Crown Commercial Service

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traffic management technology framework schedule 4c – template call off agreement (INCORPORATING THE nec3 professional services contract), contract data and z clauses

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TABLE OF CONTENTS

[A. PROFESSIONAL SERVICES CONTRACT ANNEX A - FORM OF AGREEMENT 4](#_Toc450816110)

[B. PROFESSIONAL SERVICES CONTRACT ANNEX B - CONDITIONS OF CONTRACT 7](#_Toc450816111)

[C. PROFESSIONAL SERVICES CONTRACT ANNEX C - CONTRACT DATA PARTS ONE AND TWO 8](#_Toc450816112)

[D. PROFESSIONAL SERVICES CONTRACT ANNEX D – OPTIONAL Z CLAUSES 19](#_Toc450816113)

[E. PROFESSIONAL SERVICES CONTRACT ANNEX E – THE SCOPE 65](#_Toc450816114)

[F. PROFESSIONAL SERVICES CONTRACT ANNEX F – PRICE LIST 66](#_Toc450816115)

[G. PROFESSIONAL SERVICES CONTRACT ANNEX g – STAFF TRANSFER 67](#_Toc450816116)

[H. PROFESSIONAL SERVICES CONTRACT ANNEX H – [ ] 95](#_Toc450816117)

**Date..................................**

**FORM OF AGREEMENT**

**Incorporating the NEC3 Professional Services Contract**

**Between**

**.......................................................................................................................................**

**And**

**.......................................................................................................................................**

**For the provision of**

**……………………………………………………………………………………………………………………………………**

1. PROFESSIONAL SERVICES CONTRACT ANNEX A - FORM OF AGREEMENT

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

**PARTIES:**

1. **[CONTRACTING AUTHORITY NAME]** **[**[which is a company registered in **[ ]**under company number **[ ]**and whose registered office is at] [whose offices are located at] [ADDRESS] **OR [**acting as part of the Crown] (the "**Employer**"); and

2. **[FRAMEOWORK SUPPLIER NAME]** which is a company incorporated in and in accordance with the laws of **[ ]** (Company No. **[ ]** whose registered office address is at **[ ]**(the "**Consultant**").

**BACKGROUND**

1. 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 traffic management technology and associated services for the benefit of public sector bodies.
2. The *Consultant* was appointed to the framework and executed the framework agreement (with reference number **RM1089**) which is dated *[insert date of framework agreement with the Consultant* (the “**Framework Agreement**”).
3. On the *[insert date of issue of tender]* the *Employer*[, acting as part of the Crown,] invited the *Consultant* along with other framework suppliers to tender for the *Employer’s* traffic management technology and associated services requirements in accordance with the Call Off Procedure (as defined in the Framework Agreement).

*[Include text in square brackets if Employer is a Crown Body]*

1. On the *[insert date of tender response]* the *Consultant* submitted a tender response and was subsequently selected by the *Employer* to provide the *services*.
2. The *Consultant* has agreed to carry out the *services* in accordance with this agreement and the Framework Agreement.

**IT IS AGREED AS FOLLOWS:**

1. **Definitions and Interpretation**

This agreement (the “Call Off Contract”) incorporates the conditions set out below of:

* The core clauses of the:

[NEC3 Professional Services Contract (April 2013)]

[the clauses for main Option [A] [B] [C] [D] [E] [F] [G],] **[delete as applicable]**

[dispute resolution Option [W1] [W2],] **[delete as applicable]**

[secondary Options **[list applicable X clauses]**

[Y(UK)1, Y(UK)2, Y(UK)3] **[delete as applicable]**

and option Z (being the amendments identified in the Contract Data),

which are supplemented and amended in accordance with such information and supplementary provisions as are provided in the Contract Schedules.

Together the “Conditions”

The “Contract Schedules” means any one, or all, of the annexes appended to this Call Off Contract.

1. **Entire Agreement**

2.1. 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.

2.2 Neither party has been given, nor entered into this Call Off Contract in reliance on any arrangements, understandings, agreements, statements, representations or warranties other than those expressly set out in this Call Off Contract.

