DATED 2019

(1) **COUNTY COUNCIL OF THE CITY AND COUNTY OF CARDIFF**

(2) **[USER NAME]**

SOUTH EAST WALES

**HIGHWAYS FRAMEWORK**

**(SEWH 3)**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

AGREEMENT FOR USER

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

This **AGREEMENT** is made on [***Date***]

**BETWEEN:**

1. **COUNTY COUNCIL OF THE CITY AND COUNTY OF CARDIFF** of County Hall, Atlantic Wharf, Cardiff, CF10 4UW (the “**Authority**” which expression includes any permitted successor to it and any successor to it in the exercise of its functions); and
2. **[USER NAME]** whose principal office is at [***address***] (the “**User**”) which expression includes any permitted successor to it and any successor to it in the exercise of its functions),

each a “**Party**” and together, the “**Parties**”,

**BACKGROUND**

1. The Authority, acting on behalf of itself and the other named Potential Employers (listed in Schedule 1 (*Potential Employers*) to this Agreement), has set up the South East Wales Highways Framework (“**SEWH 3**”) under which Users can procure highway maintenance services and construction works from the Framework Contractors listed by Lot in Schedule 2 (*Framework Contractors*) to this Agreement.
2. The Authority has entered into a series of framework agreements with the individual Framework Contractors in standard form, the terms, conditions and other provisions of which are referred to as the “**Framework Agreement**”.
3. The User wishes to make use of SEWH 3.
4. The Authority requires that any User which wishes to use SEWH 3 to procure highway maintenance services and construction works enters into this Agreement with the Authority to regulate the use and operation of the Framework Agreement.

IT IS AGREED as follows:

1. **Consideration and Intention to Create Legal Relations**
   1. The consideration for this Agreement shall be as follows –
      1. The Authority permits the User to use SEWH 3 in accordance with the provisions of this Agreement, the provisions of the Framework Agreement, the Guidance and Applicable Law; and
      2. The User agrees to abide by and perform diligently and in full the obligations of the User set out in this Agreement, in the Framework Agreement and in the Guidance and to comply with Applicable Law in doing so.
   2. The Parties intend that this Agreement should have legal effect and should be enforceable by either of them as a contract.
2. **Interpretation**
   1. The following terms and expressions shall have the meanings ascribed to them:

|  |  |
| --- | --- |
| **Agreement** | means this Agreement including its recitals, terms and conditions, schedules, attachments thereto and any documents referred to as forming part of it; |
| **Applicable Law** | means any law, statute, proclamation, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972 (as may be amended or preserved), regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the User is bound to comply (including for the avoidance of doubt Acts, Measures and/or subordinate legislation of the National Assembly for Wales), to the extent that each is in force in England and Wales or in Wales only; |
| **Call-Off Contract** | means an agreement between one or more Potential Employers and a Framework Contractor to carry out works and/or services for a Construction Project under the terms of this Agreement, in the relevant form set out at Schedules 5 to 11 of the Framework Agreement, and, where the context requires, includes a reference to the provisions of the relevant form of Call-Off Contract set out at Schedules 5 to 11 of the Framework Agreement; |
| **Construction Project** | means any project, services or works for an Employer within the Scope of Works including, for the avoidance of doubt, any and all phases of “early contractor involvement” or “two-stage” commissions where a contractor may be engaged initially in relation to design and then subsequently in relation to construction; |
| **Employer** | means any Potential Employer which enters into a Call-Off Contract or engages the Contractor in respect of a Construction Project; |
| **Guidance** | means the document “*South East Wales Highways Framework Guidelines and User Guide*” (as updated from time to time) provided by the Authority to the Potential Employer prior to the Potential Employer’s entry into this Agreement; |
| **Procurement Law** | means the Public Contracts Regulations 2015 (as amended) and Directive 2014/24/EU, as applicable, and in each case the relevant case law of the European Court of Justice and the UK Courts relating to the above legislation in so far as it constitutes binding precedent; |
| **Management Information** | means the management information described in Schedule 3 to this Agreement; |
| **Request to Enter into a Call-Off Contract** | as defined in paragraph 6 of Part II of Schedule 4 to the Framework Agreement; |
| **Scope of Works** | means the scope of works and services set out in Schedule 1 (*Scope of Works*) to the Framework Agreement; |
| **Selection Process** | means the processes to be followed by Potential Employers in entering into Call-Off Contracts, as set out in Schedule 4 (*Selection Processes*) to the Framework Agreement; and |
| **Social Levy** | as defined in the Framework Agreement; |
| **Website Information** | the information required by the Authority from time to time to update the SEWH3 website. |

