirect losses in respect of any Pre-Construction Services that have not been performed.

## **12 INSURANCE**

12.1 The Contractor shall maintain:

- 12.1.1 Contractor's all risks insurance;
  - 12.1.2 professional indemnity insurance;
  - 12.1.3 employer's liability insurance; and
  - 12.1.4 public liability insurance,
- as required by the Proposed Contract Documents.

12.2 Before it carries out any of the Works at the Property, the Contractor shall provide the Employer with written evidence that it maintains:

- 12.2.1 any insurance required by the Proposed Contract Documents under Insurance Option A; and
- 12.2.2 any insurance required by the Proposed Contract Documents in connection with clause 6.5 of the JCT Design and Build Contract Standard Building Contract Without Quantities (SBC XQ), 2016 edition.

### **13 NOTICES**

13.1 Any notice required under this agreement shall be sent in accordance with the requirements for notices in the Proposed Contract Documents.

### **14 ASSIGNMENT**

- 14.1 The Employer may assign or otherwise transfer the benefit of this agreement to any person.
- 14.2 Without prejudice to Clause 14.1, the Employer may charge, or assign by way of security, the benefit of this Contract to any Funder (and the Funder may reassign the benefit of this Contract to the Employer on redemption of that security).
- 14.3 The Employer shall notify the Contractor of any assignment within ten Business Days. If the Employer fails to do this, the assignment shall still be valid.
- 14.4 The Contractor shall not contend that any person to whom the benefit of this agreement is assigned under this Clause 14 may not recover any sum under this agreement because that person is an assignee and not a named party to this agreement.
- 14.5 The Contractor shall not assign or charge the benefit of this agreement or any right arising under it without the Employer's prior consent, which the Employer may withhold at its absolute discretion.

### **15 GUARANTEES**

15.1 Without prejudice to any rights, powers and remedies it may have under the Framework Agreement or any Underlying Contract, the Employer may at any time ask the Contractor to validly execute and deliver to the Employer a



parent company guarantee or a performance bond, or provide a collateral warranty to an appropriate beneficiary nominated by the Employer if:

- 15.1.1 the award of an Underlying Contract to the Contractor is conditional upon the execution and delivery of such parent company guarantee, performance bond or collateral warranty as specified in the Mini-Competition Information; or
  - 15.1.2 during the Framework Term or the term of an Underlying Contract, whichever is later, the Employer considers (at its discretion and acting in its interests only) that actual or potential risks associated with a project or with the Contractor's financial standing or its professional and technical ability require that such bond, guarantee or warranty be provided.
- 15.2 Where a parent company guarantee, performance bond or collateral warranty is required, they shall be provided in the Tempalte Call Off Form issued by the Employer.
- 15.3 Where the Employer exercises its right under Clause 16.1, the Contractor shall satisfy, or procure the satisfaction of such within 10 Business Days. In the event that the requirement under Clause 15.1 is not satisfied within 10 Business Days after the last day for delivery specified by the Employer, unless the requirement for a bond, guarantee or collateral warranty is waived by the Employer in writing, the Employer shall not be liable to make any further payment to the Contractor under such contract the Contractor has procured such execution and delivery.

## **16 DISPUTES**

- 16.1 Notwithstanding any other provision of this agreement either party may refer a dispute arising under this agreement to adjudication at any time under Part I of the Scheme for Construction Contracts (England and Wales) Regulations 1998 (SI 1998/649).
- 16.2 The adjudicator shall be appointed by: THE ROYAL INSTITUTION OF CHARTERED SURVEYORS

## **17 LIABILITY PERIOD**

- 17.1 The Employer may not commence any legal action against the Contractor under this agreement after 12 years from the date of [practical completion of all of the Works under the Contract OR termination of this agreement under Clause 11].

## **18 THIRD PARTY RIGHTS EXCLUSION**

- 18.1 A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 18.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

## **19 ENTIRE AGREEMENT**

- 19.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 19.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this agreement.
- 19.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 19.4 Nothing in this Clause 19 or elsewhere in this agreement shall limit or exclude either party's liability for fraud or fraudulent misrepresentation.

## **20 PCSA KEY PERFORMANCE INDICATORS**

- 20.1 The Contractor shall at all times during the Pre-Construction Period comply with the PCSA Key Performance Indicators and achieve the PCSA KPI Target set out in Schedule 12 of this agreement.

## **21 GOVERNING LAW**

- 21.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

## **22 JURISDICTION**

- 22.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

# Schedule 1

## PROJECT PARTICULARS

### 1 THE PROPERTY

Temple Quay House, 2 The Square, Bristol, BS1 6EB

#### THE PROJECT

Development of brief and design to RIBA Stage 2 and cost plan validation for the proposed refurbishment of Temple Quay House in line with the agreed budget and guidelines set out in GPA standards, to include backlog maintenance, replacement of HVAC and works associated with the refurbishment of Temple Quay House.

