

DEMAND MANAGEMENT AND RENEWABLES FRAMEWORK SCHEDULE 5

CALL OFF AGREEMENT (INCORPORATING THE NEC4 PROFESSIONAL SERVICES SHORT CONTRACT
JUNE 2017 (INCLUDING AMENDMENTS ISSUED JANUARY 2019 AND OCTOBER 2020) AND
CONTRACT DATA

Date Friday 9th August 2024

FORM OF AGREEMENT

**Incorporating the NEC4 Professional Services Short Contract June 2017 incorporating
amendments January 2019 and October 2020**

Between

Department for Energy Security and Net Zero (DESNZ)

And

AECOM Limited

For the provision of

**Building Energy Performance Specialist Services to the
Smart Metering Implementation Programme**

The following Documents also form part of this Agreement:

Annex 1 – The Clients Specification

Annex 2 – The Consultants Proposal

Annex 3 – The Consultants Offer

Annex 4 – GDPR Questionnaire

Appendix A – Standard Boilerplate Amendments

THIS AGREEMENT is made the 9th day of August 2024

PARTIES:

1. **Department for Energy, Security and Net Zero (DESNZ)** whose offices are located at 3-8 Whitehall Place, London, SW1A 2EG (the "Client").
and
2. **AECOM Limited** whose offices are located at Aldgate Tower, 2 Leman Street London, E1 8FA (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 demand management and renewables for the benefit of public sector bodies.
- (B) The *Consultant* was appointed to the framework and executed the framework agreement (with reference number RM6314) which is dated 24/03/2023 (the "**Framework Agreement**"). In the Framework Agreement, the Consultant is identified as the "Supplier".
- (C) On the Friday 14th June 2024 the Client and in the Framework Agreement is identified as a "Contracting Authority" invited the Consultant along with other framework suppliers to tender for the *Client's* demand management and renewable energy services requirements in accordance with the Call Off Procedure (as defined in the Framework Agreement).
- (D) On the 22nd July 2024 the *Consultant* submitted a tender response and was subsequently selected by the *Client* to provide the *service*.
- (E) The *Consultant* has agreed to Provide the Services in accordance with this agreement and the Framework Agreement.

IT IS AGREED AS FOLLOWS:

1. The *Client* 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 Service in accordance with the *conditions of contract* identified in the Contract Data and the Contract Schedules.
3. This contract incorporates the conditions of contract in the form of the NEC4 Professional Services Short Contract June 2017 Edition incorporating amendments January 2019 and October 2020 and incorporating the additional conditions specified in the Client's Contract Data, which form this contract together with the documents referred to in it. References in the NEC4 Professional Services Short Contract June 2017 Edition incorporating amendments January 2019 and October 2020 to "the contract" are references to this contract.
4. This contract incorporates the following:

- Annex 1 – The *Clients* Specification
 - Annex 2 – The *Consultants* Proposal
 - Annex 3 – The *Consultants* Offer
 - Annex 4 – GDPR Questionnaire
 - Appendix A – Standard Boilerplate Amendments
1. This contract and the Framework Agreement is the entire agreement between the parties in relation to the *service* and supersedes and extinguishes all prior arrangements, understandings, agreements, statements, representations or warranties (whether written or oral) relating thereto.
 2. Neither party has been given, nor entered into this contract in reliance on any arrangements, understandings, agreements, statements, representations or warranties other than those expressly set out in this agreement.
 3. Nothing in clauses 4 or 5 shall exclude liability in respect of misrepresentations made fraudulently.

Signed on behalf of the Consultant:

Name

Position

Signature

Date

The Client accepts the Consultant's Offer to Provide the Service

Signed on behalf of the Client:

Name

Position

Signature

Date

Short Contract

A contract between

Department for Energy Security and Net Zero (DESNZ)

and

AECOM Limited

for

Provision of Building Energy Performance Specialist Services to the Smart Metering Implementation Programme

RM6314 – Project Reference: DMR-34814-2024

Contract Forms

Contract Data

The Consultant's Offer and Client's Acceptance

Price List

Scope

Contract Data

The *Client's* Contract Data

The *Client* is

Name Department for Energy Security and Net Zero (DESNZ)

Address for communications 3-8 Whitehall Place
London
SW1A 2EG

Address for electronic communications

The service is Building Energy Performance Specialist Services to the Smart Metering Implementation Programme undertaking accuracy and policy development workstreams aimed at accelerating and assuring the robustness of SMETER applications which are in progress, scoping opportunities and developing further evidence, including the value of measurement.

The starting date is Wednesday 14th August 2024

The completion date is Thursday 13th August 2026 (or Wednesday 13th August 2025 where break clause is initiated)
Friday 13th August 2027 (if Phase 3 extension is applied)

The delay damages are £0 per day

The law of the contract is English

The period for reply is 2 weeks

The defects date is 52 weeks after Completion

The assessment day is the 1st of each month

The United Kingdom Housing Grants, Construction and Regeneration Act (1996) **does not** apply

The *Adjudicator* is

Name To be confirmed by both parties

Address for communications

Address for electronic communications

Contract Data

The *Client's* Contract Data

The interest rate on late payment is % per complete week of delay.

The *Client* provides this insurance

No insurance provided by the *Client*

The *Consultant* provides the following insurance cover

INSURANCE AGAINST	MINIMUM AMOUNT OF COVER	PERIOD FOLLOWING COMPLETION OR EARLIER TERMINATION
Liability of the <i>Consultant</i> for claims made against it arising out of the <i>Consultant's</i> failure to use the skill and care normally used by professionals providing services similar to the service.	£5 million in respect of each claim, without limit to the number of claims	6 years
Loss of or damage to property and liability for bodily injury to or death of a person (not an employee of the <i>Consultant</i>) arising from or in connection with the <i>Consultant</i> Providing the Service.	£5 million in respect of each event, without limit to the number of events	1 year
Liability for death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with the contract	£5 million in respect of each event, without limit to the number of events	1 year

The *Consultant's* total liability to the *Client* which arises under or in connection with the contract is limited to

£5 million

The *Adjudicator nominating* body is

To be confirmed by both parties.

The *tribunal* is

Arbitration

If the *tribunal* is arbitration, the arbitration procedure is

To be confirmed by both parties.

Contract Data

The *Client's* Contract Data

The *conditions of contract* are the NEC4 Professional Service Short Contract June 2017 (with amendments January 2019 and October 2020) and the following additional conditions

The additional conditions of contract are as detailed in the appended Standard Boilerplate Amendments – Appendix A.

Contract Data

The *Consultant's* Contract Data

The *Consultant* is

Name

Address for communications

Address for electronic communications

The fee percentage is %

The *people rates* are

category of person	unit	rate
<input type="text" value=""/>	Daily	<input type="text" value=""/>
<input type="text" value=""/>	Daily	<input type="text" value=""/>
<input type="text" value=""/>	Daily	<input type="text" value=""/>
<input type="text" value=""/>	Daily	<input type="text" value=""/>
<input type="text" value=""/>	Daily	<input type="text" value=""/>
<input type="text" value=""/>	Daily	<input type="text" value=""/>

The key persons are

Name (1)

Job

Responsibilities

Qualifications

Experience

Name (2)

Job

Responsibilities

Qualifications

Experience

Name (3)

Job

Responsibilities

Qualifications

Experience

Name (4)

Job

Responsibilities

Qualifications

Experience

Name (5)

Job

Responsibilities

Qualifications

Experience

Name (6)

Job

Responsibilities

Qualifications

Experience

The *Consultant's* Offer

The *Consultant* offers to Provide the Service in accordance with these *conditions of contract* for an amount to be determined in accordance with these *conditions of contract*.

