**Greater Manchester Combined Authority (GMCA)**

**Work and Skills**

**Flexible Procurement System**

**FPS TERMS AND CONDITIONS**

Chest Ref: DN497325



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**FPS TERMS AND CONDITIONS**

The legally binding document which is the basis of the FPS incorporating the following Clauses and Schedules:

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This **FPS AGREEMENT** is dated as at the date when the Service Supplier is accepted onto GMCA’s Education, Work and Skills FPS

**Parties:**

(1) **Greater Manchester Combined Authority**  of Churchgate House, 56 Oxford Street, Manchester M1 6EU (the "GMCA") and

(2) [ ] of number [ ] whose registered office is at [ ] (the "Supplier")

**Background**:

A. The Greater Manchester Combined Authority (GMCA) wish to consolidate arrangements for provision of the Services. GMCA is commissioning the Services through this FPS on behalf of itself and will be able to be accessed by the 10 Greater Manchester Local Authorities to allow them the option to use this FPS to commission their own services through this FPS, and the Supplier is a Supplier of the Services.

B. GMCA placed a contract notice in the Official Journal of the European 2020/S 175-423970 (‘OJEU Notice’) on 09.09.2020 seeking expressions of interest from potential Suppliers for the provision of Services.

C. The Supplier, having responded to the OJEU Notice, was invited to submit an application and on the basis of the Supplier Selection Questionnaire (SSQ) documents submitted by the Supplier, the Supplier was selected by GMCA to enter into a Flexible Procurement System (FPS) to provide the Services to those Purchasing Bodies who place a Contract for Services in accordance with this FPS Agreement.

D. The Supplier will enter into this FPS Agreement with GMCA for the provision of Services. This FPS Agreement sets out the procedure for awarding Services, the main terms and conditions for the provision of the Services and the obligations of the Service Supplier under this FPS Agreement.

E. This FPS Agreement does not contain pricing information. Each contract awarded under this FPS agreement will be at the price set out in the successful Suppliers response to the Invitation To Tender

E. This FPS Agreement provides that any Purchasing Body may place an Invitation to Tender as defined in schedule 4 for the provision of the Services. Any Purchasing Body placing an Invitation to Tender in accordance with this FPS Agreement will be required to enter into a separate Contract with the Supplier. Each Contract shall incorporate the terms and conditions set out in the Invitation to Tender Conditions of Contract identified in Schedule 2 to this FPS Agreement

F. Inclusion on the FPS Agreement does not guarantee engagement in any or all of the Services. The FPS Agreement will not be exclusive to one Supplier and the Purchasing Body reserves the right to place Invitations to Tender with more than one successful Supplier for the Service. Neither GMCA nor Purchasing Bodies guarantee to call off any specific quantities/services/work during the Term.