2.3 Nothing in this Clause 2 shall exclude liability in respect of misrepresentations made fraudulently.

1. **Documents**

3.1 The documents forming part of this Call Off Contract are:

1. this form of agreement duly executed by the Parties [as a deed]
2. the Conditions
3. the Contract Data
4. the Scope **[delete as applicable]**
5. **[insert reference to applicable pricing document e.g. activity schedule, price list or similar]**
6. **[insert reference to any other documents which should form part of the call off contract]**

**[Delivered** [as a deed] on the date of this document.] ***=***

***[Insert execution clause for Contracting Authority]***

|  |  |
| --- | --- |
| OPTION 1a *[execution under seal]*  Executed as a deed by **[Contracting Authority]** by affixing his common seal in the presence of: | ) ) |
|  | [Select Directors or Authorised Signatory options below] |
|  | Director or Authorised Signatory |
|  |  |
|  | Director/Secretary or Authorised Signatory |
| OPTION 1b Executed as a deed by [**Contracting Authority]** acting by: | *) )* |
|  | [Select Directors or Authorised Signatory options below] |
|  | Director or Authorised Signatory |
|  |  |
|  | Director/Secretary or Authorised Signatory |

**[Customer guidance concerning the options for how a company may need to sign can be obtained from Crown Commercial Service. Contracting Authorities will need to check with the relevant company as to which option is required].**

1. PROFESSIONAL SERVICES CONTRACT ANNEX B - CONDITIONS OF CONTRACT

NEC3 PROFESSIONAL ServiceS Contract (April 2013) Core Clauses

**[** *The terms and conditions of contract applied at call-off for the Traffic Management Technology 2 Framework Agreement are the core clauses of the NEC Professional Services (PSC) contract.*

*Access to the NEC suite of contracts, including* **guidance** *and membership details can be found via the NEC Website:* [*https://www.neccontract.com/*](https://www.neccontract.com/)

*Additionally, Crown Commercial Service has worked together with NEC to provide discounted* **access to** *the suite of contracts.  Further information can be found on the TMT2 Framework Agreement Webpage:*

[*http://ccs-agreements.cabinetoffice.gov.uk/contracts/rm1089*](http://ccs-agreements.cabinetoffice.gov.uk/contracts/rm1089)

*Customers are able to select the most appropriate optional Z clauses and include additional Z clauses that meet their requirement.***]**

