



Cyngor Sir
CEREDIGION
County Council



Invitation to Tender for the: South West and Mid Wales Regional Engineering Consultancy Framework NPS-PS-0067-16

This Invitation to Tender (ITT) consists of the following sections:

Volume 1.	Instruction to Tenderers a) Framework Information b) Framework Enquiry Document a. Appendix 1 – Technical Evaluation Guidance b. Appendix 2 – Commercial Evaluation Guidance c. Appendix 3 – Supplier Briefing Event Slides d. Appendix 4 - Supplier Briefing Event Questions and Answers	
Volume 2.	Framework Agreement Schedules:- 1. The Services 2. Staff Rates 3. Required Insurances 4. Form of Project Appointment 5. Form of Collateral Warranty 6. Form of Deed of Novation 7. Key Performance Indicators 8. Form of Parent Company Guarantee 9. Option Z Additional Clauses Conditions of Contract 10. Project Allocation 11. Community Benefits 12. NPS Clauses	
Volume 3.	Electronic tender, consisting of:	Qualification Questionnaire
		Technical Questionnaire
		Commercial Questionnaire

Please ensure that you have downloaded Volumes 1 & 2 before proceeding to complete Volume 3.

ARTICLE I.

Volume 2 – Framework Agreement

**NATIONAL PROCUREMENT SERVICE
IN ASSOCIATION WITH CARMARTHENSHIRE, CEREDIGION,
NEATH PORT TALBOT, PEMBROKESHIRE, POWYS AND THE CITY
AND COUNTY OF SWANSEA COUNCILS**

**SOUTH WEST AND MID WALES
REGIONAL ENGINEERING CONSULTANCY
FRAMEWORK**

VOLUME 2

Framework Agreement

DATED

20[.].]

(1) NATIONAL PROCUREMENT SERVICE (THE WELSH MINISTERS)

AND

(2) [INSERT *CONSULTANT*]

SOUTH WEST AND MID WALES REGIONAL ENGINEERING CONSULTANCY

FRAMEWORK AGREEMENT

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This agreement is made the day of

2017

Between:-

- (1) **WELSH MINISTERS** of Crown Buildings, Cathays Park, Cardiff, CF10 3NQ (the “Welsh Ministers”); and
- (2) **{CONSULTANT}** [co. Registration number] whose registered office is at /of {insert address} (“the *Consultant*”). Or
- (2) **{CONSULTANT}** [a partnership] whose office is situated at {insert address} (“the *Consultant*”).

1. INTRODUCTION AND BACKGROUND

1.1. Framework of *Consultants*

Following a competitive tender process and in reliance on the tenders submitted the *Consultant* and the other framework *Consultants* have been selected by the welsh ministers as potential providers of a range of engineering design services of the type set out in schedule 1 to Carmarthenshire County Council or Ceredigion County Council or Pembrokeshire County Council or Powys County Council or Neath-Port Talbot County Borough Council or City and County of Swansea during the term.

1.2. Scope of this agreement

This agreement governs

- (a) the procedure by which contracts for the provision of project specific services may be formed;
 - (b) the terms and conditions which shall apply to any such contracts; and
- the overall relationship between the *Employer* and the *Consultant* with to the provision of project specific services during the term.

2. DEFINITIONS AND INTERPRETATION

2.1. Definitions

In this agreement, the following expressions shall have the following meanings:-

Additional Fee	any fee agreed to be payable to the <i>Consultant</i> in respect of the performance of any Additional Services under any Project Appointment;
Additional Services	any services, additional to the Services that the <i>Consultant</i> is instructed to carry out under any Project Appointment;
Bond	a bond in the form set out in the relevant Contract;
Building Contract	any building or civil engineering construction contract entered into, or to be entered into, between a Contractor and the <i>Employer</i> in relation to each Project;
Client	The National Procurement Service (NPS) on behalf of the Welsh Ministers
Client Manager	the person appointed by the <i>Client</i> to provide a coordinating role with the <i>Consultant</i> pursuant to clause 4.4 or any person who replaces such person pursuant to clause 4.5;
Collateral Warranty	a deed of collateral warranty in the form set out in the relevant Contract;
Commencement Date	[to be confirmed]
Confidential Information	collectively and individually any and all information whether of a technical, commercial or financial nature relating to the <i>Employer</i> , this Agreement, any Contract entered into between the <i>Employer</i> and the <i>Consultant</i> and/or any Project Specific Services;
Contract	a contract in the form of the order set out in Schedule 4 entered into by the <i>Employer</i> and the <i>Consultant</i> pursuant to clause 3;
Contractor	the Contractor appointed by the <i>Employer</i> under the Building Contract in relation to each of the Projects and where provided to carry out any design for which the

Contractor is responsible in accordance with the Building Contract;

Documents

all drawings, details, plans, programs specifications bills of quantities, calculations, bar charts, certificates and other documents of any nature whatsoever and any designs and inventions contained in them which have been or are provided by the *Consultant* in the course of performing its obligations under this Agreement or in relation to each Project;

DPA

The Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Employer

Carmarthenshire County Council or Ceredigion County Council or Pembrokeshire County Council or Powys County Council or Neath-Port Talbot County Borough Council or City and County of Swansea which may from time to time wish to enter into a contract with the *Consultant* for the provision of the provision of Project specific services pursuant to this Agreement;

Employer's Instructions

written instructions issued by the *Employer's* Project Manager;

Fee

the *Consultant's* fee for the performance of the Services as set out in the Project Appointment which may be a lump sum or time charge fee, in either case based on, or reflecting, the Agreed Staff Rates (as subsequently amended (if at all) by written agreement with the *Employer*) on the Projects;

FOIA

collectively the Freedom of Information Act 2000 and the Environmental Information Regulations 2004;

Framework Consultants

those persons (other than the *Consultant*) who have entered into a framework agreement relating to the provision of Project specific services on terms similar to

this Agreement;