### 2 PROFESSIONAL CONSULTANTS

- 2.1 AECOM Ltd, Employer's Agent.
- 2.2 BAM Construction, Principal Designer.
- 2.3 AECOM Ltd, Quantity Surveyor.

### 3 KEY PERSONNEL

- 3.1 Redacted Under FOIA, Section 40, Personal Information.

### 4 CONTRACT PARTICULARS

- 4.1 Date for Completion: 30<sup>th</sup> July 2021
- 4.2 [DATE OR DATES FOR SECTIONAL COMPLETION] : N/A  
Liquidated damages for delay: N/A
- 4.3 Rectification Period: [12] months from the date of practical completion of the Works
- 4.4 Insurance of the Works - Insurance Options [Insurance Option A applies OR Insurance Option B applies OR Insurance Option C applies]
- 4.5 PCSA Retention Percentage 0%

## **Schedule 2**

### **PRE-CONSTRUCTION SERVICES, PERSONNEL AND RESOURCES**

#### **Part 1.**

##### **Pre-Construction Services**

Refer to Scope of Pre - Construction Services for Two Stage Design and Build (*as set out in the Government Hubs Fit Out Framework - Framework Specification*) attached at Schedule 10.

#### **Part 2.**

##### **Personnel and resources**

Redacted Under FOIA, Section 40, Personal Information.

## Schedule 3

### PAYMENTS

#### Part 1.

##### Pre-Construction Fee

The Pre-Construction Fee for the cost plan validation and RIBA stage 2 inclusive shall be the fixed sum **REDACTED FOIA Section 43, Commercial Interests**

#### Part 2.

##### Payment terms of this agreement

#### 1 THIS AGREEMENT AND THE PROPOSED CONTRACT DOCUMENTS

- 1.1 The payment terms in this Part 2 of Schedule 3 apply to payments under this agreement, except where a payment under this agreement is required to be made under the Proposed Contract Documents, in which case subject to paragraph 10 of this Schedule 3 the Proposed Contract Documents apply.
- 1.2 The due date for payment of instalments of the Pre-Construction Fee shall be the day, on a monthly basis, 7 (seven) days after the date of receipt by the Employer (or his representative nominated for that purpose) of the Contractor's valid invoice for sums to which the Contractor has become entitled. The Contractor's invoice shall be deemed to be an Interim Application (as defined below) for the purposes of the Construction Act.
- 1.3 In relation to payment of the Pre-Construction Fee, the Contractor shall send an invoice to the Employer or a person nominated by the Employer for that purpose, which Interim Application shall:
  - 1.3.1 be submitted not later than 1 (one) month after the commencement of the Pre-Construction Services and thereafter on a monthly basis;
  - 1.3.2 state the sum that the Contractor considers will become due on the Due Date in respect of the payment for the period and the basis on which that sum is calculated; and
  - 1.3.3 include all supporting documentation reasonably required for the computation of any amount due.
- 1.4 The Contractor warrants that the sum claimed in any Interim Application is properly due and payable and calculated in accordance with clause 1.5 of this agreement.
- 1.5 The sums due as an interim payment shall be the value of Pre-Construction Services carried out at the due date for payment less the following deductions:
  - 1.5.1 any amount which may be deducted and retained by the Employer under paragraph 10 of this Schedule 3 (PCSA Retention); and

1.5.2 the amounts paid in previous interim payments.

## **2 VAT**

The Employer shall pay the Contractor any Value Added Tax (VAT) properly chargeable on a sum due under this agreement. Any sum expressed as payable under this agreement is exclusive of VAT unless stated otherwise.

## **3 FINAL DATE FOR PAYMENT**

The final date for payment shall be 28 days from the due date for payment.

## **4 PAYMENT NOTICE**

Not later than five days after the due date for payment, the Employer shall give a notice to the Contractor specifying the sum it proposes paying, to what that sum relates, and the basis on which that sum has been calculated (a payment notice).

If the Employer does not give a payment notice under this clause 4 or a pay less notice under clause 7, the sum stated as due in the Interim Application shall not be deemed to be accepted or agreed.

## **5 CONTRACTOR'S DEFAULT NOTICE**

If the Employer has not given notice under Paragraph 4, the Contractor may give notice to the Employer specifying the sum the Contractor considers to be or have been due at the payment due date in respect of the payment and the basis on which that sum is calculated (a payment notice). If the Contractor serves such a payment notice the final date for payment of the sum specified in that notice shall for all purposes be regarded as postponed by the same number of days after the date the Employer's payment notice should have been served under Paragraph 4 that the Contractor's payment notice was given.