1 DEFINITIONS

1.1 The terms and expressions used in this FPS Agreement shall have the meanings set out below:

|  |  |
| --- | --- |
| “Agreement”  Application Response | means this agreement and all schedules to this agreement.  The SSQ Response Document returned to GMCA in response to GMCA’s Invitation to Apply. |
| “Authorised Officer”  “Award Process” | the person duly appointed by GMCA to act as the representative of GMCA for the purpose of the FPS Agreement and notified in writing to the Supplier from time to time.  The process the Purchasing Body and the Supplier must follow in order to award a Contract for Services under this FPS. |
| “Business Day”  “Call-Off Contract” | any day other than a Saturday or Sunday or a public or bank holiday in England.  means the terms and conditions in Schedule 2 (Call- off Terms and Conditions).. |
| “Commencement Date”  “Competed Services” | Means the Service Provider is accepted onto GMCA’s Education, Work and Skills FPS.  Means Requirements subjected to Mini-competition under this FPS |
| “Confidential Information” | means any information which has been designated as confidential by either Party in writing (including by the Supplier as "Commercially Sensitive Information") or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights, know-how of either Party and all personal data and sensitive data within the meaning of the Data Protection Legislation. |
| “Contract” | means the contract between the Purchasing Body and the Supplier and which is entered into following the acceptance of the offer by the Purchasing body and pursuant to this FPS Agreement for the provision of Services by the Supplier to the Purchasing Body. |
| “Contract Manager” | the person named by GMCA as the contract manager and any replacement from time to time for this FPS Agreement. |
| “Contract Particulars” | the document attached hereto at Appendix A of Schedule 2 and detailing the specific core terms of the Contract as agreed between the parties with regard to the Services which shall include but not be limited to the Pricing Schedule, Delivery Instructions, Commencement Date, Authorised Officer, Contract Manager, Key Personnel, Contract Period, and the Specification and relevant Contract specific details of the SSQ included in the document. |
| “Control”  “Default” | control as defined by section 416 of the Income and Corporation Taxes Act 1988.  means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term), missing the required SLAs as determined in Schedule 5 of this FPS Agreement, or any other default, act, omission, negligence or negligent statement of the relevant Party or its employees in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other. |
| “Data Controller”  “Data Processor”  “Delivery Instructions”  “Data Protection Legislation”  Or “DPL” | means a natural or legal person, public authority, agency or other body who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be processed in connection with this Contract, as defined in the Data Protection Legislation    means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller, as defined in the Data Protection Legislation  the instructions for the delivery of Services as specified in the Contract  means all legislation and regulatory requirements in force relating to the use of personal data and the privacy of electronic communications, including, without limitation (i) any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation, as well as (ii) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to data protection and privacy (for so long as and to the extent that the law of the European Union has legal effect in the UK). |
| “Descriptive Document” | the Descriptive Document detailed in Schedule 1 hereto setting out the key requirements in relation to the Services, and relevant description of the Services, together with any other detailed requirements as specified by GMCA in respect of the Invitation to Apply to the FPS |
| “Data Protection Risk Assessment”  “Data Sharing Code of Conduct”  “Data Subject” | means an assessment by the Data Controller or any agent appointed on its behalf to evaluate the extent of risk of any data breach.  means the code of conduct issued by the Information Commissioner in respect to the sharing of Personal Data  means the individual who is the subject of Personal Data. |
| “FPS Agreement”  “FPS Commencement Date”  “FPS Terms and Conditions”  “EIR” | means the FPS Terms and Conditions, and its Schedules and their appendices attached thereto, in respect of the provision of the Services which shall be read as one document. In the event of ambiguity, conflict or contradictions between these documents the conflict will be resolved according to the order of priority set out in clause 5.2:  Means the star date of the Education, Work and Skills FPS, as stated in clause 5.10.  means the conditions detailed below  The Environmental Information Regulations 2004. |
| “Extension Period”  “FOIA” | Refers to any extension to the FPS detailed in clause 5.10 in accordance with clause 5.13  The Freedom of Information Act 2000. |
| “GDPR” | Means the General Data Protection Regulation (GDPR) (EU) 2016/679. |
| “Good Industry Practice” | the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced Supplier engaged in the supply of services similar to the Services under the same or similar circumstances as those applicable to the Contract. |
| “HRA” | The Human Rights Act 1998. |
| “Intellectual Property Rights” | patents, inventions, trademarks, service  marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off. |
| “Invitation to Apply” | GMCA’s invitation to apply (submit a SSQ) for the FPS Agreement issued on 4th September 2020 incorporating information about the FPS agreement including scope, requirement, participating authorities, initial qualifying factors and SSQ return guidance. |
| “Invitation to Tender” | GMCA or Purchasing Body, Invitation To Tender to Suppliers pre-selected to bid using the Requirements Matrix to compete in a mini-competition for the award of Services |
| “Law” | any applicable Act of Parliament, sub-ordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any regulatory body of which the Supplier is bound to comply. |
| “Liabilities” | all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought. |
| “Local Authorities” | These ten authorities co-operate on a number of issues, both statutory and non-statutory, where there is the possibility of improving service delivery by working together. The 10 Authorities are: Bolton, Stockport, Tameside, Trafford Oldham, Manchester, Rochdale, Bury, Salford, Wigan, and any of their successor organisations. |
|  |  |
| “OJEU” | the contract notice published in the Official Journal of the European Union. |
|  |  |
| “Parties”  “Personal Data”  “Personal Data Breach”  “Price” | For the purposes of this FPS means the Supplier and GMCA  means personal data (as defined in the DPL) which is processed by the Supplier or any Staff on behalf of the Purchasing Body pursuant to or in connection with this FPS and the Call-Off Contract.  means a breach of the security of data leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data. This includes breaches that are the result of both accidental and deliberate causes.  the price of the Services as set out in the Pricing Schedule of the Call-Off Contract and as referenced in the Contract Particulars. Unless otherwise stated, any reference to Price shall be regarded as being exclusive of properly chargeable VAT which shall be separately accounted for |
| “Purchasing Body” | GMCA or the 10 Greater Manchester Local Authorities or other Pubic Body named in the OJEU Notice who is entitled to use the arrangements as prescribed in this FPS Agreement and is further identified in the Contract Particulars as GMCA wishing to place an a contract for the Services in accordance with this FPS Agreement. Where the context so admits includes any person which takes over or assumes the statutory functions or administrative responsibilities of the purchasing body (whether in part or totally) or which is controlled by or is under common control with the purchasing body (and the expression “control” shall mean the power to direct or cause the direction of the general management and policies of the person in question but only for so long as such control exists). |
| “Regulations” | the Public Contracts Regulations 2015 |
| “Regulatory Bodies | those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of GMCA. |
|  |  |
| “Request for Information” | a request for information or an apparent request under the FOIA or the Environmental Information Regulations. |
| “Requirements Matrix” | The means by which the Purchasing Body will filter to identify Suppliers who could potentially meet their Service Specification and such Selected Suppliers shall be invited to Tender in accordance with Schedule 4. |
| “Rounds”  “Selected Supplier”  “Service Supplier’s Specialisms”  “Services” | Refers to the re-opening of the FPS every quarter for new Suppliers to join the FPS  Supplier identified by filtering the Requirements Matrix who has been accepted onto the FPS for such Specialism / category  means the Specialism to which the Supplier has demonstrated and has been appointed under this FPS as set out in in the Requirements Matrix  the services described in the Descriptive Document or Specification to be supplied by the Supplier in accordance with the Contract together with all equipment required and any associated goods provided by the Supplier in relation to those services. |
| “Specification” | the specification detailed in the Invitation to Tender setting out the key requirements in relation to the Services, and relevant description of the Services, together with any other detailed requirements as specified by the Purchasing Body in the Contract Particulars. |
| “SSQ Submission”  “Staff”  Supplier”  “Term” | the Supplier’s SSQ submission for the Services in response to GMCA’s Invitation to Apply.  all persons employed by the Service Provider together with the Service Provider's servants, agents, suppliers and subcontractors used in the performance of its obligations under this Agreement or Contracts.  the Supplier identified in this FPS Agreement and as specified in and where applicable this shall include the Supplier's Employees, sub-contractors, agents, representatives, and permitted assigns and, if the Supplier is a consortium or consortium leader, the consortium members.  the term of the FPS Agreement as detailed in the clause 5.10 |
|  |  |
| “VAT” | means Value Added Tax or any similar tax from time to time replacing it or performing a similar fiscal function. |

1.2 Any reference to a person shall include any natural person, partnership, joint venture, body corporate, incorporated association, government, governmental agency, persons having a joint or common interest, or any other legal or commercial entity or undertakings.