Framework Manager	the competent person having experience of framework and other partnering type contracts with public authorities employed by the <i>Consultant</i> and appointed as the <i>Consultant's</i> Framework Manager pursuant to clause 4.1 or any person who replaces such person pursuant to clause 4.3;
Gateway Manager	the person appointed by each <i>Employer</i> to provide a coordinating role with the <i>Consultant</i>
General Change In Law	a change in law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which would affect or relate to a comparable supply of services of the same or a similar nature to the carrying out of the Work.
Guarantee	a parent company guarantee in the form set out in the relevant Contract;
Indicative KPI's	the indicative set of key performance indicators as set out in schedule 7;
Information	has the meaning given to it under section 84 of the Freedom of Information Act 2000;
Initial Projects	the initial batch of Projects as determined by the <i>Employer</i> ;
Intellectual Property	all copyright and database rights and moral rights, registered designs, registered and unregistered design rights or any rights or property similar to the foregoing in any part of the world whether registered or unregistered together with the right to apply for the registration of such rights in any part of the world and the rights to the current applications for registration of any such intellectual property referred to above;
Key Performance Indicators	the key performance indicators set out in schedule 7;
Key Persons	the persons listed as such in the Project Appointment;
Lead Consultant	the individual or organisation (if any) named as such in the Project Appointment or such

other individual or organisation as the *Employer* may appoint from time to time to fulfil the role of lead *Consultant*;

Mandatory Supplier Rebate (MSR)	rebate payable to the NPS as described in Schedule 12.
Novation	a deed of novation in the form set out in the relevant Contract;
Persistent Breach	any breach which occurs on three (3) or more occasions within a 6 month period after the date on which the <i>Employer</i> has issued a final warning;
Person	any individual, firm, corporation, government, state or agency of a state or any joint venture, trust, association or partnership (whether or not having separate legal personality);
Personal Data	any personal data as defined in the DPA which is supplied to the <i>Consultant</i> by the <i>Employer</i> or obtained by the <i>Consultant</i> in the course of performing the Services;
Project	any individual commission or group of commissions identified as a single project (in the sole discretion of the <i>Employer</i>) in relation to which the Services are to be provided;
Project Appointment	the agreement between the <i>Employer</i> and the <i>Consultant</i> in respect of each Project entered into pursuant to this Agreement in the form of purchase order set out in schedule 4 together with all documents incorporated into the purchase order either expressly or by reference;
Professional Indemnity Insurance	professional indemnity insurance with insurers of repute in an amount of not less than £10,000,000 (ten million pounds) in respect of all Projects for any occurrence or series of occurrences arising out of any one event;
Required Insurances	the insurances detailed in schedule 3;
Schedule of Staff Rates	The schedule of staff rates set out in schedule 2 submitted by the <i>Consultant</i> as part of the <i>Consultant's</i> bid for selection onto this framework.

Services	The services to be provided by the <i>Consultant</i> (within the scope of services set out in schedule 1) as more particularly set out, or referred to, in the Project Appointment and any additional services agreed to be carried out by the <i>Consultant</i> from time to time in accordance with the Project Appointment and any services necessary or reasonably incidental to such services;
Specific Change in Law	a change in Law which comes into effect after the commencement date that relates specifically to the business of the <i>Client</i> and/or <i>Employer</i> , and which would not affect a comparable supply of services of the same or a similar nature to the carrying out of the Works.
Statutory Obligations	all relevant statutory authorities, requirements, regulations and permissions, current British or European Union Standards, any other approved criteria relevant codes of practice or other recognised best practice;
Subsequent Projects	the Projects after the Initial Projects;
Term	the period during which this Agreement is in force pursuant to clause 8;
Works	the works, services, goods, materials and equipment to be supplied under, or incorporated by the Contractor as provided for or to be inferred from the Building Contract, relating to the construction of the Project;
Working Days	any day (other than Sundays or public holidays in wales).

2.2. Headings

The headings in this agreement are included for ease of reference only and shall not affect the interpretation or construction of this agreement.

2.3. Joint and Several Liability

Where the *Consultant* comprises more than one person (whether as a partnership joint venture or otherwise), references to "*Consultant*" shall include all persons comprising the *Consultant* each and every present and future partner of the *Consultant* and all obligations and warranties on the part of the *Consultant* under this Agreement shall be deemed to be made and undertaken by such persons jointly and severally.

2.4. Periods Of Time

Any periods of time referred to in this Agreement and expressed in days or months shall refer to calendar days or calendar months (as the case may be).

2.5. References to Statutes

A reference to any statute or statutory provision shall include any subordinate legislation made under the relevant statute or statutory provision and shall be construed as a reference to such statute, statutory provision or subordinate legislation as it may have been, or may from time to time be, amended, modified or re-enacted (with or without modification);

2.6. Genders and numbers

Words importing one gender shall include all other genders and words importing the singular shall include the plural and vice versa.

2.7. Schedules and clauses

References to clauses and Schedules are references to clauses of and schedules to this Agreement; the Schedules form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement, and any reference to this Agreement shall include the Schedules.

3. CONTRACTS

3.1. No obligation

The *Employer* shall be entitled (but not required) at any time during the Term to request in accordance with the provisions of this clause 3 the *Consultant* to provide Project specific services. For the avoidance of doubt the *Consultant* acknowledges that the *Employer* is under no obligation to procure any Project specific services from the *Consultant* during the term and the *Employer* makes no representation to that effect.

3.2. Liability

The *Employer* has no liability to the *Consultant* in respect of the award process and Contracts entered into between the *Consultant* and any other *Employer*.