The offered total of the Prices is

£428,332.00

Price List

ITEM NUMBER	DESCRIPTION	UNIT	EXPECTED QUANTITY	RATE	PRICE
1		Day Rate			
2		Day Rate			
3		Day Rate			
4		Day Rate			
5		Day Rate			
6		Day Rate			
7		Fixed			

Prices

The total of the

£428,332.00

EXPENSES

The method and rules used to compile the Price List are

Price will be evaluated using proportionate pricing (lowest bid / bid * mark) in line with the Consultants charges detailed withing Annex 3.

Scope

1 Purpose of the *service*

As per the specification located within Annex 1 and all supporting documentation for BE24137.

2 Description of the *service*

As per the specification located within Annex 1 and all supporting documentation for BE24137.

3 Existing information

As per the specification located within Annex 1 and all supporting documentation for BE24137.

4 Specifications and standards

As per the specification located within Annex 1 and all supporting documentation for BE24137.

5 Constraints on how the *Consultant Provides the Service*

As per the specification located within Annex 1 and all supporting documentation for BE24137.

6 Requirements for the programme

As per the specification within Annex 1 and all supporting documentation for BE24137.

7 Information and other things provided by the *Client*

ITEM	DATE BY WHICH IT WILL BE PROVIDED
Requirements set out within Annex 4 -GDPR Questionnaire	By Contract Award

Annex 1 – The Clients Specification

Section 4 – Specification

Introduction

UK Shared Business Services Ltd (UKSBS), on behalf of the Department for Energy Security and Net Zero (DESNZ) wishes to appoint a supplier to provide Building Energy Performance Specialist Services to the Smart Metering Implementation Programme (SMIP) to accelerate and assure the robustness of SMETER applications, scope opportunities, and expand the evidence base.

UKSBS is managing this procurement process in accordance with the Public Contracts Regulations 2015 (as amended from time to time) (the “Regulations”).

This is a services contract.

The Smart Metering Implementation Programme (SMIP)

The Smart Metering Implementation Programme (SMIP) is a Government Major Projects Portfolio programme, overseeing the replacement of traditional gas and electricity meters with smart meters in homes and small businesses. At the end of March 2024, there were 35.5 million smart and advanced meters across Great Britain, representing 62% smart coverage.

Smart meters are future-proofing our energy system by moving it into the digital age, making SMIP amongst the most significant change programmes in the energy industry. The rollout underpins the cost-effective delivery of net zero emissions, enabling consumers to save money by using energy when renewable generation is available. Smart meters are also modernising the energy system for millions of consumers by providing information that households can use to manage their energy consumption, ending manual meter reads, reducing billing complaints, and transforming the pre-payment experience. Energy networks have better information upon which to manage and plan activities.

SMIP is seeking to increase the £6 billion of already-identified smart metering net benefits through additional innovative technologies, enabled by smart meters, with the potential to significantly reduce net zero delivery costs.

Smart Meter Enabled Thermal Efficiency Ratings (SMETER)

Previously, methods for accurately measuring the energy performance of homes have not been scalable. The established way of precisely measuring heat loss is the co-heating test, which costs several thousand pounds and requires homes to be unoccupied. Therefore, assessment of the performance of individual buildings has, by necessity, been assumption based, with actual performance often very different.

The lack of reliable information about the actual performance of individual homes can affect decisions such as: which properties to target for retrofit improvements; whether a building is suitable for a heat pump without expensive retrofit measures; and what size of heat pump is required. Uncertainty around costs and whether the projected savings of treating a property will be realised is also a blocker to unlocking private finance.

Smart Meter Enabled Thermal Efficiency Ratings (SMETER) is a cost-effective new approach to assessing energy performance while the home is ‘in-use’ (occupied by the householders), using smart meters and other low-cost data sources to produce energy performance metrics, such as the building’s Heat Transfer Coefficient (HTC).

Development of SMETER will enable us to scope and evidence opportunities relating to energy performance measurement, with the potential to better target investment at all levels and significantly reduce the cost of delivering net zero. Energy associated with heating homes represents the biggest element of domestic energy consumption, and accurate information on heat losses could inform and incentivise action by installers, suppliers, policymakers and householders to efficiently transform housing.

Background

Between 2018 and 2021, DESNZ supported SMETER via an innovation competition, which funded competition partners to develop and test their own methods for measuring the thermal performance of homes using smart meter and other data. This was followed by the scientific demonstration of SMETER methods via the SMETER Innovation Competition Technical Evaluation of SMETER Technologies (TEST) project.

SMIP led the SMETER Business Process Design (BPD) project from 2021-23 to analyse the applications, benefits and requirements of these technologies. This fulfilled a commitment in the Government's EPC Action Plan and informed steps to introduce SMETER methods in retrofit policies and explore further applications within DESNZ innovation programmes.

SMIP is now building upon work to-date with the next phase of SMETER development and implementation, aimed at accelerating and assuring the robustness of SMETER applications which are in progress, scoping opportunities and developing further evidence, including on the value of measurement.

Services Required

The requirement is for services to begin on 8th August 2024 and to run to 7th August 2026, with the option to extend by a further 12 months if required.

SMIP is seeking the provision of a small project team of resources combining:

- Technical expertise in buildings and energy data utilisation and performance measurement approaches and methods in new and existing buildings.
- Scientific expertise in the measurement and modelling of building energy performance.
- Social research and stakeholder engagement methods expertise relevant to the areas of home energy performance, efficiency and heating policies and markets.

The team will be required to provide the following skills:

- Specific, in-depth knowledge of and proven background working with regulations and commercial actors and arrangements for building energy performance assessment.
- Understanding of SMETER and other building performance measurement methods, including their technical requirements and current and emerging commercial products and future innovation potential.
- Deep understanding of building physics methods and the development of scientific evidence as they relate to the modelling (including stock modelling) and in-use measurement of home energy performance.

- Expertise in social research methods relevant to investigating consumer and policy applications of in-use measurement, such as through stakeholder engagement, consumer research and approaches such as Theory of Change.
- Functional expertise in the design of systems supporting energy performance measurement, such as for home energy assessment and supporting models and databases.
- Project delivery and change management expertise.
- Understanding of the dynamics and challenges faced by those developing novel new build, retrofit, energy efficiency and low carbon heating products and services, including the impact of net zero policies, digitalisation and the smart metering rollout on the commercial decisions of relevant stakeholders.

The specialists will work primarily with the Benefits Realisation team in SMIP, but will also engage and support work across DESNZ, including with the SICE Energy Research team and relevant policy, innovation and analysis areas, and externally across government to support the development and delivery of policies in net zero buildings that are enabled by SMETER. As such, they will work collaboratively with, and draw on inputs, policy and specialist expertise from, a range of civil servants supporting this work and related activities.

The contractor will be required to support skills and knowledge transfer where appropriate.

We may also require the contractor to procure specific deliverables to meet project goals (for example, software or a model); these costs are anticipated to amount to approximately £25,000 + VAT and may be drawn down from the total contract value during Phase 1.

Deliverables

The core workstreams will include:

- **Accuracy, uncertainty, validation and quality assurance requirements and methods.** This includes work to develop a new framework (principles, criteria, methods and supporting systems) for in-use measurement. Initially this will be focussed on supporting policy pilots (SHDF Digital Uplift, ECO4 and GBIS Pay for Performance) in the retrofit area and new applications in clean heat and green finance.

