

**Date**

**2024**

**FORM OF AGREEMENT**

**Incorporating the NEC3 Professional Services Contract April 2013 and contract data**

**Between**

**GOVERNMENT PROPERTY AGENCY (an Executive Agency of the Cabinet Office)**

**and**

**McBAINS LIMITED**

**For the provision of**

**Project Management and Full Design Team Services  
including Cost Management and Programme Management**

**THIS AGREEMENT BY DEED is made the 28th day of March 2024**

**PARTIES:**

1. **The Government Property Agency** (On Behalf of The Minister for the Cabinet Office on behalf of the Crown represented by the Government Property Agency) of 23 Stephenson Street (9th floor) Birmingham B2 4BH (the "**Employer**"); and
2. **McBains Limited** which is a company incorporated in and in accordance with the laws of England (Company No. 03094139 whose registered office address is at 5th Floor 26 Finsbury Square, London, England, EC2A 1DS (the "**Consultant**").

**BACKGROUND**

- (A) The Minister for the Cabinet Office (the "**Cabinet Office**") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, without separate legal personality (the "**Authority**"), established a framework for construction professional services for the benefit of public sector bodies.
- (B) The *Consultant* was appointed to the framework and executed the framework agreement (with reference number RM6165) which is dated 1 October 2021 (the "**Framework Agreement**"). In the Framework Agreement, the Consultant is identified as the "Supplier".
- (C) On the 16th of May 2023 the *Employer*, acting as part of the Crown, and in the Framework Agreement is identified as a "Contracting Authority" invited the *Consultant* along with other framework suppliers to tender for the *Employer's* construction professional services requirements in accordance with the Call Off Procedure (as defined in the Framework Agreement).
- (D) On the 20th of June 2023 the *Consultant* submitted a tender response and was subsequently selected by the *Employer* to provide the *services*.
- (C) The *Consultant* has agreed to Provide the Services in accordance with this agreement and the Framework Agreement.

**IT IS AGREED AS FOLLOWS:**

1. The *Employer* will pay the *Consultant* the amount due and carry out his duties in accordance with the *conditions of contract* identified in the Contract Data and the Contract Schedules.
2. The *Consultant* will Provide the Services in accordance with the *conditions of contract* identified in the Contract Data and the Contract Schedules.
3. This contract incorporates the conditions of contract in the form of the NEC3 Professional Services Contract April 2013 and incorporating the following Options:

Option G: Term Contract

W2;

Option X1, X2, X7, X8, X9, X10, X11, X18, X20;

Option Y(UK)2 and Y(UK)3

which together with the *additional conditions of contract* specified in Option Z, and the amendments specified in Option Z, form this contract together with the documents referred to in it. References in the NEC3 Professional Services Contract April 2013 Edition to the “**contract**” are references to this contract.

Note Options W1, Y(UK)1, X3, X4, X5, X6, X12 and X13 are not used.

4. This contract and the Framework Agreement is the entire agreement between the parties in relation to the *services* and supersedes and extinguishes all prior arrangements, understandings, agreements, statements, representations or warranties (whether written or oral) relating thereto.
5. Neither party has been given, nor entered into this agreement in reliance on any arrangements, understandings, agreements, statements, representations or warranties other than those expressly set out in this agreement.
6. Nothing in clauses 4 or 5 shall exclude liability in respect of misrepresentations made fraudulently.

**EXECUTED** as a **DEED** by the parties on the date which first appears in this Deed.

**EXECUTED** (but not delivered until the date  
hereof) **AS A DEED** by **GOVERNMENT PROPERTY**  
**AGENCY** an executive agency of the cabinet office  
acting by two authorised signatories:

.....  
REDACTED TEXT under FOIA Section 40, Personal Information  
Deputy Director – Head of Commercial

.....  
REDACTED TEXT under FOIA Section 40, Personal Information  
Director of Workplace Services

**EXECUTED** (but not delivered until the date  
hereof) **AS A DEED** by **McBAINS LIMITED**  
acting by REDACTED TEXT under FOIA Section 40, Personal Information.  
a director, in the presence of a witness:

.....  
REDACTED TEXT under FOIA Section 40, Personal Information  
Director  
.....