3.3. Direct award - Request for Services (tendered rates only where applicable)

The *Employer* may identify a *Consultant* that it wishes to issue directly any Project specific services that it considers that the *Consultant* is able to provide on the basis of the Tendered Rates or a priced activity schedule as set out in Schedule 10. The *Employer* may issue a request setting out a description of the provision of Project specific Services required, any relevant timescales and any other requirements. If the *Consultant* is interested in providing such provision of Project specific Services the *Consultant* shall return to the *Employer* such information and within such timescales as the *Employer* shall have requested and, if so requested by the *Employer* the *Consultant* shall enter into a contract with the *Employer* in respect of such project specific services with the *Employer* in the form set out in Schedule 4.

3.4. Mini Competitions

If at any time during the term, the *Employer* has a requirement for any provision of Project specific Services that it considers that the *Consultant* or a Framework *Consultant* may be able to provide on the most economically advantageous basis and considers that a mini competition relating to the provision of such Project specific Services is required between the *Consultant* and any other Framework *Consultants*, the *Employer* shall issue a call for mini competition to the *Consultant* and such other framework *Consultants* as the *Employer* considers appropriate. If the *Consultant* wishes to respond to such a call for mini competition it shall comply with the timescales and requirements set out in the call for mini competition.

3.5. Award of contract pursuant to mini competition

If the *Employer* issues a call for mini competition pursuant to clause 3.4 and decides to award a Contract as a result of such mini competition such Contract shall be awarded to the person who submitted the most economically advantageous tender on the basis of the criteria set out in the call for mini competition and, where such person is the *Consultant*, the *Consultant* shall enter into a contract in respect of such Project specific Services with the *Employer* in the form set out in Schedule 4.

3.6. Binding contract

The issue of a Contract by way of signed purchase order to the *Consultant* in the form set out in Schedule 4 shall constitute a binding contract between the *Employer*, and the *Consultant* for the performance of the relevant Project specific Services set out in the contract.

4. WORKING TOGETHER

4.1. Framework Manager

Within 7 days of the date of this Agreement the *Consultant* shall, subject to the prior approval of the *Client*, appoint an employee of the *Consultant* to act as the *Consultant's* Framework Manager.

4.2. Authority of Framework Manager

The Framework Manager shall act as the *Consultant's* principal contact for the purposes of this Agreement and shall have full authority to act on behalf of the *Consultant* for all purposes of this Agreement. Any notice, information, instruction or other communication given by or to the Framework Manager shall be deemed to have been given by or to the *Consultant*.

4.3. Replacement of Framework Manager

The *Consultant* may at any time during the Term and subject always to the prior approval of the *Client* to terminate the appointment of the Framework Manager and appoint a substitute.

4.4. Client Manager

Within 7 days of the date of this Agreement the *Client* shall notify the *Consultant* of the person appointed to act as its principal contact for the purposes of this agreement.

4.5. Replacement of Client Managers

The *Client* shall notify the *Consultant* of any change in the identity of its Client Manager

4.6. Gateway Managers

Within 7 days of the date of this agreement each *Employer* shall notify the *Consultant* of the persons appointed to act as their principal contacts for the purposes of the framework.

4.7. Replacement of the Gateway Managers

The *Employer* shall notify the *Consultant* of any change in the identity of the Gateway Managers.

4.8. Agreement to Work Together

The *Employers* and the *Consultant* agree to work with each other in relation to this Agreement and each contract entered into between the parties under this Agreement in a co-operative and collaborative manner and in a spirit of mutual trust and respect. To this end, each party shall give to, and welcome from, the other party feedback on performance and shall draw the other party's attention to any difficulties and shall share information openly, at the earliest practicable time

4.9. Agreement to work with other persons

The *Consultant* shall work with any persons engaged or appointed or employed by the *Employer* in connection with any works or projects or services relating to or in any way connected with the Works or any of them in a co-operative and collaborative manner.

4.10. Participation in meetings

The *Consultant* shall (at the request of the *Employer*) participate in meetings with the *Employer* either with or without the Gateway Managers other persons engaged or appointed or employed by the *Employer* in connection with any works or projects or services relating to or in any way connected with the Works or any of them to discuss actual or potential improvements to the delivery of Works.

4.11. Effect of the Failure to Comply with Clauses 4.8, 4.9 and/or 4.10

In the event of any dispute between the parties, any court or adjudicator or other forum to which the dispute is referred may take into account the parties' failure to comply with clauses 4.8, 4.9 & 4.10.

5. DUTIES OF THE CONSULTANT

5.1. Duty of Care

the *Consultant* shall, in the performance of the Services (and any Additional Services requested by the *Employer*), exercise all reasonable skill, care and diligence reasonably to be expected of an appropriately qualified and competent professional person holding himself out as competent to perform the Services in relation to projects of a similar size, scope and nature to the Project and shall:-

- (a) (so far as is relevant to the performance of the Services) unless and so far as the *Employer* otherwise directs not specify for use and not authorise or approve the specification or use by others, of any goods, materials, substances or products not in accordance with relevant British and European Union standards, Codes of Practice, any other approved criteria, relevant codes of practice or other recognised best practice or otherwise generally known within the construction and architectural industries at the time of specification to be deleterious to health and safety or to the durability of the Works;
- (b) notify the *Employer* in writing at the earliest practicable time if in the performance of its duties the *Consultant* becomes aware that any other person has specified or used, or authorised or approved the specification or use by others of any such products or materials. This clause does not create any additional duty for the *Consultant* to inspect or check the work of others which is not required by the Project Appointment;
- (c) supply the *Contractor* (and, through it, any relevant sub *Contractor*) with such information, calculations, drawings, and specifications as it may reasonably require;
- (d) assist the *Employer* to review any alternative design and/or construction approaches;

- (e) use the Key Persons in the performance of the Services and shall not make any changes to the Key Persons without the prior written consent of the *Employer* (which shall not be unreasonably withheld, provided that any replacements for any Key Persons shall be no less qualified to perform the relevant role than the person replaced);
- (f) Ensure that all persons concerned in the performance of the Services are suitably qualified, experienced and competent having regard to the tasks and functions expected from them and shall use reasonable endeavours to ensure that they liaise as necessary between themselves.