Deliverables will include analysis of accuracy requirements against the spectrum of future applications and provision of expert panel members to (alongside DESNZ and Ofgem personnel) review applications and make a recommendation on whether SMETER providers meet criteria for participation in ECO4 and GBIS Pay for Performance.

- **Policy development and implementation.** This includes work to develop uses of in-use HTC methods, through analysis (including development of new evidence) and external stakeholder engagement. Within scope will be retrofit policies (SHDF and ECO4 and GBIS Pay for Performance), clean heat and green finance, with the potential for additional policy areas where agreed. This includes analysis of options for the future application of in-use measurement in retrofit policies (beyond current policy pilots) and implications for existing mechanisms such as PAS2035. Work may include the development of new capacities e.g. databases or software tools.

- **Evidence.** Expanding the evidence base on the HTC performance gap and improved accuracy of outcome prediction through analysis of existing datasets and EPC data, in partnership with other actors. Support may be needed with development of evidence to underpin possible future funding and/or policy proposals within government.

Engagement with the science base will support work towards a joint strategy on developing evidence and applications of in-use measurement. This is likely to include convening a small number of thematic workshops with invited external contributors to develop aspects of strategy and lines of investigation.

- **Project management and governance.** This will include convening and managing a task force to obtain diverse inputs to policy development. A small steering group within DESNZ will also be assembled to support and guide this work.

The project will be delivered in phases. This will enable the project plan to be co-created by the successful bidder with input from DESNZ. This approach also allows sufficient flexibility to prioritise according to early scoping activities and findings and to adapt, if required, to any emerging external factors or wider government priorities.

- **Initiation phase.** The project team will work with SMIP to review the current state of play and immediate priorities, including stakeholder engagement. Outputs to include an inception report and project plan, within six weeks of contract start.
- **Phase 1.** This will substantially be the initial phase of work, during which scoping of Phase 2 activities should also take place. Outputs will be further developed with the successful bidder during the inception phase but are expected to include: Phase 1 report on accuracy and policy development workstreams; 3-4 workshop reports.
- **Phase 2.** This will include continuation of workstreams on accuracy and policy development and evidence, with outputs to be agreed before the end of Phase 1.
- We expect the project team will be required to support with developing proposals, for example by producing a draft report to support a business case for funding. The precise timing of this will depend upon wider government timelines and deadlines.

Broadly, days should be split equally between Phase 1 (including initiation phase) and Phase 2 over the initial 24-month contract period. There is also an option to extend the contract by a further 12 months to Phase 3. Where Phase 3 is implemented, the costs associated shall be called off in accordance with the suppliers' schedule of rates provided in tab 2 of AW5.2 Price Schedule.

Location of Work

The successful bidder will work closely with colleagues based primarily in DESNZ at 3-8 Whitehall Place, London. The project team may work remotely or from their own office location, with the majority of meetings conducted via Microsoft Teams.

Occasional attendance at the DESNZ London office will be required for semi-regular in-person meetings and/or workshops.

It may also be necessary for the successful bidder to attend meetings with stakeholders to explain and to answer specialist questions – this will be either at the DESNZ London office, at stakeholder premises or at a suitable venue nearby.

Normal travel and subsistence costs within the M25 are expected to be included within daily rates. Travel costs outside of London will be reimbursed in line with DESNZ travel and subsistence policy at standard rates.

Working Arrangements

The successful contractor will be expected to identify one named point of contact through whom all enquiries can be filtered. A DESNZ project lead will be assigned to this work and will be the central point of contact.

Data Protection

The successful supplier will be compliant with the Data Protection Legislation, as defined in the terms and conditions applying to this Mini Competition. A guide to The General Data Protection Regulation published by the Information Commissioner's Office can be found [here](#).

The Parties are Independent Controllers of Personal Data

The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of:

Business contact details of Supplier Personnel for which the Supplier is the Controller, such as work email addresses and telephone numbers.

Business contact details of any directors, officers, employees, agents, consultants and contractors of Relevant Authority (excluding the Supplier Personnel) engaged in the performance of the Relevant Authority's duties under the Contract) for which the Relevant Authority is the Controller.

Data Security

The successful supplier is required to implement appropriate arrangements for data security at all times. Such procedures must meet the General Data Protection Regulation and the Data Protection Act 2018.

Processes should be in place for data being submitted by third parties and must safeguard against data loss, including appropriate risk management procedures.

The Department reserves the right to vary the contract to ensure compliance with DPA 2018. Anonymised responses and analysis will be provided to the Department.

Any information collected, processed and transferred on behalf of the Department, and in particular personal information, must be held and transferred securely. The successful supplier must provide assurances of compliance with GDPR and will have responsibility for ensuring that they and any subcontractor who processes or handles information on behalf of the Department is conducted securely.

Skills and Expertise

DESNZ requires bidders to demonstrate that they have the relevant expertise and capabilities to undertake the work. The bid response to PROJ1.2 should include a summary of each proposed team member's expertise and capabilities (including up-to-date CVs). Team members may be from different organisations in the case of consortium bids or sub-contracting arrangements.

Contractors should propose named members of the team and include the tasks and areas of responsibility of each team member.

Contractors should identify the individual(s) who will be responsible for the overall management of the work and services being provided.

We are expecting a team of approximately 4-6 people, who will not be expected to work full-time. As mentioned, we anticipate that the number of days allocated to the project should, broadly, be split equally between Phase 1 (including initiation phase) and Phase 2 over the initial 24-month contract period.

Basis of award

The Mini Competition process will be conducted to determine the most economically advantageous solution.

DESNZ reserves the right to disqualify any bidder which does not submit a completed Tender before the response deadline or provides misleading or incorrect information.

Budget and Phasing

The budget for completion of Phase 1 and Phase 2 is circa £441,667.00 (ex. VAT, £530,000.00 inc. VAT).

Invoices: Subject to the contractor providing the services to the Authority in accordance with the contract and submitting invoice/s to the DESNZ contract manager in the manner reasonably required by the DESNZ contract manager, payment will be made by the Authority to the contractor for services rendered monthly in arrears. Before payment can be considered, each invoice must include a detailed elemental breakdown of work completed and the associated costs.

Where the Department provides confirmation that they intend to utilise the extension, the budget for Phase 3 shall be £208,333.00 + VAT.

Break Clauses

The Department reserves the right to initiate a Break Clause after the completion of Phase 1 and conclude the contract.

Phase 2 shall be subject to satisfactory completion of Phase 1 and confirmation from the Department to proceed.

The Department also reserves the right not to utilise the extension period for Phase 3.

Pricing

Cost will be a criterion against which bids which will be assessed. Bidders must complete AW5.2 Price Schedule in line with their daily rates for staff, including those with the capabilities required, who would be allocated to deliver against the Requirement set out above.

Bidders are to ensure that their pricing submitted within Tab 1 for Phase 1 and Phase 2 of AW5.2 is reflective of the services to be undertaken up until completion of Phase 2 and in line with the approved budget associated of £441,667.00 + VAT.

Where the contract proceeds into Phase 3, the Department will agree a firm fixed price with the successful supplier in accordance with the day rates provided within AW5.2 Price Schedule Tab 2 which shall remain firm and fixed for Phase 3.

By submitting a response, bidders confirm that the prices offered will remain open for acceptance for a minimum of 90 Working Days from the date of submission.

For meetings outside of London, the bidder may recover travel costs on the basis of travel and subsistence rates applicable to DESNZ civil servants and in line with the DESNZ Expenses Policy.

