



**CONTRACT FOR THE PROVISION OF
PRJ_53 – PS22093 - CURRENT AND HISTORICAL SALES DATA FOR
CONSTRUCTION PRODUCTS
TO THE DEPARTMENT FOR BUSINESS, ENERGY
AND INDUSTRIAL STRATEGY**

Purchase Order Number: TBC

DUNS Number: [REDACTED]

This Contract is dated Monday, 27th June 2022 and is made between:-

1. **The Secretary of State for Business, Energy and Industrial Strategy ("the Authority")** of 1 Victoria Street, London SW1H 0ET, acting as part of the Crown;

and
2. **GfK Retail and Technology UK Limited (the "Contractor")** whose registered office is at 7th Floor, Blue Fin Building, 110 Southwark Street, London, SE1 0SU

INTRODUCTION

- (A) On Tuesday, 8th March 2022 the Authority issued an invitation to tender for the provision PRJ_53 – PS22093 - CURRENT AND HISTORICAL SALES DATA FOR CONSTRUCTION PRODUCTS this including the specification a copy of which is set out in Schedule 1 (the "Specification").
- (B) In response the Contractor submitted a proposal dated Tuesday, 22nd March 2022 and entitled PRJ_53 – PS22093 - CURRENT AND HISTORICAL SALES DATA FOR CONSTRUCTION PRODUCTS explaining how it would provide the services, a copy of which is set out in Schedule 2 (the "Proposal").

The parties agree as follows:-

1. SUPPLY OF SERVICES AND PRICE

In consideration of payment by the Authority to the Contractor of the sum of £104,439.00 exclusive of Value Added Tax) (the "Contract Price") and in accordance with (a) the Specification; (b) the Proposal; and (c) the Authority's Standard Terms and Conditions of Contract for Supplies/Services (the "Standard Terms" (a copy of which were issued by the Authority with the Invitation to Tender and are attached at Schedule 3); the Contractor shall provide the Services described in the Specification and the Proposal to the Authority.



2. COMMENCEMENT AND CONTINUATION

This contract shall commence on Friday, 1st July 2022 and subject to any provisions for earlier termination contained in the Standard Terms shall continue until the end of Monday, 31st July 2023.

3. TERMS AND CONDITIONS

3.1 The Standard Terms shall form part of this Contract.

3.2 The Standard Terms shall be amended as follows:

Clause 11 (4) shall be deleted and replaced with the following:

Subject to final resolution and agreement pursuant to clause 22, the Authority may reduce payment in respect of any Services that the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Authority.

The following wording shall be added as a new final sentence in clause 11 (5):

In the event of late payment Vendor shall be entitled to suspend the Services.

Clause 15 (1) shall be deleted and replaced with the following:

The Contractor shall provide the Services in accordance with and as specified in the Contract. The Authority shall have the power to inspect and examine the performance of the Services at the Authority's Premises at any reasonable time or, provided that the Authority gives reasonable notice to the Contractor, at any other premises where any part of the Services is being performed.

Clause 15 (5) shall be deleted and replaced with the following:

Contractor shall use all reasonable endeavors to ensure timely provision of the Services, including in relation to commencing the provision of the Services within the time agreed or on a specified date as agreed in writing between the parties.

Clause 18 (1) shall be deleted and replaced with the following:

The Contractor shall hold harmless and indemnify the Authority on demand from and against all claims, demands, proceedings,



actions, damages, costs (including legal costs), expenses and any other liabilities arising from claims made by the Authority's staff or agents, or by third parties, in respect of any death or personal injury, or loss or destruction of or damage to property, or any other loss, destruction or damage, including but not limited to financial losses which are caused, whether directly or indirectly from claims in respect of any death or personal injury, or loss or destruction of or damage to property, by the breach of contract or breach of duty (whether in negligence, tort, statute or otherwise) of the Contractor, its employees, agents or sub-contractors

Clause 18 (7) shall be deleted and replaced with the following:

Except in relation to claims relating to death or personal injury as referred to in Condition 18 (1) and claims relating to infringement of third party intellectual property rights referred to in Conditions 18 (5), Contractor's total aggregate liability for all claims arising out of or in connection with this Contract during each Contract year and whether arising from breach of contract, tort (including but not limited to negligence), breach of statute, misrepresentation or otherwise shall not exceed the total fees paid by the Authority to Contractor in the relevant year. Contractor shall not be liable under or arising out of this Contract and whether arising from breach of contract, tort (including but not limited to negligence), breach of statute, misrepresentation or otherwise for any (i) special, indirect or consequential loss; (ii) loss of profits, revenue or contracts; (iii) loss of profits; (iv) damage to reputation or goodwill.

