

Crown Commercial Service

**PROJECT MANAGEMENT AND FULL DESIGN TEAM SERVICES FRAMEWORK SCHEDULE 4 –
TEMPLATE CALL OFF AGREEMENT (INCORPORATING THE NEC3 PROFESSIONAL SERVICES
CONTRACT APRIL 2013), CONTRACT DATA AND Z CLAUSES**

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Date:.....

FORM OF AGREEMENT

Incorporating the NEC3 Professional Services Contract April 2013

Between

The Department for Work and Pensions (DWP)

And

McBains Limited

For the provision of Multi-Disciplinary Professional Services to support DWP Life Cycle Works and deliver Asset Verification Surveys in FY2020/21

THIS AGREEMENT BY DEED is made the [.....] day of [.....]

PARTIES:

1. **THE DEPARTMENT FOR WORK AND PENSIONS** acting as part of the Crown (the "**Employer**"); and
2. **MCBAINS LIMITED** which is a company incorporated in and in accordance with the laws of **England** (Company No. 03094139 whose registered office address is at **5th Floor, 26 Finsbury Square, London, EC2A 1DS** (the "**Consultant**").

BACKGROUND

- (A) The Minister for the Cabinet Office (the "**Cabinet Office**") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, without separate legal personality (the "**Authority**"), established a framework for project management and full design team services for the benefit of public sector bodies.
- (B) The *Consultant* was appointed to the framework and executed the framework agreement (with reference number **RM3741**) which is dated 03 May 2017 (the "**Framework Agreement**"). In the Framework Agreement, the Consultant is identified as the "Supplier".
- (C) The *Consultant* has agreed to Provide the Services in accordance with this agreement and the Framework Agreement.

IT IS AGREED AS FOLLOWS:

1. The *Employer* will pay the *Consultant* the amount due and carry out his duties in accordance with the *conditions of contract* identified in the Contract Data and the Contract Schedules.
2. The *Consultant* will Provide the Services in accordance with the *conditions of contract* identified in the Contract Data and the Contract Schedules.
3. This Call Off Contract is the entire agreement between the parties in relation to the *services* and supersedes and extinguishes all prior arrangements, understandings, agreements, statements, representations or warranties (whether written or oral) relating thereto.
4. Neither party has been given, nor entered into this agreement in reliance on any arrangements, understandings, agreements, statements, representations or warranties other than those expressly set out in this agreement.
5. Nothing in clauses 3 or 4 shall exclude liability in respect of misrepresentations made fraudulently.
6. The Contract Schedules are:
 1. Contract Schedule 1 - Annex G
 2. Contract Schedule 2 - DWP Statement of Requirements
 3. Contract Schedule 3 - McBains proposal dated December 2020

4. Contract Schedule 4 - McBains proposal dated 11th December 2020
5. Contract Schedule 6 - Government Commercial Function Supplier Code of Conduct
6. Contract Schedule 6 - DWP Security Policy
7. Contract Schedule 7 - Key Performance Indicators

Executed as a deed

This Call Off Contract is EXECUTED AS A DEED by the Parties and is delivered on the date which first appears in this Deed.

The corporate seal of Secretary of State for)
Work and Pensions is hereunto)
affixed and authenticated by:)
)
)
)
)

SEAL OF **SECRETARY OF STATE FOR WORK AND PENSIONS**

Signed as a deed by **MCBAINS LTD** acting
by a Director and the Company Secretary/two
Directors

.....
Director

.....
Director/Company Secretary

Professional Services Contract

Contract Data

Part one – Data provided by the *Employer*

- 1 General**
- The *conditions of contract* are the core clauses and the clauses for main Option A in respect of the Multi-Disciplinary Professional Services to support DWP Life Cycle Works (as defined in DWP's Statement of Requirements) and main Option E in respect of the Multi-Disciplinary Professional Services to deliver Asset Verification Surveys (as defined in DWP's Statement of Requirements), dispute resolution Option W2 and secondary Options X2, X10, X11, X18, X20, Y(UK)2, Y(UK)3 and Z of the NEC3 Professional Services Contract (April 2013). The *Employer* is Department for Work and Pensions of Caxton House, Tothill Street, London, SW1H 9NA.
 - The *Adjudicator* is the person agreed by the Parties from the list of *Adjudicators* published by the Royal Institution of Chartered Surveyors or nominated by the *Adjudicator nominating body* in the absence of agreement.
 - The services are as set out in DWP's Statement of Requirements appended to this agreement.
 - The Scope is as set out in DWP's Statement of Requirements appended to this agreement.
 - The *language of this contract* is English.
 - *The law of the contract* is the law of England and Wales and the Courts of England and Wales shall have exclusive jurisdiction with regard to any dispute in connection with this Agreement and the Parties irrevocably agree to submit to the jurisdiction of those courts.
 - The *period for reply* is two weeks.
 - The *period for retention* is 12 years following Completion or earlier termination.
 - The *Adjudicator nominating body* is the *Royal Institution of Chartered Surveyors*.
 - The *tribunal* is arbitration.
 - The following matters will be included in the Risk Register:
Covid-19

2 The Parties' main responsibilities

- The *Employer* provides access to the following persons, places and things
 - access to DWP premises as necessary.

3 Time

- The *starting date* is 14th January 2021.
- The *Consultant* submits revised programmes at intervals no longer than one week.

4 Quality

- The quality policy statement and quality plan are provided within 2 weeks of the Contract Date.
- The *defects date* is 52 weeks after Completion of the whole of the *services*.

5 Payment

- The *assessment interval* is monthly.
- The *currency of this contract* is the pound sterling (£).
- The *interest rate* is, 3% per annum above the Bank of England base rate in force from time to time.

8 Indemnity, insurance and liability

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

event	cover	Period
failure of the <i>Consultant</i> to use the skill and care normally used by professionals providing services similar to the <i>services</i>	£10,000,000 in respect of each claim, without limit to the number of claims except for claims arising out of pollution, contamination or fire safety notifications where the minimum amount of cover applies in the aggregate in any one period of insurance and except for claims arising out of asbestos where a lower level may apply in the aggregate.	from the <i>starting date</i> until 12 years following completion of the whole of the <i>services</i> or earlier termination

death of or bodily injury to a person (not an employee of the *Consultant*) or loss of or damage to property resulting from an action or failure to take action by the *Consultant*

As required under Framework Schedule 14 (Annex 1 - Part A)

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

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

As required under Framework Schedule 14 (Annex 1 - Part C)

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

Optional Statements

If the *Employer* has decided the *completion date* for the whole of the *services*

The *completion date* for the whole of the *services* (unless otherwise agreed by the parties in writing) will be the date all projects instructed by the Employer to the Consultant before or on 31st March 2021 have been completed on site.

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

- The *Consultant* is to submit a first programme for acceptance within two weeks of the Contract Date.

If the *Employer* has identified work which is to meet a *stated condition* by a *key date*

- The *key dates* and *conditions* to be met are
 - *condition to be met*
 - 1: The pack for the LCW Steering Group, defined in the Statement of Requirements and Scope, will be completed and issued to the Employer's Agent
 - 2: The management and evaluation of Contractor tenders, followed by production
 - *key date*
 - 1: No later than 12pm the Working Day before the fortnightly LCW Steering Group meetings, to take place on dates as communicated in writing (which may include email) by the Employer's Agent to the Consultant.
 - 2: Within timescales communicated in writing (which may include email) by the

of Tender Reports, which shall be correct and in accordance with the Statement of Requirements and Scope at the first attempt, will be completed and issued to the *Employer* and the Employer's Agent.

Employer's Agent to the Consultant, provided that the Consultant shall not be provided with less than 5 Working Days' notice to complete the Tender Report.

- | | |
|--|--|
| <ul style="list-style-type: none"> • 3: Applications for payment from other organisations contracted by the Employer, which are free from errors, will be reviewed and processed by the Consultant. | <ul style="list-style-type: none"> • 3: Within 5 Working Days of the application for payment being submitted to the Consultant, or where the Consultant requests additional time from the Employer's Agent on the grounds the application for payment is significantly large, the Employer's Agent may increase this to 7 Working Days. |
| <ul style="list-style-type: none"> • 4: Handovers will be uploaded and closed out. | <ul style="list-style-type: none"> • 4: Within 20 Working Days of project completion, to be determined. |
| <ul style="list-style-type: none"> • 5: NEC timescales for responding to Contractor Early Warning Notices and Compensation Events will be adhered to, in line with the <i>Employer's</i> governance process as outlined in the Statement of Requirements and Scope. | <ul style="list-style-type: none"> • 5: Within the NEC timescales in place in the contract between the <i>Employer</i> and the <i>Contractors</i>. |

If Option A is used:

- The *Consultant* prepares forecasts of the total *expenses* at intervals of no longer than 2 weeks, to align with fortnightly meetings between the Employer and the Consultant.

If Option C or E is used:

- The *Consultant* prepares forecasts of the total Time Charge and *expenses* at intervals of no longer than 2 weeks, to align with fortnightly meetings between the Employer and the Consultant.
- The *exchange rates* are those published in the Financial Times on the *assessment date* when payment in another currency is included in the Price for Services Provided to Date.

Option X1 Option X1 is not used

Option X2 If Option X2 is used

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

Option X3 Option X3 is not used

Option X5 Option X5 is not used

Option X6 Options X6 is not used

Option X7 Option X7 is not used

Option X8 Option X8 is not used

Option X10 Option X10 is not used

Option X12 Option X12 is not used

Option X18 Option X18 is used

- The *Consultant's* liability to the *Employer* for indirect or consequential loss is limited to [REDACTED].
- The *Consultant's* total liability to the *Employer* for all matters arising under or in connection with the contract, other than excluded matters, is limited to [REDACTED].
- The *end of liability* date is 12 years after Completion of the whole of the *services*.

Option X20 If Option X20 is used (but not if Option X12 is also used)

- *The incentive schedule* for Key Performance Indicators (KPIs) is in Contract Schedule 7.
- A report of performance against each Key Performance Indicator is provided by the Consultant to the Employer at monthly intervals.
- A 'Performance Review Meeting' will take place within 5 working days of each report on dates as communicated in writing (which may include email) by the Employer to the Consultant.
- At the meeting, the Employer and the Consultant will agree actions and associated timescales to share best practice and/or agree how improvements to performance will be implemented.
- Progress on actions and impacts on performance will be reviewed at the next Performance Review Meeting.

Option Y(UK)1 Option Y(UK)1 is not used.

Option Y(UK)3 Option Y(UK)3 is not used

- Option Z** • The *additional conditions of contract* are clauses Z1 to Z48 set out with this contract save for:

Z9, Z19, Z35, Z36, Z37, Z41 and Z48.

- Clause Z15** • Z15.1 (1) delete "Data Protection Act 1998" and add "Data Protection Act 2018"
- Delete Z15.1(2) and add: The parties agree that the only personal data to be processed by either party in relation to this Call Off Contract will be the business contact details of the staff of parties working on this Call Off Contract.

**Contract Data
relating to Z clauses**

Clause Z39 Financial Distress

If Clause Z39 applies, the *credit ratings* at the Contract Date and the rating agencies issuing them are:

party	rating agency	<i>credit rating</i>
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<i>Consultant</i>	Fame	Secure
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Clause Z42 Off Shoring of Data

The Risk Assessment is a full risk assessment and security review carried out by the *Employer* in accordance with the [Offshoring Policy for DWP Contractors](#) or any later revision or replacement.

Part two – Data provided by the *Consultant*

1 Statements given in all contracts

- The *Consultant* is
 - Name McBains Ltd
 - Address 26 Finsbury Square, London EC2A 1DS
- The *key people* are: N/A

- The *staff rates* are:

Grade	Day Rate
[REDACTED]	[REDACTED]

- The following matters will be included in the Risk Register
Covid-19

Optional statements

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

N/A

If the programme is to be identified in the Contract Data

- The programme identified in the Contract Data is

N/A

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

- The *expenses* stated by the *Consultant* are

item	amount
[REDACTED]	[REDACTED]

If the *Consultant* requires additional access

The *Employer* provides access to all persons, places and things as deemed relevant and necessary for the Contract.

If Option A or C is used

- The *activity schedule* is:
- Life Cycle Works: Contract Schedule 3 - McBains proposal dated December 2020

-
- Asset Verification Surveys: Contract Schedule 4 - McBains proposal dated 11th December 2020
 - The tendered total of the Prices is:
 - Life Cycle Works: the tendered total of the Prices for each project is the applicable service percentage of the construction cost of that project, being [REDACTED].
 - Life Cycle Works: the anticipated aggregate total amount of the Prices in respect of Life Cycle Works is [REDACTED] exclusive of VAT, based on an assumed aggregate total construction cost of all such projects of [REDACTED].

Asset Verification Surveys: the anticipated total Time Charge and stated expenses in respect of Asset Verification Surveys is **£123,303.50**, exclusive of VAT.

Additional conditions of contract - clauses Z1 to Z48

Clause Z1 Interpretation and the law

Z1.1 In this contract, except where the context shows otherwise:

- references to a document include any revision made to it in accordance with this contract;
- references to a statute or statutory instrument include any amendment or re-enactment of it from time to time and any subordinate legislation or code of practice made under it;
- references to a British, European or International standard include any current relevant standard that replaces it;
- references to persons or organisations will be construed so as to include bodies corporate, unincorporated associations, partnerships and any other legal entity; and
- the words “includes” or “including” are construed without limitation.

Z1.2 Terms for which no interpretation is provided in this contract shall have the meaning ordinarily given to them by the legal profession where appropriate but otherwise shall be interpreted in accordance with their dictionary meaning.

Acquired Rights Directive is the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time

Authority means The Minister for the Cabinet Office ("Cabinet Office") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP

Confidential Information is any information, however it is conveyed, that relates to the business, personnel, affairs, developments, trade secrets, ideas, concepts, schemes, information, knowledge, techniques, methodology, and without limiting the above anything else in the nature of know-how, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked “confidential”) or which ought reasonably to be considered to be confidential.

Consultant Personnel is all persons employed or engaged by the *Consultant* together with the *Consultant's* servants, agents, suppliers, consultants and Subconsultants (and all persons employed by any Subconsultant together with the Subconsultant's servants, consultants, agents, suppliers and sub-subconsultants);

Contracting Authorities means the bodies listed in the contract notice 2016/S 180-323830 on 14/09/2016 in the Official Journal of the European Union and “Contracting Authority” shall be construed accordingly;

Employment Regulations are the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as

amended or replaced or any other Regulations implementing the Acquired Rights Directive

Environmental Information Regulations is the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner in relation to such regulations.

FOIA is the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;

Former Consultant is the *Consultant* supplying services to the *Employer* before the Relevant Transfer Date that are the same as or substantially similar to the service (or any part of the service) and shall include any sub-consultant of such supplier (or any sub-consultant of any such sub-consultant)

Information has the meaning given under section 84 of the Freedom of Information Act 2000

A **Prohibited Act** is:

- to directly or indirectly offer, promise or give any person working for or engaged by the *Employer* and/or the Authority or other Contracting Authority or any other public body a financial or other advantage to:
 - induce that person to perform improperly a relevant function or activity; or
 - reward that person for improper performance of a relevant function or activity;
- to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this contract; and /or
- committing any offence:
 - under the Bribery Act 2010 (or any legislation repealed or revoked by such Act)
 - under legislation or common law concerning fraudulent acts; or
 - defrauding, attempting to defraud or conspiring to defraud the *Employer*; or
 - any activity, practice or conduct which would constitute one of the offences listed above if such activity, practice or conduct had been carried out in the UK.

Relevant Requirements are all applicable laws relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

Material means all designs, drawings, models, plans, specifications,

design details, photographs, brochures, reports, feasibility studies, planning submissions, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with this contract and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to this contract.

Relevant Transfer is a transfer of employment to which the Employment Regulations applies

Relevant Transfer Date is, in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place

Request for Information is a request for information or an apparent request under the FOIA or the Environmental Information Regulations

Security Policy means the *Employer's* security policy attached as a Contract Schedule as may be updated from time to time

Transferring Employer Employees are those employees of the *Employer* to whom the Employment Regulations will apply on the Relevant Transfer Date

Transferring Former Consultant Employees are, in relation to a Former Consultant, those employees of the Former Consultant to whom the Employment Regulations will apply on the Relevant Transfer Date

Working Day is any day other than a Saturday or Sunday or public holiday in England and Wales.

Clause Z2 Prevention of fraud and bribery

(i) Insert new clauses:

Z2.1 The *Consultant* represents and warrants that neither it, nor to the best of its knowledge any of its employees, have at any time prior to the Contract Date:

- committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

Z2.2. Throughout the period in which the *services* are performed the *Consultant* does not:

- commit a Prohibited Act; and/or
- do or suffer anything to be done which would cause the *Employer* or any of the *Employer's* employees, consultants, contractors, sub-consultants or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements

Z2.3 Throughout the period in which the *services* are performed the *Consultant*:

- establishes, maintains and enforces, and requires that its Subconsultants establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
- keeps appropriate records of its compliance with this contract and make such records available to the *Employer* on request;
- provides and maintains and where appropriate enforces an anti-bribery policy (which shall be disclosed to the *Employer* on request) to prevent it and any *Consultant's* employees or any person acting on the *Consultant's* behalf from committing a Prohibited Act.

Z.2.4 The *Consultant* immediately notifies the *Employer* in writing if it becomes aware of any breach of clause Z2.1, Z2.2 and / or Z2.3 , or has reason to believe that it has or any of the its employees or Subconsultants have:

- been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a

Prohibited Act; and/or

- received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this contract or otherwise suspects that any person or party directly or indirectly connected with this contract has committed or attempted to commit a Prohibited Act.

Z2.5 If the *Consultant* makes a notification to the *Employer* pursuant to clause Z2.4, the *Consultant* responds promptly to the *Employer's* enquiries, co-operates with any investigation, and allows the *Employer* to audit any books, records and/or any other relevant documentation in accordance with this contract.

Z2.6 Without limitation to clause 22.2 if the *Consultant* breaches Clause Z2.3, the *Employer* may instruct the *Consultant* to remove a person employed by the *Consultant* who has caused the *Consultant's* breach to remove that person and the *Consultant* shall immediately ensure that person has no further connection with the work included in this contract.

Clause Z3 Recovery of sums due from *Consultant*

Where the Employer is a Crown Body, then Z3.1 applies to the exclusion of Z3.2. Otherwise, Z3.2 applies to the exclusion of Z3.1.

Z3.1 Where under this contract any sum of money is recoverable from or payable by the *Consultant*, such sum may be deducted from or reduced by the amount of any sum or sums then due or which at any time after may become due to the *Consultant* under this contract or any other contract with any Department or Office of Her Majesty's Government.

Z3.2 Where under this contract or any other contract between the *Consultant* and the *Employer* any sum of money is recoverable from or payable by the *Consultant*, such sum may be deducted from or reduced by the amount of any sum or sums then due or which at any time after may become due to the *Consultant* under this contract or any other contract with the *Employer*.

Clause Z4 Assignment and Novation

Z4.1 The *Employer* is entitled to assign or otherwise dispose of its rights under this contract or any part thereof to:

- any Contracting Authority; or
- any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the *Employer*.

Z4.2 The *Consultant* does not, without the written consent of the *Employer*, assign or transfer this contract, or any part of, share of or

interest in it. In the absence of the *Employer's* written consent no sum of money becoming due under this contract is payable to any person other than the *Consultant*.

Z4.3 The *Employer* is entitled to, and the *Consultant* gives consent to, the novation of this contract or any part thereof to:

- any Contracting Authority; or
- any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the *Employer*;

upon such terms as the *Employer* proposes, provided that where such novation increases the burden on the *Consultant* pursuant to this contract, the novation shall be a compensation event. According a new clause 60.1(13) shall be added that reads "A novation pursuant to clause Z4.3 occurs which increases the burden on the *Consultant* pursuant to this contract".

Z4.5 Any change in the legal status of the *Employer* such that it ceases to be a Contracting Authority does not affect the validity of this contract. In such circumstances, this contract binds and inures to the benefit of any successor body to the *Employer*.

Z4.6 If this contract is novated to a body which is not a Contracting Authority or if a successor body which is not a Contracting Authority becomes the *Employer* (both such bodies being referred to in the remainder of this clause as the "transferee") the transferee is only able to assign, novate or otherwise dispose of its rights and obligations under this contract or any part thereof with the written consent of the *Consultant*.

Clause Z5 Discrimination

Z5.1 The *Consultant* does not discriminate directly or indirectly or by way of victimisation or harassment against any person contrary to the Equality Act 2010, any predecessor statute of it or any amendment or re-enactment of it from time to time (the "Discrimination Acts").

Z5.2 In connection with the *services* the *Consultant* co-operates with and assists the *Employer* to satisfy his duty under the Discrimination Acts to eliminate unlawful discrimination and to promote equality of opportunity between persons of different racial groups and between disabled people and other people.

Z5.3 Where any employee or Subconsultant is required to carry out any activity alongside the *Employer's* employees, the *Consultant* ensures that each such employee or Subconsultant complies with the *Employer's* employment policies and codes of practice relating to discrimination and equal opportunities.

Z5.4 The *Consultant* notifies the *Employer* in writing as soon as he becomes aware of any investigation or proceedings brought against the *Consultant* under the Discrimination Acts in connection with this contract and

- provides any information requested by the investigating body,

court or tribunal in the timescale allotted,

- attends (and permits a representative from the *Employer* to attend) any associated meetings,
- promptly allows access to any relevant documents and information and
- cooperates fully and promptly with the investigatory body, court or tribunal.