REDACTED TEXT under FOIA Section 40, Personal Information

REDACTED TEXT under FOIA Section 40, Personal Information  
Board Director



# Professional Services Contract

## Contract Data

### Part one – Data provided by the *Employer*

- 1 General**
- The *conditions of contract* are the core clauses and the clauses for main Option G, dispute resolution Option W2 and secondary Options X1, X2, X7, X8, X9, X10, X11, X18, X20, Y(UK)2 and Y(UK)3 and Z of the NEC3 Professional Services Contract (April 2013).

- The *Employer* is the Government Property Agency an Executive Agency of the Cabinet Office

Address for communications:

Government Property Agency,  
9th Floor,  
23 Stephenson Street,  
Birmingham,  
B2 4 BJ

Address for electronic communications:

REDACTED TEXT under FOIA Section 40, Personal Information

or such other address as may be provided by the Employer from time-to-time

- The *Adjudicator* is the person agreed by the Parties from the list of *Adjudicators* published by TECSA or nominated by the *Adjudicator nominating body* in the absence of agreement.
- The *services* are Project Management and Full Design Team Services including Cost Management and Programme Management. Projects and commissions will primarily be property and ICT infrastructure in nature and carried out on the GPA estate and Government office portfolio, but this may be extended to other properties.

Projects and programmes that PM & Design Suppliers will deliver and support shall include:

- Moves and Changes on the GPA estate and Government Office Portfolio, including exits relating to lease expiry and lease break events.

- Construction, refurbishment, refreshes, fit outs and the like on existing and newly acquired premises
- In particular, projects to improve Smarter Working and optimise use of the current estate.
- Furniture & decor solutions, including to support wellbeing, inclusivity, sustainability & smarter working.
- Lifecycle Replacement and Net Zero
- Data & Technology projects, including access control (GovPass), occupancy sensor technology, Audio Visual improvements and ICT infrastructure
- Project delivery process improvements
- The Scope is in Schedule 2 of the Form of Agreement
- The *language of this contract* is English.
- *The law of the contract* is the law of England and Wales and the Courts of the country selected above, shall have exclusive jurisdiction with regard to any dispute in connection with this Agreement and the Parties irrevocably agree to submit to the jurisdiction of those courts.
- Where legislation is expressly mentioned in this Call Off Contract the legislation of the country selected here, shall have the effect of substituting the equivalent country's legislation
- The *period for reply* is two weeks. The *period for retention* is 12 years following the Completion of the last Task Order unless otherwise specified in a Task Order or 12 years from the termination of this contract if earlier.
- The *Adjudicator nominating body* is TECSA
- The *tribunal* is litigation
- The matters will be included in the Risk Register when notified to the *Consultant* by the *Employer* along with any other matters which may be specified in each Task Order.

## 2 The Parties' main responsibilities

### 3 Time

- *The starting date* is the date of issue of the first Task Order
- The *Consultant* submits revised programmes received under a Task Order which requires a programme at intervals no longer than four (4) weeks unless otherwise specified in a Task Order.

### 4 Quality

- The quality policy statement and quality plan are provided within five (5) weeks of the Contract Date.

- The *defects date* is 52 weeks from Task Completion unless otherwise specified in a Task Order.

## 5 Payment

- The *assessment interval* is four (4) weeks
- The *currency of this contract* is the pound sterling (£).
- The *interest rate* is 2% per annum above the Bank of England base rate in force from time to time.