Contractor does not predict or assure any particular substantive results of the POS Data in advance, nor does Contractor accept any liability for the Authority's interpretation of the POS Data. Although Services are provided in accordance with this Contract, the POS Data is subject to the limits of statistical error.

The Authority acknowledges and agrees that the supply of POS Data is dependent upon third party data and that there is no guarantee of the availability, completeness or accuracy of such third party data. For example (and without limitation), a partner could cease or change the supply of third party data, a website owner may object to the collection of third party data from their website (or may implement additional technical measures limiting or preventing the collection of the third party data) and/or Contractor may not be able to gain access to an applicable store. Therefore Contractor (i) does not accept any liability for unavailability, incompleteness or inaccuracy of third party data which impacts on the Services; (ii) reserves the right to make



changes to the Services, to the extent it is necessary to do so due to the unavailability, incompleteness or inaccuracy of any third party data.

Clause 21 shall be deleted in its entirety.

Clause 27 "Intellectual Property Rights" shall be deleted and replaced with the following:

The Authority acknowledges and agrees that all rights title and interest in the POS Data and reports (including but not limited to any improvements, enhancements and adaptations of the same) are the property of the Contractor or its licensors, as the case may be. The Authority shall have no rights in or to the POS Data or reports other than the right to use them in accordance with the express terms of this Contract. The Contractor grants to the Authority a non-exclusive, non-transferable, non-sublicensable, revocable, licence to use the POS Data or reports for its own internal business purposes.

The Authority may use the POS Data or reports in any presentation made to its clients in the ordinary course of business (provided that it does not make available to such clients any hard copies of such presentations) and that it shall otherwise keep the POS Data and reports strictly confidential. Unless the Contractor has given its prior written consent, the Authority shall not (i) disclose, publish, sell, distribute, copy or reproduce in full or part, the POS Data and reports (except for its own internal business purposes); (ii) allow any third party to access the POS Data or reports to come into the possession of anyone, other than its representatives (being directors, officers, employees, independent contractors, workers and professional advisors (including, without limitation, legal advisers and accountants)). The Authority shall be responsible for ensuring that any representatives comply with the provisions of this Agreement. The Contractor will consider requests for written consent for appropriate disclosure to each of the Authority's sub-contractors in advance of such consent being given. The Contractor may reasonably have some reservations about giving consent to sharing with any direct competitors of The Contractor's that the Authority may engage, but these requests can be considered on a case by case basis.

Unless expressly approved in writing the Authority shall not (and shall procure that its Representatives shall not) use the Contractor Data:



- (a) whilst identifying the Contractor as the source of such data, information or reports;
- (b) for the purpose of supporting litigation;
- (c) in any advertising or promotional copy;
- (d) for supporting comparative advertising claims;
- (e) for resale or syndication; or
- (f) for distribution to any media outlet in support of external public relations efforts, including news articles, interviews, press releases and events.

These amendments are for the purposes of this Contract only and do not set a precedent for future contracts between the Contractor and the Authority.

3.3 The following additional terms also apply to this Contract:

1 Data publication

1.1 The Authority may only publish the Contractor Data upon receipt of written approval from The Contractor prior to publication.

1.2 Should the Authority wish to publish the Contractor Data; it must submit a Publication Request to the Contractor prior to publication. Each Publication Request shall set out the Contractor Data that the Authority wishes to publish and provide a reasonable level of detail of the proposed publication.