1.3 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";

1.4 the Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement shall include the Schedules;

1.5 A reference to any statute, order, regulation or similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

1.6 This Agreement provides a mechanism for the Services to be called off from the Service Provider by the Authority and a supplemental set of provisions designed to encourage the Authority and the Service Provider to work with each other in an open, co-operative and collaborative manner and in a spirit of mutual trust and respect. The Parties shall at all times endorse and support collaborative behaviour

2. HEADINGS

2.1 The index and headings to the clauses and appendices to and schedules of this FPS Agreement are for convenience only and will not affect its construction or interpretation.

3. NOTICES

3.1 Any notice required by this FPS Agreement to be given by either party to the other shall be in writing and shall be served personally or by sending it by registered post or recorded delivery to the appropriate address or email address notified to each other from time to time.

3.2 Any notice served personally will be deemed to have been served on the day of delivery; any notice sent by post will be deemed to have been served 48 hours after it was posted; any notice sent by email before 5 p.m. will be deemed to have been served on the day of despatch and otherwise on the following day save where the deemed date of service falls on a day other than a Business Day in which case the date of service will be the following Business Day.

4. ENTIRE AGREEMENT

4.1 The FPS Agreement constitutes the entire agreement between the parties relating to the subject matter of the FPS Agreement. The FPS Agreement supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause 4 shall not exclude liability in respect of any fraudulent misrepresentation.

**5. SCOPE AND TERM OF FPS AGREEMENT**

5.1 It is intended that this FPS Agreement constitutes a FPS in accordance with the provisions of Regulation 74 and 66 of the Public Contracts Regulations 2015 as amended.

5.2 The FPS Agreement governs the overall relationship of the parties with respect to the FPS. The Supplier shall supply the Services in accordance in all respects with the Terms and Conditions of the Call-Off Contract.

5.3 not used

* 1. This FPS Agreement provides that any Purchasing Body may place an Invitation to Tender for off the provision of the Services and:

5.4.1 the FPS Agreement sets out the terms on which the Supplier will supply the Services and/or goods as requested from time to time by the Purchasing Body: and

5.4.2 if and to the extent that any Services must be provided by the Supplier to any Purchasing Body, each and every Purchasing Body may, with the prior written consent of GMCA (which GMCA may refuse in its absolute discretion) place an Invitation to Tender for the Services;

5.4.3 the Purchasing Body will be required to place an Invitation to Tender for the Services in accordance with the Award process identified in Schedule 4 and upon the terms and conditions as set out in the Call-Off Contract identified in Schedule 2 to this FPS Agreement; and

5.4.4 where an award is accepted by the Supplier in accordance with the award process prescribed in Schedule 4 of this FPS Agreement the Purchasing Body and the Supplier shall be required to enter into a Contract; and

5.4.5 each Contract shall incorporate the terms and conditions set out in the Call-Off Contract identified in Schedule 2 to this FPS Agreement.

* 1. As part of and consequent on successful implementation of the requested Services pursuant to a Purchasing Body’s Award:

(a) any charges for the requested Services shall be in accordance with the Pricing Schedule;

(b) any service levels detailed In this FPS Agreement shall be applicable to any requested Services;

(c) all details of the requested Services as agreed and implemented shall be clearly set out in in the Contract; and

(d) the relevant requested Services implemented in accordance with Contract shall become part of the Services for the purpose of all other sections, clauses, obligations and rights contained within the Contract.

5.6 GMCA does not guarantee that any Services will be required to be provided by the Supplier to any Purchasing Body under the FPS Agreement and nothing in the FPS Agreement shall give the Supplier a right to receive this requirement for providing Services.

5.7 It shall be the responsibility of any Purchasing Body that requires the provision of any Services to satisfy itself that it would not, in doing so, be in breach of any relevant public procurement regulations or offend against general European Community procurement principles.

5.8 The Supplier acknowledges that, in entering this FPS Agreement, no form of exclusivity or volume guarantee has been granted by GMCA for the Services and that GMCA is at all times entitled to enter into other contracts and arrangements with other suppliers for the provision of any or all services which are the same as or similar to the Services.

5.9 A FPS Round shall be open Quarterly following the Term commencement of the FPS.

5.10 The FPS Agreement shall commence on the 23rd November 2020 and shall continue in force for a period of five years (“Initial Term”) with the option to extend for a further 5 years in 12 month periods.

For the avoidance of any doubt unless terminated earlier in accordance with the terms and conditions of this FPS Agreement, the Term shall automatically expire:

5.10.1 at the end of the Initial Period; or

5.10.2 where extended, at the end of the First Extension Period if no further Extension Period is exercised;

The terms and conditions of the FPS Agreement shall apply in full to any extension under this clause 5.10.

5.11 For the avoidance of doubt GMCA accepted the Supplier’s SSQ Submission in respect of those parts of the Services as detailed in Schedule 1.

5.12 GMCA shall not in any circumstances be liable to the Service or any other Purchasing Body for payment or otherwise in respect of any Services provided by the Supplier to any other Purchasing Body.

5.13 GMCA will provide no less than six 3 months’ notice to Supplier’s and other Purchasing Bodies of its intention to extend the FPS.