## 8 Indemnity, insurance and liability

- The amounts of insurance and the periods for which the *Consultant* maintains insurance are

event	cover	Period
failure of the <i>Consultant</i> to use the skill and care normally used by professionals providing services similar to the <i>services</i>	£10,000,000 or such higher figure as may be appropriate in respect of each claim, without limit to the number of claims except for claims arising out of pollution or contamination, where the minimum amount of cover applies in the aggregate in any one period of insurance and except for claims arising out of asbestos fire safety/cladding claims where a lower level may apply in the aggregate	from the <i>starting date</i> until 12 years following completion of the whole of the <i>services</i> or earlier termination
death of or bodily injury to a person (not an employee of the <i>Consultant</i> ) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i>	£10,000,000	from the <i>starting date</i> until all notified Defects have been corrected or earlier termination



death of or bodily injury to employees of the *Consultant* arising out of and in the course of their employment in connection with this contract

As required under Framework Agreement

from the *starting date* until all notified Defects have been corrected or earlier termination

- The *Employer* provides the following insurances  
N/a
- *The Consultant's* total liability to the *Employer* for all matters arising under or in connection with each Task Order, other than the excluded matters, is limited to £10,000,000 for each and every claim for each Task Order.

#### **Optional Statements**

##### **If no programme is identified in part two of the Contract Data**

- The *Consultant* is to submit a programme for inclusion in each Task Order.

##### **If Y(UK)2 is used and the final date for payment is not 14 days after the date when payment is due**

- The period for payment is 4 weeks

##### **If Option G is used:**

- The *Consultant* prepares forecasts of the total Time Charge and *expenses* at intervals no longer than four (4) weeks unless otherwise agreed by the *Employer* (acting reasonably) or unless specified otherwise in any Task Order.

#### **Option X1 If Option X1 is used**

Delete and insert:

The Schedule of Rates will be revised in line with paragraph 6 of Schedule 11 of Framework Agreement RM6165

#### **Option X2 If Option X2 is used**

- *The law of the project* is the law of England and Wales.

#### **Option X7 If Option X7 is used**

- The *Consultant* pays delay damages at the rate stated in a Task Order for each day from the Completion Date until Completion

**Option X8 If Option X8 is used**

- The *collateral warranty agreements* are in the form(s) contained in the Scope or if not contained in the Scope the form(s) attached as a Contract Schedule and shall be made in favour of any third party as identified in a Task Order
- The *subconsultant collateral warranties* are in the form(s) contained in the Scope or if not contained in the Scope the form(s) attached as a Contract Schedule and shall be made in favour of the *Employer* and any third party as identified in a Task Order.

**Option X10 If Option X10 is used**

- The *Employer's Agent* shall be confirmed for each Task Order

The authority of the *Employer's Agent* shall be confirmed for each Task Order

**Option X18  
Limitation of  
liability**

*The Consultant's liability to the Employer for indirect or consequential loss is limited to £10,000,000.*

*The Consultant's liability to the Employer for Defects that are not found until after the defects date is limited to £10,000,000.*

*The end of liability date is 12 years after Completion of the whole of the service.*

**Option Z1  
Additional  
conditions of  
contract**

Are as set out in the Standard Boilerplate Amendments to the NEC3 PSC April 2013 as amended for and set out in Schedule 1 of the Form of Agreement. .

**Option Z2 Identified and defined terms**

applies

**Option Z4 Admittance to Employer's Premises**

applies

**Option Z5 Prevention of fraud and bribery**

applies

**Option Z6 Equality and diversity**

applies

**Option Z7 Legislation and Official Secrets**

applies

**Option Z10 Freedom of information**

applies

- Option Z8 Conflict of interest**  
applies
- Option Z9 Publicity and Branding**  
applies
- Option Z13 Confidentiality and Information Sharing**  
applies
- Option Z14 Security Requirements**  
applies
- Option Z16 Tax Compliance**  
applies
- Option Z22 Fair payment**  
applies
- Option Z26 Building Information Modelling**  
applies  
the *information execution plan* is as may be included in any Task Order
- Option Z42 The Housing Grants, Construction and Regeneration Act 1996**  
applies
- Option Z44 Intellectual Property Rights**  
applies
- Option Z45 HMRC Requirements**  
applies
- Option Z46 MoD DEFCON Requirements**  
does not apply
- Option Z47 Small and Medium Sized Enterprises (SMEs)**  
applies  
The percentage of the *Consultant's* Subconsultants required to be SMEs is 0% (nil per cent)
- Option Z48 Apprenticeships**  
applies