## **6 NOTIFIED SUM**

In this Part 2 of Schedule 3, notified sum means:

6.1 the sum referred to in a payment notice given under Paragraph 4, or, if such notice is not given;

6.2 the sum referred to in a payment notice given under Paragraph 5.

## **7 PAY LESS NOTICE**

Not later than five days before the final date for payment, the payee may give a notice to the payer specifying its intention to pay less than the notified sum. If given, such notice shall specify the sum that the payee considers to be due on the date the notice is served and the basis on which that sum is calculated (a pay less notice).

## **8 EMPLOYER TO PAY ON OR BEFORE FINAL DATE FOR PAYMENT**

Subject to Paragraph 7, the Employer shall pay the notified sum on or before the final date for payment.

In the event that the sum specified in a payment notice is a negative figure showing a balance due to the Employer to be paid by the Contractor, the Contractor shall, subject to

any pay less notice given under clause 7, pay the sum specified in the payment notice to the Employer by the final date for payment. Where a pay less notice is given by the Contractor to the Employer, the payment to be made to the Employer on or before the final date for payment shall not be less than the amount stated as due in the pay less notice.

## **9 NOTICE TO PROCEED**

- 9.1 If the Employer issues a Notice to Proceed under Clause 6 of this agreement, then from the date of the Notice to Proceed the Employer shall be under no further obligation to make payment to the Contractor under this agreement (including its obligations under this clause) (save for any payments which have already become due for payment) and all sums paid or to be paid under this agreement shall be treated as paid on account under the Contract.

## **10 PCSA RETENTION**

- 10.1 Where a payment under this agreement is required to be made under the Proposed Contract Documents, for the duration of the Pre-Construction Period:

10.1.1 the term 'Retention' in the Proposed Contract Documents shall be replaced with the term 'PCSA Retention' as defined in this agreement; and

10.1.2 the term 'Retention Percentage' in the Proposed Contract Documents shall be replaced with the term 'PCSA Retention Percentage' as defined in this agreement,

and this paragraph 10 shall apply to the treatment of that PCSA Retention.

- 10.2 All payments that become due under this agreement or pursuant to the Proposed Contract Documents shall include the deduction of the PCSA Retention Percentage from the total amount of sums due at the due date of each interim payment.

- 10.3 The PCSA Retention shall be the Employer's property until the last of the following events occur:

10.3.1 the parties confirm in writing that the Contract Sum for the Works has been agreed; [and/or]

10.3.2 the parties enter into the Contract; [and/or]

10.3.3 [the parties confirm in writing that the Contractor has completed the delivery of the stage 4 design required by this agreement. <sup>1</sup>]

- 10.4 Provided that each of the conditions required in paragraph 10.3 have been satisfied by the Contractor, the PCSA Retention shall become due to the Contractor in the first interim payment under the Contract, with such sum shall being included within the Contract Sum.

## **Schedule 4**

### **NOTICE TO PROCEED**



[TO BE TYPED ON THE EMPLOYER'S HEADED PAPER]

To:

BAM Construction Ltd

**Redacted Under FOIA, Section 40, Personal Information.**

Date TBC

**CAMS480: CO Government Property Agency - Bristol, Temple Quay House**

**Redacted Under FOIA, Section 40, Personal Information.**

PROJECT NAME: GPA, Temple Quay House Bristol - Main Contract Works

Notice to Proceed

We refer to the pre-construction services agreement entered into between us on [DATE] (the Pre-Construction Services Agreement).

In accordance with Clause 6 of the Pre-Construction Services Agreement, we hereby give you Notice to Proceed with the Works (as defined in the Pre-Construction Services Agreement) in accordance with the Pre-Construction Services Agreement.

Please arrange for the enclosed documents to be executed and delivered to **Redacted Under FOIA, Section 40, Personal Information** by return.

Yours faithfully

.....

Signed on behalf of The Government Property Agency

## **Schedule 5**

### **DOCUMENTS AND PROPOSED CONTRACT DOCUMENTS**

**REDACTED FOIA Section 43, Commercial Interests**

## **Schedule 6**

### **BIM PROTOCOL**

**REDACTED FOIA Section 43, Commercial Interests**

## **Schedule 7**

### **COST PLAN**

**REDACTED FOIA Section 43, Commercial Interests**

## **Schedule 8**

### **PROGRAMME<sup>2</sup>**

**REDACTED FOIA Section 43, Commercial Interests**

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<sup>2</sup> DRAFTING NOTE: The Programme should include the coordination of the pre-construction services and any preparatory works that are likely to be required by the Employer during the pre-construction stage, with an agreed cashflow forecast aligned to these activities.