5.14 The FPS Agreement shall be reviewed in accordance with these terms and conditions by GMCA.

#### 6. AWARD PROCEDURES

6.1 GMCA shall select Suppliers for appointment to this FPS Agreement and has appointed the Supplier to this FPS Agreement.

6.2 The Purchasing Body must adhere to the Award Procedure identified in Schedule 4.

6.3 The Supplier is required to adhere to the Award Procedure identified in Schedule 4.

6.4 Subject to the provisions Schedule 4, any Purchasing Body shall be entitled at any time during the Term to place an Invitation to Tender with the Supplier for the supply of the Services.

6.5 The Parties acknowledge that the Purchasing Body’s award of any Contract for services to the Supplier shall be by mini-competition between Suppliers on the FPS at the time of the issue of the mini-competition, and any such mini-competition will be conducted according to the procedures laid out in clause 7,

Purchasing Body’s may direct award from the FPS where:

(a) a Supplier is the only Supplier who satisfied the selection criteria using the Requirements Matrix;

(b) only one (1) Supplier is capable of performing the Services for GMCA (for example when the services required are filtered using the Requirements Matrix and only one Supplier is identified as able to supply

6.6 The Supplier agrees that each Tender submitted by the Supplier in relation to a mini-competition for Services held pursuant to this Clause 6 shall remain open for acceptance for thirty (90) days from the specified commencement date for such Services (or such other period specified in the Invitation to Tender issued by the Purchasing Body in accordance with this Clause 6).

6.7 The Supplier shall supply the Services in accordance in all respects with the terms of the Call-Off Contract.

6.8 For the avoidance of doubt GMCA shall not be responsible for any Services that are delivered by the Supplier to a Purchasing Body unless that Purchasing Body is GMCA and each Purchasing Body shall not be responsible for any Services provided by the Supplier to the Purchasing Body which are not the subject of a Contract.

6.9 The Supplier shall ensure that the Services provided pursuant to the Contract and meet the requirements of the Service Specification and where the purpose for which the Services are required is indicated in the Contract, either expressly or by implication, shall be fit for that particular purpose.

6.10 The Supplier warrants that the Services to be supplied under this FPS Agreement shall comply in all respects with all relevant requirements of any statute, statutory rule or order, or other instrument having the force of law which may be in force at the time when the Services are supplied.

6.11 The Supplier shall bear the cost of ensuring that the Services shall comply with all applicable Law.

**7. MINI-COMPETITION**

## 7.1 The Purchasing Body when requesting Competed Services under the FPS Agreement shall apply the principles of section 74 and 76 of The Public Contract Regulations 2015:

## a) identify the FPS Suppliers capable of performing the Contract for the Competed Services requirements by filtering the Requirements Matrix ;

## c) supplement and refine the Contract Terms and Conditions only to the extent permitted by and in accordance with the requirements of the Regulations and Guidance;

## d) invite tenders by conducting a mini-competition for its Competed Services requirements in accordance with Schedule 4 :

## i) consult in writing the FPS Suppliers capable of performing the Contract for the Competed Services requirements and invite them within a specified time limit to submit a Tender;

## ii) set a time limit for the receipt of the Tender/s which takes into account factors such as the complexity of the subject matter of the Contract and the time needed to submit tenders; and

## iii) keep each Tender submission confidential until the expiry of the time limit for the receipt by it of the Supplemental Tenders;

## e) apply the Competed Services Award Criteria to any compliant Tenders submitted through the mini-competition; and

## f) subject to clause 7.1 place a contract with the successful Supplier;

## g) if the Supplier who was ranked highest is not able to provide the Services, award the Contract to the Supplier ranked next highest.

## 7.2 Notwithstanding the fact that the Purchasing Body has followed the procedure set out above for Competed Services, the Purchasing Body may cancel, postpone, delay or end the procedure without awarding a Contract. Nothing in this FPS Agreement shall oblige the Purchasing Body to place any Contract for Services.

**8. MONITORING AND REPORTING**

8.1 The Supplier shall:

8.1.1 appropriately manage the Services that it provides under all Contracts in accordance with the relevant Descriptive Document;

8.1.2 be required to provide to GMCA accurate and up to date management information in relation to the FPS Agreement at the required frequency throughout the Term. Such information shall include but not be limited to the volume and value of Contracts, the dates and duration of Contracts, the Purchasing Body, and the Services provided (including Title);

8.1.3 on reasonable notice grant to GMCA and/or GMCA’s external and internal auditors access to any relevant data or documentation relating to the FPS Agreement and the supply of the Services for the purpose of carrying out an audit.

8.2 The Supplier shall hold performance review meetings when specified by GMCA in respect of the FPS Agreement with GMCA. This meeting shall include a review of information and data on performance of the Services, GMCA enquiries and complaints and the volume and value of Contracts. The Supplier shall co-operate fully in providing this and any other financial and statistical information required by GMCA during the course of each review.

8.3 The performance review meeting may take the form of regular review meeting or review meeting as a result of a complaint, non-performance or Supplier Contract breach or any other reason stipulated by GMCA

8.4 All meeting requested and attended by the Supplier will be at the Suppliers own cost.

8.5 The Supplier shall meet all the Contract Performance and Management requirements identified in section 15 of the FPS Descriptive Document.**9.**

**9. AUTHORISED REPRESENTATIVES**

9.1 The GMC’s Authorised Representatives are:

|  |  |
| --- | --- |
| Mat Ainsworth  Assistant Director – Employment (Policy, Strategy & Delivery)  Tel: 07973 876799  Email: Matthew.Ainsworth@greatermanchester-ca.gov.uk | Nic Hutchins  Principal Skills Manager (Apprenticeships & Technical Education)  Tel: 07973 876926  Email: Nic.Hutchins@greatermanchester-ca.gov.uk |
| Greater Manchester Combined Authority  1st Floor Broadhurst House  56 Oxford Street  Manchester  M1 6EU |  |

9.2 The Suppliers Authorised Representatives are the persons whose contact details are as shown in the "Contact Details and Declaration " box as set out in Part 1 of the Supplier Selection Questionnaire.