Terms and Conditions

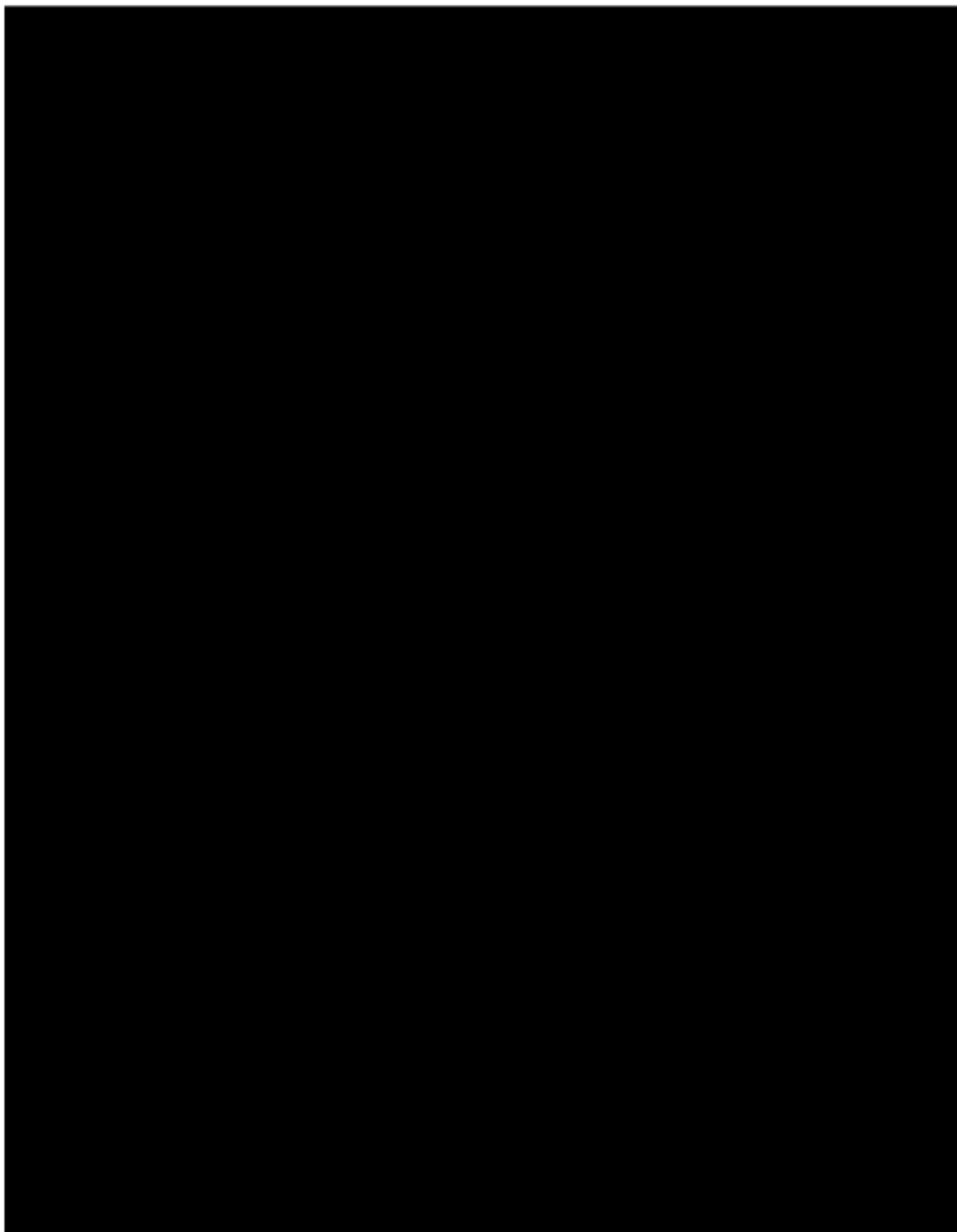
Bidders are to note that any requested modifications to the Contracting Authority Terms and Conditions, on the grounds of statutory and legal matters only, shall be raised as a formal clarification during the permitted clarification period.

Sourcing Document Clarifications

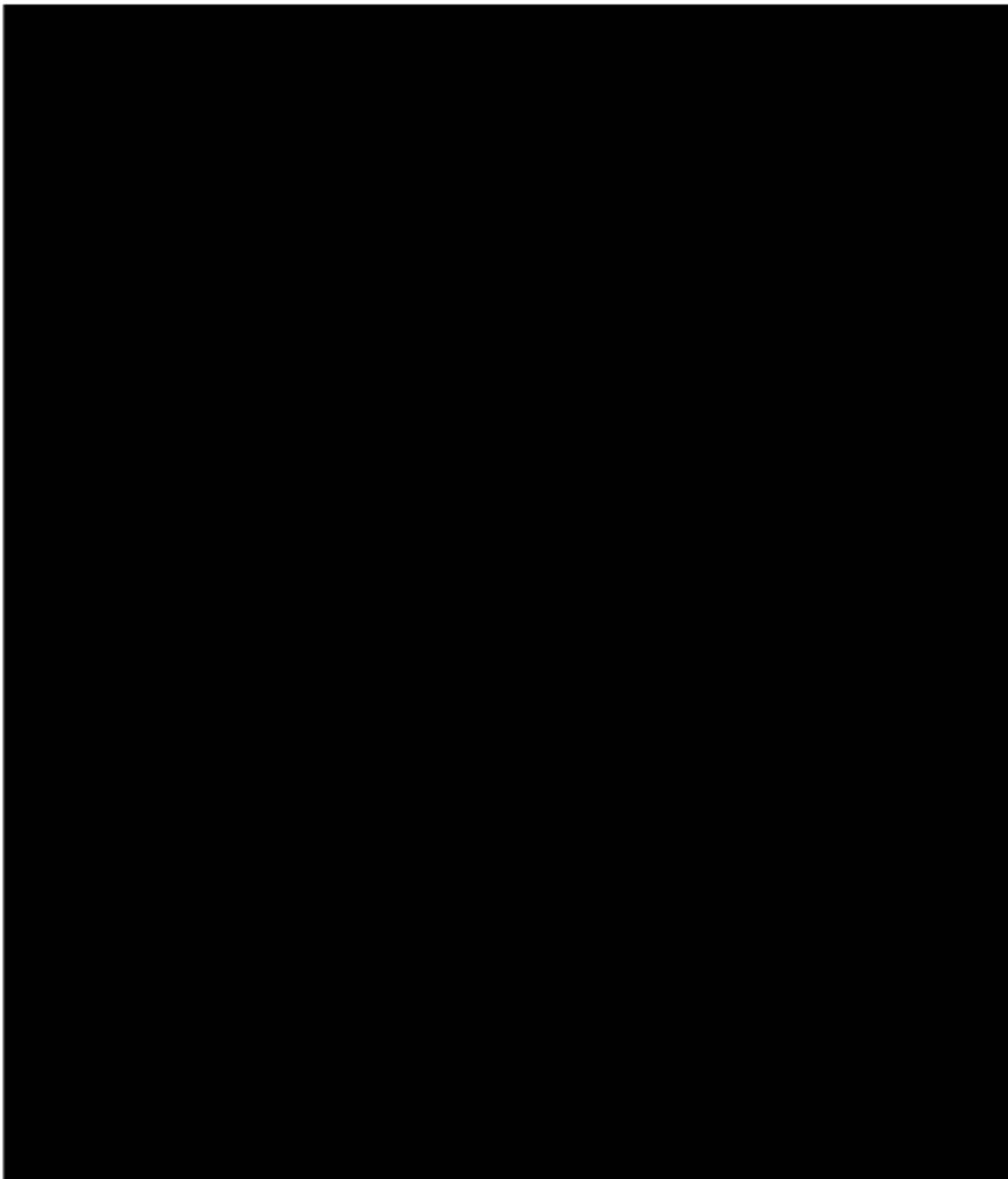
SOURCING REFERENCE:	BE24137
SOURCING DOCUMENT TITLE:	Provision of Building Energy Performance Specialist Services to the Smart Metering Implementation Programme