* 1. In this Agreement unless the context otherwise requires:
     1. references to a statute or statutory provision shall be construed as a reference to the same as from time to time amended, consolidated, modified, extended, re-enacted or replaced. Any reference to a statutory provision shall include any subordinate legislation made from time to time under that provision;
     2. words in the singular shall include the plural and vice versa and a reference to a gender shall include a reference to all genders;
     3. a reference to a person shall include a reference to a firm, a body corporate or unincorporated association or to a person’s executors or administrators;
     4. a reference to a Clause or Schedule shall be a reference to a Clause or Schedule (as the case may be) of or to this Agreement, unless otherwise specified;
     5. the headings are for convenience only and shall not affect the interpretation of any provision of this Agreement;
     6. unless a right or remedy of a Party is expressed to be an exclusive right or remedy, the exercise of it by a Party is without prejudice to that Party’s other rights and remedies;
     7. any phrase introduced by the words “including”,“includes”,“in particular” or “for example” or similar shall be construed as illustrative and shall not limit the generality of the related general words; and
     8. “writing” or “written” includes e-mail (provided that an error-free transmission report is received by the sender and no notification of malfunction or failure of transmission is received by the sender).

1. **Warranties and Exclusion of Liability**
   1. The User warrants that it has the necessary power and authority to use SEWH 3 (including entering into Call-Off Contracts) and has carried out all necessary steps and actions (including obtaining necessary approvals whether internal or otherwise) so as to comply with its own procedures and the Applicable Law.
   2. The Authority and the User warrant to each other that their respective representative(s) who execute this Agreement are duly authorised and empowered to do so.
   3. The Authority gives no warranty and makes no representation about the ability of the User to use SEWH 3 for the User’s intended purpose in accordance with Applicable Law (including Procurement Law). The User acknowledges this and further acknowledges that the User is wholly responsible for carrying its own due diligence to ensure that it is able to use SEWH 3 for its intended purpose in accordance with Applicable Law.
   4. Neither Party limits its liability to the other for death or personal injury arising from negligence, or for any liability arising from fraud or fraudulent misrepresentation.
   5. Subject to Clause 3.4 above, the Authority excludes any and all liability to the User including in contract, tort (including negligence), breach of statutory duty, Procurement Law, competition law, public law including judicial review, restitution, legitimate expectation or any other area of liability to the fullest extent permitted by law, for any loss, damage, costs or proceedings whatsoever arising out of –
      1. any claim or issue as to whether the User had the necessary power and authority and/or has complied with all applicable procedural requirements; and/or
      2. any claim or issue as to whether the User has complied with its obligations under Procurement Law,

in each case in relation to the User entering or proposing to enter into a Call-Off Contract and/or the User’s use of SEWH 3.

* 1. The User acknowledges that the Authority shall not in any way be responsible or held liable for any loss, damage, costs or proceedings whatsoever arising out of the performance of any Call-Off Contract(s), such matters being between the User and the relevant Framework Contractor(s).