1. **PROFESSIONAL SERVICES CONTRACT ANNEX C - CONTRACT DATA PARTS ONE AND TWO**

**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, C E or G], dispute resolution Option [W1 or W2] and secondary Options [X1, X2, X3, X4, X5, X6, X7, X8, X9, X10, X11, X12, X13, X18, X20, Y(UK)1, Y(UK)2], Y(UK)3 and Z of the NEC3 Professional Services Contract (April 2013). | | | |
|  | * The *Employer* is [ ] | | | |
|  | * The *Adjudicator* is the person chosen by the Parties from the list of *Adjudicator*s published by the Institution of Civil Engineers. *[Replace with Chartered Institute of Arbitrators for non-engineering services]* | | | |
|  | * The *services* are [….]. | | | |
|  | * The Scope is in [….]. | | | |
|  | * The *language of this contract* is English. * *The* *law of the contract* is the [law of England, subject to the jurisdiction of the Courts of England]. * The *period for reply* is [two weeks]. *[If periods other than 2 weeks are required for certain communications, identify them here and add “all other communications … 2 weeks”]* * The *period for retention* is [6/12] years following Completion or earlier termination. | | | |
|  | * The *Adjudicator nominating body* is the *[Institution of Civil Engineers]* *[Chartered Institute of Arbitrators]* *[other nominating body]* * The *tribunal* is [ ] | | | |
|  | * The following matters will be included in the Risk Register   [….]. | | | |
| 2 The Parties' main responsibilities | * The *Employer* provides access to the following persons, places and things * access to *access date* * [….] [….] * [….] [….] * [….] [….] | | | |
| 3 Time | * *The starting date* is [….]. * The *Consultant* submits revised programmes at intervals no longer than [one month]. | | | |
| 4 Quality | * The quality policy statement and quality plan are provided within [….] weeks of the Contract Date. * The *d*e*fects date* is [….] weeks after Completion of the whole of the *services.* | | | |
| 5 Payment | * The *assessment interval* is [………] * The *currency of this contract* is the pound sterling (£). * The *interest rate* is, [unless the provisions of the Late Payment of Commercial Debts (Interest) Act 1998 otherwise require, 3% per annum above the Bank of England base rate in force from time to time.] * The *staff rates* are [the rates calculated using the method set out in the document entitled “Schedule of Cost Components”.]   *[above option for staff rates applies to Highways England contracts only. If not applicable, staff rates are specified by the Consultant in Contract Data Part 2]* | | | |
| 8 Indemnity, insurance and liability | * The Consultant's total liability to the Employer for all matters arising under or in connection with this contract, other than the excluded matters, is unlimited. * The amounts of insurance and the periods for which the *Consultant* maintains insurance are | | | |
| *[Amend insurance levels as appropriate for the contract being prepared. Increase period for insurance to 12 years if contract formed by deed]* | **event** | **cover** | | **Period** |
| failure of the *Consultant* to use the skill and care normally used by professionals providing services similar to the *services* | £15 million in respect of each claim, the number of claims being unlimited, in any annual period of insurance, except for claims arising out of pollution or contamination, where the minimum amount of indemnity applies in the aggregate in any one annual period of insurance and £1 million in the aggregate in any one annual period of insurance for claims arising out of asbestos. | | from the *starting date* until 12 years following completion of the whole of the *services* 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* | £10 million for each and every occurrence without limit to the number of occurrences in any one annual period of insurance except for claims in respect of pollution, contamination and products liability where the minimum amount of indemnity applies in the aggregate in any one annual period of insurance.  In respect of use of motor vehicles a limit of indemnity as required by statute. | | 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 | £10 million or as required by statute whichever is the higher in respect of each occurrence, without limit to the number of occurrence in any one annual period of insurance. | | from the *starting date* until all notified Defects have been corrected or earlier termination |
| *[Include if applicable]* | * The *Consultant* provides these additional insurances   Insurance against [….]  Cover is [….]  Period of cover [….]   * Deductibles are [….] | | | |
| *[Include if applicable]* | * The *Employer* provides the following insurances   Insurance against [….]  Cover is [….]  Period of cover [….]  Deductibles are [….] | | | |
| *[Include clause Z24 if Consultant’s liability is limited]* | * *The* *Consultant*'s total liability to the *Employer* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to [….]. | | | |
| *Include if long form of Z48 IPR used]* | * The *relevant services* and the *relevant service conditions* are  |  |  |  | | --- | --- | --- | | ***relevant service*** | | ***relevant service condition*** | | reference | Reference sections of the Scope | |  |  |  | |  |  |  | | | | |
| Optional Statements |  | | | |
| *[Include if the Employer has decided the completion date]* | **If the *Employer* has decided the *completion date* for the whole of the services**   * The *completion date* for the whole of the *services* is [….].   **If no programme is identified in part two of the Contract Data**   * The *Consultant* is to submit a first programme for acceptance within [….] weeks of the Contract Date. | | | |