5.2. Keeping the *Employer* Informed

Without prejudice to the generality of clause 5.1, the *Consultant* shall keep the *Employer* regularly and reliably informed of the actual and anticipated cost of the Services and (in conjunction with the other *Consultants*) the Project from time to time with a view to keeping the cost of the Services and the Project within the *Employer's* budget.

- 5.3.** The *Consultant* shall appoint a framework manager prior to the commencement of this agreement and shall notify the *Client* immediately in writing of the name of the framework manager. The framework manager shall act as the coordinator and the main point of contact with the *Client* and *Employers* and shall be authorized to make decisions on behalf of the *Consultant* in connection with and pursuant to this Agreement and any Project Appointment.
- 5.4.** Any notice information instruction or other communication given by or made to the Framework Manager shall be deemed to have been given by or made to the *Consultant*.
- 5.5.** The *Consultant* shall notify the *Client* in writing of any proposal to replace the Framework Manager and shall provide the *Client* with the new Framework Manager's name, details and experience.
- 5.6.** If this Agreement or any Project Appointment involves the provision of any works or services where the *Consultant's* staff are exempt from the provisions of section 4(2) of the Rehabilitation of Offenders Act 1974, by virtue of the Rehabilitation of Offenders Act 1974 (Exemptions) order 1075, then the *Consultant* shall ensure that all such staff provide sufficient information and assistance to enable the *Consultant* to make proper checks with the Criminal Record Bureau (or successor organisation). The *Consultant* shall make such checks and ensure that only suitable persons are used in connection with the provision of any Services. The *Consultant* shall ensure that the terms of any sub-contracts contain similar provisions to those set out in this paragraph to enable proper checks to be made of sub-*Consultants'* staff and to require such checks to be undertaken.

- 5.7. The *Client* and *Employer* shall be entitled (acting reasonably) to issue the *Consultant* with a written notice requiring the *Consultant* to remove any of its staff (or secure the removal of any sub-*Consultants*' staff) from the provision of work under this agreement or any project appointment and the *Consultant* shall comply with such notice immediately. The *Client* and *Employer* shall not be liable to the *Consultant* for any staff or any costs claims losses or demands arising as a result of such removal and the *Consultant* shall indemnify the *Client* and *Employer* against any claims made by any staff or sub *Consultant*.
- 5.8. The *Consultant* shall (at the request of the *Client* and/or *Employer*) participate in meetings and gateway reviews with the *Client* and/or *Employer* either with or without the other *Consultants* or *Consultants* engaged by the *Client* and/or *Employer* in relation to this Agreement to discuss actual or potential improvements to the delivery of projects. Such meetings will take place not more than quarterly in any calendar year with regard to the review of this Agreement and shall take place not more than once a month in relation to each Project Appointment. Such meetings shall also be attended and led by the Gateway/Client Manager and the Framework Manager on behalf of the *Client* and/or *Employer* and the *Consultant* respectively.

6. ADDITIONAL SERVICES AND INSTRUCTIONS

- 6.1.** In addition to the services the *Consultant* shall perform such other Additional Services in respect of each Project Appointment as the *Employer* may from time to time instruct in writing. The *Employer* shall pay to the *Consultant* in respect of such Additional Services the Additional Fee, such Additional Fee to be agreed between the *Employer* and the *Consultant* prior to commencing the performance of such Additional Services.
- 6.2.** The *Consultant* shall immediately comply with all *Employer* instructions unless any such instructions conflict with any statutory requirements. If the *Consultant* fails to comply within 7 days of any such instructions, the *Employer* may employ others to give effect to such instructions and the additional cost expense and/or damages to the *Employer* shall be recoverable from the *Consultant* or deducted from any amount otherwise due to the *Consultant*.
- 6.3.** If any instruction issued under clause 6.1 shall require the *Consultant* to undertake work or do anything not provided for under this Agreement and shall not have arisen out of or in connection with any negligence, omission or default of the *Consultant* or of any of its servants or agents, the *Employer* shall pay the *Consultant* in accordance with the Project Appointment.

7. COPYRIGHT/LICENCE TO USE DOCUMENTS

- 7.1.** The Intellectual Property in the Documents shall remain vested in the *Consultant*.
- 7.2.** In relation to any Documents, the *Consultant* hereby grants to the *Employer* an irrevocable royalty-free non-exclusive licence to use and to reproduce all Documents for any purpose whatsoever connected with this Agreement and any Project and such other purposes as are reasonably foreseeable including, but without limitation, the carrying out, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Project. Such licence will carry the right to grant sub-licences and will be transferable to third parties but shall not entitle the owner of such licence or any sub-licences to reproduce the designs contained in the Documents. Such licence shall take effect from the date of the relevant Project Appointment or (in relation to Documents not yet in existence) from the date of the creation of the relevant Document and shall continue notwithstanding any termination of this Agreement or any Project Appointment. The *Employer* will not hold the *Consultant* liable for any use it may make of the Documents for any purpose other than that for which they were originally provided by it.
- 7.3.** The *Consultant* agrees on reasonable request at any time and following reasonable written prior notice to give the *Employer* or those authorised by it access to the Documents and to provide copies (including copy negatives and CAD disks) thereof at the *Employer's* expense.
- 7.4.** The *Consultant* warrants to the *Employer* that it has used the standard of skill, care and diligence as set out in clause 5.1 to see that the Documents (save to the extent duly appointed sub-*Consultants* have been used to prepare the same) are its own original work and that in any event their use in connection with the Project will not infringe the rights of any third party.

8. THE TERM OF THIS AGREEMENT

8.1. Expiry

This agreement shall continue until the 31st day of March 2020 unless terminated in accordance with clause 13 or extended in accordance with clause 8.2;

8.2. Option to extend

The *Client* may give notice to the *Consultant* at any time before the expiry of this Agreement to extend the period of this agreement for a further period of up to 1 year.