1. **Use of the Framework Agreement**
   1. The User must not commence any Selection Process or enter into any Call-Off Contract without the prior consent of the Authority.
   2. Before the User can commence a Selection Process, it must notify the Authority of –
      1. the nature of the works or services to be undertaken under the proposed Call-Off Contract;
      2. the estimated value of the proposed Call-Off Contract;
      3. the Lot which the User proposes to use;
      4. the Selection Process which the User proposes to use; and
      5. the award or tender procedure which the User proposes to use.
   3. The User shall in conducting any Selection Process and/or awarding any Call-Off Contract comply with the provisions of Clause 7 of the Framework Agreement (*Awarding Call-Off Contracts*) and Schedule 4 to the Framework Agreement (*Selection Processes*).
   4. If the User is using Selection Process A (*Direct Award*) it shall only issue a "Request to enter into a Call-Off Contract" (pursuant to and as defined in paragraph 6 of Part II of Schedule 4 to the Framework Agreement) to the Framework Contractor identified by the User. If that Framework Contractor is unwilling or unable to enter into the relevant Call-Off Contract or is not capable of performing the Call-Off Contract, then the User shall select the Framework Contractor with the next lowest cost.
   5. The User shall not use any of the mechanisms set out under Clauses 7.3 (*Ensuring genuine competition*) without first consulting the Authority and obtaining the Authority’s prior approval. The Authority may apply conditions to its approval, regarding how the User should conduct the Selection Process under any of the above provisions of the Framework Agreement and if so, the User shall comply with such conditions.
   6. Within seven (7) days after completion of any Selection Process (whether or not resulting in the award of a Call-Off Contract), the User shall provide the following information to the Authority –
      1. the works or services to be undertaken under the Call-Off Contract;
      2. the Lot or Lots involved in the Selection Process;
      3. the Selection Process used;
      4. the time allowed to Framework Contractors to respond to the User's invitation to tender or request (as appropriate);
      5. the Framework Contractors who responded or submitted tenders (as appropriate);
      6. the Framework Contractors who were invited but did not respond or submit tenders (as appropriate);
      7. the form of contract awarded;
      8. the value of the contract awarded;
      9. the identity of the Framework Contractor to whom the Call-Off Contract has been or will be awarded;
      10. if the Selection Process did not result in an award of a Call-Off Contract, the reasons for this; and
      11. for Lots 7 to 11 (inclusive), whether the Social Levy needs to be collected
   7. The User shall notify the Authority of any complaint, claim or challenge (whether or not involving legal proceedings) in relation to the User's use of SEWH 3 as soon as reasonably practicable after becoming aware of it.
   8. The User shall not do anything to prejudice the Authority’s procurement of SEWH 3 and in particular the User shall not amend any the Framework Agreement or the form(s) of Call-Off Contract(s) without the prior written consent of the Authority, unless such amendments are for project specific reasons as indicated and permitted in the relevant documents.
   9. The User shall:
      1. always act professionally when using the SEWH 3, including when undertaking a Selection Process, awarding a Call-Off Contract, managing and enforcing a Call-Off Contract, throughout the duration of a Call-Off Contract, through the duration of this Agreement and when liaising with the Authority and/or Framework Contractors and/or other Users;
      2. actively contribute to the continuous improvement of SEWH 3;
      3. attend meetings with the Authority and/or other Users and/or Framework Contractors , workshops and/or other events as reasonably requested by the Authority;
      4. regularly update the Website Information; and
      5. share with the Authority and other Users its experiences in relation to SEWH 3 and information as to best practice when using SEWH 3.
2. **Management Information**
   1. In respect of each Construction Project, the User shall submit to the Authority the Management Information at the frequency and in the form specified in Schedule 3 to this Agreement.
   2. The User shall in addition provide to the Authority such further information as may reasonably be requested by the Authority concerning the tender or award process for any Call-Off Contract(s), the performance of any Call-Off Contract(s), and/or the relevant Framework Contractor(s).
3. **Confidentiality**
   1. The User agrees to keep all commercially sensitive information relating to the costs data of any Framework Contractors confidential.
4. **Governing Law and Jurisdiction**

This Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales as they apply in Wales and the Courts of England and Wales (sitting at Cardiff) shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

1. **Costs and Expenses**

Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement.

1. **No Partnership or Agency**
   1. Nothing in this Agreement shall be construed as creating a partnership.
   2. No Party shall be deemed to be an agent of any other Party and no Party shall hold itself out as having authority or power to bind any other Party in any way.
2. **Third Party Rights**

Nothing in this Agreement shall create any rights for third parties under the Contracts (Rights of Third Parties) Act 1999.

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| **Signed on behalf of the Authority by:**  **[Authorised Signatory]** | **Signed on behalf of [the User] by:**  **[Authorised Signatory]** |

**SCHEDULE 1: POTENTIAL EMPLOYERS**

**CONTRACTING AUTHORITIES**

The following Potential Employers (including any successor to any of them in the exercise of their statutory or public functions) may enter into Call-Off Contracts with the Contractor under SEWH 3 –