1.3 Upon receipt of written approval from the Contractor, the Authority may only publish the Contractor Data in accordance with the following provisions:

- (a) The Contractor must be quoted as the data source, except where the Contractor Data is used in combination with additional data sources;
- (b) any the Contractor Data published should only refer to the Authority's own market/sector/brand performance, as applicable;
- (c) The Contractor Data may not be quoted in statements regarding competitor performance. This includes but is not limited to references such as 'market leader' or 'number 1', which directly or indirectly refer to the position of competitors;
- (d) The Contractor Data may only be quoted at total product group level. The Contractor will not substantiate quotes on product sub segments;
- (e) The Contractor Data may only be quoted at total market level. The Contractor will not substantiate quotes made on single distribution channels; and



(f) The Contractor Data may only be quoted from the results of The Contractor syndicated retail panel or continuous studies. The Contractor will not substantiate or support quotes from ad hoc studies.

1.4 The Contractor requires a minimum of five (5) days to process Publication Requests.

- 3.4 The Contractor's Standard Terms and Conditions of business shall not apply to this Contract.
- 3.5 This Contract is formed of these clauses and the Schedules hereto. Any other attachments are provided for information purposes only and are not intended to be legally binding. In the event of any conflict or inconsistency, the documents prevail in the following order:
- a) these clauses
 - b) the Standard Terms
 - c) the Specification
 - d) and finally, the Proposal

4. CONTRACTOR'S OBLIGATIONS

- 4.1 Where the Contractor is supplying goods to the Authority these shall be delivered to the Authority in full compliance with the Specification and shall be of satisfactory quality and fit for purpose. Where the Contractor is performing services for the Authority it shall do so in accordance with the Specification and exercise reasonable skill and care.

5. MANAGEMENT AND COMMUNICATIONS

- 5.1 The Contractor shall perform the Services under the direction of the Authority.
- 5.2 Any direction by the Authority may be given by [REDACTED] email address [REDACTED] (the "Contract Manager") who is an officer in the Authority's Office for Product Safety and Standards, 1 Victoria Street, London, SW1H 0ET or such other person as is notified by the Authority to the Contractor in writing.
- 5.3 The Contractor appoints [REDACTED] "Key Account Manager" - Market Insights contact), email address [REDACTED] and [REDACTED] - Commercial contact), email address [REDACTED] to be the Contractor's first point of contacts for this Contract. All queries to the Contractor from the Authority's Contract Manager shall initially be addressed to the Contractor's first point of contacts.



- 5.4 The Contractor's first point of contacts and the Contract Manager shall meet as often as either the Contractor or the Authority may require to review the Contractor's performance of the Contract.

6. INVOICES AND PAYMENT

- 6.1 Subject to the Contractor providing the Services to the Authority in accordance with this Contract and submitting invoice/s to the Contract Manager in the manner reasonably required by the Contract Manager payment will be made by the Authority to the Contractor in accordance with (as referred to in Condition 11 of the Standard Terms & Conditions).

7. TRANSPARENCY

- 7.1 The Authority is required to publish information about this contract within the Official Journal of the European Union and through the Governments Transparency website, Contracts Finder.

The Authority's decision not to publish full details of the contract does not however preclude it publishing such information in the future (subject to applicable redactions) and the Authority may be required to disclose such information under the Freedom of Information Act 2000, the Environmental Information Regulations 2004 (EIR) or other legal requirement. In such cases, the Authority would need to consider disclosure in the context of the particular circumstances of the request or requirement concerned.

Signed by the parties' duly authorised representatives:-

For the Secretary of State for **Business, Energy and Industrial Strategy**

Signature: .

Print Name:

Job Title: ...

Date:.....

For the Contractor **GfK Retail and Technology UK Limited**

Signature:

Print Name

Job Title: .

Date:

For the Contractor **GfK Retail and Technology UK Limited**

Signature:

Print Name

Job Title: .

Date:



The following Schedules form part of this Contract Pack:

Schedule 1	The Authority's Specification
Schedule 2	The Contractor's Proposal
Schedule 3	The Authority's Standard Terms & Conditions of Contract for Supplies/Services
Schedule 4	Clarification of Sourcing Documents
Schedule 5	Clarification of Bidding Documents