Z5.5 The *Consultant* indemnifies the *Employer* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Employer* arising out of or in connection with any investigation or proceedings under the Discrimination Acts resulting from any act or omission of the *Consultant*.

Z5.6 The *Consultant* includes in the conditions of contract for each Subconsultant obligations substantially similar to those set out above.

Clause Z6 Conflict of interest

Z6.1 The *Consultant* does not take an action which would cause a conflict of interest to arise in connection with this contract. The *Consultant* notifies the *Employer* if there is any uncertainty about whether a conflict of interest may exist or arise.

Z6.2 The *Consultant* immediately notifies the *Employer* of any circumstances giving rise to or potentially giving rise to conflicts of interest relating to the *Consultant* and/or the *Employer* (including without limitation its reputation and standing), of which it is aware or anticipates may justify the *Employer* taking action to protect its interests.

Z6.3 The *Consultant* must take positive steps to mitigate any conflict of interest that may exist or arise under Clause Z6.1 or there are circumstances that may give rise to a conflict of interest under Z6.2.

Z6.4 Should the Parties be unable to either remove the conflict of interest and/or to reduce its damaging effect to a reasonably acceptable level, the *Employer* has the right to terminate this contract whereupon the provisions of PSC clause 92.2 apply to the termination.

Clause Z7 Merger, take-over or change of control

Z7.1 In clauses Z7, Z30 (Consortia), Z39 (Financial Distress), Z40 (Change of Control – new guarantee) and Z41 (Parent Company Guarantee)

- **Change of Control** is an event where a single person (or group of persons acting in concert)
 - acquires Control of the *Consultant* or
 - acquires a direct or indirect interest in the relevant share capital of the *Consultant* and as a result holds or controls the largest direct or indirect interest in (and in any event more than 25% of) the relevant share capital of the

Consultant,

- **Consortium Member** is an organisation or person which is a member of a group of economic operators comprising the *Consultant*, whether as a participant in an unincorporated joint venture or a shareholder in a joint venture company,
- **Control** has the meaning set out in section 1124 of the Corporation Tax Act 2010,
- **Controller** is the single person (or group of persons acting in concert) that
 - has Control of the *Consultant* or a Consortium Member or
 - holds or controls the largest direct or indirect interest in the relevant share capital of the *Consultant* or a Consortium Member,
- **Credit Rating Threshold** means the minimum credit rating for the *Consultant*, a Consortium Member or a proposed guarantor, such credit rating being set out at Annex 2 to Schedule 16 of the Framework Agreement,
- **Framework Agreement** means the framework agreement pursuant to which this contract has been entered into
- **Guarantor** is a person who has given a Parent Company Guarantee to the *Employer* and
- **Parent Company Guarantee** is a guarantee of the *Consultant's* performance in the form set out in the Scope, or if not set out in the Scope, the template form attached to this contract.

Z7.2 A Change of Control does not happen without the prior agreement of the *Employer*, and if a Change of Control occurs without the *Employer's* prior consent, then the *Employer* may treat the Change of Control as a substantial failure by the *Consultant* to comply with his obligations.

Z7.3 The *Consultant* notifies the *Employer* immediately if a Change of Control has occurred or is expected to occur.

Z7.4 If the Change of Control will not allow the *Consultant* to perform its obligations under this contract, the *Employer* may treat the Change of Control as a substantial failure by the *Consultant* to comply with his obligations.

Z7.5 The *Consultant* notifies the *Employer* immediately of any material change in

- the direct or indirect legal or beneficial ownership of any shareholding in the *Consultant*. A change is material if it

relates directly or indirectly to a change of 3% or more of the issued share capital of the *Consultant*, or

- the composition of the *Consultant*. Without limitation a change is material if it directly or indirectly affects the performance of this contract by the *Consultant*.

Z7.6 The *Consultant* notifies the *Employer* immediately of any change or proposed change in the name or status of the *Consultant*.

Z7.7 If the *Consultant* does not provide a notification required by clause Z7.5 or Z7.6, the *Employer* may treat that failure as a substantial failure by the *Consultant* to comply with his obligations.

Z7.8 In this clause Z7 a Change of Control in relation to

- material change in the ownership of shares in, or
- change in the name or status of

a Consortium Member is treated as a change relating to the *Consultant*.

Clause Z8 Appointment of *Adjudicator*

Z8.1 The *Adjudicator's* appointment under the NEC *Adjudicator's* Contract current at the *starting date* includes the following additional conditions of contract

"The *Adjudicator* complies, and takes all reasonable steps to ensure that any persons advising or aiding him comply, with the Official Secrets Act 1989. Any information concerning the *contract between the Parties* obtained either by the *Adjudicator* or any person advising or aiding him is confidential, and may not be used or disclosed by the *Adjudicator* or any such person except for the purposes of this Agreement."

Clause Z9 Clause Z9 is not used.

Clause Z10 *Employer's* Codes of Conduct

Z10.1 The *Consultant* complies (and ensures that any person employed by him or acting on his behalf complies) with the *Employer's* code of conduct to the extent one is included as a Contract Schedule to this contract. The *Consultant* complies with the code of conduct until Completion and for the *period of retention*.

Z10.2 A failure to comply with this clause is treated as a substantial failure by the *Consultant* to comply with his obligations.

Clause Z11 Fair payment

Z11.1 The *Consultant* assesses the amount due to a Subconsultant

without taking into account the amount assessed under this contract.

Z11.2 The *Consultant* includes in the contract with each Subconsultant

- a period for payment of the amount due to the Subconsultant not greater than 19 days after the date on which payment becomes due under this contract. The amount due includes, but is not limited to, payment for work which the Subconsultant has completed from the previous assessment date up to the current assessment date in this contract,
- a provision requiring the Subconsultant to include in each subsubcontract the same requirement, except that the period for payment is to be not greater than 23 days after the date on which payment becomes due under this contract and
- a provision requiring the Subconsultant to assess the amount due to a subsubconsultant without taking into account the amount paid by the *Consultant*.

Z11.3 The *Consultant* notifies non-compliance with the timescales for payment through the Efficiency and Reform Group supplier feedback service. The *Consultant* includes this provision in each subcontract, and requires Subconsultants to include the same provision in each subsubcontract.

Z11.4 A failure to comply with this condition is treated as a substantial failure by the *Consultant* to comply with his obligations.

Clause Z12 Confidentiality

Z12.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this contract, each party shall:

- treat the other party's Confidential Information as confidential and safeguard it accordingly; and
- not disclose the other party's Confidential Information to any other person without that other party's prior written consent.

Z12.2 Clause Z12.1 shall not apply to the extent that:

- such disclosure is a requirement of the law of the contract placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause Z16 (Freedom of Information);
- such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure;
- such information was obtained from a third party without obligation of confidentiality;
- such information was already in the public domain at the time of disclosure otherwise than by a breach of this contract; or
- it is independently developed without access to the other party's

Confidential Information.

Z12.3 The *Consultant* shall not, and shall procure that the Consultant Personnel do not, use any of the *Employer's* Confidential Information received otherwise than for the purposes of this contract.

Z12.4 The *Consultant* may only disclose the *Employer's* Confidential Information to the Consultant Personnel who are directly involved in the provision of the services and who need to know the information, and shall ensure that such Consultant Personnel are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any default, act or omission of any Consultant Personnel causes or contributes (or could cause or contribute) to the *Consultant* breaching its obligations as to confidentiality under or in connection with this contract, the *Consultant* shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Consultant Personnel, the *Consultant* shall provide such evidence to the *Employer* as the *Employer* may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the *Consultant* is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from Consultant Personnel, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with Consultant Personnel in connection with obligations as to confidentiality.

Z12.5 At the written request of the *Employer*, the *Consultant* shall procure that those members of the Consultant Personnel identified in the *Employer's* notice signs a confidentiality undertaking prior to commencing any work in accordance with this contract.

Z12.6 Nothing in this contract shall prevent the *Employer* from disclosing the *Consultant's* Confidential Information:

- to any Crown Body or any other Contracting Authorities. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
- to any consultant, contractor or other person engaged by the *Employer* or any person conducting an Office of Government Commerce gateway review;
- for the purpose of the examination and certification of the *Employer's* accounts; or
- for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Employer* has used its resources.

and for the purposes of the foregoing, disclosure of the *Consultant's* Confidential Information shall be on a confidential basis and subject to

a confidentiality agreement or arrangement containing terms no less stringent than those placed on the *Employer* under this clause Z12.6.

Z12.7 The *Employer* shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Subconsultant to whom the *Consultant's* Confidential Information is disclosed pursuant to the above clause is made aware of the *Employer's* obligations of confidentiality.

Z12.8 Nothing in this clause shall prevent either party from using any techniques, ideas or know-how gained during the performance of this contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of intellectual property rights.

Clause Z13 Security Requirements

Z13.1 The *Consultant* complies with, and procures the compliance of its personnel, with:

- the Security Policy;
- the Security Management Plan produced pursuant to the Security Provisions; and
- the Security Provisions contained within the Security Policy or the Scope.

Z13.2 The *Consultant* shall ensure that the Security Management Plan produced by the *Consultant* fully complies with the Security Policy.

Clause Z14 Official Secrets Act

Z14.1 The Official Secrets Act 1989 applies to this contract from the *starting date* until the *defects date* or earlier termination.

Z14.2 The *Consultant* notifies his employees and Subconsultants of their duties under the Official Secrets Act 1989.

Z14.3 A failure to comply with this clause is treated as a substantial failure by the *Consultant* to comply with his obligations.

Z14.4 The *Consultant* complies with the staff vetting and training requirements stated in the Scope, if any.

Clause Z15 Data Protection

Z15.1

(1) The Data Protection Acts are the Data Protection Act 1998 (as amended) and any other laws or regulations relating to privacy or personal data.

(2) The parties agree that the only personal data to be processed by either party in relation to this Call Off Contract will be the business contact details of the staff of each party working on this Call Off

Contract.

Z15.2 For the purposes of this contract and the Data Protection Acts

- the *Employer* is the Data Controller and
- the *Consultant* is the Data Processor.

Z15.3 The *Consultant* processes the Personal Data in accordance with (and so as not to put the *Employer* in breach of) the Data Protection Acts and only to the extent necessary for the purpose of performing his obligations under this contract.

Z15.4 The *Consultant* has in place for as long as it holds the Personal Data

- appropriate technical and organisational measures (having regard to the nature of the Personal Data) to protect the Personal Data against accidental, unauthorised or unlawful processing, destruction, loss, damage, alteration or disclosure and
- adequate security programmes and procedures to ensure that unauthorised persons do not have access to the Personal Data or to any equipment used to process the Personal Data.

Z15.5 The *Consultant* immediately notifies the *Employer* if it receives

- a request from any person whose Personal Data it holds to access his Personal Data or
- a complaint or request relating to the *Employer's* obligations under the Data Protection Acts.

Z15.6 The *Consultant* assists and co-operates with the *Employer* in relation to any complaint or request received, including

- providing full details of the complaint or request,
- complying with the request within the time limits set out in the Data Protection Acts and in accordance with the instructions of the *Employer* and
- promptly providing the *Employer* with any Personal Data and other information requested by him.

Z15.7 The *Consultant* complies with the requirements of the *Employer* in relation to the storage, dispatch and disposal of Personal Data in any form or medium.

Z15.8 The *Consultant* immediately notifies the *Employer* on becoming aware of any breach of this clause or of the Data Protection Acts.

Z15.9 The *Consultant* does not process Personal Data outside the European Economic Area (the "EEA") without the prior written agreement of the *Employer*.

Z15.10 If the *Consultant* becomes aware that Personal Data will be transferred or processed outside the EEA, the *Consultant* sends the *Employer* details of:

- the Personal Data which will be processed outside the EEA;

-
- the countries where the Personal Data will be processed;
 - any Subconsultants or other third parties who will be processing and/or receiving Personal Data outside the EEA; and
 - proposals to ensure the *Consultant* will provide adequate levels of protection and safeguards of the Personal Data that will be processed outside the EEA to ensure compliance with the Data Protection Acts.

Z15.11 Where the *Employer* agrees to the *Consultant* processing or transferring Personal Data outside the EEA the *Consultant* complies with the instructions of the *Employer* and provides an adequate level of protection to any Personal Data in accordance with the Data Protection Acts

Clause Z16 Freedom of Information

Z16.1. The *Consultant* acknowledges that unless the *Employer* has notified the *Consultant* that the *Employer* is exempt from the provisions of the FOIA, the *Employer* is subject to the requirements of the FOIA and the Environmental Information Regulations. The *Consultant* cooperates with and assists the *Employer* so as to enable the *Employer* to comply with its information disclosure obligations.

Z16.2 The *Consultant*:

- transfers to the *Employer* all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
- provides the *Employer* with a copy of all Information relevant to the Request for Information in its possession, or power in the form that the *Employer* requires within five Working Days (or such other period as the *Employer* may specify) of the *Employer's* request;
- provides all necessary assistance as reasonably requested by the *Employer* to enable the *Employer* to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations; and
- procures that its Subconsultants do likewise.

Z16.3 The *Employer* is responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

Z16.4 The *Consultant* does not respond directly to a Request for Information unless authorised to do so by the *Employer*.

Z16.5 The *Consultant* acknowledges that the *Employer* may, acting in accordance with the MoJ Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of

Information Act 2000, be obliged to disclose Information without consulting or obtaining consent from the *Consultant* or despite the *Consultant* having expressed negative views when consulted.

Z16.6 The *Consultant* ensures that all Information is retained for disclosure throughout the period for retention and permits the *Employer* to inspect such records as and when reasonably requested from time to time.

Clause Z17 Records and Audit Access

Z17.1 In addition to its obligations under clause 13.6 of the *conditions of contract* the *Consultant* keeps documents and information obtained or prepared by the *Consultant* or any Subconsultant in connection with this contract for the *period for retention*.

Z17.2 The *Consultant* permits the *Employer*, comptroller, auditor general and any other auditor appointed by the *Employer* to examine documents held or controlled by the *Consultant* or any Subconsultant.

Z17.3 The *Consultant* provides such oral or written explanations as the *Employer* or comptroller and auditor general considers necessary.

Z17.4 The *Consultant* acknowledges that, for the purpose of examining and certifying the *Employer's* accounts or any examination pursuant to Section 6(1) of the National Audit Act 1983, the comptroller and auditor general or any other auditor appointed by the *Employer* may examine documents held or controlled by the *Consultant* or any Subconsultant and may require the *Consultant* to provide such oral or written explanations as he considers necessary. The *Consultant* promptly complies with any such requirements at his own cost. This clause does not constitute a requirement or agreement for the purposes of section 6(3)(d) of the National Audit Act 1983 for the examination, certification or inspection of the accounts of the *Consultant* and the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the *Consultant* is not a function exercisable under this contract.

Clause Z18 Reporting: Small and Medium Enterprises

Z18.1 In this clause "SME" is

- a Subconsultant or
- a subconsultant to a Subconsultant

that also:

- is autonomous,
- is a United Kingdom or European Union enterprise not owned or controlled by a non-United Kingdom or non-European Union parent company,
- for a medium sized enterprise (medium class) employs fewer than 250 staff, has turnover no greater than 50 million Euros and does not have a balance sheet greater than 43 million

Euros,

- for a small sized enterprise (small class) employs fewer than 50 staff, has turnover no greater than 10 million Euros and does not have a balance sheet greater than 10 million Euros and
- for a micro sized enterprise (micro class) employs fewer than 10 staff, has turnover no greater than 2 million Euros and does not have a balance sheet greater than 2 million Euros.

Z18.2 For each SME employed in connection with the *services*, the *Consultant* reports to the *Employer* on a monthly basis from the *starting date* until Completion and at the *defects date*

- the name of the SME,
- the class of SME (medium, small or micro),
- the value and percentage of the contract undertaken by the SME,
- the amounts paid to the SME and
- the aggregated value paid to the SME since the *starting date*.

Z18.3 The *Consultant* acknowledges that the *Employer* may

- publish the information supplied under clause Z18.2, along with the *Consultant's* name and this contract name and
- pass the information supplied under this clause Z18 to any government department who may then publish it along with the names of the SMEs, the *Consultant's* name and this contract name.

Z18.4 The *Consultant* ensures that the conditions of contract for each Subconsultant who is an SME include

- a term allowing the *Employer* to publish the information supplied under Z18.2 and
- obligations substantially similar to those set out in this clause Z18.

Z18.5 The *Consultant* further ensures that the conditions of contract for each Subconsultant include a requirement that the conditions of contract for any subsubconsultant engaged by the Subconsultant who is an SME include obligations substantially similar to those set out in clause Z218.4.

Clause Z19 Clause Z19 is not used.

Clause Z20 Tax Non-Compliance

Z20.1

- (1) Tax Non-Compliance is where a tax return submitted by the *Consultant* to a Relevant Tax Authority on or after 1 October 2012

is found on or after 1 April 2013 to be incorrect as a result of:

- a Relevant Tax Authority successfully challenging the *Consultant* under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rule or legislation with similar effect or
- the failure of an avoidance scheme in which the *Consultant* was involved which was (or should have been) notified to a Relevant Tax Authority under the DOTAS or a similar regime or
- gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax-related offences which is not spent at the Contract Date or to a civil penalty for fraud or evasion.

(2) DOTAS are the Disclosure of Tax Avoidance Schemes rules contained in Part 7 of the Finance Act 2004 and in secondary legislation made pursuant to it, as extended to National Insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012 (SI 2012/1868).

(3) General Anti-Abuse Rule is

- the legislation in Part 5 of the Finance Act 2013 and
- any future legislation introduced to counteract tax advantages arising from abusive arrangements to avoid National Insurance contributions.

(4) Halifax Abuse Principle is the principle explained in the CJEU case C-255/02 Halifax and others.

(5) Relevant Tax Authority is HM Revenue & Customs or, if the *Consultant* is established in another jurisdiction, the tax authority in that jurisdiction.

Z20.2 The *Consultant* warrants that it has notified the *Employer* of any Tax Non-Compliance or any litigation in which it is involved relating to any Tax Non-Compliance prior to the Contract Date.

Z25.3 The *Consultant* notifies the *Employer* within one week of any Tax Non-Compliance occurring after the Contract Date and provides details of

- the steps the *Consultant* is taking to address the Tax Non-Compliance and to prevent a recurrence,
- any mitigating factors that it considers relevant and
- any other information requested by the *Employer*.

Z20.4 The *Consultant* is treated as having substantially failed to comply with his obligations if

- the warranty given by the *Consultant* under clause Z20.2 is untrue,
- the *Consultant* fails to notify the *Employer* of a Tax Non-Compliance or
- the *Employer* decides that any mitigating factors notified by the

Consultant are unacceptable.

Clause Z21 Quality Management Points

Z21.1 Quality Management Points are points accrued by the *Consultant* in accordance with the Quality Table set out below. Quality Management Points accrue for the failures listed on the Quality Table whether arising from an audit by the *Consultant*, the *Employer* or the relevant accreditation body

Z21.2 If the *Consultant* fails to comply with his quality management system, the *Consultant* accrues Quality Management Points from the date when the failure is identified in accordance with the Quality Table. The number of Quality Management Points is reduced in accordance with the Quality Table.

Z21.3 The *Consultant* maintains a register of the number of Quality Management Points in effect, showing when Quality Management Points accrue and are removed.

Z21.4 If the number of Quality Management Points in effect at any time is more than 25 points, the *Consultant* and the *Employer* meet within one week to consider ways of reducing the number of Quality Management Points in effect to 25 or less and to avoid accruing further Quality Management Points. The *Consultant* submits a report to the *Employer* within one week of the meeting setting out

- the actions agreed at the meeting and
- any other actions which the *Consultant* proposes to take immediately to reduce the number of Quality Management Points in effect to 25 or less and to avoid accruing further Quality Management Points.

Z21.5 If the *Employer* does not accept the *Consultant's* proposals or the *Consultant* does not take the agreed actions, the *Employer* serves a quality warning notice on the *Consultant*. Within one week of receipt of the quality warning notice, the *Consultant* submits a report to the *Employer* setting out the actions which the *Consultant* has taken and what further or alternative actions he proposes to take to reduce the number of Quality Management Points in effect to 25 or less.

Z21.6 Until the number of Quality Management Points in effect is reduced to 25 or less, the *Consultant* takes the actions detailed in his reports and submits weekly up date reports to the *Employer* setting out the actions he has taken, the results of those actions and the actions

which are still to be taken by him.

Z21.7 Failure to take actions to reduce the number of Quality Management Points in effect to 25 or less is treated as a substantial failure by the *Consultant* to comply with his obligations.

Quality Table

Failure	Quality Management Points	Period of effect
Failure to have a complete Quality Plan in place and operating	25	Until audit confirms that Quality Plan complete and operating
The Quality Plan does not comply with the requirements of this contract	10 per failure	Until audit confirms that Quality Plan complies
Failure to raise a Non-Conformity report	5 per [Non-Conformity]	6 months
Failure to raise a corrective action report	5 per [Non-Conformity]	6 months
Failure to correct Quality Plan in manner set out in a corrective action report (see note 1 below)	10 per failure	Until failure corrected
Failure to implement recommendations in audit report (see note 1 below)	5 per recommendation	Until audit confirms that recommendation implemented
Failure to carry out internal audit	25 per audit	Until audit carried out
Carrying out work without release of hold point	10 per item	6 months
Failure to make records available for inspection by the <i>Employer</i>	10 per failure	Until the records are made available
Failure to allow access for <i>Employer</i> audits	10 per failure	Until <i>Employer</i> audit is carried out
Failure by <i>Consultant</i> to accrue Quality	The number of Quality	Applicable to the failure that should

Management Points that should have been accrued	Management Points that should have been accrued	have accrued Quality Management Points
	plus an additional number of Quality Management Points equivalent to the Quality Management Points that should have been accrued	6 months
Note 1: For these failures additional Quality Management Points are accrued at each audit until an audit confirms that rectification/correction/implementation/action has taken place.		