No.	Section of sourcing document	Questionnaire	Question No.	Issue raised by Bidder for clarification	Date raised	Issue responded to by the Contracting Authority	Date responded
1	Section 3 - Timescales	N/A	N/A	<p>Can the latest date for clarification questions please be extended until Monday 1st July? Typically, as the tender is being developed, further clarification questions arise.</p> <p>In addition, it is unclear whether the intent is for DESNZ to issue the clarification answers together in one go at the end of the clarification period. If possible, could clarification answers be issued at intervals. It avoids delay in tender preparation.</p>	18/06/2024	<p>The Department can extend the deadline for Mini Competition clarification questions to be received through Jaggaer eSourcing Portal to 11am on Friday 28th June 2024. DESNZ encourages Bidders to submit questions earlier than this date, where possible.</p> <p>The latest date for Mini Competition clarification answers to be sent to all Bidders by the Buyer through Jaggaer eSourcing Portal will therefore be 5pm on Wednesday 3rd July 2024.</p> <p>The Department intends to issue clarification answers at intervals rather than at the end of the clarification period.</p> <p>BE23137 - Mini Competition - MC V2 has been uploaded to the document repository which reflects the revised timescales for clarifications.</p>	20/06/2024
2	Section 4 - Specification	N/A	N/A	<p>(RE: Specification P11 - Deliverables) Have the software costs of £25k been checked with potential supplier to validate the costs? Is it up to the supplier to identify a suitable software provider?</p>	27/06/2024	<p>The £25,000 estimate of fixed costs is based on previous experience and has been provided so that all bids rely on the same assumption. If necessary, and where agreed by DESNZ and the successful supplier, additional funding will be made available to cover fixed costs that are higher than expected. The Department will work with the successful supplier to identify a suitable provider.</p>	02/07/2024
3	Section 4 - Specification	N/A	N/A	<p>(RE: Specification P11 - Deliverables) Is there any expectation of field trials to be included within the analysis of accuracy requirements as part of the review of applications?</p>	27/06/2024	<p>The Department does not expect that field trials will be necessary as part of this contract. Suppliers should assume that analysis will use existing datasets, for example from UK and Welsh Government and/or other sources where possible. The approach to developing the framework will need to take into account the expected continuing emergence of evidence from multiple sources (potentially including separately commissioned and funded studies and work undertaken by commercial providers).</p>	02/07/2024

Annex 2 – The Consultants Proposal



Annex 3 – The Consultants Offer



Annex 4 – GDPR Questionnaire



Appendix A – Standard Boilerplate Amendments

SCHEDULE OF AMENDMENTS TO NEC4 PROFESSIONAL SERVICES SHORT CONTRACT

Option Z2 - Identified and defined terms

Insert new clause 11.3 additional defined terms.

11.3 (1) Auditor is:

- the *Client's* internal and external auditors;
- the *Client's* statutory or regulatory auditors;
- the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
- HM Treasury or the Cabinet Office;
- any party formally appointed by the *Client* to carry out audit or similar review functions;
and
- successors or assigns of any of the above;

11.3 (2) Change of Control is a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;

11.3 (3) Client Confidential Information is all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and contractors of the *Client*, including all IPRs, 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 be considered to be confidential.

11.3 (4) Client Data is the data, 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 supplied to the *Consultant* by or on behalf of the *Client*,
- which the *Consultant* is required to generate, process, store or transmit pursuant to this contract or
- which are any Personal Data for which the *Client* is the Data Controller to the extent that such Personal Data is held or processed by the *Consultant*.

11.3 (5) Client's Premises are premises owned, occupied or leased by the *Client* and the site

*Standard 'boilerplate' amendments*

of any works to which the *service* relates.

11.3 (6) Commercially Sensitive Information is the information agreed between the Parties (if any) comprising the information of a commercially sensitive nature relating to the *Consultant*, the charges for the service, its IPR or its business or which the *Consultant* has indicated to the *Client* that, if disclosed by the *Client*, would cause the *Consultant* significant commercial disadvantage or material financial loss.

11.3 (7) Confidential Information is the Client's Confidential Information and/or the Consultant's Confidential Information.

11.3 (8) Contracting Body is any Contracting Body as defined in Regulation 5(2) of the Public Contracts (Works, Service and Supply) (Amendment) Regulations 2000 other than the Client.

11.3 (9) Consultant's Confidential Information is any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and consultants of the *Consultant*, including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, including the Commercially Sensitive Information.

11.3 (10) Crown Body is any department, office or agency of the Crown.

11.3 (11) DASVOIT is the Disclosure of Tax Avoidance Schemes: VAT and other indirect taxes contained in the Finance (No.2) Act 2017.

11.3 (12) Data Controller has the meaning given to it in the Data Protection Legislation.

11.3 (13) Data Protection Legislation is (i) the GDPR, (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy, which, pending a decision from the competent authorities of the EU on the adequacy of the UK data protection regime will include the requirements set out or referenced in Part Three, Title VII, Article 71(1) of the Withdrawal Agreement signed by the UK and the EU in December 2019;

11.3 (14) DOTAS is the Disclosure of Tax avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and 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 made under s.132A Social Security Administration Act 1992.

11.3 (15) 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.

11.3 (16) 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.

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11.3 (17) General Anti-Abuse Rule is

- the legislation in Part 5 of the Finance Act 2013 (as amended) and
- any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements and to avoid national insurance contributions.

11.3 (18) Halifax Abuse Principle is the principle explained in the CJEU Case C-255/02 Halifax and others.

11.3 (19) Intellectual Property Rights or "IPRs" is

- copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information,
- applications for registration, and the right to apply for registration, for any of the rights listed in the first bullet point that are capable of being registered in any country or jurisdiction,
- all other rights having equivalent or similar effect in any country or jurisdiction and
- all or any goodwill relating or attached thereto.

11.3 (20) Law is any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the *Consultant* is bound to comply under the *law of the contract*.

11.3(21) An Occasion of Tax Non-Compliance is

- where any tax return of the *Consultant* submitted 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 rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle or
- the failure of an avoidance scheme which the *Consultant* was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DAVOIT, DOTAS or VADR or any equivalent or similar regime and

where any tax return of the *Consultant* submitted to a Relevant Tax Authority on or after 1 October 2012 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 date of this contract or to a civil penalty for fraud or evasion.

*Standard 'boilerplate' amendments*

11.3 (22) Personal Data has the meaning given to it in the Data Protection Legislation.

11.3 (23) Prohibited Act is

- to directly or indirectly offer, promise or give any person working for or engaged by the *Client* or other Contracting Body 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,
- 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 *Client* 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.

11.3 (24) Request for Information is a request for information or an apparent request under the Code of Practice on Access to government Information, FOIA or the Environmental Information Regulations.

11.3 (25) 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.

11.3 (26) Relevant Tax Authority is HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the *Consultant* is established.

11.3 (27) Security Policy means the *Client's* security policy attached as Appendix 1 to Contract Schedule J (Security Provisions) as may be updated from time to time.

11.3 (28) VADR is the VAT disclosure regime under Schedule 11A of the Value Added Tax Act 1994 (VATA 1994) (as amended by Schedule 1 of the Finance (No. 2) Act 2005).