10. **WARRANTIES AND REPRESENTATIONS**

10.1 The Supplier warrants and represents that:

10.1.1 the Supplier has full capacity and authority and all necessary consents (including but not limited to where its procedures so require the consent of its Parent Company) to enter into and perform the FPS Agreement and that the FPS Agreement is executed by the duly authorised representatives of the Supplier.

11.**TERMINATION**

**Termination without Cause**

11.1 GMCA may terminate this FPS Agreement by giving to the Supplier(s) not less than 90 days’ notice in writing of such termination.

**Termination on Insolvency**

11.3 GMCA may at any time by notice in writing terminate the placement onto this FPS Agreement as from the date of service of such notice if:

11.3.1 there is a change of control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, in the Supplier or its Parent Company; or

11.3.2 the Supplier, being an individual, or where the Supplier is a firm, any partner or partners in that firm who together are able to exercise direct or indirect control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, shall at any time become bankrupt or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or appears unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of Section 268 of the Insolvency Act 1986 or he shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 as amended by the Bankruptcy (Scotland) Act 1993 or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors; or any similar event occurs under the law of any other jurisdiction; or

11.3.3 the Supplier, being a company, passes a resolution, or the Court makes an order that the Supplier or its Parent Company be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or administrator on behalf of a creditor is appointed in respect of the business or any part thereof of the Supplier or the Parent Company, or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding‑up order, or the Supplier or its Parent Company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or any similar event occurs under the law of any other jurisdiction;

**Termination for Breach**

11.4 GMCA may at any time by notice in writing terminate the placement onto this FPS Agreement (which may be immediate) if the Supplier is in default of any obligation under the FPS Agreement and:

11.4.1 the Supplier is in breach of any of its obligations under this FPS Agreement that is capable of remedy and which has not been remedied to the satisfaction of GMCA within 10 working days or such other period specified by GMCA after issue of a written notice specifying the breach and requesting it to be remedied; or

11.4.2 there is a material or substantial breach by the Supplier of any of its obligations under this FPS Agreement which is incapable of remedy; or

11.4.3 the Supplier commits persistent minor breaches of this Agreement whether remedied or not and which cumulatively amount to a material breach of this agreement; or

11.4.4 the Supplier has on more than two occasions terminated a Contract and re-submitted a bid on the subsequent mini-competition for the purpose of increasing the Supplier’s price for the specified Service;

11.4.5 the Supplier is convicted of a criminal offence;

11.4.6 there is a risk or a genuine belief that reputational damage to GMCA will occur as a result of the FPS Agreement continuing;

11.4.7 any warranty given by the Supplier in this FPS or the Call-Off contract is found to be untrue or misleading

11.5 GMCA may terminate a Suppliers place on this FPS with immediate effect where a Purchasing Body terminates a Call-Off Contract awarded to the Supplier under this FPS as a consequence of Default by the Supplier;

**Termination under the Public Contracts Regulations 2015**

11.6 GMCA may terminate this FPS Agreement or placement on this FPS Agreement by notice in writing with immediate effect or with effect from the date specified in such notice where:

11.6.1 this FPS has been subject to substantial modification which would have required a new procurement procedure in accordance with Regulation 72(9) of the Public Contracts Regulations 2015 (SI 2015/102);

11.6.2 the Supplier was, at the time of entering in this FPS Agreement, in one of the situations referred to in Regulation 57(1) of the Public Contracts Regulations 2015, including as a result of the application of Regulation 57(2), and should therefore have been excluded from the procurement procedure; or

11.6.2 This FPS should not have been entered into with the Supplier in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union;

**Consequences of Termination**

11.8 Termination in accordance with this Clause 11 or otherwise shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party.

11.9 Following termination of the FPS Agreement or placement on to the FPS Agreement the Supplier shall continue to fulfil such Contracts that may be outstanding or that it may receive in accordance with the FPS Agreement up to the date of termination.

11.10 Termination or expiry of this FPS, or placement on to the FPS Agreement, shall not cause any Call-Off Contracts to terminate automatically. For the avoidance of doubt, all Call-Off Contracts shall remain in force for the duration indicated in the Contract Particulars, unless and until they are terminated or expire in accordance with Call-Off Contract terms.

11.11 Within 30 days of termination or expiry of this FPS, or removal from the FPS, the Supplier shall return to GMCA any data and confidential information belonging to GMCA in the Suppliers possession, power or control, either in its then current format or in a format nominated by GMCA (in which event GMCA shall reimburse the Service Provider's reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by GMCA, save that it may keep one (1) copy of any such data or information for a period of up to twelve (12) Months to comply with its obligations under the Agreement, or such period as is necessary for such compliance.

11.12 Termination or expiry of this Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Agreement before termination or expiry.

**Other Termination Rights**

11.12 GMCA may remove a Supplier from this FPS, where a Variation has been proposed by GMCA but has been rejected by the Supplier and where GMCA considers (acting reasonably) that variation to be a necessary variation to the FPS in order to maintain and/or sustain the viability of the FPS and to avoid any significant financial or other adverse or detrimental effect to the Purchasing Body.