9. SELECTION OF CONSULTANTS TO PROVIDE PROJECT SPECIFIC SERVICES

9.1. Selection of *Consultants* for the Initial Projects

Each *Employer* will endeavour to allocate a fair and reasonable proportion of the Initial Projects to the *Consultant* as set out in clause 3.3 to 3.5 of this Agreement and Schedule 10.

9.2. Issue of a project appointment

The *Employer* will confirm the appointment of the *Consultant* by the issue of a Project Appointment.

9.3. Effect of the issue of a project appointment

Upon the issue of a project appointment to the *Consultant*, the *Consultant* shall execute and return the relevant project appointment to the *Employer*. Notwithstanding any failure to execute the project appointment or any delay in so doing, the issue of the project appointment by the *Employer* shall constitute a binding contract between the *Employer* and the *Consultant* for the performance of the relevant services to the *Employer* at the fee previously agreed and set out in the project appointment.

9.4. Subsequent projects

Following the collection and assessment by the *Employer* of the records of performance monitoring under clause 10 the *Employer* will allocate such Subsequent Projects to the *Consultant* by consideration of the *Consultant's* performance.

9.5. Mini-competitions

The *Employer* reserves the right, in its absolute discretion to invite the *Consultant* and the Framework *Consultants* to bid for the Projects by way of mini competitions as detailed in clause 3.4.

Request for Services (tendered rates only where applicable)

The *Employer* reserves the right, in its absolute discretion, to allocate any provision of project specific services that it considers that the *Consultant* is able to provide on the basis of the tendered rates on the most economically advantageous basis as detailed in schedule 10.

9.6. No guarantee of work

It is the *Employer's* intention that this Agreement will apply to the procurement of all of the Projects that occur during the course of this Agreement but the *Employer* cannot guarantee its ability to provide future Projects under this Agreement and makes no representation to that effect.

10. KEY PERFORMANCE INDICATORS

Throughout the term the performance of the *Consultant* in relation to each Contract shall be measured against the Key Performance Indicators. The *Employer* shall be entitled, in its absolute discretion, to add to, amend or delete any of the Key Performance Indicators. The parties shall meet at such intervals set out by the *Employer* from time to time but in any event at least once in each year of the term. The purpose of the meeting is to review the *Consultant's* performance in relation to the Key Performance Indicators on each Contract. The *Employer* shall maintain a record of all Key Performance Indicators collected in relation to each Contract and of a summary of the review meetings that take place.

11. CONTINUOUS IMPROVEMENT

During the term of this Agreement and in relation to each and every Project, the *Consultant* shall identify and achieve, in conjunction with the Framework *Consultants* and others involved in the delivery of any Project, continuous improvement in the quality of and the way in which the Services are provided and of the works carried out and a reduction in the costs, wastage, construction related accidents and the time taken to deliver completed Projects.

12. ASSIGNMENT AND SUB-CONTRACTING

12.1. Assignment by the *Employer*

The *Employer* shall be free to assign, novate, transfer, sub-contract or otherwise dispose of any or all of its rights and obligations under this Agreement and/or any Contract and the *Consultant* shall enter into such deeds of novation in respect thereof as the *Employer* shall reasonably require.

12.2. Assignment by the *Consultant*

This Agreement and any Contract are personal to the *Consultant* and the *Consultant* shall not be entitled to assign, novate, transfer, sub-contract or otherwise dispose of any or all of its rights and obligations under this Agreement.

12.3. Sub – contracting by the *Consultant*

The *Consultant* shall not subcontract in whole or in part the performance of this Agreement. The *Consultant* shall only subcontract the partial performance of any Services under any Project Appointment with the prior written consent of the *Employer*. Any consent to subcontract any part or parts of the Services shall not affect or reduce the scope of the *Consultant's* obligations under any Project Appointment.

13. TERMINATION

13.1. Termination by the *Client*

Without prejudice to any other rights or remedies to which it may be entitled under this Agreement or any Contract entered into between the *Employer* and the *Consultant* or at law or in equity, the *Client* may terminate this Agreement with immediate effect at any time on notice to the *Consultant* if any of the following occur:

- (a) any breach of the terms of this Agreement by the *Consultant* (other than a breach which is notified to, and remedied by, the *Consultant* within 10 working days of the notice); or
- (b) [the *Consultant* suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (c) the *Consultant* commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of the *Consultant* (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the *Consultant* with one or more other companies for the solvent reconstruction of that *Consultant*; or
- (e) an application is made to court, or an order is made, for the appointment of an administrator or is a notice of intention to appoint an administrator is given or if an administrator is appointed over the *Consultant* (being a company); or
- (f) a floating charge holder over the assets of the *Consultant* (being a company) has become entitled to appoint or has appointed an administrative receiver; or
- (g) a person becomes entitled to appoint a receiver over the assets of the *Consultant* or a receiver is appointed over the assets of the *Consultant*; or
- (h) a creditor or encumbrancer of the *Consultant* attaches or takes possession of, or a distress, execution, sequestration or other such process is levied

or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or

- (i) any event occurs, or proceeding is taken, with respect to the *Consultant* in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1 (b) to clause 13.1 (l) (inclusive); or
- (j) the *Consultant* suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (k) there is a change of control of the *Consultant* (within the meaning of section 1124 of the Corporation Tax Act 2010);
- (l) any warranty given in clause 26 (warranties) is found to be untrue or misleading; or
- (m) in the opinion of the *Client* whose opinion shall be final and binding an irreconcilable conflict of interest between the interests of the *Client* and the *Consultant* arises or is likely to arise; or
- (n) a persistent breach; or
- (o) a contract is terminated early by the *Employer*; or
- (p) any serious breach of a health and safety obligation under any contract.

13.2. Termination by the *Consultant*

The *Consultant* may terminate this agreement:

- (a) at any time by serving not less than three (3) months' prior notice on the *Client*; and
- (b) following any material breach by the *Client* (other than a material breach which is notified to, and remedied by, the *Client* within 10 working days of the notice).