Option Z 4 - Admittance to Client's Premises

Insert new clause 18:

18.1 The *Consultant* submits to the *Client* details of people who are to be employed by it and its subcontractors in Providing the Service. The details include a list of names and addresses, the capabilities in which they are employed, and other information required by the *Client*.

*Standard 'boilerplate' amendments*

18.2 The *Client* may instruct the *Consultant* to take measures to prevent unauthorised persons being admitted to the *Client's* Premises.

18.3 Employees of the *Consultant* and its subcontractors are to carry a *Client's* pass and comply with all conduct requirements from the *Client* whilst they are on the parts of the *Client's* Premises identified in the Scope.

18.4 The *Consultant* submits to the *Client* for acceptance a list of the names of the people for whom passes are required. On acceptance, the *Client* issues the passes to the *Consultant*. Each pass is returned to the *Client* when the person no longer requires access to that part of the *Client's* Premises or after the *Client* has given notice that the person is not to be admitted to the *Client's* Premises.

18.5 The *Consultant* does not take photographs of the *Client's* Premises or of work carried out in connection with the *service* unless it has obtained the acceptance of the *Client*.

18.6 The *Consultant* takes the measures needed to prevent its and its subcontractors' people taking, publishing or otherwise circulating such photographs.

Option Z5 - Prevention of fraud and bribery

Insert new clauses:

17.4.1 The *Consultant* represents and warrants that neither it, nor to the best of its knowledge any of its people, have at any time prior to the date of this contract

- committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act 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.

17.4.2 During the carrying out of the *service* the *Consultant* does not

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

17.4.3 In Providing the *Service* the *Consultant*

- establishes, maintains and enforces, and requires that its subcontractors 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



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available to the *Client* on request and

- provides and maintains and where appropriate enforces an anti-bribery policy (which shall be disclosed to the *Client* on request) to prevent it and any *Consultant's* people or any person acting on the *Consultant's* behalf from committing a Prohibited Act.

17.4.4 The *Consultant* immediately notifies the *Client* in writing if it becomes aware of any breach of clause 17.4.1, or has reason to believe that it has or any of its people or subcontractors 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 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.

17.4.5 If the *Consultant* makes a notification to the *Client* pursuant to clause 17.4.4, the *Consultant* responds promptly to the *Client's* enquiries, co-operates with any investigation, and allows the *Client* to audit any books, records and/or any other relevant documentation in accordance with this contract.

17.4.6 If the *Consultant* breaches clause 17.4.3, the *Client* may by notice require the *Consultant* to remove from carrying out the service any person whose acts or omissions have caused the *Consultant's* breach.

Option Z6 - Equality and diversity

Insert new clauses:

25.1 The *Consultant* performs its obligations under this contract in accordance with

- all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
- any other requirements and instructions which the *Client* reasonably imposes in connection with any equality obligations imposed on the *Client* at any time under applicable equality Law;

25.2 The *Consultant* takes all necessary steps, and informs the *Client* of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

*Standard 'boilerplate' amendments***Option Z8 – Conflicts of interest**

Insert new clauses:

26.1. The *Consultant* takes appropriate steps to ensure that neither the *Consultant* nor any of its personnel are placed in a position where (in the reasonable opinion of the *Client*) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the *Consultant* or its personnel and the duties owed to the *Client* under this contract.

26.2. The *Consultant* promptly notifies and provides full particulars to the *Client* if such conflict referred to in clause 26.1 arises or may reasonably be foreseen as arising.

26.3. The *Client* may terminate the *Consultant's* obligation to Provide the Service immediately under reason R2 and/or to take such other steps the *Client* deems necessary where, in the reasonable opinion of the *Client*, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the *Consultant* and the duties owed to the *Client* under this contract.

Option Z9 – Publicity and Branding

Insert new clauses:

27.1 The *Consultant* does not

- make any press announcements or publicise this contract in any way
- use the *Client's* name or brand in any promotion or marketing or announcement of the contract

without approval of the *Client*.

27.2. The *Client* is entitled to publicise the contract in accordance with any legal obligation upon the *Client*, including any examination of the contract by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

Option Z10 - Freedom of information

Insert new clauses:

22.1 The *Consultant* acknowledges that unless the *Client* has notified the *Consultant* that the *Client* is exempt from the provisions of the FOIA, the *Client* is subject to the requirements of the Code of Practice on Government Information, the FOIA and the Environmental Information Regulations. The *Consultant* cooperates with and assists the *Client* so as to enable the *Client* to comply with its information disclosure obligations.

22.2 The *Consultant*

- transfers to the *Client* 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,

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- provides the *Client* with a copy of all information in its possession, or power in the form that the *Client* requires within five working days (or such other period as the *Client* may specify) of the *Client's* request,
- provides all necessary assistance as reasonably requested by the *Client* to enable the *Client* 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 Subcontractors do likewise.

22.3 The *Client* is responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.

22.4 The *Consultant* does not respond directly to a Request for Information unless authorised to do so by the *Client*.

22.5 The *Consultant* acknowledges that the *Client* may, acting in accordance with Cabinet Office Freedom of Information Code of Practice, be obliged to disclose information without consulting or obtaining consent from the *Consultant* or despite the *Consultant* having expressed negative views when consulted.

22.6 The *Consultant* ensures that all information is retained for disclosure throughout the *period for retention* and permits the *Client* to inspect such records as and when reasonably requested from time to time.

Option Z13 - Confidentiality and Information Sharing

Insert a new clause

23.1 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,
- not disclose the other Party's Confidential Information to any other person without prior written consent,
- immediately notify the other Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information and
- notify the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may be a criminal offence under the Bribery Act 2010.

23.2 The clause above shall not apply to the extent that

- such disclosure is a requirement of the Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause Z10 (Freedom of

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Information),

- such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner,
- 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.

23.3 The *Consultant* may only disclose the Client Confidential Information to the people who are directly involved in Providing the Service and who need to know the information, and shall ensure that such people are aware of and shall comply with these obligations as to confidentiality. The *Consultant* shall not, and shall procure that the *Consultant's* people do not, use any of the Client Confidential Information received otherwise than for the purposes of this contract.

23.4 The *Consultant* may only disclose the Client Confidential Information to *Consultant's* people who need to know the information, and shall ensure that such people 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's* people 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's* people, the *Consultant* shall provide such evidence to the *Client* as the *Client* 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's* people, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with *Consultant's* people in connection with obligations as to confidentiality.

23.5 At the written request of the *Client*, the *Consultant* shall procure that those members of the *Consultant's* people identified in the *Client's* request signs a confidentiality undertaking prior to commencing any work in accordance with this contract.

23.6 Nothing in this contract shall prevent the *Client* from disclosing the *Consultant's* Confidential Information

- to any Crown Body or any other Contracting Bodies. All Crown Bodies or Contracting Bodies receiving such Confidential Information shall be entitled to further disclose the *Consultant's* Confidential Information to other Crown Bodies or other Contracting Bodies 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 Body,
- to a professional adviser, contractor, consultant, supplier or other person engaged by the *Client* or any Crown Body (including any benchmarking organisation) for any purpose connected with this contract, or any person conducting an Office of Government Commerce Gateway Review,

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- for the purpose of the examination and certification of the *Client's* accounts,
- for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Client* has used its resources,
- for the purpose of the exercise of its rights under this contract or
- to a proposed successor body of the *Client* in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this contract,

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 *Client* under this clause 23.6.

23.7 The *Client* shall use all reasonable endeavours to ensure that any government department, Contracting Body, people, third party or subcontractor to whom the Consultant's Confidential Information is disclosed pursuant to the above clause is made aware of the *Client's* obligations of confidentiality.