11.13 GMCA may remove a Supplier from this FPS Agreement with the Supplier where an Audit by GMCA reveals that the supplier can no-longer satisfy any requirement within the SSQ and reach the minimum required standard described in the SSQ then GMCA may remove the Supplier from the FPS until such time as the Supplier re-applies and meets the required standard

11.14 The Supplier has a duty to inform GMCA if they become aware that they no-longer satisfy any requirement within the SSQ and reach the minimum required standard described in the SSQ. GMCA may remove the Supplier from the FPS until such time as the Supplier re-applies and meets the required standard11.14 Without prejudice to GMCA’s right to terminate this FPS Agreement in clause 11.8 above, if a right to terminate this FPS Agreement arises in accordance with clause 11.8, GMCA may suspend the Supplier's right to receive Contracts from Purchasing Bodies in any or all Service Supplier's Specialism by giving notice in writing to the Service Supplier. If GMCA provides notice to the Service Supplier in accordance with this clause 11, the Service Supplier's appointment shall be suspended for the period set out in the notice or such other period notified to the Service Supplier by GMCA in writing from time to time.

11.15 The provisions of Clauses 10 (Warranties and Representations), 8 (Monitoring and Reporting), 12 (Confidentiality), 17 (Insurance and Liabilities), 13 (Date Protection), 14 (Freedom of Information Act FOIA and Environmental Information Regulations EIR), 11 (Termination), 15 (Corruption) 16 (Transfer and Sub-contracting) and 20 (Law and Jurisdiction), shall survive the termination or expiry of the Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination

**12. CONFIDENTIALITY**

* 1. 12.1 Any documents provided by one party (“disclosing party”) to the other party (“receiving party”) GMCA and information which the Supplier other party may acquire as a result of the FPS Agreement shall to the extent that they are not in the public domain or required to be disclosed by operation of Law remain confidential to GMCA disclosing party and shall not be disclosed disposed of or used for any purpose without prior written consent from GMCA disclosing party.

12.2 All Confidential Information provided by GMCA disclosing party to the Supplier receiving party shall be returned to GMCA receiving party at the end of the Term.

12.3 Without prejudice to GMCA obligations under the FOIA or EIR, neither party shall make any press announcements or publicise the FPS Agreement or any part thereof in any way, except with the written consent of the other party (such consent not to be unreasonably withheld or delayed).

12.4 Both parties shall take all reasonable steps to ensure the observance of the provisions of this clause by all of their servants, Employees, sub-Contractors, agents, professional advisors and consultants.

**13. DATA PROTECTION**

13.1 The Parties shall ensure that information acquired by the Parties and sub-contractors in the delivery of this Contract will at all times comply with the provisions and obligations imposed by the Data Protection Act 2018 and the General Data Protection Regulations 2016/679; together with any subsequent re-enactment or amendment thereof in storing and processing personal data, and all personal data acquired by either party from the other shall be returned to the disclosing party on request. GMCA and the Supplier hereby acknowledge that performance of a duty imposed by the Act shall not constitute a breach of any obligation in respect of confidentiality which may be owed to the other party.

## 13.2 Both parties will comply with all applicable requirements of the Data Protection Legislation.

## 13.3 The Supplier agrees abide by the DPL. Should the Supplier realise that any instructions by the Purchasing Body contradicts any of the Suppliers obligations under the DPL; the Supplier agrees to notify the Purchasing Body immediately.

## 13.4 The Supplier acknowledges that the clauses within the Call-Off Contract will govern its responsibilities in relation to Data Protection and it is the Purchasing Body who will determine whether the Supplier is a Data Processor or a Data Controller for the purposes of the DPL.

## 13.5 By submitting to perform the Services described within the FPS; the Supplier warrants that it has implemented the appropriate technical, and organisational measures to protect the Personal Data against unauthorised, or unlawful Processing (as defined within the DPL) and against accidental loss, destruction, damage, alternation or disclosure.

## 13.6 GMCA is not a Data Controller or a Data Processor on behalf of any Purchasing Body for the purposes of this FPS

## 13.7 GMCA is solely responsible for maintaining and updating the Data Protection clauses for the FPS and not any individual Call-Off Contract. The Supplier and the Purchasing Body agree to collectively observe their duties under the DPL, including ensuring there is a legal basis to process any Personal Data.

**14. FREEDOM OF INFORMATION ACT 2000 (FOIA) AND ENVIRONMENTAL INFORMATION REGULATIONS 2004 (EIR)**

14.1 GMCA is subject to the FOIA and the EIR (“the Acts”). As part of GMCA's duties under the Acts, it may be required to disclose information forming part of the FPS Agreement to anyone who makes a reasonable request. GMCA has absolute discretion to apply or not to apply any exemptions under the Acts.

14.2 The Supplier shall assist and cooperate with GMCA (at the Supplier’s expense) to enable GMCA to comply with the information disclosure requirements under the Acts and in so doing will comply with any timescale notified to it by GMCA.

**15. CORRUPTION**

15.1 The Supplier shall not offer or give, or agree to give, to any employee, agent, servant or representative of GMCA any gift or consideration of any kind as an inducement or reward for doing, any act in relation to the obtaining or execution of the FPS Agreement or any other contract with GMCA, or for showing or refraining from showing favour or disfavour to any person in relation to the FPS Agreement or any such contract. The attention of the Supplier is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916.

15.2 The Supplier warrants that it has not paid commission nor agreed to pay any commission to any Employee or representative of GMCA by the Supplier or on the Supplier’s behalf.