## **Schedule 9**

### **COMMERCIAL PROTOCOLS**

JCT “BOILERPLATE” AMENDMENTS - TBC

RM6073 - GOVERNMENT HUBS FIT OUT FRAMEWORK - CORE TERMS

## Schedule 10

Not used

## **Schedule 11**

### **THE FRAMEWORK AGREEMENT**



## Schedule 12

### PCSA KEY PERFORMANCE INDICATORS

#### 1. GENERAL

- 1.1 This Schedule 12 sets out the PCSA KPIs and PCSA KPI Target by which the Contractor's overall performance under this PCSA shall be monitored and managed.
- 1.2 The Employer may, at its discretion, adjust, introduce new, or remove PCSA KPIs or the PCSA KPI Target throughout the Pre-Construction Period, however any significant changes to PCSA KPIs or PCSA Target shall be agreed between the Employer and the Contractor.
- 1.3 The Contractor shall comply with all its obligations related to PCSA KPIs set out in this agreement and shall use all reasonable endeavours to meet the PCSA KPI Target.
- 1.4 The PCSA KPIs and PCSA KPI Target from which performance by the Contractor of this agreement will be reported against are set out below:

#### [EXAMPLE KPIs - Employer to insert]

KPI no.	Performance Measure	KPI objective	Level	Frequency	Owner & Reporting responsibility	Methodology	Rating
KPI1	Cost	Accuracy of Target Cost Plan compared to agreed CSA	PCSA	End of PCSA	Contractor	Comparison between Target Cost Plan and CSA	5 - 1% (+/-) variance 4 - 2.5% (+/-) variance 3 - 5% (+/-) variance 2 - 7.5% (+/-) variance 1 - 10% (+/-) variance 0 - +10% (+/-) variance
KPI2	Cost	Value Engineering	PCSA	End of PCSA	Contractor	% of VE opportunities identified compared to the Target Cost Plan	5 - 10% + saving 4 - 7.5% saving 3 - 5% saving 2 - 2.5% saving 1 - 1% saving 0 - less than 1% saving
KPI3	Design Quality	Design adherence to brief	PCSA	End of PCSA	Contractor	Technical design sign off by Employer	5 - Sign off 7 days or more ahead of programme 4 - Sign off 1 to 7 days ahead of programme 3 - Sign off to programme 2 - Sign off 1 to 3 days over programme 1 - Sign off 4 to 7 days over programme 0 - Sign off 7 days over programme
KPI4	Programme	Number of Key Milestone's (design, cost and approval deliverables) achieved during the Pre-Construction Stage	PCSA	Monthly	Contractor	Comparison between tendered construction programme and end of call off stage 1 construction programme	5 = call-off stage 1 programme two or more weeks shorter than tendered construction programme. 4 = call-off stage 1 programme up to two weeks shorter than tendered construction programme. 3 = call-off stage 1 programme same as tendered construction programme. 2 = call-off stage 1 programme up to two weeks longer than tendered construction programme. 1 = call-off stage 1 programme two to four weeks longer than tendered construction programme. 0 = call-off stage 1 programme over four weeks longer than tendered construction programme

KPI5	Programme	Adherence to TES deliverables	PCSA	Monthly	Contractor	Monthly review of TES identifying any missed deliverables against planned	5 - 0 milestones missed 4 - 1-2 milestones missed 3 - 3-4 milestones missed 2 - 5-7 milestones missed 1 - 8-10 milestones missed 0 - 10 or more milestones missed
KPI6	Programme	Delivery of draft CSA xx weeks in advance of the Start on Site (SoS)	PCSA	End of PCSA	Contractor	Measure in weeks the time between the draft CSA being submitted and Start on Site	5 - 6 weeks before 4 - 5 weeks before 3 - 4 weeks before 2 - 3 weeks before 1 - 2 weeks before 0 - less than 2 weeks prior to SoS
KPI7	Whole Life Costing	Whole Life Costing analysis of design components during Stages 3 & 4	PCSA	End of PCSA	Contractor	Contractor to provide, against the scoring criteria, a number of WLC options during the development of the Stage 3/4 design	5 - 4 components having had options analysis undertaken 4 - 3 components having had options analysis undertaken 3 - 2 components having had options analysis undertaken 2 - 1 component having had options analysis undertaken 1 - 0 component having had options analysis undertaken 0 - N/A

- 1.5 The Contractor shall establish processes to monitor its performance against the agreed PCSA KPIs. The Contractor shall at all times ensure compliance with the standards set by the PCSA KPIs.
- 1.6 The Employer shall review progress against these PCSA KPIs to evaluate the effectiveness and efficiency of which the Contractor performs its obligations to fulfil this agreement.
- 1.7 The Employer may, at its absolute discretion:
  - 1.6.1 use and publish the performance of the Contractor against the PCSA KPIs and PCSA Target without restriction; and
  - 1.6.2 initiate performance escalation under clause 29 of the Framework Agreement in respect of any failure by the Contractor to comply with the PCSA KPIs or PCSA KPI Target in accordance with this agreement.