Clause Z22 Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”)

Z22.1 The Parties agree that:

- where the commencement of the provision of the *service* or any part thereof results in one or more Relevant Transfers, Contract Schedule 1 shall apply as follows:
- where the Relevant Transfer involves the transfer of Transferring Employer Employees, Part A of Contract Schedule 1 shall apply;
- where the Relevant Transfer involves the transfer of Transferring Former Consultant Employees, Part B of the Contract Schedule 1 shall apply;
- where the Relevant Transfer involves the transfer of Transferring Employer Employees and Transferring Former Consultant Employees, Parts A and B of Contract Schedule 1; and
- Part C of Contract Schedule 1 shall not apply;
- where commencement of the provision of the *service* or a part of thereof does not result in a Relevant Transfer, Part C of Contract Schedule 1 shall apply and Parts A and B of Contract Schedule 1 shall not apply; and
- Part D of Contract Schedule 1 shall apply on the expiry or termination of the *service* or any part of thereof.

Clause Z23 Changes to *staff rates* and Subconsultants

Z23.1 When the *Consultant* proposes a revision to an existing *staff rate* or a new *staff rate*, the proposal is accompanied by a certificate from the

Consultant's (or if appropriate Consortium Member's – as defined in clause Z7) Chief Financial Officer or Director of Finance (or an equivalent officer authorised to bind the *Consultant* and agreed by the *Employer* before the proposal is issued) confirming that the proposal

- is accurate and not misleading,
- has been prepared in conformity with generally accepted accounting principles within the United Kingdom,
- is a true and fair reflection of the information included within the *Consultant's* books, management and statutory accounts and other documents and records and
- complies with this contract.

Z23.2 If a Subconsultant wishes to propose revisions to an existing staff rate or a new staff rate and the *Consultant* considers that, in order to comply with any law, the Subconsultant should submit its proposal directly to the *Employer*, the *Consultant* submits a request to that effect to the *Employer* for acceptance. A reason for not accepting the *Consultant's* request is that the law does not require the Subconsultant to submit its proposal directly to the *Employer*. If the *Employer* accepts the *Consultant's* request, the *Consultant* directs the Subconsultant to submit its proposal directly to the *Employer*.

Z23.3 Where, in order to verify an invoice submitted by the *Consultant*, the *Employer* requires a Subconsultant to provide

- records of any Time Charge and expenses incurred by it or
- a certificate that its invoice and records of any Time Charge and expenses incurred by it are accurate and not misleading

and the *Consultant* considers that, in order to comply with any law, the Subconsultant should submit its records and certificate directly to the *Employer*, the *Consultant* submits a request to that effect to the *Employer* for acceptance. A reason for not accepting the *Consultant's* request is that the law does not require the Subconsultant to submit its records and certificate directly to the *Employer*. If the *Employer* accepts the *Consultant's* request, the *Consultant* directs the Subconsultant to submit its records and certificate directly to the *Employer*.

Z23.4 The *Consultant* includes in the conditions of contract for each Subconsultant

- provisions substantially similar to those set out in clause Z23.1,
- a right for the *Employer* to audit any records and certificates provided by the Subconsultant under this clause Z23,
- an obligation on the Subconsultant to discuss directly with the *Employer* any concerns that the *Employer* may have as to the accuracy of any records and certificates provided by the Subconsultant,
- a right for the *Consultant* to recover from the Subconsultant (or to deduct from any amount that would otherwise be due to the Subconsultant) the amount of any overpayment identified by the *Employer* as a result of its audits and discussions with the

Subconsultant and

- an acknowledgment from the Subconsultant that the *Employer* may enforce these provisions directly against the Subconsultant under the Contracts (Rights of Third Parties) Act 1999.

Clause Z24 Insurance cover

Z24.1 All insurances required to be effected and maintained under this contract by the *Consultant* are placed with reputable insurers, to whom the *Employer* has no reasonable objection and upon customary and usual terms prevailing for the time being in the insurance market. The said terms and conditions do not include any term or condition to the effect that any insured must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010 or the Third Parties (Rights Against Insurers) Act (Northern Ireland) Order 1930 as amended by the Insolvency (Northern Ireland) Order 1989.

Z24.2 Nothing in this clause relieves the *Consultant* from any of its obligations and liabilities under this contract.

Clause Z25 Professional indemnity insurance

Z25.1 The *Consultant* obtains and maintains the professional indemnity insurance required by Clause 81.1 of the *conditions of contract* upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business on the basis and in an amount not less than that stated in the Contract Data, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions do not include any term or condition to the effect that the *Consultant* must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010 or the Third Parties (Rights Against Insurers) Act (Northern Ireland) 1930 as amended by the Insolvency (Northern Ireland) Order 1989.

Z25.2 The *Consultant* does not without the prior written approval of the *Employer* settle or compromise with the insurers any claim which the *Consultant* may have against the insurers and which relates to a claim by the *Employer* against the *Consultant*, nor by any act or omission lose or prejudice the *Consultant's* right to make or proceed with such a claim against the insurers.

Z25.3 The *Consultant* immediately informs the *Employer* if the professional indemnity insurance ceases to be available at rates and on terms that the *Consultant* considers to be commercially reasonable. Any increased or additional premium required by insurers by reason of the *Consultant's* own claims record or other acts, omissions, matters or things particular to the *Consultant* is deemed to be within commercially

reasonable rates.

Z25.4 The *Consultant* co-operates fully with any measures reasonably required by the *Employer* including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the *Employer* undertakes in writing to reimburse the *Consultant* in respect of the net cost of such insurance to the *Consultant* above commercially reasonable rates or, if the *Employer* effects such insurance at rates at or above commercially reasonable rates, reimbursing the *Employer* in respect of what the net cost of such insurance to the *Employer* would have been at commercially reasonable rates.

Z25.5 The above obligation in respect of professional indemnity insurance continues notwithstanding termination of the *Consultant's* employment under this contract for any reason whatsoever, including (without limitation) breach by the *Employer*.

Clause Z26 • ~~Termination and omission of work OMIT DO NOT USE~~

~~Z26.1 If the *Employer* instructs a change to the Scope which involves the omission of part of the services, the *Employer* may engage other people to carry out the part omitted. The instruction is assessed as a compensation event, except that if the instruction is given for insolvency or a default by the *Consultant*, the assessment includes a deduction of the forecast additional cost to the *Employer* of completing the services.~~

~~Z26.2 The following is added at the end of the first bullet point in clause 91.1 of the conditions of contract:~~

~~“unless instructed otherwise by the *Employer*”.~~

~~Z26.3 The following are treated as a substantial failure by the *Consultant* to comply with his obligations~~

- ~~• a key resource needed by the *Consultant* to Provide the Services is no longer available and the *Consultant* does not propose an alternative resource acceptable to the *Employer*~~
- ~~• the *Consultant's* performance as measured in accordance with the current edition of the Collaborative Performance Framework is below the failure level~~
- ~~• the *Consultant* breaching the terms of its obligations in clause 22.1 of the conditions of contract or~~
- ~~• any conflict of interest under this contract cannot be resolved to the *Employer's* satisfaction.~~

~~Z26.4 The *Employer* may terminate the *Consultant's* obligation to Provide the Services by notifying the *Consultant* if in the *Employer's* opinion the known or anticipated cost of the project, which the services are performed (or to be performed) in connection with, has significantly increased.~~

Clause Z27 Termination – PCRs, Regulation 73

Z27.1 The occurrence of the following events are deemed to be a

substantial failure of the *Consultant* to comply with his obligations:

- one or more of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applied to the *Consultant* at the Contract Date.

Z27.2 The *Employer* may terminate the *Consultant's* obligation to Provide the Services by notifying the *Consultant* if

- this contract has been subject to substantial modification which would have required a new procurement procedure pursuant to regulation 72 of the Public Contracts Regulations 2015 or
- the Court of Justice of the European Union declares, in a procedure under Article 258 of the Treaty on the Functioning of the European Union, that a serious infringement of the obligations under the European Union Treaties and the Public Contracts Directive has occurred.

If the modification or infringement was due to a default by the *Consultant*, this is treated as a termination because of a substantial failure of the *Consultant* to comply with his obligations.

Clause Z28 Value Added Tax (VAT) Recovery

Z28.1 Where under this contract any amount is calculated by reference to any sum which has been or may be incurred by any person, the amount shall include any VAT in respect of that amount only to the extent that such VAT is not recoverable as input tax by that person (or a member of the same VAT group) whether by set off or repayment.

Clause Z29 Tax Arrangements of Public Appointees

Z29.1 For the purposes of this clause

- **Associated Company** is any company, corporation, partnership, joint venture or other entity which directly or indirectly controls, is controlled by or is under common control with the *Consultant*. The word "control" in this context means the ability or entitlement to exercise, directly or indirectly, at least 50 per cent of the voting rights attributable to the shares or other interest in the controlled company, corporation, partnership, joint venture or other entity.
- **Staff** are individuals (other than direct employees of the *Consultant*, an Associated Company or any Subconsultant) made available by the *Consultant* to the *Employer* for the purpose of Providing the Services.

Z29.2 Where any Staff are liable to be taxed in the United Kingdom in respect of consideration received under this contract, the *Consultant* complies, and procures that the Staff comply, with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration.

Z29.3 Where any Staff are liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, the *Consultant* complies, and procures that the Staff comply, with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration.

Z29.4 The *Employer* may, at any time during the term of this contract, request the *Consultant* to provide information to demonstrate either how any member of Staff is complying with clauses Z29.2 and Z29.3 or why those clauses do not apply to it.

Z29.5 If the *Consultant* fails to provide information in response to a request under clause Z29.4

- within the *period for reply* or
- which adequately demonstrates either how any member of Staff is complying with clauses Z29.2 and Z29.3 or why those clauses do not apply to it

the *Employer* may

- treat such failure as a substantial failure by the *Consultant* to comply with his obligations or
- instruct the *Consultant* to replace the relevant member of Staff

Z29.6 If the *Employer* receives or identifies information through any means which demonstrates that a member of Staff is not complying with clauses Z29.2 and Z29.3, the *Employer* may treat such non-compliance as a substantial failure by the *Consultant* to comply with his obligations.

Z29.7 The *Consultant* acknowledges that the *Employer* may

- supply any information which it receives under clauses Z29.4 or Z29.6 or
- advise the non-supply of information

to the Commissioners of Her Majesty's Revenue & Customs or Revenue Scotland for the purpose of the collection and management of revenue for which they are responsible.

Clause Z30 Consortia

Z30.1 Where two or more Consortium Members comprise the *Consultant*, each Consortium Member is jointly and severally liable to the Employer for the performance of the *Consultant's* obligations under this contract.

Z30.2 If the joint venture arrangement between any Consortium Members which comprise the *Consultant* is terminated for any reason, the *Employer* may

- terminate this contract with immediate effect and
- treat the termination of this contract as a substantial failure by

the *Consultant* to comply with his obligations.

Z30.3 Clause 90.1 of the *conditions of contract* is amended by inserting after “the other Party” in each of the second, third and fourth places where it appears the words “(or, in the case of the *Consultant*, any Consortium Member)”.

Clause Z31 Subconsulting

Z31.1 Before:

- appointing a proposed Subconsultant or
- allowing a Subconsultant to appoint a proposed subsubconsultant

the *Consultant* submits to the *Employer* for acceptance

- a European Single Procurement Document (as described in regulation 59 of the Public Contracts Regulations 2015) in respect of the proposed Subconsultant or subsubconsultant or
- other means of proof that none of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applies to the proposed Subconsultant or subsubconsultant.

Z31.2 The *Consultant* does not appoint the proposed Subconsultant (or allow the Subconsultant to appoint the proposed subsubconsultant) until the *Employer* has accepted the submission. A reason for not accepting the submission is that it shows that there are grounds for excluding the proposed Subconsultant or subsubconsultant under regulation 57 of the Public Contracts Regulations 2015.

Z31.3 If requested by the *Employer*, the *Consultant* provides further information to support, update or clarify a submission under clause Z31.1.

Z31.4 If, following the acceptance of a submission under clause Z31.2, it is found that one of the grounds for excluding the Subconsultant or subsubconsultant under regulation 57 of the Public Contracts Regulations 2015 applies, the *Employer* may instruct the *Consultant* to

- replace the Subconsultant or
- require the Subconsultant to replace the subsubconsultant.

Clause Z32 Energy Efficiency Directive

Z32.1 To the extent contained in the Scope, the *Consultant* includes in the *conditions of contract* for each Subconsultant and subsubconsultant obligations substantially similar to those set out in the Scope for

- compliance with the Procurement Policy Note 7/14 entitled “Implementing Article 6 of the Energy Efficiency Directive” and
- demonstrating to the *Employer* how in Providing the Services how the Subconsultant and subsubconsultant complies with the requirements of Procurement Policy Note 7/14 entitled

“Implementing Article 6 of the Energy Efficiency Directive”.

Clause Z33 Compliance with statutory requirements

The *Consultant* Provides the Services in compliance with all relevant:

- acts of parliament and any instruments, rules, orders, regulations, notices, directions, bye-laws, permissions and plans for the time being made under or deriving validity from them;
- European Directives or Regulations legally enforceable in England and Wales;
- rules, regulations, building regulations, orders, bye-laws or codes of practice or similar of any local or other competent authority or of any statutory undertaker; and
- permissions, consents, approvals, licences, certificates and permits as may be necessary lawfully to commence, carry out, complete and maintain the *services*.

Clause Z34 Negotiation and mediation

Z34.1 Without prejudice to either Party’s right to refer a dispute to the *Adjudicator* in accordance with clause W1 or W2 (as appropriate), any dispute or difference between the Parties arising out of or relating to this contract is referred by either Party initially to representatives of the *Employer* and *Consultant* for negotiation and resolution.

Z34.2 If any dispute is not resolved within ten working days after it has been referred to the Parties’ representatives (or such longer period as the Parties may agree), it is referred to an authorised senior officer of the *Employer* and an authorised senior officer of the *Consultant* for negotiation and resolution.

Z34.3 If any dispute cannot be resolved within ten working days after it has been referred to the authorised senior officers of the *Employer* and *Consultant* (or such longer period as the Parties may agree) either Party may decline to continue to participate in the negotiation but both should give serious consideration to referring the dispute to mediation.

Clause Z35 Clause Z35 is not used.

Clause Z36 Clause Z36 is not used..

Clause Z37 Clause Z37 is not used.

Clause Z38

Intellectual Property Rights

Z38.1 In this clause Z38:

- “**Intellectual Property Rights**” means any and all patents, trademarks, service marks, copyright, moral rights, rights in a design, know-how, Confidential Information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto; and
- “**Material**” means all Material prepared by or on behalf of the *Consultant*.

Z38.2 The Intellectual Property Rights in all Material and the work executed from them remains the property of the *Consultant*. The *Consultant* hereby grants to the *Employer* and to the Authority an irrevocable, royalty free, non-exclusive licence to use and reproduce the Material for any and all purposes connected with the *services*. Such licence entitles the *Employer* and the Authority to grant sub-licences to third parties in the same terms as this licence.

Z38.3 The *Consultant* shall not be liable to any licensee for any use of the Material or the Intellectual Property Rights in the Material for purposes other than those for which the same were originally prepared by or on behalf of the *Consultant*.

Z38.4 In the event that the *Consultant* does not own the copyright or any Intellectual Property Rights in any Material the *Consultant* uses all reasonable endeavours to procure the right to grant such rights to the *Employer* to use any such copyright or Intellectual Property Rights from any third party owner of the copyright or Intellectual Property Rights. In the event that the *Consultant* is unable to procure the right to grant to the *Employer* in accordance with the foregoing the *Consultant* procures that the third party grants a direct licence to the *Employer* on industry acceptable terms.

Z38.5 The *Consultant* waives any moral right to be identified as author of the Material in accordance with section 77, Copyright Designs and Patents Acts 1988 and any right not to have the Material subjected to derogatory treatment in accordance with section 8 of that Act as against the *Employer* or any licensee or assignee of the *Employer*.

Z38.6 In the event that any act unauthorised by the *Employer* infringes a moral right of the *Consultant* in relation to the Material the *Consultant* undertakes, if the *Employer* so requests and at the *Employer's* expense, to institute

proceedings for infringement of the moral rights.

- Z38.7 The *Consultant* warrants to the *Employer* that he has not granted and shall not (unless authorised by the *Employer*) grant any rights to any third party to use or otherwise exploit the Material.
- Z38.8 The *Consultant* supplies copies of the Material to the *Employer* and to the *Employer's* other contractors and consultants for no additional fee to the extent necessary to enable them to discharge their respective functions in relation to this contract or related works.
- Z38.9 After the termination or conclusion of the *Consultant's* employment, the *Consultant* supplies the *Employer* with copies and/or computer discs of such of the Material as the *Employer* may from time to time request and the *Employer* pays the *Consultant's* reasonable costs for producing such copies or discs.
- Z38.10 In Providing the Service the *Consultant* does not infringe any Intellectual Property Rights of any third party. The *Consultant* indemnifies the *Employer* against claims, proceedings, compensation and costs arising from an infringement or alleged infringement of the Intellectual Property Rights of any third party.

Clause Z39 Financial Distress

- Z39.1 In this clause Z39 Credit Rating is the *credit rating* or any revised long term *credit rating* issued by a rating agency accepted by the *Employer* in respect of the *Consultant*, a Consortium Member or any *Guarantor*.
- Z39.2 The *Consultant* notifies the *Employer* within one week if any of the following events occurs in relation to the *Consultant*, a Consortium Member or a *Guarantor*:
- its Credit Rating falls below the relevant *credit rating*,
 - a further fall in its Credit Rating below the relevant credit rating,
 - it issues a profits warning to a stock exchange or makes any other public announcement about a material deterioration in its financial position or prospects,
 - it is subject to a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety,
 - it commits a material breach of its covenants to its lenders or
 - its financial position or prospects deteriorate to such an

extent that it would not meet the Credit Rating Threshold.

Z39.3 If any of the events listed in clause Z39.2 occurs, the *Employer* may require the *Consultant* to give to the *Employer* a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Consultant* and accepted by the *Employer* who (in either case) has a Credit Rating at least equal to the *credit rating* for the person to whom the event listed in clause Z39.2 has occurred.

Z39.4 The *Employer* may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Consultant* who does not comply with clause Z39.3 if the *Consultant* gives to the *Employer* an assurance that the Controller or the alternative guarantor will so comply within 18 months of the *Employer's* acceptance. If so, the Parties agree a process for reviewing the financial standing of the Controller or the alternative guarantor during that period in order to demonstrate to the *Employer* that it will so comply by the end of that period.

Z39.5 If

- the *Consultant* fails to notify the *Employer* that an event listed in clause Z39.2 has occurred,
- neither the Controller nor any alternative guarantor proposed by the *Consultant* complies with clause Z39.3,
- the *Consultant* does not give to the *Employer* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Employer* within four weeks of a request from the *Employer* to do so or
- the *Consultant* fails to demonstrate to the *Employer* that the Controller or the alternative guarantor accepted by the *Employer* will comply with clause Z39.3 within 18 months of the *Employer's* acceptance

the *Employer* may treat such failure as a substantial failure by the *Consultant* to comply with his obligations.

Clause Z40 Change of Control – new guarantee

Z40.1 If a Change of Control occurs, the *Consultant* provides to the *Employer*

- certified copies of the audited consolidated accounts of the Controller for the last three financial years,
- a certified copy of the board minute of the Controller confirming that it will give to the *Employer* a Parent

Company Guarantee if so required by the *Employer* and any other information required by the *Employer* in order to determine whether the Controller has a credit rating at least equal to the *credit rating* for the original Guarantor (if there is one) or the *Consultant* (if there is not).

Z40.2 If the Controller does not comply with the tests in clause Z40.1 or (if applicable) does not provide the legal opinion required in clause Z40.6, the *Consultant* may propose an alternative guarantor to the *Employer* for acceptance. The *Consultant* provides to the *Employer* the details set out in clause Z40.1 and (if applicable) the legal opinion required in clause Z40.6 in relation to the proposed alternative guarantor. A reason for not accepting the proposed alternative guarantor is that he does not comply with the tests in clause Z40.1 or (if applicable) does not provide the legal opinion required in clause Z40.6.

Z40.3 If so required by the *Employer*, the *Consultant* within four weeks gives to the *Employer* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Employer*.

Z40.4 The *Employer* may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Consultant* who does not comply with the tests in clause Z40.1 if the *Consultant* gives to the *Employer* an assurance that the Controller or the alternative guarantor will so comply within 18 months of the *Employer's* acceptance. If so, the Parties agree a process for reviewing the financial standing of the Controller or the alternative guarantor during that period in order to demonstrate to the *Employer* that it will so comply by the end of that period.

Z40.5 If

- neither the Controller nor any alternative guarantor proposed by the *Consultant* complies with the tests in clause Z40.1 or provides the legal opinion required by clause Z40.6,
- the *Consultant* does not give to the *Employer* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Employer* within four weeks of a request from the *Employer* to do so or
- the *Consultant* fails to demonstrate to the *Employer* that the Controller or the alternative guarantor accepted by the *Employer* will comply with the tests in clause Z40.1 within 18 months of the *Employer's* acceptance

the *Employer* may treat such failure as a substantial failure by

the *Consultant* to comply with his obligations.