23.8 Nothing in this clause shall prevent either party from using any techniques, ideas or know-how gained during the performance of the 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 IPR.

23.9 The *Client* may disclose the Consultant Confidential Information

- to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement,
- to the extent that the *Client* (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions.

Option Z16 - Tax Compliance

Insert new clauses:

24.1 The *Consultant* represents and warrants that at the date of this contract, it has notified the *Client* in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance.

24.2 If, at any point prior to the *defects date*, an Occasion of Tax Non-Compliance occurs, the *Consultant* shall

- notify the *Client* in writing of such fact within 5 days of its occurrence and
- promptly provide to the *Client*
 - details of the steps which the *Consultant* is taking to address the Occasions of Tax Non-Compliance and to prevent the same from recurring, together with any



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mitigating factors that it considers relevant and

- such other information in relation to the Occasion of Tax Non-Compliance as the *Client* may reasonably require.

Option Z22 - Fair payment

Insert a new clause:

53.1 The *Consultant* assesses the amount due to a subcontractor without taking into account the amount certified by the *Client*.

53.2 The *Consultant* includes in the contract with each subcontractor

- a period for payment of the amount due to the subcontractor not greater than 5 days after the final date for payment in this contract. The amount due includes, but is not limited to, payment for work which the subcontractor has completed from the previous assessment date up to the current assessment date in this contract,
- a provision requiring the subcontractor to include in each subsubcontract the same requirement (including this requirement to flow down, except that the period for payment is to be not greater than 9 days after the final date for payment in this contract and
- a provision requiring the subcontractor to assess the amount due to a subsubcontractor without taking into account the amount paid by the *Consultant*.

Option Z44 - Intellectual Property Rights

Delete clause 70 and insert the following clause

In this clause 70 only:

"Document" means all designs, drawings, specifications, software, electronic data, photographs, plans, surveys, reports, and all other documents and/or information prepared by or on behalf of the *Consultant* in relation to this contract.

70.1 The Intellectual Property Rights in all Documents prepared by or on behalf of the *Consultant* in relation to this contract and the work executed from them remains the property of the *Consultant*. The *Consultant* hereby grants to the *Client* an irrevocable, royalty free, non-exclusive licence to use and reproduce the Documents for any and all purposes connected with the construction, use, alterations or demolition of the *service*. Such licence entitles the *Client* to grant sub-licences to third parties in the same terms as this licence provided always that the *Consultant* shall not be liable to any licensee for any use of the Documents or the Intellectual Property Rights in the Documents for purposes other than those for which the same were originally prepared by or on behalf of the *Consultant*.

70.2 The *Client* may assign novate or otherwise transfer its rights and obligations under the licence granted pursuant to clause 70.1 to a Crown Body or to anybody (including any private sector body) which performs or carries on any functions and/or activities that previously had been performed and/or carried on by the *Client*.

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70.3 In the event that the *Consultant* does not own the copyright or any Intellectual Property Rights in any Document the *Consultant* uses all reasonable endeavours to procure the right to grant such rights to the *Client* 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 *Client* in accordance with the foregoing the *Consultant* procures that the third party grants a direct licence to the *Client* on industry acceptable terms.

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

70.5 In the event that any act unauthorised by the *Client* infringes a moral right of the *Consultant* in relation to the Documents the *Consultant* undertakes, if the *Client* so requests and at the *Client's* expense, to institute proceedings for infringement of the moral rights.

70.6 The *Consultant* warrants to the *Client* that it has not granted and shall not (unless authorised by the *Client*) grant any rights to any third party to use or otherwise exploit the Documents.

70.7 The *Consultant* supplies copies of the Documents to the *Client* and to the *Client'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 service.

70.8 After the termination or conclusion of the *Consultant's* employment hereunder, the *Consultant* supplies the *Client* with copies and/or computer discs of such of the Documents as the *Client* may from time to time request and the *Client* pays the *Consultant's* reasonable costs for producing such copies or discs.

70.9 In carrying out the service the *Consultant* does not infringe any Intellectual Property Rights of any third party. The *Consultant* indemnifies the *Client* against claims, proceedings, compensation and costs arising from an infringement or alleged infringement of the Intellectual Property Rights of any third party.

Option Z47 - Small and Medium Sized Enterprises (SMEs)

Insert new clause:

21.4

The *Consultant* is required to take all reasonable steps to engage SMEs as Subcontractors and to seek to ensure that no less than the SME percentage of Subcontractors stated in the Contract Data are SMEs or that a similar proportion of the Defined Cost is undertaken by SMEs.

The *Consultant* is required to report to the *Client* in its regular contract management monthly reporting cycle the numbers of SMEs engaged as Subcontractors and the value of the Defined Cost that has been undertaken by SMEs.

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Where available, the *Consultant* is required to tender its Subcontracts using the same online electronic portal as was provided by the *Client* for the purposes of tendering this contract.

The *Consultant* is to ensure that the terms and conditions used to engage Subcontractors are no less favourable than those of this contract. A reason for the *Client* not accepting subcontract documents proposed by the *Consultant* is that they are unduly disadvantageous to the Subcontractor.

Option Z49 – Change of Control

Insert new clauses:

19.1 The *Consultant* notifies the *Client* immediately in writing and as soon as the *Consultant* is aware (or ought reasonably to be aware) that it is anticipating, undergoing, undergoes or has undergone a Change of Control and provided such notification does not contravene any Law. The *Consultant* ensures that any notification sets out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.

90.7 The *Client* may terminate the *Consultant's* obligation to Provide the Service (which shall take effect as termination under reason R2) within six months from

- being notified in writing that a Change of Control is anticipated or is in contemplation or has occurred; or
- where no notification has been made, the date that the *Client* becomes aware that a Change of Control is anticipated or is in contemplation or has occurred, but shall not be permitted to terminate where an approval was granted prior to the Change of Control.

Option Z50 – Financial Standing

90.8 The *Client* may terminate the *Consultant's* obligation to Provide the Service (which shall take effect as termination under reason R2) where in the reasonable opinion of the *Client* there is a material detrimental change in the financial standing and/or the credit rating of the *Consultant* which:

- adversely impacts on the *Consultant's* ability to perform its obligations under this contract; or
- could reasonably be expected to have an adverse impact on the *Consultant's* ability to perform its obligations under this contract.

Option Z51 – Financial Distress

90.9 The *Consultant* complies with the provisions of Schedule A (Financial Distress) in relation to the assessment of the financial standing of the *Consultant* and the consequences of a change to that financial standing.



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Option Z52 – Records, audit access and open book data

Insert new clauses:

28.1 The *Consultant* keeps and maintains for the period of the *Consultant's* liability under this contract full and accurate records and accounts of the operation of this contract including the service provided under it, any subcontracts and the amounts paid by the *Client*.

28.2 The *Consultant*

- keeps the records and accounts referred to in clause 28.1 in accordance with Law
- affords any Auditor access to the records and accounts referred to in clause 28.1 at the *Consultant's* premises and/or provides records and accounts (including copies of the *Consultant's* published accounts) or copies of the same, as may be required by any Auditor from time to time during the *Consultant* Providing the Service and the liability period under the contract in order that the Auditor may carry out an inspection to assess compliance by the *Consultant* and/or its subcontractors of any of the *Consultant's* obligations under this contract including in order to:
 - verify the accuracy of any amounts payable by the *Client* under this contract (and proposed or actual variations to them in accordance with this contract)
 - verify the costs of the *Consultant* (including the costs of all subcontractors and any third party suppliers) in connection with Providing the Service
 - identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the *Client* has no obligation to inform the *Consultant* of the purpose or objective of its investigations
 - obtain such information as is necessary to fulfil the *Client's* obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General
 - enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Client* has used its resources
- subject to the *Consultant's* rights in respect of *Consultant's* Confidential Information, the *Consultant* provides the Auditor on demand with all reasonable co-operation and assistance in respect of
 - all reasonable information requested by the *Client* within the scope of the audit
 - reasonable access to sites controlled by the *Consultant* and to any *Consultant's* equipment used to Provide the Service
 - access to the *Consultant's* personnel.