* + - Blaenau Gwent County Borough Council;
    - Bridgend County Borough Council;
    - The County Council of the City of Cardiff Council;
    - Caerphilly County Borough Council;
    - Monmouthshire County Council;
    - Merthyr Tydfil County Borough Council;
    - Newport City Council;
    - Rhondda Cynon Taf County Borough Council;
    - Torfaen County Borough Council;
    - Vale of Glamorgan Council; and
    - Welsh Government and associated trading bodies such as Transport for Wales
    - Welsh Higher Education bodies as described at *<http://www.wales.com/study/universities-wales>*
    - Welsh Further Education Colleges as described at [*http://www.collegeswales.ac.uk/Find-a-College*](http://www.collegeswales.ac.uk/Find-a-College)
    - NHS Local Health Boards and NHS Trusts in Wales
    - Welsh Housing Associations/registered social landlords as described at <http://gov.wales/topics/housing-and-regeneration/publications/registered-social-landlords-in-wales/?lang=en>
    - Welsh Local Authorities as described at: <http://gov.wales/topics/localgovernment/unitary-authorities/?lang=en>
    - Joint Ventures or collaborations between Welsh Local Authorities or any combination of the bodies listed above; and
    - Any successors to any of the above bodies in the exercise of their statutory or public functions, including (without limitation), by reason of abolition, merger, boundary change, replacement or otherwise.

**SCHEDULE 2: FRAMEWORK CONTRACTORS**

***Note: this may vary from time to time due to suspension, replacement and termination in accordance with the terms of the Framework Agreement***

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| --- | --- | --- | --- | --- |
| **Lot 1 – (£0-£150k) Blaenau Gwent; Caerphilly; Monmouthshire; and Torfaen** | |  | **Lot 4 – (£150k - £500k) Blaenau Gwent; Caerphilly; Monmouthshire; and Torfaen** | |
| **Contractor** | |  | **Contractor** | |
| D.T. Contracting (South West) Limited | |  | Alun Griffiths (Contractors) Limited | |
| Alun Griffiths (Contractors) Limited | |  | Calibre Contracting Limited | |
| Calibre Contracting Limited | |  | Centregreat Limited | |
| Centregreat Limited | |  | Dyer & Butler Limited | |
| Horan Construction Limited | |  | Encon Construction Limited | |
| Horizon Civil Engineering Limited | |  | Horan Construction Limited | |
| Intervention Services Limited | |  | Walters U.K. Limited | |
|  |  |  |  |  |
| **Lot 2 – (£0-£150k) Merthyr Tydfil; and RCT** | |  | **Lot 5 – (£150k - £500k) Merthyr Tydfil; and RCT** | |
| **Contractor** | |  | **Contractor** | |
| Alun Griffiths (Contractors) Limited | |  | Alun Griffiths (Contractors) Limited | |
| Calibre Contracting Limited | |  | Calibre Contracting Limited | |
| Horan Construction Limited | |  | Centregreat Limited | |
| Centregreat Limited | |  | Encon Construction Limited | |
| D.T. Contracting (South West) Limited | |  | Horan Construction Limited | |
| Intervention Services Limited | |  | Intervention Services Limited | |
| Horizon Civil Engineering Limited | |  | Walters U.K. Limited | |
|  |  |  |  |  |
| **Lot 3 – (£0-£150k) Bridgend; Vale of Glamorgan; Newport; and Cardiff** | |  | **Lot 6 – (£150k-£500k) Bridgend; Vale of Glamorgan; Newport; and Cardiff** | |
| **Contractor** | |  | **Contractor** | |
| Alun Griffiths (Contractors) Limited | |  | Alun Griffiths (Contractors) Limited | |
| Calibre Contracting Limited | |  | Calibre Contracting Limited | |
| Centregreat Limited | |  | Centregreat Limited | |
| D.T. Contracting (South West) Limited | |  | Encon Construction Limited | |
| Horan Construction Limited | |  | Horan Construction Limited | |
| Horizon Civil Engineering Limited | |  | Intervention Services Limited | |
| Intervention Services Limited | |  | Walters U.K. Limited | |
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| **Lot 7 – (£500k - £2m) All Regions** | |  | **Lot 8 – (£2m - £5m) All Regions** | |
| **Contractor** | |  | **Contractor** | |
| Alun Griffiths (Contractors) Limited | |  | Alun Griffiths (Contractors) Limited | |
| Centregreat Limited | |  | Centregreat Limited | |
| Dawnus Construction Holdings Limited | |  | Dawnus Construction Holdings Limited | |
| Dyer & Butler Limited | |  | Dyer & Butler Limited | |
| Encon Construction Limited | |  | Horan Construction Limited | |
| Horan Construction Limited | |  | Knights Brown Construction Limited | |
| Walters U.K. Limited | |  | Walters U.K. Limited | |
|  |  |  |  |  |
| **Lot 9 – (£5m - £10m) All Regions** | |  | **Lot 10 – (£0 - £10m) Surfacing** | |
| **Contractor** | |  | **Contractor** | |
| Alun Griffiths (Contractors) Limited | |  | Alun Griffiths (Contractors) Limited | |
| Centregreat Limited | |  | Centregreat Limited | |
| Dawnus Construction Holdings Limited | |  | Hanson Quarry Products Europe Limited | |
| Jones Bros. Ruthin (Civil Engineering) Co. Limited | |  | Tarmac Trading Limited | |
| Knights Brown Construction Limited | |  |  |  |
| Walters U.K. Limited | |  |  |  |
|  |  |  |  |  |
| **Lot 11 – (£0 - £10m) Surfacing Preservation** | |  |  |  |
| **Contractor** | |  |  |  |
| Alun Griffiths (Contractors) Limited | |  |  |  |
| Road Maintenance Services Limited | |  |  |  |