13.3. Effects of expiry or termination

- (a) upon expiry or termination of this Agreement howsoever arising and subject always to the other provisions of this clause 13.3 all rights and obligations hereunder shall immediately cease and determine without prejudice to any rights of action then accrued under this Agreement including any rights which either party may have in respect of a claim for damages for breach by the other party of any of the terms of this Agreement.
- (b) the expiry or termination of this agreement shall not automatically terminate any Contract in force at the date of expiry or termination unless in the case of termination of this Agreement the reason for termination of this Agreement is also a ground for the termination of such Contract and where such termination is optional such option is exercised.

- (c) the following clauses shall survive expiry or termination of this Agreement (howsoever arising): clause 15 and clause 13.3.

14. GUARANTEE, BOND, COLLATERAL WARRANTIES, NOVATION

If so required under any Contract the *Consultant* shall within 14 days of entering into such Contract provide or procure the provision of a Guarantee, Bond, Collateral Warranty and/or Novation. Failure to provide the above documents will result in non-payment for the services.

15. REQUIRED INSURANCES

- 15.1.** The *Consultant* shall prior to the commencement date take out and thereafter maintain at all times during both the Term and where the Contract extends beyond the Term, for the Term provided for in the Contract, the Required Insurances. Where the *Client* or *Employer* instructs the *Consultant* to take out and maintain Professional Indemnity Insurance in relation to any Contract the term Required Insurance shall be deemed to include Professional Indemnity Insurance.
- 15.2.** Whenever requested by the *Client* or *Employer*, the *Consultant* shall provide to the *Client* or *Employer*, copies of all insurance policies (including any variations or amendments) in relation to the Required Insurances and evidence that all premiums thereunder have been fully paid.
- 15.3.** The *Consultant* shall comply on a day to day basis with the terms, conditions and limitations of the Required Insurances throughout the Term. In particular, the *Consultant* shall notify the *Client* and *Employer* if any matter or element is refused insurance cover or the cover therefore is withdrawn or if there any exclusions from such cover or deductions in respect of any insured risks.
- 15.4.** The *Consultant* shall not do or allow to be done anything whereby any Required Insurance may lapse or become wholly or partly void or voidable.

16. COMMUNITY BENEFITS

16.1. Community benefits measurement tool

Within this framework the *Employer* would be seeking to identify Community Benefits as part of the on-going Contract Management and will use where appropriate the Welsh Government Community Benefits Measurement Tool for specific projects as required by the funding bodies.

17. NOTICES

17.1. Notices in writing

All notices required to be given under the terms of this Agreement must be in writing.

17.2. Forms of service

Any notice may be served by leaving it with, or sending it by pre-paid first class post or by email to, the parties at their addresses set out in this agreement (or to such addresses as shall have been duly notified in accordance with this clause) or to the following email address:-

Kathryn Jones
Category Officer
National Procurement Service
Welsh Government Offices
Ty Afon
Bedwas Road
Bedwas
Caerphilly
Wales
CF83 8WT

NPSPROFESSIONALSERVICES@WALES.GSI.GOV.UK

THE CONSULTANT {INSERT DETAILS}

17.3. Times of service

Notices delivered by hand shall be deemed to have been delivered on the day when they are handed over. Notices sent by post shall be deemed to have been delivered on the first working day after posting and notices given by email shall be deemed to have been served upon successful transmission between the hours of 9am and 5pm on any working day.

18. NO AGENCY, PARTNERSHIP OR JOINT VENTURE

Nothing contained in this Agreement shall be construed as creating an agency, partnership or joint venture relationship between the parties.

19. DATA PROTECTION ACT

19.1. DPA interpretation

For the purposes of this Clause, the terms “Data Controller”, “Data Processor”, “Data Subject”, “Personal Data”, “Process” and “Processing” shall have the meaning prescribed under the DPA.

19.2. DPA general obligations

The *Consultant* shall (and shall procure that any of its Staff involved in the provision of this Contract) be registered under the Data Protection Act 1998 (“DPA”) and both parties will duly observe all their obligations under the Act which arise in connection with this Agreement and any Contract.

19.3. DPA processing obligation

Notwithstanding the general obligation in Clause 19.2, where the *Consultant* is processing Personal Data (as defined by the DPA) as a data processor for the *Client* and *Employer* the *Consultant* shall:

- (a) process the Personnel Data only in accordance with instructions from the *Client* or *Employer* (which may be specific instructions or instructions of a general nature) as set out in this Contract or as otherwise notified by the *Client* or *Employer*;
- (b) comply with all applicable laws;
- (c) process the Personal Data only to the extent; and in such manner as is necessary for the provision of the Provider’s obligations under this Agreement and under any Contract or as is required by Law or any Regulatory Body;
- (d) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or

damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

- (e) take reasonable steps to ensure the reliability of its staff and agents who may have access to the Personal Data;
- (f) obtain prior written consent from the *Client* or *Employer* in order to transfer the Personal Data to any Sub-Consultant for the provision of the Services;
- (g) not cause or permit the Personal Data to be transferred outside of the European Economic Area without the prior consent of the *Employer*;
- (h) ensure that all staff and agents required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 19;
- (i) ensure that none of the staff and agents publish disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the *Client* or *Employer*;
- (j) not disclose personnel data to any third parties in any circumstances other than with the written consent of the *Client* or *Employer* or in compliance with a legal obligation imposed upon the *Client* or *Employer*; and

19.4. Notification of request or complaint

Notify the *Client* or *Employer* (within [five] working days) if it receives:

- (a) a request from a data subject to have access to that person's personal data; or
- (b) a complaint or request relating to the *Client* or *Employer's* obligations under the DPA;

19.5. Continuance of obligations

The provisions of this condition shall apply during the continuance of this Agreement and any Contract and indefinitely after their respective expiry or termination.