Z40.6 If the Controller, or any alternative guarantor proposed by the *Consultant*, is not a company incorporated in and subject to the laws of England and Wales, the *Consultant* provides a legal opinion from a lawyer or law firm which is

- qualified and registered to practise in the jurisdiction in which the Controller or guarantor is incorporated and
- accepted by the *Employer*.

The legal opinion is addressed to the *Employer* on a full reliance basis and the liability of the lawyer or law firm giving the opinion is not subject to any financial limitation unless otherwise agreed by the *Employer*.

The legal opinion confirms that the method of execution of the Parent Company Guarantee is valid and binding under applicable local law and in particular covers the matters listed in the Scope.

Clause Z41 Clause Z41 is not used.

Clause Z42 Offshoring of data

Z42.1 In this clause

Risk Assessment is a full risk assessment and security review carried out by the *Employer* in accordance with the document stated in the Contract Data

Z42.2 The *Consultant* does not store any of the *Employer's* data that is classified as Official or higher in accordance with "Government Security Classifications" dated April 2014 (or any later revision or replacement)

- offshore or
- in any way that it could be accessed from an offshore location

until the *Employer* has confirmed to the *Consultant* that either

- the *Employer* has gained approval for such storage in accordance with "*Offshoring information assets classified at OFFICIAL*" dated November 2015 (or any later revision or replacement) or
- such approval is not required.

Z42.3 The *Consultant* ensures that no premises are used to Provide the Services until

- such premises have passed a risk assessment or

-
- the *Employer* confirms to the *Consultant* that no risk assessment is required.
- Z42.4 The *Consultant* complies with a request from the *Employer* to provide any information required to allow the *Employer* to
- gain approval for storing data or allowing access to data from an offshore location in accordance with Z42.2 or
 - conduct a risk assessment for any premises for the purpose of Z42.3.
- Z42.5 The *Consultant* ensures that any subcontract (at any stage of remoteness from the *Employer*) contains provisions to the same effect as this clause.
- Z42.6 A failure to comply with this condition is treated as a substantial failure by the *Consultant* to comply with his obligations.

Clause Z43

Payment forecast

Z43.1 Prior to the submission of the *Consultant's* first invoice, the *Consultant* submits to the *Employer* a payment forecast based on the *Consultant's* estimate of the interim payments (including fees and expenses) which the *Consultant* anticipates will fall due at each assessment until Completion of the whole of the services.

Z43.2 Each subsequent invoice from the *Consultant* is accompanied by an updated payment forecast, amended to show the effects of any changes in the Scope and Accepted Programme.

Clause Z44

Responsibility for documents

Z44.1 The *Employer* may at any reasonable time examine schedules, calculations, surveys, reports, specifications, drawings and/or any other documents and information which are in the possession of the *Consultant* and which concern this contract, but no such examination relieves the *Consultant* of any responsibility to Provide the Services.

Clause Z45

Apprenticeships

Z45.1 The *Consultant* is required to take all reasonable steps to employ apprentices, and report to the *Employer* on a monthly basis the numbers of apprentices employed and the wider skills training provided, in Providing the Services.

Z45.2 The *Consultant* is required to take all reasonable steps to ensure that no less than the percentage of its employees stated in the Contract Data (the "Apprenticeship Percentage") are on formal apprenticeship programmes or that a similar proportion of hours worked in Providing the Services, (which may include support staff and Subconsultants) are provided by employees on formal apprenticeship programmes.

Z45.3 The *Consultant* is required to make available to its employees and Subconsultants working on this contract, information about the Government's Apprenticeship programme and wider skills opportunities.

Z45.4 The *Consultant* is to provide any further skills training opportunities that are appropriate for its employees engaged in the *services*.

Z45.5 The *Consultant* is to provide a monthly written report detailing the following measures and be prepared to discuss apprenticeships at its regular meetings with the *Employer*:

- the number of people during the reporting period employed on this contract, including support staff and Subconsultants,
- the number of apprentices and number of new starts on apprenticeships directly initiated through the procurement process,
- the percentage of all employees taking part in an apprenticeship programme,
- if applicable, an explanation from the *Consultant* as to why it is not managing to meet the specified percentage target
- actions being taken to improve the take up of apprenticeships and
- other training/skills development being undertaken by employees in relation to this contract, including
 - work experience placements for 14 to 16 year olds,
 - work experience /work trial placements for other ages,
 - student sandwich/gap year placements,
 - graduate placements,
 - vocational training,
 - basic skills training and
 - on site training provision/ facilities.

Clause Z46

Termination following prolonged suspension

Z46.1 The *Consultant* may terminate his obligation to Provide the Services by notifying the Employer if

- the whole of the *services* has been stopped under clause 33 of the *conditions of contract* for a period in excess of six months;
- the *Consultant* has given the *Employer* a request for an instruction that the *services* be resumed; and
- the *Consultant* has not been given instructions to resume the *services* within a period of 30 days after the *Employer* receives

from the *Consultant* a request for an instruction that the *services* be resumed.

Clause Z47

Employer's Property

Z47.1 If the *Consultant* is permitted to use equipment or other such property belonging to the *Employer* (the "Employer's Property") the following provisions apply.

- All Employer's Property remains the property of the *Employer*.
- Any failure of the Employer's Property shall not be a compensation event unless the *Consultant* demonstrates that the failure was caused by the *Employer's* undue delay in its repair or replacement.

Clause Z48

Clause Z48 is not used.

Contract Schedule 1 - Annex G

STAFF TRANSFER

1. Definitions

1.1. In this Annex G, the following definitions shall apply:

“Consultant’s Final Personnel List”	means a list provided by the <i>Consultant</i> of all staff who will transfer under the Employment Regulations on the Relevant Transfer Date;
“Consultant’s Provisional Personnel List”	means a list prepared and updated by the <i>Consultant</i> of all staff who are engaged in or wholly or mainly assigned to the provision of the <i>service</i> or any relevant part of the <i>service</i> which it is envisaged as at the date of such list will no longer be provided by the <i>Consultant</i>
“Employee Liabilities”	<p>means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:</p> <ul style="list-style-type: none">a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;b) unfair, wrongful or constructive dismissal compensation;c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;d) compensation for less favourable treatment of part-time workers or fixed term employees;e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the <i>Employer</i> or the Replacement Consultant to a Transferring Consultant Employee which would have been payable by the <i>Consultant</i> or the Sub-Consultant if such payment should have been made prior to the Service Transfer Date;

	<p>f) claims whether in tort, contract or statute or otherwise;</p> <p>g) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;</p>
"New Fair Deal"	the revised Fair Deal position set out in the HM Treasury guidance: "Fair Deal for staff pensions: staff transfer from central government" issued in October 2013;
"Notified Sub-Consultant"	means a Sub-Consultant identified in Annex 1 of this Contract Annex G to whom Transferring Employer's Employees and/or Transferring Former Consultant Employees will transfer on a Relevant Transfer Date;
"Principles of Good Employment Practice"	means the guidance published by the Cabinet Office and found at ;
"Replacement Consultant"	means any third party provider of Replacement Services appointed by or at the direction of the <i>Employer</i> from time to time or where the <i>Employer</i> is providing Replacement Services for its own account, shall also include the <i>Employer</i>
"Replacement Services"	means any services which are substantially similar to any of the <i>service</i> and which the <i>Employer</i> receives in substitution for any of the <i>service</i> following the end of the <i>service period</i> or earlier termination, whether those services are provided by the <i>Employer</i> internally and/or by any third party;
"Replacement Sub-Consultant"	means a Subconsultant of the Replacement Consultant to whom Transferring Consultant Employees will transfer on a Service Transfer Date (or any sub-Consultant of any such sub-Consultant);
"Service Transfer"	any transfer of the <i>service</i> (or any part of the <i>service</i>), for whatever reason, from the <i>Consultant</i> or any Subconsultant to a Replacement Consultant or a Replacement Sub-Consultant
"Service Transfer Date"	means the date of a Service Transfer;
"Staffing Information"	<p>means, in relation to all persons identified on the Consultant's Provisional Personnel List or Consultant's Final Personnel List, as the case may be, such information as the <i>Employer</i> may reasonably request (subject to all applicable provisions of the Data Protection Legislation), but including in an anonymised format:</p> <p>their ages, dates of commencement of employment or engagement and gender;</p> <p>details of whether they are employed, self employed Consultants or consultants, agency workers or otherwise;</p> <p>details of contracted working hours;</p>

the identity of the employer or relevant contracting party;

their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;

their wages, salaries and profit sharing arrangements as applicable;

details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;

any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);

details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;

copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and

any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

"Transferring Consultant Employees"

means those employees of the *Consultant* and/or the Sub-Consultants to whom the Employment Regulations will apply on the Service Transfer Date

"Transferring Employer Employees"

means those employees of the *Employer* to whom the Employment Regulations will apply on the Relevant Transfer Date;

Interpretation

Where a provision in this Annex imposes an obligation on the *Consultant* to provide an indemnity, undertaking or warranty, the *Consultant* shall procure that each of its Sub-Consultants shall comply with such obligation and provide such indemnity, undertaking or warranty to the *Employer*, Former Consultant, Replacement Consultant or Replacement Sub-Consultant, as the case may be.

PART A

TRANSFERRING EMPLOYER EMPLOYEES AT COMMENCEMENT OF THE PROVISION OF SERVICES

1. Relevant Transfers

1.1. The *Employer* and the *Consultant* agree that:

- 1.1.1. the commencement of the provision of the *service* or of each relevant part of the *service* will be a Relevant Transfer in relation to the Transferring Employer Employees; and
- 1.1.2. as a result of the operation of the Employment Regulations, the contracts of employment between the *Employer* and the Transferring Employer Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the *Consultant* and/or any Notified Sub-Consultant and each such Transferring Employer Employee.

- 1.2. The *Employer* shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Employer Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the *Employer*; and (ii) the *Consultant* and/or any Notified Sub-Consultant (as appropriate).

2. *Employer* Indemnities

- 2.1. Subject to paragraph 1 of Part A of this Annex G, the *Employer* shall indemnify the *Consultant* and any Notified Sub-Consultant against any Employee Liabilities in respect of any Transferring Employer Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

- 2.1.1. any act or omission by the *Employer* occurring before the Relevant Transfer Date;
- 2.1.2. the breach or non-observance by the *Employer* before the Relevant Transfer Date of:
 - a) any collective agreement applicable to the Transferring Employer Employees; and/or
 - b) any custom or practice in respect of any Transferring Employer Employees which the *Employer* is contractually bound to honour.
- 2.1.3. any claim by any trade union or other body or person representing the Transferring Employer Employees arising from or connected with any failure by the *Employer* to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;
- 2.1.4. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - a) in relation to any Transferring Employer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - b) in relation to any employee who is not a Transferring Employer Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so

as to transfer his/her employment from the *Employer* to the *Consultant* and/or any Notified Sub-Consultant as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.

- 2.1.5. a failure of the *Employer* to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Employer Employees arising before the Relevant Transfer Date;
 - 2.1.6. any claim made by or in respect of any person employed or formerly employed by the *Employer* other than a Transferring Employer Employee for whom it is alleged the *Consultant* and/or any Notified Sub-Consultant as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and
 - 2.1.7. any claim made by or in respect of a Transferring Employer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Employer Employee relating to any act or omission of the *Employer* in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the *Consultant* or any Sub-Consultant to comply with regulation 13(4) of the Employment Regulations.
- 2.2. The indemnities in paragraph 2.1 of Part A of this Annex G shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the *Consultant* or any Sub-Consultant (whether or not a Notified Sub-Consultant) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:
- 2.2.1. arising out of the resignation of any Transferring Employer Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the *Consultant* and/or any Sub-Consultant to occur in the period from (and including) the Relevant Transfer Date); or
 - 2.2.2. arising from the failure by the *Consultant* or any Sub-Consultant to comply with its obligations under the Employment Regulations.
- 2.3. If any person who is not identified by the *Employer* as a Transferring Employer Employee claims, or it is determined in relation to any person who is not identified by the *Employer* as a Transferring Employer Employee, that his/her contract of employment has been transferred from the *Employer* to the *Consultant* and/or any Notified Sub-Consultant pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 2.3.1. the *Consultant* shall, or shall procure that the Notified Sub-Consultant shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the *Employer*; and
 - 2.3.2. the *Employer* may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of receipt of the notification by the *Consultant* and/or any Notified Sub-Consultant, or take such other reasonable steps as the *Employer* considers appropriate to deal with the matter provided always that such steps are in compliance with *law of the contract*.
- 2.4. If an offer referred to in paragraph 2.3.2 of Part A of this Annex G is accepted, or if the situation has otherwise been resolved by the *Employer*, the *Consultant* shall, or shall procure that the Notified Sub-Consultant shall, immediately release the person from his/her employment or alleged employment.
- 2.5. If by the end of the fifteen (15) Working Day period specified in paragraph 2.3.2 of Part A of this Annex G:
- 2.5.1. no such offer of employment has been made;

2.5.2. such offer has been made but not accepted; or

2.5.3. the situation has not otherwise been resolved,

the *Consultant* and/or any Notified Sub-Consultant may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2.6. Subject to the *Consultant* and/or any Notified Sub-Consultant acting in accordance with the provisions of paragraphs 2.3 to 2.5 of Part A of this Annex G and in accordance with all applicable proper employment procedures set out in the *law of the contract*, the *Employer* shall indemnify the *Consultant* and/or any Notified Sub-Consultant (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 2.5 of Part A of this Annex G provided that the *Consultant* takes, or procures that the Notified Sub-Consultant takes, all reasonable steps to minimise any such Employee Liabilities.

2.7. The indemnity in paragraph 2.6 of Part A of this Annex G

2.7.1. shall not apply to:

a) any claim for

a) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

b) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the *Consultant* and/or any Sub-Consultant;

b) any claim that the termination of employment was unfair because the *Consultant* and/or Notified Sub-Consultant neglected to follow a fair dismissal procedure; and

2.7.2. shall apply only where the notification referred to in paragraph 2.3.1 of Part A of this Annex G is made by the *Consultant* and/or any Notified Sub-Consultant (as appropriate) to the *Employer* within six (6) months of the Contract Date.

2.8. If any such person as is referred to in paragraph 2.3 of Part A of this Annex G is neither re-employed by the *Employer* nor dismissed by the *Consultant* and/or any Notified Sub-Consultant within the time scales set out in paragraph 2.5 of Part A of this Annex G such person shall be treated as having transferred to the *Consultant* and/or any Notified Sub-Consultant and the *Consultant* shall, or shall procure that the Notified Sub-Consultant shall, comply with such obligations as may be imposed upon it under the *law of the contract*.

3. *Consultant* Indemnities and Obligations

3.1. Subject to paragraph 3.2 of Part A of this Annex G, the *Consultant* shall indemnify the *Employer* against any Employee Liabilities in respect of any Transferring Employer Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

3.1.1. any act or omission by the *Consultant* or any Sub-Consultant whether occurring before, on or after the Relevant Transfer Date;

3.1.2. the breach or non-observance by the *Consultant* or any Sub-Consultant on or after the Relevant Transfer Date of:

a) any collective agreement applicable to the Transferring Employer Employees; and/or

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- b) any custom or practice in respect of any Transferring Employer Employees which the *Consultant* or any Sub-Consultant is contractually bound to honour;
- 3.1.3. any claim by any trade union or other body or person representing any Transferring Employer Employees arising from or connected with any failure by the *Consultant* or any Sub-Consultant to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- 3.1.4. any proposal by the *Consultant* or a Sub-Consultant made before the Relevant Transfer Date to change the terms and conditions of employment or working conditions of any Transferring Employer Employees on or after their transfer to the *Consultant* or the relevant Sub-Consultant (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Employer Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 3.1.5. any statement communicated to or action undertaken by the *Consultant* or any Sub-Consultant to, or in respect of, any Transferring Employer Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the *Employer* in writing;
- 3.1.6. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- a) in relation to any Transferring Employer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
- b) in relation to any employee who is not a Transferring Employer Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the *Employer* to the *Consultant* or a Sub-Consultant, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 3.1.7. a failure of the *Consultant* or any Sub-Consultant to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Employer Employees in respect of the period from (and including) the Relevant Transfer Date; and
- 3.1.8. any claim made by or in respect of a Transferring Employer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Employer Employee relating to any act or omission of the *Consultant* or any Sub-Consultant in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the *Employer's* failure to comply with its obligations under regulation 13 of the Employment Regulations.
- 3.2. The indemnities in paragraph 3.1 of Part A of this Annex G shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the *Employer* whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the *Employer's* failure to comply with its obligations under the Employment Regulations.
- 3.3. The *Consultant* shall comply, and shall procure that each Sub-Consultant shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Consultant shall perform and discharge, all its obligations in respect of the
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Transferring Employer Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the *Employer* and the *Consultant*.

4. Information

- 4.1. The *Consultant* shall, and shall procure that each Sub-Consultant shall, promptly provide to the *Employer* in writing such information as is necessary to enable the *Employer* to carry out its duties under regulation 13 of the Employment Regulations. The *Employer* shall promptly provide to the *Consultant* and each Notified Sub-Consultant in writing such information as is necessary to enable the *Consultant* and each Notified Sub-Consultant to carry out their respective duties under regulation 13 of the Employment Regulations.

5. Principles of Good Employment Practice

- 5.1. The Parties agree that the principles set out in the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the *Consultant* of employees whose employment begins after the Relevant Transfer Date, and the *Consultant* undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.

- 5.2. The *Consultant* shall, and shall procure that each Sub-Consultant shall, comply with any requirement notified to it by the *Employer* relating to pensions in respect of any Transferring Employer Employee as set down in:

- 5.2.1. the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
- 5.2.2. HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
- 5.2.3. HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
- 5.2.4. The New Fair Deal.

6. Pensions

- 6.1. The *Consultant* shall, and shall procure that each of its Sub-Consultants shall, comply with the pensions provisions set out in the following Annex.

ANNEX TO PART A: PENSIONS

7. Participation

7.1. The *Consultant* undertakes to enter into the Admission Agreement.

7.2. The *Consultant* and the *Employer*:

7.2.1. undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the *Consultant* to participate in the Schemes in respect of the Fair Deal Employees;

7.2.2. agree that the *Employer* is entitled to make arrangements with the body responsible for the Schemes for the *Employer* to be notified if the *Consultant* breaches the Admission Agreement;

7.2.3. notwithstanding Paragraph 1.2.2 of this Annex, the *Consultant* shall notify the *Employer* in the event that it breaches the Admission Agreement; and

7.2.4. agree that the *Employer* may terminate this Call Off Contract for default in the event that the *Consultant* breaches the Admission Agreement.

7.3. The *Consultant* shall bear its own costs and all costs that the *Employer* reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the *Consultant* participating in the Schemes.

8. Future Service Benefits

8.1. The *Consultant* shall procure that the Fair Deal Employees shall be either admitted into or offered continued membership of the relevant section of the Schemes that they currently contribute to or were eligible to join immediately prior to the Relevant Transfer Date and the *Consultant* shall procure that the Fair Deal Employees shall continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.

8.2. The *Consultant* undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the *Employer*, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the *Employer* in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.

8.3. The parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

9. Funding

9.1. The *Consultant* undertakes to pay to the Schemes such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.

9.2. The *Consultant* shall indemnify and keep indemnified the *Employer* on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and non-payment or the late payment of any sum payable by the *Consultant* to or in respect of the Schemes.

10. Provision of Information

10.1. The *Consultant* and the *Employer* respectively undertake to each other:

10.1.1. to provide all information which the other party may reasonably request concerning matters:

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- a) referred to in this Annex; and
 - b) set out in the Admission Agreement

and shall supply such information as expeditiously as possible; and

- 10.1.2. not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other party (not to be unreasonably withheld or delayed).

11. Indemnities

- 11.1. The *Consultant* undertakes to the *Employer* to indemnify and keep indemnified the *Employer* on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

12. Employer Obligation

- 12.1. The *Consultant* shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

13. Subsequent Transfers

- 13.1. The *Consultant* shall:

- 13.1.1. not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer; and

- 13.1.2. provide all such co-operation and assistance as the Replacement Consultant and/or the *Employer* may reasonably require to enable the Replacement Consultant to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and.

- 13.1.3. for the period either:

- a) after notice (for whatever reason) is given, in accordance with the other provisions of this contract, to terminate the contract or any part of the *service*; or
- b) after the date which is two (2) years prior to the date of expiry of this contract,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Contract or the *Employer*, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the *Employer* (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

PART B

TRANSFERRING FORMER CONSULTANT EMPLOYEES AT COMMENCEMENT OF THE PROVISION OF SERVICES

1. Relevant Transfers

1.1. The parties agree that:

- 1.1.1. the commencement of the provision of the *service* or of any relevant part of the *service* will be a Relevant Transfer in relation to the Transferring Former Consultant Employees; and
- 1.1.2. as a result of the operation of the Employment Regulations, the contracts of employment between each Former Consultant and the Transferring Former Consultant Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the *Consultant* and/or Notified Sub-Consultant and each such Transferring Former Consultant Employee.

- 1.2. The *Employer* shall procure that each Former Consultant shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Consultant Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the *Consultant* shall make, and the *Employer* shall procure that each Former Consultant makes, any necessary apportionments in respect of any periodic payments.