**SCHEDULE 3**

**MANAGEMENT INFORMATION REPORTING**

**Key Performance Indicators - Lots 1-3**

The Framework Contractor shall commit to the completion and submission of the below KPIs to the Authority's Framework Management Team within 14 calendar days following the completion of every Construction Project when requested by the Authority.

If NEC4 Term Service Contract is used the KPIs will be expected to submit the KPIs at the end of the term service.

The Framework Contractor will be expected to meet a minimum KPI score of at least thirty-two (32) for each Construction Project for which the Contractor has submitted KPIs.

If a Framework Contractor has a score of under thirty-two (32) it will receive a warning notice from the Authority's Framework Management Team notifying it of inadequate performance.

On the second consecutive occasion the Framework Contractor will have to attend a meeting with the Authority's Framework Management Team to discuss its performance on the Framework.

On the third consecutive occasion the Framework Contractor will receive a final warning notice.

If the Framework Contractor scores under thirty-two (32) on four (4) consecutive occasions it will be suspended from bidding for work on all Lot(s) to which it has been appointed until it has shown clear improvement of its performance on the Framework.

Framework Contractors are also expected to meet the minimum threshold for all KPIs. The scoring highlighted in yellow shows the Authority's minimum thresholds that need to be met by each Framework Contractor for each Construction Project awarded. If any or all of these KPIs are not met, the Framework Contractor will receive a warning notice from the Authority's Framework Management Team notifying it of inadequate performance. If the Framework Contractor scores below these thresholds on any or all of these KPIs on four (4) consecutive occasions it will be suspended from bidding for work on all Lots(s) to which it has been appointed until it has shown clear improvement of its performance on the Framework.

During this suspension the Framework Contractor will be expected to show clear improvement of its performance on the Framework. This will include completing an improvement plan to the Authority's Framework Management Team and attending an improvement meeting. When the Framework Contractor has clearly identified that it has improved to the Framework Management Team, it will then be able to tender for future work on the Framework under the Lot(s) to which it was appointed.

During any such suspension period, the Authority shall inform the Potential Employer of the suspension, and the Employer shall not invite the Framework Contractor to participate in Selection Processes until told otherwise by the Authority's Framework Management Team.

**1. Time Predictability – Meeting the Programme**

|  |  |
| --- | --- |
| Score | Result |
| 10 | Yes – Completed before Completion Date |
| 5 | Yes- Met Completion Date |
| 0 | No |

Has the Framework Contractor completed all works by the completion dates?

**2. Quality - Quality of Work Completed**

|  |  |
| --- | --- |
| Score | Result |
| 10 | Yes - Exceeded |
| 5 | Yes - Satisfactory |
| 0 | No |

Has the Framework Contractor completed to the quality expected within the specification?