20. FREEDOM OF INFORMATION ACT (FOIA)

The *Consultant* acknowledges that the *Client* and *Employer* are subject to the requirements of the FOIA and shall assist and co-operate with the *Client* and *Employer* (at the *Consultant's* expense) to enable the *Client* and *Employer* to comply with its information disclosure requirements.

The *Consultant* shall and shall procure that its sub-*Consultants* shall:

- (a) transfer any Request for Information to the *Client* or *Employer* as soon as practicable after receipt and in any event within two (2) Working Days of receiving a Request for Information;
- (b) provide the *Client* or *Employer* with a copy of all information in its possession or power in the form that *Client* or *Employer* requires within 7 Working Days (or such other period as the *Client* or *Employer* may specify) of the *Client* or *Employer* requesting that information; and
- (c) Provide all necessary assistance as reasonably requested by the *Client* or *Employer* to enable the *Client* or *Employer* to respond to a Request for Information within the time for compliance set out in the FOIA

The *Client* and *Employer* shall be responsible for determining at their absolute discretion whether any information

- (i) is exempt from disclosure in accordance with the provisions of the FOIA; and
- (ii) is to be disclosed in response to a Request for Information

and in no event shall the *Consultant* respond directly to a Request for Information unless expressly authorised to do so by the *Client* or *Employer*.

The *Consultant* acknowledges that the *Client* and *Employer* may be obliged under the FOIA to disclose information:

- (iii) without consulting with the *Consultant*, or
- (iv) following consultation with the *Consultant* and having taken its views into account

Without prejudice to the provisions of this clause 20, the *Consultant* shall ensure that all information produced in the course of this Agreement or any Contract between the parties or relating to this Agreement or any Contract is retained for disclosure and shall permit the *Client* and *Employer* to inspect such records as requested from time to time.

21. EQUAL OPPORTUNITIES

- 21.1.** Without prejudice to the *Consultant's* obligations to undertake the contract in accordance with all the Statutory Obligations, the *Consultant* shall at all times during the Term and for the term of each of the Contracts operate an equal opportunities policy that complies with the statutory obligations set down in the Equality Act 2010 and such provisions of the following statutes that have not been amended or repealed by the Equality Act 2010 : Race Relations Act 1976, the Race Relations (Amendment Act) 2000, Equal Pay act 1970 and 1983, Sex Discrimination Act 1976 and 1986 and the Disability Discrimination Act 1995, Maternity and Paternity Leave etc Regulations 1999. Protection from Harassment Act 1997, Human Rights Act 1998 and the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and it shall not treat one group of people less favourably than others because of their colour race nationality ethnic origin gender sexual orientation disability age or religion in relation to decisions to recruit train or promote staff.
- 21.2.** The *Consultant* shall take all reasonable steps to ensure that all agents and sub-consultants or sub-consultants engaged in the delivery of the Services pursuant to any contract between the parties do not unlawfully discriminate and comply with the provisions equivalent to those set out in this clause.

22. CONFIDENTIALITY

22.1. The *Consultant* shall:

- (a) keep the Confidential Information confidential;
- (b) not use the Confidential Information otherwise than for the purposes of this agreement and the relevant Contracts between the parties; and
- (c) disclose the Confidential Information only on a need to know basis and in confidence to those of its employees who require knowledge thereof for the purposes of this Agreement and/or the relevant Contracts between the parties and who are subject to obligations of confidentiality to the *Consultant* [and in confidence to those of its professional advisors and/or auditors who are required to provide advice in respect of this Agreement and/or any Contract between the parties].

- 22.2.** The restrictions on disclosure contained in clause 22.1(c) shall not apply to information which is in the public domain at the date of disclosure or which subsequently enters the public domain otherwise than as a consequence of any unauthorised disclosure, act or omission by the *Consultant*, its employees, its professional advisers or auditors. For the purposes of this clause 22.2, Confidential Information shall not be considered to be in the public domain merely because parts of it are known or because it is known to a few people but is not generally freely available.
- 22.3.** No announcement concerning the existence or subject matter of this Agreement, any Contract between the parties or any ancillary matter shall be made by the *Consultant* at any time except as required by law or by any legal or regulatory authority or with the prior written approval of the *Client* and *Employer*.

22.4. The *Consultant* shall not take any photograph film tape or other recording of any works or publish the same without the *Employer* prior written consent.

23. ENTIRE AGREEMENT

With the exception of the *Consultant's* tender representations and statements made fraudulently, this Agreement and any and all Contracts between the parties set out the entire agreement between the parties relating to the subject matter hereof and supersedes all prior negotiations representations and undertakings all previous agreements between the parties relating to the subject matter of this Agreement.

24. VARIATIONS

No modification or alteration to the terms of this Agreement shall have effect unless the same is agreed in writing and signed by a duly authorised representative of each of the parties.

25. PROCUREMENT ON BEHALF OF EMPLOYER

Where the *Consultant* is required to secure the provision of goods and services (including equipment) on behalf of the *Employer* or as an element of any Project Appointment this shall be effected in accordance with

- (a) any terms instructed by the *Employer* to comply with the *Employer's* respective financial regulations; and
- (b) the terms of this agreement.

26. WARRANTIES

26.1. The *Consultant* warrants to the *Client* and *Employer* as follows:

- (a) it has the power to enter into and perform its obligations under this Agreement and any and all Contracts;
- (b) it is not under any obligation to any person whether express or implied which would or might conflict with the full and proper performance of its obligations under this Agreement and any and all Contracts; and
- (c) any and all information provided to the *Client* by the *Consultant* in connection with the *Client's* tender process in respect of this agreement prior to the commencement date is true, complete and accurate and is not misleading in any respect

26.2. Each of the warranties set out in clause 26.1 shall be interpreted and construed as a separate warranty and shall not be limited or restricted by reference to any other warranty or any other provision of this Agreement or of any Contract and shall be deemed to have been repeated by the *Consultant* at the date of execution of each and every Contract.