15.3 Where the Supplier engages in conduct prohibited by clauses 15.1 and 15.2 in relation to this or any other contract with GMCA, GMCA has the right to:

15.3.1 terminate the FPS Agreement and recover from the Supplier the amount of any loss suffered by GMCA resulting from the termination, including the cost reasonably incurred by GMCA of making other arrangements for the provision of the Services and/or Goods and any additional expenditure incurred by GMCA throughout the remainder of the Term; or

15.3.2 recover in full from the Supplier any other loss sustained by GMCA in consequence of any breach of this clause whether or not the FPS Agreement has been terminated.

**16. TRANSFER and SUB‑CONTRACTING**

16 Subject to any express provision of this FPS Agreement, the Supplier shall not without the prior written consent of GMCA (which consent shall not be unreasonably withheld or delayed), transfer, assign or novate all or any benefit, right or interest under this FPS Agreement or sub-contract the provision of the Services.

16.2 GMCA shall, without the prior written consent of the Supplier, be entitled to:

16.2.1 assign, novate or dispose of its rights and obligations under this FPS Agreement either in whole or part to any contracting authority (as defined in The Public Contracts Regulations 2006 as amended); or

16.2.2 transfer, assign or novate its rights and obligations where required by Law; or

16.2.3 transfer, assign or novate its rights and obligations where as a result of an out-sourcing exercise, or similar exercise, by GMCA a company takes over or assumes the statutory functions or administrative responsibilities of GMCA (whether in part or totally); or

16.2.4 transfer, assign or novate its rights and obligations to an entity (whether unincorporated or not) or company which is controlled by or is under common control of GMCA (and the expression “control” shall mean the power to direct or cause the direction of the general management and policies of the person in question but only for so long as such control exists).

16.3 The Supplier shall remain responsible and liable for the acts and omissions of any other members of a consortium arrangement, sub-contractors, servants, agents and employees as though they were its own.

**17. INSURANCE AND LIABILITY**

17.1 GMCA (where it calls off this FPS), nor the Supplier excludes or limits its liability for:

17.1.1 Death or personal injury caused by its negligence, or that of its staff, sub-contractors, or agents;

17.1.2 Fraud or fraudulent misrepresentation by it or that of its staff, sub-contractors, or agents;

17.1.3 Breach of any obligations as to title implied by Section 12 of the Sale of Goods Act 1979, or Section 2 of the Supply of Goods and Services Act 1982;

17.2 The Supplier shall indemnify GMCA and keep indemnified in full from and against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the FPS or any Call-Off Contract including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused directly, or indirectly by any act or omission of the Supplier. This Clause shall not apply to the extent that the Supplier is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or Default, or the negligence or Default of its Staff, sub-contractors or agents, or by any circumstances within its or their control;

17.3 The Supplier shall effect and maintain the following insurances for the duration of the FPS and any Call-Off Contract in relation to the performance of the FPS and Call-Off Contract;

17.3.1 Public Liability Insurance as required by the Contract;

17..2 Employers Liability Insurance as required by the Contract;

17.3.3 Other Insurances required by the Contract;

17.4 Any excess or deductibles under such insurance (referred to in Clause 17.3) shall be the sole and exclusive responsibility of the Supplier;

17.5 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities arising under the Call-Off Contract;

17.6 If, for whatever reason, the Supplier fails to give effect to and maintain the insurance required by GMCA under this FPS agreement then GMCA may remove the Supplier from the FPS.

17.7 The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the Agreement.

17.8 The Service Provider shall not do or permit anything to be done which makes void or voidable any insurance policy.

17.9 Each party shall use its reasonable endeavours to mitigate any loss or damage suffered or arising out of or in connection with this Agreement, including any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to the indemnities in the Agreement.

**18. VARIATION TO AGREEMENT**

18.1 No variation or modification to the FPS Agreement is valid unless it is in writing and signed by GMCA and the Supplier.

**19. SEVERABILITY & WAIVER**

19.1 If any provision of the FPS Agreement shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity shall not impair or affect any other provision all of which shall remain in full force and effect.

19.2 In the event of a holding or invalidity so fundamental as to prevent the accomplishment of the purpose of the FPS or Call-Off Contract, the Purchasing Body and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

19.3 Failure by either party at any time to enforce any one or more of the provisions of this FPS Agreement or to require performance by the other party of any of the provisions shall not constitute or be construed as a waiver of the provision or of the right at any time subsequently to enforce all terms and conditions of this FPS Agreement nor affect the validity of the FPS Agreement or any part of it or the right of the parties to enforce any provision in accordance with its terms.

19.4 No waiver of any of the provisions of this FPS Agreement shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with clause 3.

**20. LAW AND JURISDICTION**

20.1 This FPS Agreement shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English courts.

**21. PURCHASING BODY RIGHTS**

21.1 Nothing contained in this FPS Agreement shall prejudice GMCA’s and the relevant Purchasing Bodies’ rights, powers and duties as Purchasing Bodies.

**Signed by the Purchasing Bodies’ authorised Signed by the Suppliers authorised representative:**

**representative:**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Authorised Person |  |  | Authorised Person |  |
| Organisation | GMCA | Organisation |  |
| Signature |  | Signature |  |
| Date |  | Date |  |

SCHEDULE ONE

Descriptive Document



**SCHEDULE TWO**

**CALL-OFF TERMS AND CONDITIONS**



**SCHEDULE THREE**

**APPLICATION RESPONSE**

**[INSERT]**

[Supplier to insert response here before signing and returning electronically via the Chest. Please ensure you also send any amendments sent as clarification as part of you submission]

**SCHEDULE FOUR**

**AWARD PROCESS**

1. GMCA and Purchasing Bodies are required to undertake a mini competition in accordance with the following Award Process
2. The Supplier is required to adhere to the following Award Process.
3. The Purchasing Body shall ensure that each awarded Contract contains all relevant information and detail as may be agreed by the Parties.
4. Where an offer is accepted by the Purchasing Body the successful Supplier will be required to enter into a contract with the Purchasing Body under the Contract Terms and Condition in schedule 2.