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| --- | --- |
| **3. Quality – Target of Zero Defects at Completion** | |
| This measure will compare total number of Defects raised compared to number of Defects not completed before Completion Date. It will be based on the formula:  A x100  B  **NB: If no defects were raised the Framework Contractor scores 10.**  A – Number of Defects not completed within time  B – Total number of Defects raised. | |  |  | | --- | --- | | Score | Result | | 10 | 0% | | 9 | 10% | | 8 | 20% | | 7 | 30% | | 6 | 40% | | 5 | 50% | | 4 | 60% | | 3 | 70% | | 0 | >80% | |
| **4. Compensation Events (CEs)** | |
| This will measure number of CEs raised by the Framework Contractor compared to number of CEs accepted by the Project Manager.  A x100  B  **NB: If no compensation events were raised the Framework Contractor scores 10.**  A – Number of CEs accepted by Project Manager  B – Total number of CEs submitted by Framework Contractor | |  |  | | --- | --- | | Score | Result | | 10 | >90% | | 9 | >80% to 90% | | 8 | >75% to 80% | | 7 | >70% to 75% | | 6 | >65% to 70% | | 5 | >60 to 65% | | 4 | >55 to 60 % | | 3 | >50 to 55% | | 2 | >45 to 50% | | 0 | < 45% | |
| **5. Agreement of Final Account** | |
| This will measure the time taken for the Project Manager and Framework Contractor to agree the Final Account from the point of contract completion | |  |  | | --- | --- | | Score | Time to agree final account. | | 10 | < 3 weeks | | 9 | >3 to 4 weeks | | 8 | >4 to 5 weeks | | 7 | >5 to 6 weeks | | 6 | >6 to 7 weeks | | 5 | >7 to 8 weeks | | 4 | >8 to 9 weeks | | 3 | >9 to 10 weeks | | 2 | >10 –12weeks | | 0 | >12 weeks | |
| **6. Time taken to submit the Health and Safety File and as-built drawings to the Employer** | |
| This will measure the time taken for submission of the above documents from completion | |  |  | | --- | --- | | Score | Time taken to submit H&S File and as-built drawings from contract award | | 10 | < 2 week | | 9 | 2-3 weeks | | 8 | 3-4 weeks | | 7 | 4-5 weeks | | 6 | 5-6 weeks | | 5 | 6-7 weeks | | 4 | 7-8 weeks | | 3 | 2-3 months | | 2 | 3-4 months. | | 0 | > 4months | |

**Key Performance Indicators – Lot 4-11**

The Contractor will commit to the completion and submission of the below KPIs to the Authority's Framework Management Team within 14 calendar days, following the completion of every Construction Project when requested by the Authority. The scoring highlighted in yellow shows the minimum thresholds that need to be met for each Construction Project.

The Framework Contractor will be expected to meet a minimum KPI score of at least forty-five (45) for each Construction Project which it has submitted KPIs for. If a Framework Contractor has a score of under forty-five (45) it will receive a warning notice from the Framework Management Team notifying it of inadequate performance. On the second consecutive occasion the Framework Contractor will have to attend a meeting with the Framework Management Team to discuss its performance on the Framework. If the Contractor scores under forty-five (45) on three (3) consecutive occasions it will be suspended from bidding for work on all Lot(s) to which it has been appointed until it has shown clear improvement of its performance on the Framework.

Framework Contractors are also expected to meet the minimum threshold for all Key Performance Indicators. If any or all of these KPIs are not met, the Contractor will receive a warning notice from the Framework Management Team Framework notifying it of inadequate performance. If the Framework Contractor scores below these thresholds on any/or all of these KPIs on three (3) consecutive occasions it will be suspended from bidding for work on all Lot(s) to which it has been appointed until it has shown clear improvement of its performance on the Framework.

During this suspension the Framework Contractor will be expected to show clear improvement of its performance on the Framework. This will include completing an improvement plan to the Framework Management Team and attending an improvement meeting. When the Framework Contractor has clearly identified that it has improved to the Framework Management Team, it will then be able to tender for future work on the Framework under Lot(s) to which it has been appointed.

During the suspension period, Potential Employers shall be informed of this suspension and will not invite the Framework Contractor to participate in Selection Processes until told otherwise by the Framework Management Team. If Framework Contractors are invited to participate in any Selection Processes during this period (excluding those already tendered before the suspension) the Framework Contractor will be obliged to inform the Potential Employer that it will not be tendering due to this suspension.