2. Former Consultant Indemnities

- 2.1. Subject to paragraph 1.2 of Part B of this Annex G, the *Employer* shall procure that each Former Consultant shall indemnify the *Consultant* and any Notified Sub-Consultant against any Employee Liabilities in respect of any Transferring Former Consultant Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

- 2.1.1. any act or omission by the Former Consultant arising before the Relevant Transfer Date;
- 2.1.2. the breach or non-observance by the Former Consultant arising before the Relevant Transfer Date of:
 - a) any collective agreement applicable to the Transferring Former Consultant Employees; and/or
 - b) any custom or practice in respect of any Transferring Former Consultant Employees which the Former Consultant is contractually bound to honour.
- 2.1.3. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - a) in relation to any Transferring Former Consultant Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - b) in relation to any employee who is not a Transferring Former Consultant Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Consultant to the *Consultant* and/or any Notified Sub-Consultant as appropriate, to the extent that the

proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;

- 2.1.4. a failure of the Former Consultant to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Consultant Employees in respect of the period to (but excluding) the Relevant Transfer Date;
 - 2.1.5. any claim made by or in respect of any person employed or formerly employed by the Former Consultant other than a Transferring Former Consultant Employee for whom it is alleged the *Consultant* and/or any Notified Sub-Consultant as appropriate may be liable by virtue of this contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
 - 2.1.6. any claim made by or in respect of a Transferring Former Consultant Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Consultant Employee relating to any act or omission of the Former Consultant in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the *Consultant* or any Sub-Consultant to comply with regulation 13(4) of the Employment Regulations.
- 2.2. The indemnities in paragraph 2.1 of Part B of this Annex G shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the *Consultant* or any Sub-Consultant whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
- 2.2.1. arising out of the resignation of any Transferring Former Consultant Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the *Consultant* or any Sub-Consultant to occur in the period from (and including) the Relevant Transfer Date); or
 - 2.2.2. arising from the failure by the *Consultant* and/or any Sub-Consultant to comply with its obligations under the Employment Regulations).
- 2.3. If any person who is not identified by the *Employer* as a Transferring Former Consultant Employee claims, or it is determined in relation to any person who is not identified by the *Employer* as a Transferring Former Consultant Employee, that his/her contract of employment has been transferred from a Former Consultant to the *Consultant* and/or any Notified Sub-Consultant pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 2.3.1. the *Consultant* shall, or shall procure that the Notified Sub-Consultant shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the *Employer* and, where required by the *Employer*, to the Former Consultant; and
 - 2.3.2. the Former Consultant may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the *Consultant* and/or the Notified Sub-Consultant or take such other reasonable steps as the Former Consultant considers appropriate to deal with the matter provided always that such steps are in compliance with the *law of the contract*.
- 2.4. If an offer referred to in paragraph 2.3.2 of Part B of this Annex G is accepted, or if the situation has otherwise been resolved by the Former Consultant and/or the *Employer*, the *Consultant* shall, or shall procure that the Notified Sub-Consultant shall, immediately release the person from his/her employment or alleged employment.
- 2.5. If by the end of the 15 Working Day period specified in paragraph 2.3.2 of Part B of this Annex G:
- 2.5.1. no such offer of employment has been made;

2.5.2. such offer has been made but not accepted; or

2.5.3. the situation has not otherwise been resolved;

the *Consultant* and/or any Notified Sub-Consultant may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2.6. Subject to the *Consultant* and/or any Notified Sub-Consultant acting in accordance with the provisions of paragraphs 2.3 to 2.5 of Part B of this Annex G and in accordance with all applicable proper employment procedures set out in the *law of the contract*, the *Employer* shall procure that the Former Consultant indemnifies the *Consultant* and/or any Notified Sub-Consultant (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 2.5 of Part B of this Annex G provided that the *Consultant* takes, or shall procure that the Notified Sub-Consultant takes, all reasonable steps to minimise any such Employee Liabilities.

2.7. The indemnity in paragraph 2.6 of Part B of this Annex G

2.7.1. shall not apply to:

a) any claim for

- a) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- b) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees;

in any case in relation to any alleged act or omission of the *Consultant* and/or any Sub-Consultant; or

b) any claim that the termination of employment was unfair because the *Consultant* and/or Notified Sub-Consultant neglected to follow a fair dismissal procedure; and

2.7.2. shall apply only where the notification referred to in paragraph 2.3.2 of Part B of this Annex G is made by the *Consultant* and/or any Notified Sub-Consultant (as appropriate) to the *Employer* and, if applicable, the Former Consultant, within six (6) months of the Contract Date.

2.8. If any such person as is described in paragraph 2.3 of Part B of this Annex G is neither re-employed by the Former Consultant nor dismissed by the *Consultant* and/or any Notified Sub-Consultant within the time scales set out in paragraph 2.5 of Part B of this Annex G, such person shall be treated as having transferred to the *Consultant* or Notified Sub-Consultant and the *Consultant* shall, or shall procure that the Notified Sub-Consultant shall, comply with such obligations as may be imposed upon it under the *law of the contract*.

3. Consultant Indemnities and Obligations

3.1. Subject to paragraph 3.2 of Part B of this Annex G, the *Consultant* shall indemnify the *Employer* and/or the Former Consultant against any Employee Liabilities in respect of any Transferring Former Consultant Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

3.1.1. any act or omission by the *Consultant* or any Sub-Consultant whether occurring before, on or after the Relevant Transfer Date;

3.1.2. the breach or non-observance by the *Consultant* or any Sub-Consultant on or after the Relevant Transfer Date of:

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- a) any collective agreement applicable to the Transferring Former Consultant Employee; and/or
 - b) any custom or practice in respect of any Transferring Former Consultant Employees which the *Consultant* or any Sub-Consultant is contractually bound to honour;
- 3.1.3. any claim by any trade union or other body or person representing any Transferring Former Consultant Employees arising from or connected with any failure by the *Consultant* or a Sub-Consultant to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- 3.1.4. any proposal by the *Consultant* or a Sub-Consultant prior to the Relevant Transfer Date to change the terms and conditions of employment or working conditions of any Transferring Former Consultant Employees on or after their transfer to the *Consultant* or a Sub-Consultant (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Consultant Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 3.1.5. any statement communicated to or action undertaken by the *Consultant* or a Sub-Consultant to, or in respect of, any Transferring Former Consultant Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the *Employer* and/or the Former Consultant in writing;
- 3.1.6. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- a) in relation to any Transferring Former Consultant Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - b) in relation to any employee who is not a Transferring Former Consultant Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Consultant to the *Consultant* or a Sub-Consultant, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 3.1.7. a failure of the *Consultant* or any Sub-Consultant to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Consultant Employees in respect of the period from (and including) the Relevant Transfer Date; and
- 3.1.8. any claim made by or in respect of a Transferring Former Consultant Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Consultant Employee relating to any act or omission of the *Consultant* or any Sub-Consultant in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Consultant's failure to comply with its obligations under regulation 13 of the Employment Regulations.
- 3.2. The indemnities in paragraph 3.1 of Part B of this Annex G shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Consultant whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Consultant's failure to comply with its obligations under the Employment Regulations.
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- 3.3. The *Consultant* shall comply, and shall procure that each Sub-Consultant shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Consultant shall perform and discharge, all its obligations in respect of all the Transferring Former Consultant Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the *Consultant* and the Former Consultant.
4. Information
- 4.1. The *Consultant* shall, and shall procure that each Sub-Consultant shall, promptly provide to the *Employer* and/or at the *Employer's* direction, the Former Consultant, in writing such information as is necessary to enable the *Employer* and/or the Former Consultant to carry out their respective duties under regulation 13 of the Employment Regulations. The *Employer* shall procure that the Former Consultant shall promptly provide to the *Consultant* and each Notified Sub-Consultant in writing such information as is necessary to enable the *Consultant* and each Notified Sub-Consultant to carry out their respective duties under regulation 13 of the Employment Regulations.
5. Principles of Good Employment Practice
- 5.1. The *Consultant* shall, and shall procure that each Sub-Consultant shall, comply with any requirement notified to it by the *Employer* relating to pensions in respect of any Transferring Former Consultant Employee as set down in:
- 5.2. the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
- 5.3. HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
- 5.4. HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
- 5.5. the New Fair Deal.
6. Procurement Obligations
- 6.1. Notwithstanding any other provisions of this Part B of this Annex G, where in this Part B the *Employer* accepts an obligation to procure that a Former Consultant does or does not do something, such obligation shall be limited so that it extends only to the extent that the *Employer's* contract with the Former Consultant contains a contractual right in that regard which the *Employer* may enforce, or otherwise so that it requires only that the *Employer* must use reasonable endeavours to procure that the Former Consultant does or does not act accordingly.
7. Pensions
- 7.1. The *Consultant* shall, and shall procure that each Sub-Consultant shall, comply with the pensions provisions in the following Annex.

ANNEX TO PART B: PENSIONS

1. Participation

1.1. The *Consultant* undertakes to enter into the Admission Agreement.

1.2. The *Consultant* and the *Employer*:

1.2.1. undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the *Consultant* to participate in the Schemes in respect of the Fair Deal Employees;

1.2.2. agree that the *Employer* is entitled to make arrangements with the body responsible for the Schemes for the *Employer* to be notified if the *Consultant* breaches the Admission Agreement;

1.2.3. notwithstanding Paragraph 1.2.2 of this Annex, the *Consultant* shall notify the *Employer* in the event that it breaches the Admission Agreement; and

1.2.4. agree that the *Employer* may terminate this Call Off Contract for default in the event that the *Consultant* breaches the Admission Agreement.

1.3. The *Consultant* shall bear its own costs and all costs that the *Employer* reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the *Consultant* participating in the Schemes.

2. Future Service Benefits

2.1. If the *Consultant* is rejoining the Schemes for the first time, the *Consultant* shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.

2.2. If staff have already been readmitted to the Schemes, the *Consultant* shall procure that the Fair Deal Employees shall be either admitted into or offered continued membership of the relevant section of the Schemes that they currently contribute to or were eligible to join immediately prior to the Relevant Transfer Date and the *Consultant* shall procure that the Fair Deal Employees shall continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.

2.3. The *Consultant* undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the *Employer*, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the *Employer* in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.

2.4. The parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

3. Funding

3.1. The *Consultant* undertakes to pay to the Schemes such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.

3.2. The *Consultant* shall indemnify and keep indemnified the *Employer* on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and non-payment or the late payment of any sum payable by the *Consultant* to or in respect of the Schemes.

4. Provision of Information

4.1. The *Consultant* and the *Employer* respectively undertake to each other:

4.1.1. to provide all information which the other party may reasonably request concerning matters:

- a) referred to in this Annex; and
- b) set out in the Admission Agreement

and shall supply such information as expeditiously as possible; and

4.1.2. not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other party (not to be unreasonably withheld or delayed).

5. Indemnities

5.1. The *Consultant* undertakes to the *Employer* to indemnify and keep indemnified the *Employer* on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

6. Employer Obligation

6.1. The *Consultant* shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

7. Subsequent Transfers

7.1. The *Consultant* shall:

7.1.1. not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer; and

7.1.2. provide all such co-operation and assistance as the Replacement Consultant and/or the *Employer* may reasonably require to enable the Replacement Consultant to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and.

7.1.3. for the period either:

- a) after notice (for whatever reason) is given, in accordance with the other provisions of this contract, to terminate the contract or any part of the *service*; or
- b) after the date which is two (2) years prior to the date of expiry of this contract,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Contract or the *Employer*, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the *Employer* (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

PART C

NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF THE PROVISION OF SERVICES

8. Procedure in the Event of Transfer

- 8.1. The *Employer* and the *Consultant* agree that the commencement of the provision of the *service* or of any part of the *service* will not be a Relevant Transfer in relation to any employees of the *Employer* and/or any Former Consultant.
- 8.2. If any employee of the *Employer* and/or a Former Consultant claims, or it is determined in relation to any employee of the *Employer* and/or a Former Consultant, that his/her contract of employment has been transferred from the *Employer* and/or the Former Consultant to the *Consultant* and/or any Sub-Consultant pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 8.2.1. the *Consultant* shall, and shall procure that the relevant Sub-Consultant shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the *Employer* and, where required by the *Employer*, give notice to the Former Consultant; and
- 8.2.2. the *Employer* and/or the Former Consultant may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the *Consultant* or the Sub-Consultant (as appropriate) or take such other reasonable steps as the *Employer* or Former Consultant (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with the *law of the contract*.
- 8.3. If an offer referred to in paragraph 1.2.2 of Part C of this Annex G is accepted (or if the situation has otherwise been resolved by the *Employer* and/or the Former Consultant), the *Consultant* shall, or shall procure that the Sub-Consultant shall, immediately release the person from his/her employment or alleged employment.
- 8.4. If by the end of the fifteen (15) Working Day period specified in paragraph 1.2.2
- 8.4.1. no such offer of employment has been made;
- 8.4.2. such offer has been made but not accepted; or
- 8.4.3. the situation has not otherwise been resolved,
- the *Consultant* and/or the Sub-Consultant may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

9. Indemnities

- 9.1. Subject to the *Consultant* and/or the relevant Notified Sub-Consultant acting in accordance with the provisions of paragraphs 1.2 to 1.4 of Part C of this Annex G and in accordance with all applicable employment procedures set out in the *law of the contract* and subject also to paragraph 1.4 of Part C of this Annex G, the *Employer* shall:
- 9.1.1. indemnify the *Consultant* and/or the relevant Notified Sub-Consultant against all Employee Liabilities arising out of the termination of the employment of any employees of the *Employer* referred to in paragraph 1.2 of Part C of this Annex G made pursuant to the provisions of paragraph 1.4 of Part C of this Annex G provided that the *Consultant* takes, or shall procure that the Notified Sub-Consultant takes, all reasonable steps to minimise any such Employee Liabilities; and
- 9.1.2. procure that the Former Consultant indemnifies the *Consultant* and/or any Notified Sub-Consultant against all Employee Liabilities arising out of termination of the employment of the

employees of the Former Consultant made pursuant to the provisions of paragraph 1.2 of Part C of this Annex G provided that the *Consultant* takes, or shall procure that the relevant Sub-Consultant takes, all reasonable steps to minimise any such Employee Liabilities.

9.2. If any such person as is described in paragraph 1.2 of Part C of this Annex G is neither re employed by the *Employer* and/or the Former Consultant as appropriate nor dismissed by the *Consultant* and/or any Sub-Consultant within the fifteen (15) Working Day period referred to in paragraph 1.4 of Part C of this Annex G such person shall be treated as having transferred to the *Consultant* and/or the Sub-Consultant (as appropriate) and the *Consultant* shall, or shall procure that the Sub-Consultant shall, comply with such obligations as may be imposed upon it under the *law of the contract*.

9.3. Where any person remains employed by the *Consultant* and/or any Sub-Consultant pursuant to paragraph 1.2 of Part C of this Annex G, all Employee Liabilities in relation to such employee shall remain with the *Consultant* and/or the Sub-Consultant and the *Consultant* shall indemnify the *Employer* and any Former Consultant, and shall procure that the Sub-Consultant shall indemnify the *Employer* and any Former Consultant, against any Employee Liabilities that either of them may incur in respect of any such employees of the *Consultant* and/or employees of the Sub-Consultant.

9.4. The indemnities in paragraph 2.1 of Part C of this Annex G

9.4.1. shall not apply to:

a) any claim for

a) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

b) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, or

in any case in relation to any alleged act or omission of the *Consultant* and/or any Sub-Consultant; or

b) any claim that the termination of employment was unfair because the *Consultant* and/or Notified Sub-Consultant neglected to follow a fair dismissal procedure; and

9.4.2. shall apply only where the notification referred to in paragraph 1.2.1 of Part C of this Annex G is made by the *Consultant* and/or any Sub-Consultant to the *Employer* and, if applicable, Former Consultant within six (6) months of the Contract Date.

10. Procurement Obligations

10.1. Where in this Part C of this Annex G the *Employer* accepts an obligation to procure that a Former Consultant does or does not do something, such obligation shall be limited so that it extends only to the extent that the *Employer's* contract with the Former Consultant contains a contractual right in that regard which the *Employer* may enforce, or otherwise so that it requires only that the *Employer* must use reasonable endeavours to procure that the Former Consultant does or does not act accordingly.

PART D

EMPLOYMENT EXIT PROVISIONS

1. Pre-service Transfer Obligations

1.1. The *Consultant* agrees that within twenty (20) Working Days of the earliest of:

- 1.1.1. receipt of a notification from the *Employer* of a Service Transfer or intended Service Transfer;
- 1.1.2. receipt of the giving of notice of early termination or any partial termination of this contract;
- 1.1.3. the date which is twelve (12) months before the end of the *service period*; and
- 1.1.4. receipt of a written request of the *Employer* at any time (provided that the *Employer* shall only be entitled to make one such request in any six (6) month period),

it shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, the *Consultant's* Provisional Personnel List, together with the Staffing Information in relation to the *Consultant's* Provisional Personnel List and it shall provide an updated *Consultant's* Provisional Personnel List at such intervals as are reasonably requested by the *Employer*.

1.2. At least twenty (20) Working Days prior to the Service Transfer Date, the *Consultant* shall provide to the *Employer* or at the direction of the *Employer* to any Replacement *Consultant* and/or any Replacement Sub-*Consultant*:

- 1.2.1. the *Consultant's* Final Personnel List, which shall identify which of the Staff are Transferring *Consultant* Employees; and
- 1.2.2. the Staffing Information in relation to the *Consultant's* Final Personnel List (insofar as such information has not previously been provided).

1.3. The *Employer* shall be permitted to use and disclose information provided by the *Consultant* under paragraphs 1.1 and 1.2 of Part D of this Annex G for the purpose of informing any prospective Replacement *Consultant* and/or Replacement Sub-*Consultant*.

1.4. The *Consultant* warrants, for the benefit of the *Employer*, any Replacement *Consultant*, and any Replacement Sub-*Consultant* that all information provided pursuant to paragraphs 1.1 and 1.2 of Part D of this Annex G shall be true and accurate in all material respects.

1.5. From the date of the earliest event referred to in paragraphs 1.1.1 to 1.1.3 of Part D of this Annex G, the *Consultant* agrees, that it shall not, and agrees to procure that each Sub-*Consultant* shall not, assign any person to the provision of the Services who is not listed on the *Consultant's* Provisional Personnel List and shall not without the approval of the *Employer* (not to be unreasonably withheld or delayed):

- 1.5.1. replace or re-deploy any Staff listed on the *Consultant's* Provisional Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
- 1.5.2. make, promise, propose or permit any material changes to the terms and conditions of employment of the Staff (including any payments connected with the termination of employment);

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- 1.5.3. increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Staff save for fulfilling assignments and projects previously scheduled and agreed;
 - 1.5.4. introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Consultant's Provisional Personnel List;
 - 1.5.5. increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
 - 1.5.6. terminate or give notice to terminate the employment or contracts of any persons on the Consultant's Provisional Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-Consultant shall promptly notify, the *Employer* or, at the direction of the *Employer*, any Replacement Consultant and any Replacement Sub-Consultant of any notice to terminate employment given by the *Consultant* or relevant Sub-Consultant or received from any persons listed on the Consultant's Provisional Personnel List regardless of when such notice takes effect.

- 1.6. During the *service period*, the *Consultant* shall provide to the *Employer* any information the *Employer* may reasonably require relating to any individual employed, assigned or engaged in providing the Services (subject to any limitations imposed by the Data Protection Legislation) including without limitation the Staffing Information and, upon reasonable request by the *Employer* and subject only to any limitation imposed by the Data Protection Legislation, the *Consultant* shall provide, and shall procure that each Sub-Consultant shall provide, the *Employer* or, at the direction of the *Employer* to a Replacement Consultant and/or any Replacement Sub-Consultant with access (on reasonable notice and during normal working hours) to such employment records as the *Employer* reasonably requests and shall allow the *Employer* or at the *Employer's* direction, the Replacement Consultant and/or any Replacement Sub-Consultant to have copies of any such documents.
- 1.7. The *Consultant* shall provide, and shall procure that each Sub-Consultant shall provide, all reasonable cooperation and assistance to the *Employer*, any Replacement Consultant and/or any Replacement Sub-Consultant to ensure the smooth transfer of the Transferring Consultant Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Consultant Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the *Consultant* shall provide, and shall procure that each Sub-Consultant shall provide, the *Employer* or, at the direction of the *Employer*, to any Replacement Consultant and/or any Replacement Sub-Consultant (as appropriate), in respect of each person on the Consultant's Final Personnel List who is a Transferring Consultant Employee:
 - 1.7.1. the most recent month's copy pay slip data;
 - 1.7.2. details of cumulative pay for tax and pension purposes;
 - 1.7.3. details of cumulative tax paid;
 - 1.7.4. tax code;
 - 1.7.5. details of any voluntary deductions from pay; and
 - 1.7.6. bank/building society account details for payroll purposes.