27. CORRUPT GIFTS AND COLLUSION

- 27.1.** In relation to this Agreement or any Contract between the parties the *Consultant* shall not give nor offer to give any gift or consideration of any kind whatsoever as an inducement or reward to any employee or agent of the *Client* or *Employer*. The *Consultant* shall not take any gift or consideration from any other *Consultant* or *Consultant* with an interest in this Agreement any Contract or any Services.
- 27.2.** The *Consultant* warrants that it has not breached and will not breach any competition law and has not colluded nor unlawfully collaborated with any person.

28. NO WAIVER

No delay by either party in exercising, or failure by either party to exercise, any right, power or remedy provided by law or under this Agreement shall operate as a waiver of that or any other right, power or remedy; or affect the other terms of this Agreement or the relevant Contract between the parties (as applicable). The single or partial exercise of any right, power or remedy provided by law or under this Agreement or any Contract between the parties shall not preclude any other or further exercise of it or the exercise of any other right, power or remedy. A waiver of any breach of or default under this Agreement or any Contract between the parties shall not constitute a waiver of any other breach or default and will not prevent a party from subsequently requiring compliance with the waived obligation.

29. DISPUTE RESOLUTION

29.1. Notification

As soon as any party is aware of any difference or dispute with the other party arising out of, or in connection with, this Agreement which does not fall to be dealt with under a Contract between the parties, it shall give notice to the other party.

29.2. Negotiation

The parties shall endeavour to resolve any difference or dispute by direct negotiation in good faith between senior executives and each party shall give serious consideration to a request by the other party to refer a difference or dispute to mediation.

29.3. Adjudication

Any disputes arising under or in connection with this Agreement may be referred by either party to adjudication in accordance with the Scheme for Construction Contracts at any time. In the absence of agreement between the parties as to the choice of adjudicator, the adjudicator shall be appointed by the Chairman for the time being of the Technology and Construction Solicitors Association or his nominated representative.

29.4. Litigation

The decision of any adjudicator shall be binding on and implemented by the parties pending any final determination of the relevant dispute by the courts of England & Wales, applied in Wales.

30. JURISDICTION & GOVERNING LAW

This Agreement shall be governed by the laws of England and Wales as applied in Wales and the parties submit to the non-exclusive jurisdiction of the Courts of England and Wales.

31. CHANGE IN LAW

31.1. No release

The *Consultant* shall neither be relieved of its obligations under this Agreement nor to carry out the Services under any Contract nor be entitled to an increase in the charges as the result of:

- (a) a general change in law; or
- (b) a specific change in law where the effect of that specific change in law on the works is known at the commencement date.

31.2. Notification

If a specific change in law occurs or will occur during the Term (other than those referred to in clause 31.1), the *Consultant* shall notify the *Employer* of the likely effects of that change, including:

- (a) whether any change is required to the works, the schedule of staff rates, or any prices under any Contracts; and
- (b) whether any relief from compliance with the *Consultant's* obligations is required, including any obligation to achieve any milestones or to meet any of its obligations at any time.

31.3. Mitigation

As soon as practicable after any notification in accordance with clause 31.2 the parties shall discuss and agree the matters referred to in that clause and any ways in which the *Consultant* can mitigate the effect of the specific change of law, including:

- (a) providing evidence that the *Consultant* has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its sub-consultants;
- (b) demonstrating that a foreseeable specific change in law had been taken into account by the *Consultant* before it occurred;
- (c) giving evidence as to how the specific change in law has affected the cost of providing the Works; and

- (d) demonstrating that any expenditure that has been avoided has been taken into account in amending the schedule of staff rates and any prices under any contract.

32. RIGHTS OF THIRD PARTIES

This Agreement is not intended to confer any benefit on any third party nor are any of its terms intended to be enforced by any third party and the provisions of the Contracts (Rights of Third Parties) Act 1999 shall accordingly not apply.

33. WELSH LANGUAGE STANDARDS

33.1. Carmarthenshire County Council, Ceredigion County Council, Pembrokeshire County Council, Powys County Council, Neath-Port Talbot County Borough Council and City And County of Swansea have Welsh Language Standards. The standards outline how the relevant public bodies will treat the Welsh and English languages on a basis of equality in the conduct of public business.

33.2. The *Consultant* confirms that, at its own cost, it will demonstrate how it complies with these standards and where requested provide information on the extent to which they are able to conduct work through the medium of welsh.

33.3. A copy of the welsh language standards are available at

Carmarthenshire : <http://www.carmarthenshire.gov.wales/home/council-democracy/welsh-language>

<http://www.carmarthenshire.gov.wales/media/1443477/carmarthenshire-welsh-language-standards.pdf>

Ceredigion : <http://www.ceredigion.gov.uk/english/your-council/strategiesplansandperformances/welshlanguage/standards/pages/default.aspx>

<http://www.ceredigion.gov.uk/cymraeg/eich-cyngor/strategaethaucynllunioaperfformiadau/iaithgymraeg/safonau/pages/default.aspx>

Neath port talbot : <https://www.npt.gov.uk/default.aspx?page=4648>

Pembrokeshire : <http://www.pembrokeshire.gov.uk/content.asp?nav=101,1581,2430>

Powys : <http://www.powys.gov.uk/en/welsh-language-standards/welsh-language-standards/>

<http://www.powys.gov.uk/cy/welsh-language-standards/safonaur-gymraeg/>

Swansea : <http://www.swansea.gov.uk/cymraeg>

In witness whereof the parties have entered into this agreement on the day in the year first before written

Signed by

[name], [job title], under authority of the [tbc], on behalf of the welsh ministers

In the presence of:-

Authorised signatory

Signed by the

Consultant:-

Director

Director/secretary

[or

Signed by the

Consultant:-

Director

In the presence of

Witness signature

Witness name

Witness address