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| --- | --- |
| **1. Time Predictability – Meeting Programme** | |
| This measure will assess the number of calendar days between the Contract Completion Date and actual Completion: | |  |  | | --- | --- | | Score | Result | | 10 | > 14 days ahead of Completion Date | | 9 | Up to 3 days ahead of Completion Date | | 8 | On programme | | 7 | Up to 3 days behind Completion Date | | 6 | >3 to 6 days behind Completion Date | | 5 | >6 to 9 days behind Completion Date | | 4 | >9 to 12 days behind Completion Date | | 3 | >12 to 15 days behind Completion Date | | 2 | > 15 to 18 days behind Completion Date | | 0 | > 18 days behind Completion Date | |
|  |  |

|  |  |
| --- | --- |
| **2. Quality – Target of zero defects at completion** | |
| This measure will compare total number of Defects raised compared to number of Defects not completed before Completion Date. It will be based on the formula:  A x100  B  A – Number of Defects not completed within time  B – Total number of Defects raised. | |  |  | | --- | --- | | Score | Result | | 10 | 0% | | 9 | 10% | | 8 | 20% | | 7 | 30% | | 6 | 40% | | 5 | 50% | | 4 | 60% | | 3 | 70% | | 0 | >80% | |
|  |  |
| **3. Cost Predictability CEs – Change in Costs** | |
| This measure will compare the submitted cost of the compensation events to the actual cost. All costs associated with the compensation are to be included. It will be based on the formula:  A x100  B  A – Actual total cost of CEs  B – Submitted total cost of CEs. | |  |  | | --- | --- | | Score | Result | | 10 | >90% | | 9 | >90 to 95% | | 8 | >85 to 90% | | 7 | >80 to 85 % | | 6 | >75 to 80% | | 5 | >70% to 75% | | 4 | >67% to 70% | | 3 | >65% to 67% | | 2 | >60% to 65% | | 0 | >60% | |
| |  |  | | --- | --- | | **4. Compensation Events (CEs)** | | |  |  | | This will measure number of CEs raised by the Framework Contractor compared to number of CEs accepted by Project Manager.  A x100  B  A – Number of CEs accepted by project manager  B – Total number of CEs. submitted by Contractor | |  |  | | --- | --- | | Score | Result | | 10 | >90% | | 9 | >80% to 90% | | 8 | >75% to 80% | | 7 | >70% to 75% | | 6 | >65% to 70% | | 5 | >60 to 65% | | 4 | >55 to 60 % | | 3 | >50 to 55% | | 2 | >45 to 50% | | 0 | < 45% | | | |
| The Contractor will commit to the completion and submission of the below follow up KPIs to the Authority's Framework Management Team within 14 calendar days, when requested by the Authority.  **5. Agreement of Final Account** | |
|  |  |
| This will measure the time taken for the Project Manager and Framework Contractor to agree the Final Account from the point of contract completion | |  |  | | --- | --- | | Score | Time to agree final account | | 10 | < 3 weeks | | 9 | >3 to 4 weeks | | 8 | >4 to 5 weeks | | 7 | >5 to 6 weeks | | 6 | >6 to 7 weeks | | 5 | >7 to 8 weeks | | 4 | >8 to 9 weeks | | 3 | >9 to 10 weeks | | 2 | >10 –12weeks | | 0 | >12 weeks | |
| **6. Time taken to submit the Health and Safety File and as-built drawings to the Employer** | |
|  |  |
| This will measure the time taken for submission of the above documents | |  |  | | --- | --- | | Score | Time taken to submit H&S File and as-built drawings | | 10 | < 2 week | | 9 | 2-3 weeks | | 8 | 3-4 weeks | | 7 | 4-5 weeks | | 6 | 5-6 weeks | | 5 | 6-7 weeks | | 4 | 7-8 weeks | | 3 | 2-3 months | | 2 | 3-4 months. | | 0 | > 4months | |

**Key Performance Indicators – All Lots**

The Framework Contractor shall report regularly at intervals to be agreed from time to time with the Authority and in a form and with content agreed from time to time with the Authority on its progress and performance in relation to achieving the targets set out in any plan(s), including providing such information as is reasonably requested by the Authority from time to time in relation to any plan(s).

If the Contractor unreasonably refuses or fails to agree the intervals, content and/or form of the reports and/or to provide the information to be provided under clause 4.6, clause 5.1 or this Schedule 3, then the Authority may serve notice of suspension from this Agreement on the Contractor, and the Contractor shall not be entitled to commence any new Selection Process until such breach is rectified to the Authority's reasonable satisfaction.