2. Employment Regulations Exit Provisions

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- 2.1. The *Employer* and the *Consultant* acknowledge that subsequent to the *starting date*, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or partial termination of this contract or otherwise) resulting in the Services being undertaken by a Replacement Consultant and/or a Replacement Sub-Consultant. Such change in the identity of the *Consultant* of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The *Employer* and the *Consultant* further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the *Consultant* and the Transferring Consultant Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Consultant and/or a Replacement Sub-Consultant (as the case may be) and each such Transferring Consultant Employee.
- 2.2. The *Consultant* shall, and shall procure that each Sub-Consultant shall, comply with all its obligations in respect of the Transferring Consultant Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Consultant shall perform and discharge, all its obligations in respect of all the Transferring Consultant Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the *Consultant* and/or the Sub-Consultant (as appropriate); and (ii) the Replacement Consultant and/or Replacement Sub-Consultant.
- 2.3. Subject to paragraph 2.4 of Part D of this Annex G, the *Consultant* shall indemnify the *Employer* and/or the Replacement Consultant and/or any Replacement Sub-Consultant against any Employee Liabilities in respect of any Transferring Consultant Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- 2.3.1. any act or omission of the *Consultant* or any Sub-Consultant whether occurring before, on or after the Service Transfer Date;
 - 2.3.2. the breach or non-observance by the *Consultant* or any Sub-Consultant occurring on or before the Service Transfer Date of:
 - a) any collective agreement applicable to the Transferring Consultant Employees; and/or
 - b) any other custom or practice with a trade union or staff association in respect of any Transferring Consultant Employees which the *Consultant* or any Sub-Consultant is contractually bound to honour;
 - 2.3.3. any claim by any trade union or other body or person representing any Transferring Consultant Employees arising from or connected with any failure by the *Consultant* or a Sub-Consultant to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
 - 2.3.4. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - a) in relation to any Transferring Consultant Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
 - b) in relation to any employee who is not a Transferring Consultant Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the *Consultant* to the *Employer* and/or
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Replacement Consultant and/or any Replacement Sub-Consultant, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;

- 2.3.5. a failure of the *Consultant* or any Sub-Consultant to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Consultant Employees in respect of the period up to (and including) the Service Transfer Date);
 - 2.3.6. any claim made by or in respect of any person employed or formerly employed by the *Consultant* or any Sub-Consultant other than a Transferring Consultant Employee for whom it is alleged the *Employer* and/or the Replacement Consultant and/or any Replacement Sub-Consultant may be liable by virtue of this contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
 - 2.3.7. any claim made by or in respect of a Transferring Consultant Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Consultant Employee relating to any act or omission of the *Consultant* or any Sub-Consultant in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the *Employer* and/or Replacement Consultant to comply with regulation 13(4) of the Employment Regulations.
- 2.4. The indemnities in paragraph 2.3 of Part D of this Annex G shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Consultant and/or any Replacement Sub-Consultant whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
- 2.4.1. arising out of the resignation of any Transferring Consultant Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Consultant and/or any Replacement Sub-Consultant to occur in the period on or after the Service Transfer Date); or
 - 2.4.2. arising from the Replacement Consultant's failure, and/or Replacement Sub-Consultant's failure, to comply with its obligations under the Employment Regulations.
- 2.5. If any person who is not a Transferring Consultant Employee claims, or it is determined in relation to any person who is not a Transferring Consultant Employee, that his/her contract of employment has been transferred from the *Consultant* or any Sub-Consultant to the Replacement Consultant and/or Replacement Sub-Consultant pursuant to the Employment Regulations or the Acquired Rights Directive, then:
- 2.5.1. the *Employer* shall procure that the Replacement Consultant shall, or any Replacement Sub-Consultant shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the *Consultant*; and
 - 2.5.2. the *Consultant* may offer (or may procure that a Sub-Consultant may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Consultant and/or any and/or Replacement Sub-Consultant or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with the *law of the contract*.
- 2.6. If such offer is accepted, or if the situation has otherwise been resolved by the *Consultant* or a Sub-Consultant, the *Employer* shall procure that the Replacement Consultant shall, or procure that the Replacement Sub-Consultant shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 2.7. If after the fifteen (15) Working Day period specified in paragraph 2.5.2 of Part D of this Annex G has elapsed:
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- 2.7.1. no such offer of employment has been made;
 - 2.7.2. such offer has been made but not accepted; or
 - 2.7.3. the situation has not otherwise been resolved;

the *Employer* shall advise the Replacement Consultant and/or Replacement Sub-Consultant, as appropriate that it may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2.8. Subject to the Replacement Consultant and/or Replacement Sub-Consultant acting in accordance with the provisions of paragraphs 2.5 to 2.7 of Part D of this Annex G and in accordance with all applicable proper employment procedures set out in the *law of the contract*, the *Consultant* shall indemnify the Replacement Consultant and/or Replacement Sub-Consultant against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 1.7 of Part D of this Annex G provided that the Replacement Consultant takes, or shall procure that the Replacement Sub-Consultant takes, all reasonable steps to minimise any such Employee Liabilities.

2.9. The indemnity in paragraph 2.8 of Part D of this Annex G

2.9.1. shall not apply to:

a) any claim for

- a) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- b) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Replacement Consultant and/or Replacement Sub-Consultant; or

b) any claim that the termination of employment was unfair because the Replacement Consultant and/or Replacement Sub-Consultant neglected to follow a fair dismissal procedure; and

2.9.2. shall apply only where the notification referred to in paragraph 2.5.1 of Part D of this Annex G is made by the Replacement Consultant and/or Replacement Sub-Consultant to the *Consultant* within six (6) months of the Service Transfer Date.

2.10. If any such person as is described in paragraph 2.5 of Part D of this Annex G is neither re-employed by the *Consultant* or any Sub-Consultant nor dismissed by the Replacement Consultant and/or Replacement Sub-Consultant within the time scales set out in paragraphs 2.5 to 2.7 of Part D of this Annex G, such person shall be treated as a Transferring Consultant Employee and the Replacement Consultant and/or Replacement Sub-Consultant shall comply with such obligations as may be imposed upon it under the *law of the contract*.

2.11. The *Consultant* shall comply, and shall procure that each Sub-Consultant shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-Consultant shall perform and discharge, all its obligations in respect of the Transferring Consultant Employees up to (but not including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

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- 2.11.1. the *Consultant* and/or any Sub-Consultant; and
- 2.11.2. the Replacement Consultant and/or the Replacement Sub-Consultant.
- 2.12. The *Consultant* shall, and shall procure that each Sub-Consultant shall, promptly provide to the *Employer* and any Replacement Consultant and/or Replacement Sub-Consultant, in writing such information as is necessary to enable the *Employer*, the Replacement Consultant and/or Replacement Sub-Consultant to carry out their respective duties under regulation 13 of the Employment Regulations. The *Employer* shall procure that the Replacement Consultant and/or Replacement Sub-Consultant shall promptly provide to the *Consultant* and each Sub-Consultant in writing such information as is necessary to enable the *Consultant* and each Sub-Consultant to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.13. Subject to paragraph 2.14 of Part D of this Annex G, the *Employer* shall procure that the Replacement Consultant indemnifies the *Consultant* on its own behalf and on behalf of any Replacement Sub-Consultant and its sub-Consultants against any Employee Liabilities in respect of each Transferring Consultant Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Consultant Employee) arising from or as a result of:
- 2.13.1. any act or omission of the Replacement Consultant and/or Replacement Sub-Consultant;
- 2.13.2. the breach or non-observance by the Replacement Consultant and/or Replacement Sub-Consultant on or after the Service Transfer Date of:
- a) any collective agreement applicable to the Transferring Consultant Employees; and/or
- b) any custom or practice in respect of any Transferring Consultant Employees which the Replacement Consultant and/or Replacement Sub-Consultant is contractually bound to honour;
- 2.13.3. any claim by any trade union or other body or person representing any Transferring Consultant Employees arising from or connected with any failure by the Replacement Consultant and/or Replacement Sub-Consultant to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- 2.13.4. any proposal by the Replacement Consultant and/or Replacement Sub-Consultant to change the terms and conditions of employment or working conditions of any Transferring Consultant Employees on or after their transfer to the Replacement Consultant or Replacement Sub-Consultant (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Consultant Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 2.13.5. any statement communicated to or action undertaken by the Replacement Consultant or Replacement Sub-Consultant to, or in respect of, any Transferring Consultant Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the *Consultant* in writing;
- 2.13.6. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- a) in relation to any Transferring Consultant Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
-

-
- b) in relation to any employee who is not a Transferring Consultant Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the *Consultant* or Sub-Consultant, to the Replacement Consultant or Replacement Sub-Consultant to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- 2.13.7. a failure of the Replacement Consultant or Replacement Sub-Consultant to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Consultant Employees in respect of the period from (and including) the Service Transfer Date; and
- 2.13.8. any claim made by or in respect of a Transferring Consultant Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Consultant Employee relating to any act or omission of the Replacement Consultant or Replacement Sub-Consultant in relation to obligations under regulation 13 of the Employment Regulations.
- 2.14. The indemnities in paragraph 2.3 of Part D of this Annex G shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the *Consultant* and/or any Sub-Consultant (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the *Consultant* and/or any Sub-Consultant (as applicable) to comply with its obligations under the Employment Regulations.

ANNEX 1: LIST OF NOTIFIED SUBCONSULTANTS

Engineering Services Partnership Limited
Sunley House 4 Bedford Park Croydon CR0 2AP
T: 020 8662 2288 www.espltd.co.uk

Contract Schedule 2 - DWP's Statement of Requirements

1. Background

The Department for Work and Pensions (DWP) (the Employer) is responsible for welfare, pensions and child maintenance policy. As the UK's biggest public service department it administers the State Pension and a range of working age, disability and ill health benefits to around 20 million claimants and customers.

The Employer delivers these services across England, Wales and Scotland (including the Orkney and Shetland Islands), across a diverse estate of c.850 buildings – the largest commercial estate within Government. This number is made up primarily of Jobcentre Plus offices, but also includes Health Assessment Centres and back offices. The back office sites consist of corporate centres, large processing centres and service centres very similar to call centre environments, which are not open to the public. The DWP estate is geographically dispersed due to the high street nature of the Jobcentre Plus and Health Assessment Centre portfolio - requiring local presence to serve customers.

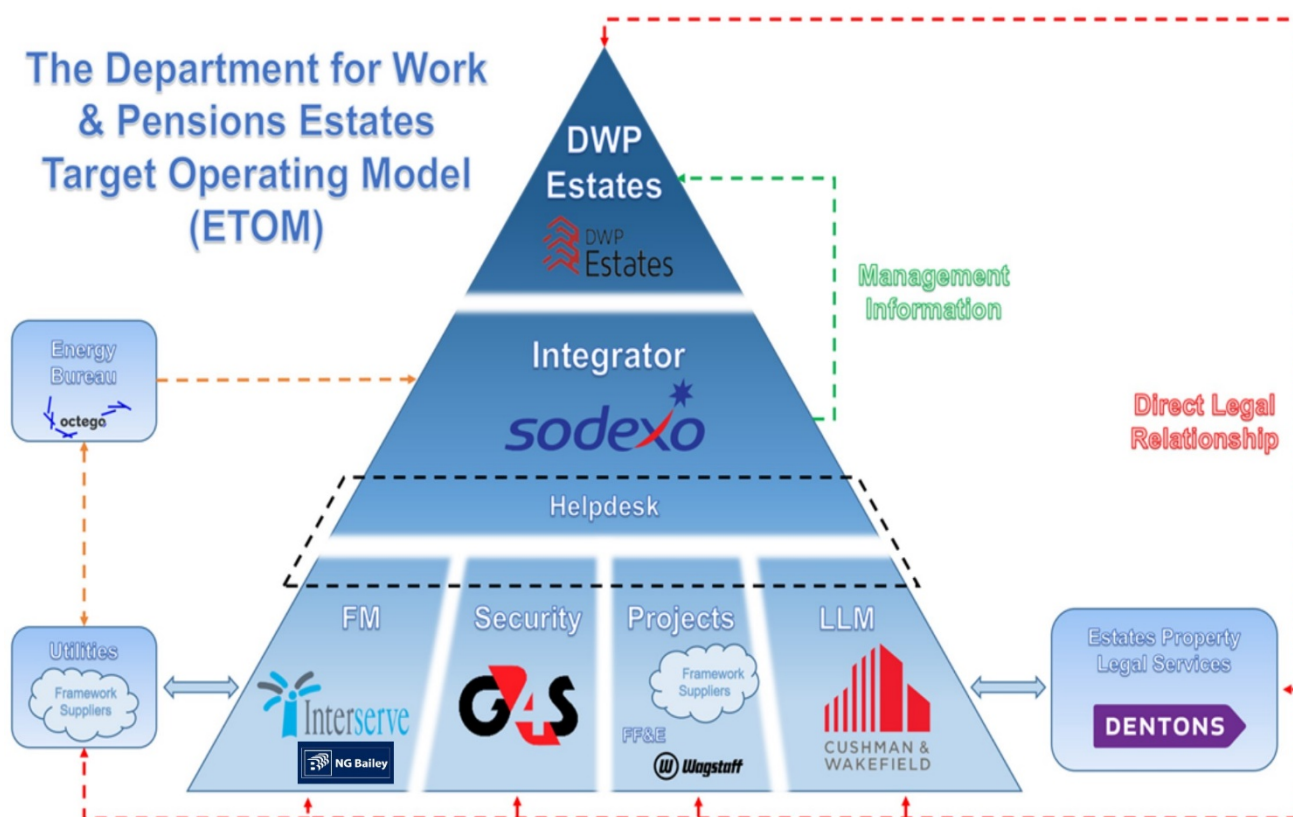
Of this estate, 39% is age expired and prone to failure. Approximately 40% of properties are rated as poor or very poor against the BPI (Building Performance Index). A rolling programme of Life Cycle Works (LCW) is required to repair and replace key assets, such as heating systems, HVAC and roofs. LCW are required to maintain the general up-keep of DWP's estate, ensure statutory compliance and provide safe and effective places for staff to work and customers to visit.

2. The Estates Target Operating Model

Within the Department, DWP Estates Directorate are accountable for the delivery of all aspects of real estate services, supported by the Estates Category Team within Commercial Directorate to undertake all commercial activity required within the complex estates portfolio.

DWP operates an 'Estates Target Operating Model' (ETOM), shown in Figure 1, whereby a large proportion of the estates management is out-sourced to an independent third party organisation ('the Supply Chain Integrator').

Figure 1: DWP's Estates Target Operating Model (ETOM)



Each of the following headings within Figure 1 are referred to by the Employer as 'towers:'

- FM (Facilities Management)
- Security
- Projects (This includes providers of professional services, all providers of construction, fit-out and LCW as well as suppliers of furniture, fittings and equipment (FFE)).
- LLM (Landlord and Lease Management)

DWP has engaged and authorised Sodexo Ltd (Sodexo) under the role of the "Supply Chain Integrator" to perform certain estate related duties and obligations. In this capacity, Sodexo is charged with deploying the Department's programmes of LCW. To ensure successful programme delivery, Sodexo work closely with providers of professional services appointed from CCS Framework RM3741 Project Management and Full Design Team Services (PMFDTS) and contractors on DWP's 'Estate Jobcentre & Office Fit Out Contractor Framework' (the Contractor(s)). Diagrams providing more information about the Estate Jobcentre & Office Fit Out Contractor Framework can be found in Table 1 and Figures 2 and 3.

Table 1: Estate Jobcentre & Office Fit Out Contractor Framework Contractors

	Lot 1 (£0-£250k)					Lot 2 (£250k - £2m)					Lot 3 (£2m-£8m)
Region	A	B	C	D	E	A	B	C	D	E	National
FES Support Services Ltd									X		
Interserve Construction Ltd							X	X			X
ISG Fit Out Ltd		X									X
John Graham Construction											X
Kier Construction Ltd											X
Midas Construction Ltd										X	
Mitie Property Services (UK) Ltd				X							
Morris & Spottiswood								X	X		
Overbury							X		X		
Resolution Interiors Ltd			X		X	X				X	
Seddon Construction Ltd						X		X			
Speller Metcalfe Malvern Ltd	X					X				X	
Wates Construction Ltd											X
Willmott Dixon Interiors							X				

Figure 2: DWP's Estate Job Centre & Office Fit Out Contractor Framework

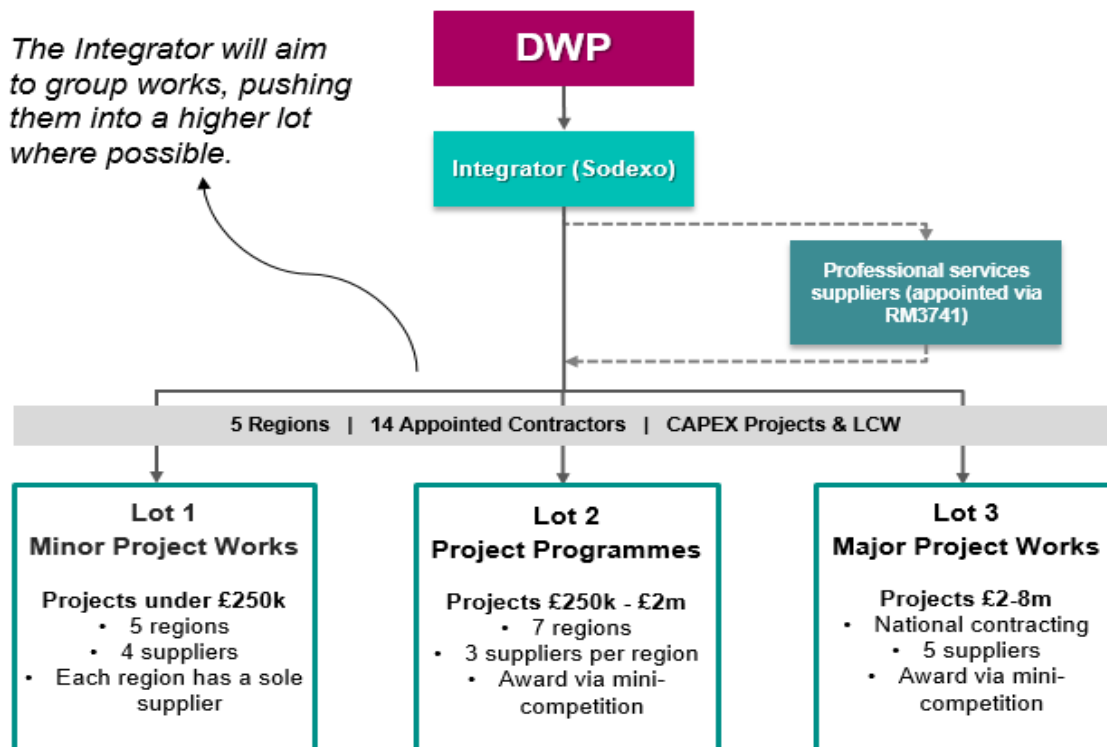


Figure 3: DWP's Estate Job Centre & Office Fit Out Contractor Framework Regions

Region A – East Anglia, East Midlands & West Midlands, Norfolk, Suffolk, Cambridgeshire, Bedfordshire, Buckinghamshire, Hertfordshire, Essex, Lincolnshire, Nottinghamshire, Staffordshire, Shropshire, Derbyshire, Hereford and Worcestershire, West Midlands, Warwickshire, Leicestershire, Northamptonshire

Region B – London & South East England, London, Kent, East Sussex, Surrey, Berkshire, Oxfordshire, Hampshire

Region C – North West England & North Wales, Cumbria, Lancashire, Manchester, Merseyside, Cheshire, Clwyd Gwynedd

Region D – Scotland and North East England, Northumberland, Newcastle Area, Durham, Teesside, Yorkshire, Humber area, Grampian, Highland, Tayside, Central, Fife, Edinburgh, Borders, Dumfries & Galloway, Glasgow, Ayrshire and Lanark, Argyll and Bute

Region E – South Wales & South West England, Dorset, Somerset, Devon, Cornwall, Gloucestershire, Bristol, Wiltshire, Gwent, Mid Glamorgan, Dyfed, Powys



3. The Employer's Requirements

Multi-Disciplinary Professional Services to support LCW

The Employer requires an appropriate multi-disciplinary team to support the programme of LCW remaining in the 20/21 financial year from the point of contract award up until 31st March 2021. The budget for LCW in this remaining period is expected to be £18.8m. However, on account of Covid-19 and other unknown variables, there is a risk the LCW programme may emerge as more complex and costly than initially forecast. The appointment is therefore designed to provide professional services for an additional £5m of funding, if required, in order to allow the Consultant to support all LCW instructed before or on 31st March 2021 up until completion on site.

The Consultant acknowledges and agrees that no guarantee is given by the Employer in respect of volumes of LCW for the duration of this Call Off Contract, which is non-exclusive.

The multi-disciplinary team should comprise of a Project Manager, Contract Administrator, Cost Consultant, Principal Designer and as required, Technical Advisors in the form of Building Surveyors and Mechanical and Electrical Engineers. The exact requirements for each discipline have been set out in Annex 1: Schedule of Requirements. Please note that this is amended from the Schedule of Services provided by CCS. Further information about each of these roles has been outlined in Table 2.

Table 2: Expected Role Requirements

Role	Location	Primary Duty
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Project Manager(s)	To be discussed and agreed. To include attendance at meetings across the UK as required.	<p>Sound implementation and strong management of the projects within a defined region/scope including:</p> <ol style="list-style-type: none"> 1. Management of DWP Contractors appointed to undertake LCW; 2. Provision of technical guidance/solutions; <p>Understanding and addressing critical Contractor requirements that enable successful project delivery; Providing appropriate challenge to changes to cost or the programme;</p> <ol style="list-style-type: none"> 1. Evaluation of scope submission to ensure full validation of LCW; 3. Ensuring safe ways of working; <ul style="list-style-type: none"> • Ensuring all project and programme administration is completed, including reporting requirements. 2. PM to assist brief development and compose outline brief and scope of works for LCW projects. 3. PM to assist and contribute to weekly project updates. 4. Project Execution Plan required for each programme component. 5. PM attendance required at fortnightly LCW Steering Group and Project Control meetings. <p>PM required to produce overarching work breakdown structure for each programme component.</p>
Contract Admin (NEC4)	To be discussed and agreed. Anticipated to be based at one location but to include attendance at meetings across the UK as required.	<p>Oversight and effective management of contract administration related to NEC 3 & 4 ways of working including:</p> <ol style="list-style-type: none"> 1. Effective set up and management of NEC contract requirements through Sodexo provided platform CEMAR. 2. Notifying the Employer and Sodexo of all Early Warning Notices and Compensation Events and ensuring responses are provided within NEC timescales. 3. Enabling and supporting systemised management reporting. 4. Ensuring collaborative and effective communications. 5. Evaluating and sensitively managing commercial issues and risks by evolving optimal approaches and solutions.