**AWARD PROCESS**

1.1 Following the establishment / conclusion of the FPS, the Call-Off Contracts for individual routes will be awarded by mini-competition unless clause 6.5 of the FPS Terms and Conditions is used.

* 1. The mini-competition maybe in the form of any of the following procurement routes and full details of award and scoring criteria will be provided at the mini competition stage
  2. The mini competition may take the form of the following:

1.3.1 Invitation to Tender or submit a quotation to all FPS Suppliers

1.3.2 Invitation to Tender or submit a quotation inviting Selected Suppliers using the Requirements Matrix as described in the SSQ documentation

1.3.3 Under Section 74 of the Public Contract Regulations 2015 the Purchasing Body shall determine the procedures it will follow in connection with the mini-competition and subsequent award of Contract. At all times it will adhere to the principles of awarding contracts as contained in section 76 of the Public Contract Regulations 2015. This may include dialogue and negotiation

1.4 Suppliers will be informed if they have been awarded the Call-Off Contract to provide the service described in the mini-competition and also if they have been unsuccessful.

The Purchasing Body shall issue a contract to the Supplier. The Supplier shall respond to the Purchasing Body within the period of time specified by the Customer in Contract particulars.

* 1. The contract will come into force when the Contract Particulars are signed by both parties to the Contract or in the event that the Contract is not signed the Contract will come into force under the Contract terms and Conditions when the Supplier is instructed in writing by the Purchasing Body to commence providing the services and the Purchasing Body pays the invoice.
  2. The Supplier should note the Purchasing Body is not liable to pay for services undertaken by the Supplier without a written, signed Contract or written authorisation to commence the contract under the Contract terms and conditions..
  3. The Supplier will confirm its acceptance of the Contract by signing and returning the Contract Particulars to the Purchasing Body or reject the Contract by notifying the Purchasing Body in writing and specifying the reasons why the Contract has been rejected.
  4. Where the Supplier requires further information in order to clarify the Purchasing Body’s requirements, the Purchasing Body shall participate in discussions or provide any further information necessary.
  5. Where the Purchasing Body issues an invitation to an Invitation Tender or submit a quotation the following criteria and weightings are an indication of what may apply. Purchasing Bodies may collaborate, and thus a requirement may be for an individual Purchasing Body alone, or for multiple Purchasing Bodies.

|  |  |  |  |
| --- | --- | --- | --- |
| **Criteria** | **Weighting** | **Sub-criteria** | **Weighting** |
| Quality | 20% - 100% | Quality sub-criteria 1 | 5% -100% |
| Quality sub-criteria 2 | 5% -100% |
| Quality sub-criteria 3 | 5%-100% |
| Quality sub-criteria 4 | 5% -100% |
| Social Value | 5% - 50% | Social value sub-criteria 1 | 5% -100% |
| Social value sub-criteria 2 | 5% - 100% |
| Price | 20% - 70% | Price sub-criteria 1 | 5%-100% |

* 1. There is no limit to how many sub criteria a purchasing body may include at further competition
  2. The Purchasing Body may choose not to include price at their discretion.

1.11 The Purchasing Body shall issue a Contract Particulars document (Schedule 2, Appendix A) to all relevant Suppliers, this must be completed and signed and returned to the Purchasing Body.

1.11.1 The following scoring methodology is indicated, however, Purchasing Bodies may wish to apply their own scoring methodology in evaluating mini-competitions, and this shall be acceptable and in compliance with the rules of the FPS.

|  |  |
| --- | --- |
| **Criteria** | **Score** |
| **Disqualified –** No response, or irrelevant response that does not meet any requirements. | 0 |
| **Poor / Unacceptable** – Limited information provided, or response is inadequate (i.e. doesn’t demonstrate bidders’ solution is able to meet the requirements) or only partially addresses the requirements. Significantly deficient. | 1 |
| **Acceptable** - An acceptable response submitted in terms of the level of detail, accuracy and relevance, (i.e. demonstrated bidders’ solution meets the requirements). | 2 |
| **Comprehensive** – As with Acceptable, however, bidders’ solution is demonstrated to be comprehensive with a high degree of detail and relevance, | 3 |
| **Exceeded Expectations-** The bidder has gone over and above the requirements and has provided additional value | 4 |

1.11.2 Once a score has been allocated, it shall be multiplied by the relevant weighting in accordance with the below calculation:

(Score x weighting) / maximum score = weighted score

**SCHEDULE FIVE**

**MINIMUM SERVICE LEVEL REQUIREMENTS/KPI’s**

### The minimum service level agreements (SLA) will be described at the mini-competition stage and the minimum service level that GMCA and Purchasing Bodies expect the Supplier to adhere to will be made clear in the mini-competition documentation and / or as agreed between the parties at Contract implementation and / or as the Contract progresses:

### In the event that any of the SLA targets result in 5% or more not being met over any given quarter, GMCA reserve the right to call an immediate review with the Supplier, in serious cases GMCA will terminate the contract and award to the second ranking supplier.

### (As this FPS is subject to mini-competitions the Key control (KPI’s) required come into force as and when the Supplier supplies the Purchasing Body with the Services)

### GMCA may review and revise KPI’s by mutual agreement with the Supplier at the commencement of the Contract or during the Contract duration.