**Option Z49    Change of Control**

applies

**Option Z50    Financial Standing**

applies

**Option Z51    Financial Distress**

applies

**Option Z52    Records, audit access and open book data**

applies

**Option Z100    Data Protection**

applies

**Option Z101    Cyber Essentials**

applies

## Part two – Data provided by the *Consultant*

### 1 Statements given in all contracts

- The *Consultant* is

Name	The <i>Consultant</i> is McBains Limited
Address	5th Floor 26 Finsbury Square, London, England, EC2A 1DS

- The *key people* are:

- Name: REDACTED TEXT under FOIA Section 40, Personal Information.

- Job: REDACTED TEXT under FOIA Section 40, Personal Information.

- Responsibilities: REDACTED TEXT under FOIA Section 40, Personal Information.

- Experience REDACTED TEXT under FOIA Section 40, Personal Information.

- Name: REDACTED TEXT under FOIA Section 40, Personal Information.

- Job: REDACTED TEXT under FOIA Section 40, Personal Information.

- Responsibilities: REDACTED TEXT under FOIA Section 40, Personal Information.

- Experience REDACTED TEXT under FOIA Section 40, Personal Information.

- Name: REDACTED TEXT under FOIA Section 40, Personal Information.

- Job: Resilience REDACTED TEXT under FOIA Section 40, Personal Information.

- Responsibilities: REDACTED TEXT under FOIA Section 40, Personal Information.

- Experience REDACTED TEXT under FOIA Section 40, Personal Information.

- Name: REDACTED TEXT under FOIA Section 40, Personal Information.

- Job: REDACTED TEXT under FOIA Section 40, Personal Information.
- Responsibilities: REDACTED TEXT under FOIA Section 40, Personal Information.
- Experience REDACTED TEXT under FOIA Section 40, Personal Information.
- Name: REDACTED TEXT under FOIA Section 40, Personal Information.
- Job: REDACTED TEXT under FOIA Section 40, Personal Information.
- Responsibilities: REDACTED TEXT under FOIA Section 40, Personal Information.
- Experience REDACTED TEXT under FOIA Section 40, Personal Information.
- Name: REDACTED TEXT under FOIA Section 40, Personal Information.
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- Responsibilities: REDACTED TEXT under FOIA Section 40, Personal Information.
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- Name: REDACTED TEXT under FOIA Section 40, Personal Information.
- Job: REDACTED TEXT under FOIA Section 40, Personal Information.
- Responsibilities: REDACTED TEXT under FOIA Section 40, Personal Information.
- Experience REDACTED TEXT under FOIA Section 40, Personal Information.

- The following matters will be included in the Risk Register – none to note at Contract Date – along with any other matters which may be specified in each Task Order.

**Optional statements    If the *Consultant* is to decide the *completion date* for the whole of the services**

- The *completion date* for the whole of the *service* shall be three years from the Contract Date subject always to the *Employer's* right to extend the *completion date* in 2 (two) yearly increments which shall be reviewed on an annual basis.

**If the programme is to be identified in the Contract Data**

- The programme is to be provided in accordance with Part 1 of the Contract Data.

**If the *Consultant* states any expenses**

- None save for any *expenses* which may be agreed by the *Employer* and the *Consultant* and then included in a Task Order.

**If the *Consultant* requires additional access**

The *Employer* provides access to the following persons, places and things as may be required for and set out in a Task Order.

## **SCHEDULE 1**

### **Additional conditions of contract and z clauses**



## **SCHEDULE 2**

### **Scope**

REDACTED TEXT under FOIA Section 43 Commercial Interests.



**SCHEDULE 3**

**Schedule of Rates**

REDACTED TEXT under FOIA Section 43 Commercial Interests.