28.3 The Parties bear their own respective costs and expenses incurred in respect of

*Standard 'boilerplate' amendments*

compliance with their obligations under this clause 28, unless the audit reveals a default by the *Consultant* in which case the *Consultant* reimburses the *Client* for the *Client's* reasonable costs incurred in relation to the audit.

28.4 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.

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SCHEDULE A FINANCIAL DISTRESS

1. Definitions

1.1. In this Schedule A the following definitions apply:

"Credit Rating Threshold" means the minimum credit rating level for the *Consultant* as set out in Annex 1

"Financial Distress Event" means the occurrence or one or more of the events listed in this Schedule A

"Financial Distress Service Continuity Plan" means a plan setting out how the *Consultant* will ensure the continued performance in accordance with this contract in the event that a Financial Distress Event occurs;

"Rating Agency" means the rating agency means Dun & Bradstreet.

2. Credit rating and duty to notify

2.1. The *Consultant* warrants and represents to the *Client* for the benefit of the *Client* that as at the date of the contract the long-term credit ratings issued for the *Consultant* by the Rating Agency.

2.2. The *Consultant* promptly notifies (or procures that its auditors promptly notify) the *Client* if there is any significant downgrade in the credit rating issued by any Rating Agency for the *Consultant* (and in any event within seven days from the occurrence of the downgrade).

2.3. If there is any downgrade credit rating issued by any Rating Agency for the *Consultant*, the *Consultant* ensures that the *Consultant's* auditors thereafter provide the *Client* within 14 days of a written request by the *Client* or the *Service Manager* with written calculations of the quick ratio for the *Consultant* at such date as may be requested by the *Client*. For these purposes the "quick ratio" on any date means:

Where

A. is the value at the relevant date of all cash in hand and at the bank of the *Consultant*

B. is the value of all marketable securities held by the *Consultant* determined using closing prices on the working day preceding the relevant date

C. is the value at the relevant date of all account receivables of the *Consultant* and

D. is the value at the relevant date of the current liabilities of the *Consultant*.

2.4. The *Consultant*:

*Standard 'boilerplate' amendments*

- regularly monitors the credit ratings of the *Consultant* with the Rating Agencies and
- promptly notifies (or shall procure that its auditors promptly notify) the *Client* following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event and in any event, shall ensure that such notification is made within 14 days of the date on which the *Consultant* first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event.

2.5. For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of paragraph, the credit rating of the *Consultant* shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have rated the *Consultant* at or below the applicable Credit Rating Threshold.

3. Consequences of a financial distress event

3.1. In the event of:

3.1.1. the credit rating of the *Consultant* dropping below the applicable Credit Rating Threshold;

3.1.2. the *Consultant* issuing a profits warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;

3.1.3. there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the *Consultant*;

3.1.4. the *Consultant* committing a material breach of covenant to its lenders;

3.1.5. a subconsultant notifying the *Client* that the *Consultant* has not satisfied any sums properly due for a material specified invoice or sequences of invoices that are not subject to a genuine dispute;

3.1.6. any of the following:

- commencement of any litigation against the *Consultant* with respect to financial indebtedness or obligations under this contract;
- non-payment by the *Consultant* of any financial indebtedness; any financial indebtedness of the *Consultant* becoming due as a result of an event of default
- the cancellation or suspension of any financial indebtedness in respect of the *Consultant* in each case which the *Client* reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance of the *Consultant* in accordance with this contract

then, immediately upon notification of the Financial Distress Event (or if the *Client* becomes aware of the Financial Distress Event without notification and brings the event to the attention of the *Consultant*), the *Consultant* shall have the obligations and the *Client* shall have the rights and remedies as set out in paragraphs 3.2 – 3.6.

Standard 'boilerplate' amendments

3.2. The *Consultant*:

3.2.1 at the request of the *Client* meets the *Client* as soon as reasonably practicable (and in any event within three working days of the initial notification (or awareness) of the Financial Distress Event or such other period as the *Client* may permit and notify to the *Consultant* in writing) to review the effect of the Financial Distress Event on its continued performance in accordance with this contract and

3.2.2. where the *Client* reasonably believes (taking into account any discussions and representations under paragraph 3.2.1) that the Financial Distress Event could impact on the *Consultant's* continued performance in accordance with this Contract:

- submits to the *Client* or approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within 14 days from the initial notification (or awareness) of the Financial Distress Event or such other period as the *Client* may permit and notify to the *Consultant* in writing)
- provides such financial information relating to the *Consultant* as the *Client* may reasonably require.

3.3. The *Client* does not withhold approval of a draft Financial Distress Service Continuity Plan unreasonably. If the *Client* does not approve the draft Financial Distress Service Continuity Plan, the *Client* informs the *Consultant* of the reasons and the *Consultant* takes those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which the *Consultant* resubmits to the *Client* within seven days of the rejection of the first or subsequent (as the case may be) drafts. This process is repeated until the Financial Distress Service Continuity Plan is approved by the *Client* or referred to the dispute resolution procedure.

3.4. If the *Client* considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the relevant Financial Distress Event, the *Client* may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the dispute resolution procedure.

3.5. Following approval of the Financial Distress Service Continuity Plan by the *Client* the *Consultant*

- reviews on a regular basis (which shall not be less than monthly) the Financial Distress Service Continuity Plan and assesses whether it remains adequate and up to date to ensure the continued performance in accordance with this contract
- where the Financial Distress Service Continuity Plan is not adequate or up to date in, submits an updated Financial Distress Service Continuity Plan to the *Client* for approval, and the provisions of shall apply to the review and approval process for the updated Financial Distress Service Continuity Plan and
- complies with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).

Standard 'boilerplate' amendments

3.6. Where the *Consultant* reasonably believes that the relevant Financial Distress Event (or the circumstance or matter which has caused or otherwise led to it) no longer exists, the *Consultant* notifies the *Client* and subject to the agreement of the *Client*, the *Consultant* is relieved of its obligations under paragraph 3.

4. Termination rights

4.1. The *Client* may terminate the *Consultant's* obligation to Provide the Service (which shall take effect as termination under the second bullet point of clause 90.2) if

- the *Consultant* fails to notify the *Client* of a Financial Distress Event in accordance with paragraph 2.2;
- the *Client* fails to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraph 3 and/or
- the *Consultant* fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraph 3.

5. Primacy of credit ratings

5.1. Without prejudice to the *Consultant's* obligations and the *Client's* rights and remedies under paragraph 3, if, following the occurrence of a Financial Distress Event pursuant to paragraph 2 to the Rating Agencies review and report subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then:

- the *Consultant* is relieved automatically of its obligations under paragraph 3 and
- the *Client* is not entitled to require the *Consultant* to provide financial information in accordance with paragraph 2.3.

ANNEX 1: CREDIT RATINGS & CREDIT RATING THRESHOLDS

Consultant Credit current rating (long term) – ■

Credit Rating Threshold - 65