Cost Consultant	To be discussed and agreed. Anticipated to be based at one location but to include attendance at meetings across the UK as required.	<p>Cost management and reporting of LCW programmes, including the associated supply chain, including:</p> <ol style="list-style-type: none"> 1. Commercial administration and management of all projects; 2. Ensuring effective commercial management of Contractors and the direct service suppliers; 3. Tracking, reporting and managing completion of all contractual requirements; 4. Enabling and supporting accurate, timely and data led management information and reporting; and 5. Effective and accurate valuation and certification of Contractor AFPs and Compensation Events, ensuring the DWP payment processes are followed in a timely manner. <p>Specific functions will include cost estimating, cost planning, cost management and cost control together with tender management. This will include contract conditions, tender evaluation and subsequent valuation and payment certification.</p>
Technical Advisor	To be discussed and agreed. To include attendance at meetings across the UK as required	<ol style="list-style-type: none"> 1. Provide initial advice on project and requirements. 2. Develop and produce brief, scope of works and specifications where required. 3. Develop initial cost estimate. 4. Determine and report upon the extent of works required to the existing building to enable the proposed project works. 5. Advise on statutory and landlord compliance matters including planning, disability, access, fire precautions, conservation, etc. 6. Advise on health and safety aspects of the project and liaise with the principal designer. 7. Undertake briefing meeting with contractor. 8. Ensure works delivered to brief requirements
Principle Designer	To be discussed and agreed. To include attendance at meetings across the UK as required	<p>Oversight and effective management of LCW and all relevant duty-holders to ensure compliance with H&S and environmental regulations e.g. HASWA 1974 and CDM 2015 requirements. Provision of astute professional advice and robust reporting at programme and tactical levels.</p> <p>The Principle Designer will be required to undertake ad-hoc audits of a representative sample of Contractors to ensure compliance.</p>

There is no guarantee by the Employer of any role being deployed or any works being allocated. The multi-disciplinary team will work closely to support the Employer across all stages of the LCW programme, described in Table 3.

Table 3: LCW Programme Stages

Stage	Responsibilities
Defining the scope	<p>In conjunction with Sodexo, the Consultant will visit each site and develop a scope definition (the Employer's Requirements) for each LCW by location. Each task is allocated a budget against which Framework contractor's proposals will be measured.</p> <p>It is within the role of the Contractors to undertake scoping surveys and any subsequently required intrusive surveys to develop the Employer's Requirements, including but not limited to specialist investigations and asbestos testing. However, pre-contract site inspection reports and scoping surveys may also need to be undertaken by the Consultant.</p> <p>Where the Contractor is required to undertake a scoping survey, the Consultant may or may not be required to attend the scoping survey, dependant on work type, value and the requirement. Scoping surveys of works of a value less than £100,000 will generally be undertaken independently by the Contractor, Sodexo Regional Operations Manager and often the Employer's Estates Regional Lead. The Consultant will participate as required by video conferencing. A common sense approach will be adopted for scoping surveys attended by the Consultant's Technical Advisor depending on project complexity.</p>
Reviewing the Contractor's Proposal	<p>Following appointment, Contractors (and sometimes the Consultant) will liaise with the Employer's site and regional operations representatives to undertake a scoping survey. The extent of the scope and any limits will be agreed, and Landlord consent acquired where necessary. Liaison with suppliers in other 'towers' of the ETOM may be necessary in respect of access and security arrangements, in addition to making enquiries about the suppliers of FFE and the Employer's signage.</p>
Tender Process	<p>It should be noted that for Contractors on Lot 1 of the Estate Jobcentre & Office Fit Out Contractor Framework, a direct award allocation is used based on region coverage and the tender process is not required.</p> <p>A competitive tender process is required by the Employer for projects valued above £250,000. The Consultant will work closely with Sodexo and the Employer to tender the LCW projects via the Estate Job Centre & Office Fit Out Contractor Framework, considering bundling to maximise efficiencies and value for money.</p>

	<p>In line with the agreed procurement strategy, the Consultant will review Contractor's proposed scopes and respond to technical queries to ensure that the proposals are robust and offer value for money. Contractors will submit their technical and commercial proposals for evaluation. Where possible, PSA Schedule of Rates will be utilised, or upon request, quotations sought from specialists. The Consultant will scrutinise the Contractor's proposals in regards to:</p> <ul style="list-style-type: none"> • the credentials of key personnel proposed, the processes and procedures to be adopted; and • quantum accuracy and value for money compared with the initial brief and budget allocation. <p>Consultation with the Employer's site representatives, the Employer's Regional Operations Managers and Sodexo Project Managers may be necessary before a recommendation for acceptance is given. Where the Contractor's proposals exceed budget, further scrutiny and justification may be necessary in order to obtain approval from the Employer's governance processes in order to proceed. The Employer's commercial governance processes are outlined in Annex 2.</p> <p>To ensure the procurement is approved by the Employer's commercial governance processes, details of the evaluation process will be recorded by the Consultant via a Tender Report. The Tender Report is a document intended to be the single, summary record of the procurement exercise. It is to provide how the recommendation(s) to award to a particular Contractor(s) was arrived at in line with The Public Contract Regulations 2015 and includes appendices with all necessary evidence and justification to support commentary and decisions made. It is the primary document relied upon in the Employer's commercial governance processes. The Tender Report should provide the following:</p> <ul style="list-style-type: none"> • Executive Summary: an overview of the project, covering the intent and nature of procurement, the type of tender and number of bids, supplier returns and issues, significant risks, recommendation and rationale behind this. • Tender Details: Explanation of the tender process relied on, detailing the number of expressions of interests returned and listing the suppliers who did and did not return them, providing any reasons provided for the latter. Any market failure should be explained, as well as compliance. • Evaluation Criteria: Referencing an annex with the criteria laid out in full, outline the % balance of price vs quality questions, any weightings and any special requirements like minimum thresholds and how the final score was calculated.
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	<ul style="list-style-type: none"> • Any Changes: Any changes should have been communicated to all, to maintain equality of opportunity maintained. This section should evidence what changes were made and how they were communicated. • Compliance/Issues: Explain any excluded bids as a result of compliance issues, or why mitigation has been applied. <p>Gaps and unexplained statements in the Tender Report will delay the Employer's commercial assurance processes, required to award the contract to the Contractor(s).</p> <p>The Consultant will need to produce a Tender Report meeting the required quality standard within procurement timescales communicated in writing (which may include email) by Sodexo to the Consultant, as long as the Consultant is not provided with less than 5 working days' notice to complete the Tender Report.</p>
Contractor appointment and management	<p>Subject to the Employer's governance processes, the Consultant will work with the appointed Contractor to develop an agreed programme and priced activity schedule as required under a formal NEC Contract Agreement. This will require work to clarify the scope and contractor proposal.</p> <p>Once appointed, the Consultant will use Sodexo software called CEMAR to manage and administer the Contractor's contract with the Employer. CEMAR is used to raise Early Warning Notices, propose and approve Compensation Events and submit applications for payment. The Consultant will notify the Employer and Sodexo of Early Warning Notices and Compensation Events and ensure responses are provided in line with NEC timescales, whilst also ensuring compliance with the Employer's governance processes. The Consultant will be required to review Compensation Events submitted for quantum accuracy and value for money, compared with the initial brief and budget allocation.</p> <p>The Consultant will attend and lead all relevant project meetings and pre-start meetings on all LCW projects. The Consultant will participate through video conferencing or physical attendance as required by representative sampling, predetermined work value (typically >£100,000), or as agreed necessary. The Contractor produces the minutes for these meetings, but the Consultant will ensure these are completed to the required standard and distributed to all relevant stakeholders.</p> <p>Contractors will be required to submit Applications for Payments (AFPs) to the Consultant at agreed intervals. Each task and site will be assigned a unique task and site number. Each site will also have a unique project number. Following review, the Consultant will make a recommendation to elevate the AFP through the Employer's AFP process, supported by an</p>

	assurance document. The Consultant is required to assist in forecasting the required PO and tracking the spend to give early warning of any requirement to increase the PO value.												
Progress tracking	The Consultant is required to produce and maintain a detailed Progress Tracker for LCW to report on programme, cost, milestones etc, with information provided on workstream, site, Contractor, region and Purchase Order. The Progress Tracker is reported weekly to the Sodexo Project Manager. Site scoping surveys, asbestos reports, Contractor's proposals, accepted proposals, start-up meetings, commencement of work on site and completion certifications are all tracked and recorded. Tracking filters allow financial commitment and actual spend to be closely monitored. Tasks or sites that are added, postponed or cancelled are all recorded in a change log to maintain auditability.												
Meetings	<div>In addition to the meetings listed elsewhere in the Statement of Requirements and Scope, the Consultant will be required to attend the following meetings:</div> <table><tr><th></th><th>Frequency</th><th>Detail</th></tr><tr><td>LCW Steering Group</td><td>Fortnightly</td><td>Please see the terms of reference in Annex 3.</td></tr><tr><td>LCW Commercial Review</td><td>Fortnightly (every other week to LCW Steering Group)</td><td>The role of the Consultant is to provide an update on LCW in regards to progress through the cost production process. At early stages, this will be rough order costs through feasibility, followed by detailed costs, with updates through delivery and then handover/final costs.</td></tr><tr><td>Project Control</td><td>As required.</td><td>The Consultant may be periodically invited to Project Control meetings held by the Sodexo Programme Lead and other Consultants as required.</td></tr></table>		Frequency	Detail	LCW Steering Group	Fortnightly	Please see the terms of reference in Annex 3.	LCW Commercial Review	Fortnightly (every other week to LCW Steering Group)	The role of the Consultant is to provide an update on LCW in regards to progress through the cost production process. At early stages, this will be rough order costs through feasibility, followed by detailed costs, with updates through delivery and then handover/final costs.	Project Control	As required.	The Consultant may be periodically invited to Project Control meetings held by the Sodexo Programme Lead and other Consultants as required.
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Project Control	As required.	The Consultant may be periodically invited to Project Control meetings held by the Sodexo Programme Lead and other Consultants as required.											
Reporting	All reporting will be through a single point of contact, the Sodexo Project Lead. Data is gathered from Contractors and the Employer's Regional												

	<p>Managers. Each week, the Consultant will produce a Flash Report for holistic procurement, consultancy and operations reporting to DWP. Objectives, highlights of achievements in the period, financial commitment and actual spend, key activities anticipated in the coming period and decisions, support required and risks to delivery are discussed. For LCW, or otherwise determined by the Employer or Sodexo to be political or sensitive, the Consultant will produce a weekly project management report.</p> <p>Data from the Progress Tracker and the Purchase Order Dashboard, updated weekly, are used to populate the Flash Report. A Programme summary is also provided, highlighting key milestones in the delivery process. The Flash Report will develop and evolve as progress is made through the analysis, perception, commercial approval, contractor mobilisation, survey and works execution phases and updated weekly.</p> <p>Throughout the works delivery phases, the Consultant will then chair a weekly call with each Contractor appointed to LCW to track progress towards mobilisation and progress made throughout the execution of the work on site. Reporting through these stages will also be undertaken through weekly spreadsheets.</p> <p>From a cost management perspective, the Consultant is required to maintain and present a master commercial tracker that covers the following functions:</p> <ul style="list-style-type: none"> • Data tracking; • Cashflow forecast; • AFP forecast; and • Future demand. <p>Additionally, the Consultant is required to prepare a financial statement to be issued weekly prior to the LCW Steering Group and LCW Commercial Review which covers the following:</p> <ul style="list-style-type: none"> • Initial programme budget by work category; • Programme spend to date; • Forecast out turn cost; • Risks and opportunities; • Programme level cashflow; • Summary of certified payments; • Compensation Events requiring approval; • Compensation Events previously approved; and • Compensation Events that are rejected or require more information for approval. <p>Further reports may be required to:</p> <ul style="list-style-type: none"> • illustrate progress against agreed deliverables;
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	<ul style="list-style-type: none"> • demonstrate whether the approved budget and cash-flow is being maintained; and • identify those matters which require a decision from the Employer and where necessary, provide assistance for the Employer to make an informed decision on all such matters. <p>The Consultant shall also provide regular management data relating to these services as required by the Employer. Management information required includes but is not limited to the following subject matter:</p> <ol style="list-style-type: none"> a) price of LCW projects as progress is made through the RIBA stages, and the difference between the pre-agreed budget; b) the number of RIDDOR recordable incidents by Consultant staff (including Contract Supplied Workers, Agency Supplied Workers and all sub-consultants) who are working on delivering the services; c) the number of RIDDOR recordable incidents by Contractor staff (including Contract Supplied Workers, Agency Supplied Workers and all sub-consultants) who are working on LCW projects where the Consultant is delivering services; d) the number of instances of Contractor non-compliance with the latest version of Government guidelines regarding Covid-19 and social distancing, including devolved administration guidelines, where applicable; and e) information needed in order to publish Contractor contracts over £10,000 in value in line with Central Government guidance for publishing contracts (link here for information), including value, tender and contract documentation.
Final Account and Close Out	<p>Contractors will be required to self-certify completion. Evidence in the form of photographic evidence and a check list of deliverables will be submitted to the Consultant for review and sign-off. An audit of selected tasks will be undertaken through liaison with site and Regional Operations representatives.</p> <p>The Consultant will participate in handover meetings and ensure that all handover document is correct and complete. The Consultant will participate in handover meetings through video conferencing or physical attendance as required by representative sampling, predetermined work value (typically >£100,000), or as agreed necessary to verify the final account. The Contractor produces the minutes for these meetings, but the Consultant will ensure these are completed to the required standard and distributed to all relevant stakeholders.</p> <p>The timeline to close out any minor outstanding actions and snags will be agreed and monitored. Contractors will submit their final accounts by task and site to the Consultant for verification, approval and sign-off. The Consultant will ensure all supporting evidence will be uploaded to SharePoint.</p>

Throughout all programme stages outlined in Table 3, the Consultant will be managing information from various sources. To assist Sodexo in adhering to ISO19650:2014, the Consultant will need to:

- Adopt the information management processes as defined by the Employer and Sodexo;
- Adopt the information security protocols defined by the Employer and Sodexo;
- Manage project information and documentation in a digital format using a Common Data Environment;
- Interface with appointed parties to receive, collate, verify, publish and issue information in accordance with the Exchange Information Requirements;

The Consultant will collate and verify information received from the Contractors (Operation & Maintenance Manuals, surveys, permits, designs, drawings, asset change forms etc.) and hold it within their document management system until the project is completed. Following project completion, the Consultant will hand over to the Employer and Sodexo to store in SharePoint.

Figure 4: Information Management Process

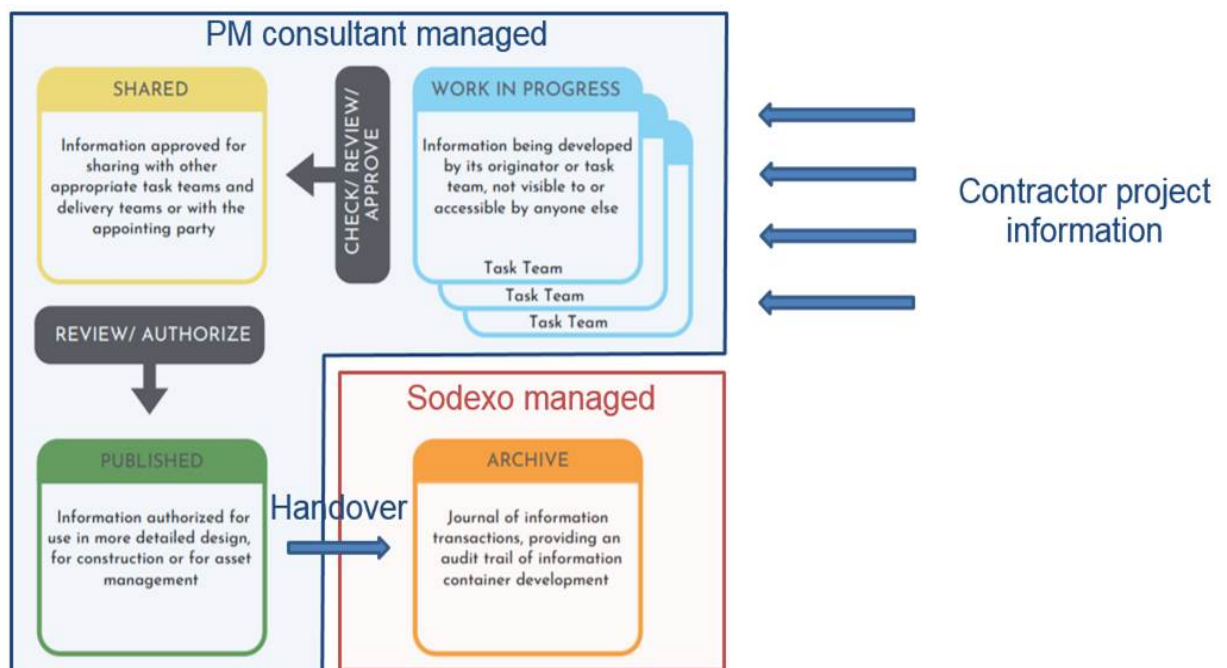


Figure 2: CDE concept as demonstrated in ISO 19650-1 Figure 10

The Consultant must be fully attuned to the Employer's business environment and must be able to demonstrate functional empathy and understanding of diverse Employer staff needs, customer needs, building access provisions, and security requirements. Functional emphasis on accommodating the needs of the Employer's staff and customers is essential in the Employer's busy, sensitive and sometimes volatile environments.

The Employer intends for the Consultant to support all LCW on which they are instructed through to project completion. The Consultant will provide any assistance required by the Employer to exit the contract and tender for any ongoing or future support or services free of charge.

b) Multi-Disciplinary Professional Services to deliver Asset Verification Surveys

The Employer is looking for the Consultant to appoint a multi-disciplinary team to undertake asset verification surveys across 25 sites listed in Annex 4 - Site Information by 31st March 2021. The Employer is looking for the multi-disciplinary team to comprise of a Project Manager and as required, Technical Advisors in the form of Building Surveyors and Mechanical, Electrical and Plumbing Consultants.

There are a wide range of asset types the Employer is looking to be covered by these asset verification surveys, which are provided in Annex 5 - Asset Types. The Employer is looking for the Consultant to provide the information listed in Table 4 and Table 5 below for each asset identified in each of the 25 sites. Table 4 provides the minimum information the Employer requires. The Consultant can propose to the Employer that additional information be collected if the Consultant believes there to be an omission from this list.

The Employer does not hold reliable information about the number of assets in each site. The Consultant should use their professional judgment to draw assumptions from the square metres and number of floors information provided in Annex 4.

Table 4: Information to be provided by the asset verification survey

Information to be provided by the asset verification survey
Site Number
Site Name
Building Name
Building Number
Building Address
Floor

Room Name/Description / explicit description of asset location / building section and whether the asset is external or internal to the facility / site.
Asset Classification
Asset Category
Asset Sub Category
Asset Description
Asset Status
Asset Bar Code (Note if no Barcode present)
Install Date
Condition (From provided list in Table 2)
Manufacturer
Model
Serial Number
Asset KW Rating
Asset KW Rating Unit of Measure
Asset Refrigerant Type
Asset Refrigerant Amount
Asset Number of Switch ways
Asset Number of Spare Switch ways
Asset ID (Note if not Asset ID tag present)
Image of Asset
Quantity
Notes any other observations

Table 5: Condition Types

CONDITION	
RATING	DEFINITION
CONDITION A:	As new condition. Features one or more of the following: Typically built within the last 5 years, or may have undergone a major refurbishment within this period. Maintained / serviced to ensure fabric and building services replicate conditions at installation. No structural, building envelope, building services or statutory compliance issues apparent. No impacts upon operation of the building.
CONDITION B:	Sound, operationally safe and exhibiting only minor deterioration. Typically features one or more of the following: Maintenance will have been carried out. Minor deterioration to internal/external finishes. Few structural, building envelope, building services or statutory compliance issues apparent. Likely to have minor impacts upon the operation of the building.

CONDITION C:	Operational, but major repair or replacement needed in the short to medium term (generally 3-5 years). Typically features one or more of the following: Requiring replacement of building elements or services elements in the short to medium term. Several structural, building envelope, building services or statutory compliance issues apparent, or one particularly significant issue apparent. Often including identified problems with building envelope (windows / roof etc.), building services (boilers, chillers etc.). Likely to have major impacts upon the operation of the building, but still allow it to be operable.
CONDITION D:	Inoperable or serious risk of major failure or breakdown. Building is inoperable, or likely to become inoperable, due to statutory compliance issues or condition representing a health and safety risk or breach. May be structural, building envelope, or building services problems coupled with compliance issues. The conditions are expected to curtail operations within the building. Exclude very minor items which can be rectified easily.

The Consultant will need to produce a risk assessment and method statement in compliance with health and safety legislation and The Construction (Design and Management) Regulations 2015 for each site.

This is a new service. For the purposes of Z22, the commencement of the provision of the *service* or a part of thereof is not expected to result in a Relevant Transfer. The Employer confirms that is has not identified any person to be a Transferring Former Consultant Employee or Transferring Employer Employee.

The Consultant will provide an effective handover to colleagues in the Employer's operations, and provide any assistance required by the Employer to exit the contract and tender for any ongoing or future support or services free of charge.

4. Annexes

Annex 1 - Schedule of Requirements

[REDACTED]

Annex 2 - The Employer's Commercial Governance Processes

Value of contract, contractual change or Compensation Event	DWP Commercial Directorate Estates Category Team Approval	Commercial Approval Board (CAB)	Cabinet Office Reporting Template <i>Reporting only</i>	DWP Ministerial Approval	Cabinet Office Approval
<£100k					
£100k+					
£1m+					
£5m+					
£10m+					

Annex 3 - LCW Steering Group Terms of Reference

[REDACTED]

Annex 4 - Site Information

[REDACTED]

Annex 5 - Asset Types

[REDACTED]

Contract Schedule 3 - McBains Proposal dated December 2020

[REDACTED]

Contract Schedule 4 - McBains Proposal dated 11th December 2020

[REDACTED]

Appendix B

Asset List

[REDACTED]

Appendix C

Minimum Info to be provided by the Asset

INFORMATION TO BE PROVIDED BY THE ASSET SURVEY

Site Number

Site Name

Building Name

Building Number

Building Address

Floor

Room Name/Description / explicit description of asset location / building section and whether the asset is external or internal to the facility / site.

Asset Classification

Asset Category

Asset Sub Category

Asset Description

Asset Status

Asset Bar Code (Note if no Barcode present)

Install Date

Condition (From Provided List)

Manufacturer

Model

Serial Number

Asset KW Rating

Asset KW Rating Unit of Measure

Asset Refrigerant Type

Asset Refrigerant Amount

Asset Number of Switch ways

Asset Number of Spare Switch ways

Asset ID (Note if not Asset ID tag present)

Image of Asset

Quantity

Notes any other observations

Appendix D

Condition Criteria

CONDITION	
RATING	DEFINITION
CONDITION A:	As new condition. Features one or more of the following: Typically built within the last 5 years, or may have undergone a major refurbishment within this period. Maintained / serviced to ensure fabric and building services replicate conditions at installation. No structural, building envelope, building services or statutory compliance issues apparent. No impacts upon operation of the building.
CONDITION B:	Sound, operationally safe and exhibiting only minor deterioration. Typically features one or more of the following: Maintenance will have been carried out. Minor deterioration to internal/external finishes. Few structural, building envelope, building services or statutory compliance issues apparent. Likely to have minor impacts upon the operation of the building.
CONDITION C:	Operational, but major repair or replacement needed in the short to medium term (generally 3-5 years). Typically features one or more of the following: Requiring replacement of building elements or services elements in the short to medium term. Several structural, building envelope, building services or statutory compliance issues apparent, or one particularly significant issue apparent. Often including identified problems with building envelope (windows / roof etc.), building services (boilers, chillers etc.). Likely to have major impacts upon the operation of the building, but still allow it to be operable.
CONDITION D:	Inoperable or serious risk of major failure or breakdown. Building is inoperable, or likely to become inoperable, due to statutory compliance issues or condition representing a health and safety risk or breach. May be structural, building envelope, or building services problems coupled with compliance issues. The conditions are expected to curtail operations within the building. Exclude very minor items which can be rectified easily.

Thank you

[REDACTED]

Contract Schedule 5 – Government Commercial Function Supplier Code of Conduct

You can find the latest version of the Supplier Code of Conduct published on:

<https://www.gov.uk/government/publications/supplier-code-of-conduct> unless specified otherwise

Contract Schedule 6 - DWP Security Policy

1. GENERAL

The Consultant shall, and shall procure that any Sub-consultant (as applicable) shall, comply with the Employer's security requirements as set out in the Call Off Contract which include the requirements set out in this Schedule 8 to the Call Off Contract (the "**Security Policy**"). The Security Policy includes, but is not limited to, requirements regarding the confidentiality, integrity and availability of Employer Assets, the Employer's Systems Environment and the Consultant's Systems Environment. Terms used in this Schedule 8 which are not defined below shall have the meanings given to them in the Contract Data and/or clause Z1 (Interpretation and the law) of this Call Off Contract.

"Availability Test"	shall mean the activities performed by the Consultant to confirm the availability of any or all components of any relevant ICT system as specified by the Employer.
"Breach of Security"	means the occurrence of: (I) any unauthorised access to or use of Employer Data, the Employer's Systems Environment (or any part thereof) or the Consultant's Systems Environment (or any part thereof); (II) the loss and/or unauthorised disclosure of any Employer Data, the Employer's Systems Environment (or any part thereof) or the Consultant's Systems Environment (or any part thereof); (III) any unauthorised event resulting in loss of availability of any Employer Data, the Employer's Systems Environment (or any part thereof) or the Consultant's Systems Environment (or any part thereof); (IV) any unauthorised changes or modification to any Employer Data, the Employer's Systems Environment (or any part thereof) or the Consultant's Systems

	Environment (or any part thereof).
“CHECK”	shall mean the scheme for authorised penetration tests which scheme is managed by the NCSC.
“Cloud”	shall mean an off-premise network of remote ICT servers on the Internet to store, process, manage and transmit data.
“Consultant’s Systems Environment”	means any ICT systems provided by the Consultant (and any Sub-consultant) which are or may be used for the provision of the services.
“Cyber Essentials”	shall mean the Government-backed, industry-supported scheme managed by the NCSC to help organisations to protect themselves against online threats or the relevant successor or replacement scheme which is published and/or formally recommended by the NCSC.
“Cyber Security Information Sharing Partnership” or “CiSP”	shall mean the cyber security information sharing partnership established by the NCSC or the relevant successor or replacement scheme which is published and/or formally recommended by the NCSC.
“Employer Assets”	mean any <i>Employer Devices</i> and <i>Employer Data</i> .
“Employer Data”	<p>means the data, guidance, specifications, instructions, toolkits, plans, databases, patents, patterns, models, design, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:-</p> <ul style="list-style-type: none"> (i) supplied to the <i>Consultant</i> by or on behalf of the Employer; or (ii) which the <i>Consultant</i> is required to generate, process, store or transmit pursuant to this Call Off Contract.

“Employer’s Systems Environment”	means all of the Employer’s ICT systems which are or may be used for the provision of the <i>services</i> .
“Good Security Practice”	<p>shall mean:</p> <ul style="list-style-type: none"> a) the technical and organisational measures and practices that are required by, or recommended in, nationally or internationally accepted management standards and codes of practice relating to Information Security (such as published by the International Organization for Standardization or the National Institute of Standards and Technology); b) security standards and guidelines relating to Information Security (including generally accepted principles regarding the segregation of the duties of governance, implementation and control) provided to the general public or Information Security practitioners and stakeholders by generally recognised authorities and organisations; and c) the Government’s security policies, frameworks, standards and guidelines relating to Information Security.
“Information Security”	<p>shall mean:</p> <ul style="list-style-type: none"> a) the protection and preservation of: <ul style="list-style-type: none"> i) the confidentiality, integrity and availability of any Employer Assets, the Employer’s Systems Environment (or any part thereof) and the Consultant’s Systems Environment (or any part thereof); ii) related properties of information including, but not limited to, authenticity,

	<p>accountability, and non-repudiation; and</p> <p>b) compliance with all Law applicable to the processing, transmission, storage and disposal of Employer Assets.</p>
“Information Security Manager”	shall mean the person appointed by the Consultant with the appropriate experience, authority and expertise to ensure that the Consultant complies with the Security Policy.
“Information Security Management System (“ISMS”)”	shall mean the set of policies, processes and systems designed, implemented and maintained by the Consultant to manage Information Security Risk as certified by ISO/IEC 27001.
“Information Security Questionnaire”	shall mean the Employer’s set of questions used to audit and on an ongoing basis assure the Consultant’s compliance with the Security Policy. The Information Security Questionnaire is the Security Management Plan.
“Information Security Risk”	shall mean any risk that might adversely affect Information Security including, but not limited to, a Breach of Security.
“ISO/IEC 27001, ISO/IEC 27002 and ISO 22301”	<p>shall mean</p> <p>a) ISO/IEC 27001;</p> <p>b) ISO/IEC 27002/IEC; and</p> <p>c) ISO 22301</p> <p>in each case as most recently published by the International Organization for Standardization or its successor entity (the “ISO”) or the relevant successor or replacement information security standard which is formally recommended by the ISO.</p>
“NCSC”	shall mean the National Cyber Security Centre or its successor entity (where applicable).
“Penetration Test”	shall mean a simulated attack on any Employer Assets, the Employer’s Systems Environment (or any part thereof) or the

	Consultant's Systems Environment (or any part thereof).
"PCI DSS"	shall mean the Payment Card Industry Data Security Standard as most recently published by the PCI Security Standards Council, LLC or its successor entity (the "PCI").
"Risk Profile"	shall mean a description of any set of risk. The set of risks can contain those that relate to a whole organisation, part of an organisation or as otherwise applicable.
"Security Test"	shall include, but not be limited to, Penetration Test, Vulnerability Scan, Availability Test and any other security related test and audit.
"Security Policies"	mean the Employer's Security Policies published by the Employer from time to time and shall include any successor, replacement or additional Security Policies. The Security Policies are set out in Annex A.
"Security Policies and Standards"	mean the Security Policies and the Security Standards
"Security Standards"	mean the Employer's Security Standards published by the Employer from time to time and shall include any successor, replacement or additional Security Standards. The Security Standards are set out in Annex B.
"Tigerscheme"	shall mean a scheme for authorised penetration tests which scheme is managed by USW Commercial Services Ltd.
"Vulnerability Scan"	shall mean an ongoing activity to identify any potential vulnerability in any Employer Assets, the Employer's Systems Environment (or any part thereof) or the Consultant's Systems Environment (or any part thereof).

- 1.1 Reference to any notice to be provided by the Consultant to the Employer shall be construed as a notice to be provided by the Consultant to the Employer's Agent.

2. PRINCIPLES OF SECURITY

- 2.1 The Consultant shall at all times comply with the Security Policy and provide a level of security which is in accordance with the Security Policies and Standards, Good Security Practice and Law.

3. ISO/IEC 27001 COMPLIANCE AND AUDIT

- 3.1 The Consultant shall, and shall procure that any Sub-consultant (as applicable) shall, comply with ISO/IEC 27001 in relation to the *services* during the Call Off Contract.
- 3.2 The Consultant shall appoint an Information Security Manager and shall notify the Employer of the identity of the Information Security Manager on the *starting date* and, where applicable, within 5 Working Days following any change in the identity of the Information Security Manager.
- 3.3 The Consultant shall ensure that it operates and maintains the Information Security Management System during the *service period* and that the Information Security Management System meets the Security Policies and Standards, Good Security Practice and Law and includes:
- a) a scope statement (which covers all of the Services provided under this Call Off Contract);
 - b) a risk assessment (which shall include any risks specific to the Services);
 - c) a statement of applicability;
 - d) a risk treatment plan; and
 - e) an incident management plan
- in each case as specified by ISO/IEC 27001.

The Consultant shall provide the Information Security Management System to the Employer upon request within 10 Working Days from such request.

- 3.4 The Consultant shall carry out regular Security Tests in compliance with ISO/IEC 27001 and shall within 10 Working Days after completion of the relevant audit provide any associated security audit reports to the Employer.
- 3.5 Notwithstanding the provisions of paragraph 3.1 to paragraph 3.4, the Employer may, in its absolute discretion, notify the Consultant that it is not in compliance with the Security Policy and provide details of such non-compliance. The Consultant shall, at its own expense, undertake those actions required in order to comply with the Security Policy within one calendar month following such notification or on a date as agreed by the Parties. For the avoidance of doubt, any failure to comply with the Security Policy within the required timeframe (regardless of whether such failure is capable of remedy) shall constitute a substantial failure by the Consultant to comply with his obligations.

4. CYBER ESSENTIALS SCHEME

- 4.1 The Consultant shall, and shall procure that any Sub-Consultant (as applicable) shall, obtain and maintain certification to Cyber Essentials (the "Cyber Essentials Certificate") in relation to the Services during the *service period*. The Cyber Essentials Certificate shall be provided by the Consultant to the Employer annually on the dates as agreed by the Parties.
- 4.2 The Consultant shall notify the Employer of any failure to obtain, or the revocation of, a Cyber Essentials Certificate within 2 Working Days of confirmation of such failure or revocation. The Consultant shall, at its own expense, undertake those actions required in order to obtain a

Cyber Essentials Certificate following such failure or revocation. For the avoidance of doubt, any failure to obtain and/or maintain a Cyber Essentials Certificate during the *service period* after the first date on which the Consultant was required to provide a Cyber Essentials Certificate in accordance with paragraph 4.1 (regardless of whether such failure is capable of remedy) shall constitute a substantial failure by the Consultant to comply with his obligations.

5. RISK MANAGEMENT

- 5.1 The Consultant shall operate and maintain policies and processes for risk management (the **Risk Management Policy**) during the *service period* which includes standards and processes for the assessment of any potential risks in relation to the *services* and processes to ensure that the Security Policy is met (the **Risk Assessment**). The Consultant shall provide the Risk Management Policy to the Employer upon request within 10 Working Days of such request. The Employer may, at its absolute discretion, require changes to the Risk Management Policy to comply with the Security Policy. The Consultant shall, at its own expense, undertake those actions required in order to implement the changes required by the Employer within one calendar month of such request or on a date as agreed by the Parties.
- 5.2 The Consultant shall carry out a Risk Assessment (i) at least annually, (ii) in the event of a material change in the Consultant's Systems Environment or in the threat landscape or (iii) at the request of the Employer. The Consultant shall provide the report of the Risk Assessment to the Employer, in the case of at least annual Risk Assessments, within 5 Working Days of completion of the Risk Assessment or, in the case of all other Risk Assessments, within one calendar month after completion of the Risk Assessment or on a date as agreed by the Parties. The Consultant shall notify the Employer within 5 Working Days if the Risk Profile in relation to the Services has changed materially, for example, but not limited to, from one risk rating to another risk rating.
- 5.3 If the Employer decides, at its absolute discretion, that any Risk Assessment does not meet the Security Policy, the Consultant shall repeat the Risk Assessment within one calendar month of such request or as agreed by the Parties.
- 5.4 The Consultant shall, and shall procure that any Sub-consultant (as applicable) shall, co-operate with the Employer in relation to the Employer's own risk management processes regarding the *services*.
- 5.5 For the avoidance of doubt, the Consultant shall pay all costs in relation to undertaking any action required to meet the requirements stipulated in this paragraph 5. Any failure by the Consultant to comply with any requirement of this paragraph 5 (regardless of whether such failure is capable of remedy), shall constitute a substantial failure by the Consultant to comply with his obligations.

6. SECURITY AUDIT AND ASSURANCE

- 6.1 The Consultant shall, and shall procure that any Sub-consultant (as applicable) shall, complete the information security questionnaire in the format stipulated by the Employer (the **"Information Security Questionnaire"**) at least annually or at the request by the Employer. The Consultant shall provide the completed Information Security Questionnaire to the Employer within one calendar month from the date of request.
- 6.2 The Consultant shall conduct Security Tests to assess the Information Security of the Consultant's Systems Environment and, if requested, the Employer's Systems Environment. In relation to such Security Tests, the Consultant shall appoint a third party which i) in respect of

any Penetration Test, is duly accredited by CHECK, CREST (International), or Tigerscheme and, ii) in respect of any Security Test to which PCI DSS apply, is an approved scanning vendor duly accredited by the PCI. Such Security Test shall be carried out (i) at least annually, (ii) in the event of a material change in the Consultant's Systems Environment or in the Employer's System Environment or (iii) at the request of the Employer which request may include, but is not limited to, a repeat of a previous Security Test. The content, and format of any report of such Security Tests shall be approved in advance of the Security Test by the Employer. The Consultant shall provide any report of such Security Tests within one calendar month following the completion of such Security Test or on a date agreed by the Parties. The Consultant shall, at its own expense, undertake those actions required to rectify any risks identified by any Security Test in the manner and within the timeframe required by the Employer in its absolute discretion.

- 6.3 The Employer shall be entitled to send the Employer's Agent or such other person it shall reasonably require to witness the conduct of any Security Test. The Consultant shall provide to the Employer notice of any Security Test at least one month prior to the relevant Security Test.
- 6.4 Where the Consultant provides code development services to the Employer, the Consultant shall comply with the Security Policy in respect of code development within the Consultant's Systems Environment and the Employer's Systems Environment.
- 6.5 Where the Consultant provides software development services, the Consultant shall comply with the code development practices specified in the Statement of Requirements and Scope or in the Security Policy.
- 6.6 The Employer, or an agent appointed by it, may undertake Security Tests in respect of the Consultant's Systems Environment after providing advance notice to the Consultant. If any Security Test identifies any non-compliance with the Security Policy, the Consultant shall, at its own expense, undertake those actions required in order to rectify such identified non-compliance in the manner and timeframe as stipulated by the Employer at its absolute discretion. The Consultant shall provide all such co-operation and assistance in relation to any Security Test conducted by the Employer as the Employer may reasonably require.
- 6.7 The Employer shall schedule regular security governance review meetings which the Consultant shall, and shall procure that any Sub-consultant (as applicable) shall, attend.

7. PCI DSS COMPLIANCE AND CERTIFICATION

- 7.1 Where the Consultant obtains, stores, processes or transmits payment card data, the Consultant shall comply with the PCI DSS.
- 7.2 The Consultant shall obtain and maintain up-to-date attestation of compliance certificates ("**AoC**") provided by a qualified security assessor accredited by the PCI and up-to-date self-assessment questionnaires ("**SAQ**") completed by a qualified security assessor or an internal security assessor, in each case accredited by the PCI (each with the content and format as stipulated by the PCI and such reports the "PCI Reports"), during the *service period*. The Consultant shall provide the respective PCI Reports to the Employer upon request within 10 Working Days of such request.
- 7.3 The Consultant shall notify the Employer of any failure to obtain a PCI Report or a revocation of a PCI Report within 2 Working Days of confirmation of such failure or revocation. The Consultant shall, at its own expense, undertake those actions required in order to obtain a PCI

Report following such failure or revocation within one calendar month of such failure or revocation.

8. SECURITY POLICIES AND STANDARDS

- 8.1 The Consultant shall, and shall procure that any Sub-consultant (as applicable) shall, comply with the Security Policies and Standards set out Annex A and B.
- 8.2 Notwithstanding the foregoing, the Security Policy applicable to the services may be subject to change following certain events including, but not limited to, any relevant change in the delivery of the Services. The Employer may issue instructions to the Consultant to comply with any amended Security Policy as required by the Employer, provided that where such amended Security Policy increases the burden on the Consultant pursuant to this contract, the novation shall be a compensation event. Accordingly a new clause 60.1(14) shall be added that reads “An amendment to a Security Policy pursuant to paragraph 8.2 of Contract Schedule 8 occurs which increases the burden on the Consultant pursuant to this Call Off Contract”.
- 8.3 The Consultant shall, and shall procure that any Sub-consultant (as applicable) shall, maintain appropriate records and is otherwise able to demonstrate compliance with the Security Policies and Standards.

9. CYBER SECURITY INFORMATION SHARING PARTNERSHIP

- 9.1 The Consultant may become a member of the Cyber Security Information Sharing Partnership in accordance with the recommendations by the NCSC during the *service period*. The Consultant may participate in the Cyber Security Information Sharing Partnership for the exchange of cyber threat information.
- 9.2 Where the Consultant becomes a member of the Cyber Security Information Sharing Partnership, it shall review the NCSC weekly threat reports on a weekly basis and implement recommendations in line with the Consultant’s Risk Management Policy.

ANNEX A – EMPLOYER SECURITY POLICIES AND STANDARDS

The Security Policies are published on:

<https://www.gov.uk/government/publications/dwp-procurement-security-policies-and-standards> unless specified otherwise:

- a) Acceptable Use Policy
- b) Information Security Policy
- c) Physical Security Policy
- d) Information Management Policy
- e) Email Policy
- f) Technical Vulnerability Management Policy
- g) Remote Working Policy
- h) Social Media Policy
- i) Forensic Readiness Policy
- j) SMS Text Policy
- k) Privileged Users Security Policy
- l) User Access Control Policy
- m) Security Classification Policy
- n) Cryptographic Key Management Policy
- o) HMG Personnel Security Controls – May 2018
(published on <https://www.gov.uk/government/publications/hmg-personnel-security-controls>)
- p) NCSC Secure Sanitisation of Storage Media
(published on <https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media>)

ANNEX B – SECURITY STANDARDS

The Security Standards are published on:

<https://www.gov.uk/government/publications/dwp-procurement-security-policies-and-standards>:

- a) SS-001 - Part 1 - Access & Authentication Controls
- b) SS-001 - Part 2 - Privileged User Access Controls
- c) SS-002 - PKI & Key Management
- d) SS-003 - Software Development
- e) SS-005 - Database Management System Security Standard
- f) SS-006 - Security Boundaries
- g) SS-007 - Use of Cryptography
- h) SS-008 - Server Operating System
- i) SS-009 - Hypervisor
- j) SS-010 - Desktop Operating System
- k) SS-011 - Containerisation
- l) SS-012 - Protective Monitoring Standard for External Use
- m) SS-013 - Firewall Security
- n) SS-014 - Security Incident Management
- o) SS-015 - Malware Protection
- p) SS-016 - Remote Access
- q) SS-017 - Mobile Devices
- r) SS-018 - Network Security Design
- s) SS-019 - Wireless Network
- t) SS-022 - Voice & Video Communications
- u) SS-023 - Cloud Computing
- v) SS-025 - Virtualisation
- w) SS-027 - Application Security Testing
- x) SS-028 - Microservices Architecture
- y) SS-029 - Securely Serving Web Content
- z) SS-030 - Oracle Database
- aa) SS-031 - Domain Management
- bb) SS-033 - Patching

Contract Schedule 7 - Key Performance Indicators

The Key Performance Indicators will be assessed via completion of the Assessment of Service Quality Proforma.

Assessment of Service Quality

[REDACTED]