| *[Include if applicable]* | **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 [….] * 2 [….] * 3 [….] | | * *key date* * [….] * [….] * [….] | |
|  | **If the period in which payments are made is not three weeks and Y(UK)2 is not used**   * The period within which payments are made is [ ] | | | |
|  | **If Y(UK)2 is used and the final date for payment is not 14 days after the date when payment is due**   * The period for payment is [ ] | | | |
|  | **If the *Employer* states any *expenses***   * The *expenses* stated by the *Employer* are * Item Amount * [ ] [ ] * [ ] [ ] | | | |
|  | **If the *tribunal* is arbitration**   * The *arbitration procedure* is the *[Institution of Civil Engineers Arbitration Procedure (April 2012)] [Chartered Institution of Arbitrators’ Arbitration Rules (2000)] [other procedure]* * The place where arbitration is to be held is [ ] * The person or organisation who will choose an arbitrator * if the Parties cannot agree a choice or * if the *arbitration procedure* does not state who selects an arbitrator is *the* *President or Vice President of the Institution of Civil Engineers] [Chartered Institute of Arbitrators [other nominating body]* | | | |
|  | **If this contract is a sub contract and the main contract provides for the joint adjudication of disputes**   * The main contract Adjudicator is [ ] | | | |
|  | **If Option A is used:**   * The *Consultant* prepares forecasts of the total *expenses* at intervals no longer than [….] weeks. | | | |
|  | **If Option C, E or G is used:**   * The *Consultant* prepares forecasts of the total Time Charge and *expenses* at intervals no longer than [….] weeks. * 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. | | | |
| *[Include if Option C chosen]* | **If Option C is used:**   * The *Consultant’s* share percentages and *the share ranges* are  |  |  | | --- | --- | | *share range* | *Consultant’s share percentage* | | less than [….] % | [….] % | | from [….] % to [….] % | [….] % | | * from [….] % to [….] % | * [….] % | | * greater than [….] % | * [….] % | | | | |
| *[Include if Option G chosen]* | * **If Option G is used:** * If the *Employer* notifies the *Consultant* that the total of the Prices is to be treated as a target price, *the* *Consultant’s share percentages* and the *share ranges* are  |  |  | | --- | --- | | *share range* | *Consultant’s share percentage* | | less than [….] % | [….] % | | from [….] % to [….] % | [….] % | | * from [….] % to [….] % | * [….] % | | * greater than [….] % | * [….] % | | | | |
| Option X1  *[include if used]* | **If Option X1 is used**   * The *index* is [the Harmonised Indices of Consumer Prices (HICPs) -International comparisons : EU countries :United Kingdom as published in Table 18.6 of the Central Statistical Office publication “Monthly Digest of Statistics”]. **OR** [Retail Prices Index] **OR** [other index] | | | |
| Option X2 | **If Option X2 is used**   * *The* *law of the project* is the law of England and Wales, subject to the jurisdiction of the Courts of England and Wales. | | | |
| Option X3  *[Include if used]* | **If Option X3 is used**   * The *Employer* will pay for the items or activities listed below in the currencies stated  |  |  |  | | --- | --- | --- | | items and activities | other currency | total maximum payment in the currency | | 1 [….] | [….] | [….] | | 2 [….] | [….] | [….] | | 3 [….] | [….] | [….] |  * The *exchange rates* are those published in [….] on [….] (date) | | | |
| Option X5  *[Include if used]* | **If Option X5 is used**   * *The* *completion* date for each *section* of the *services* is  |  |  |  | | --- | --- | --- | | *section* | description | *completion date* | | 1 | [….] | [….] | | 2 | [….] | [….] | | 3 | [….] | [….] | | | | |
| Option X6  *[Include if X5 and X6 used together]* | **If Options X5 and X6 are used together**   * The bonuses for each *section* of the *services* are:  |  |  |  | | --- | --- | --- | | s*ection* | description | amount per day | | 1 | [….] | [….] | | 2 | [….] | [….] | | 3 | [….] | [….] | |  | Remainder of the *services* | [….] | | | | |
| Option X7  *[Include if X5 and X7 used together]* | **If Options X5 and X7 are used together**   * Delay damages for each *section* of the *services* are  |  |  |  | | --- | --- | --- | | s*ection* | description | amount per day | | 1 | [….] | [….] | | 2 | [….] | [….] | | 3 | [….] | [….] | |  | Remainder of the *services* | [….] |   [If Option C or E used, insert “nil” per day for each entry] | | | |
| Option X6  *[Include if used and X5 is not used]* | **If Option X6 is used (but not if Option X5 is also used)**   * The bonus for the whole of the *services* is [….] per day. | | | |
| Option X7  *[use only with main Options A, C and E]* | **If Option X7 is used (whether or not Option X5 is also used)**   * Delay damages for Completion of the whole of the *services* are [….] per day. | | | |
| Option X8  *[Include if used]* | **If Option X8 is used**   * The *collateral warranty agreements* are  |  |  | | --- | --- | | agreement reference | third party | | [….] | [….] | | [….] | [….] | | [….] | [….] | | [….] | [….] | | | | |
| Option X10  *[Include if used]* | **If Option X10 is used**   * The *Employer’s Agent* is * Name [….] * Address [….]   The authority of the *Employer’s Agent* is [….] | | | |
| Option X12  *[Include if used]* | **If Option X12 is used**   * The *Client* is [ ]. *[insert name and address]* | | | |
|  | * The *Client’s objective* is [….]. | | | |
|  | * The Partnering Information is in [….]. | | | |
| Option X13  *[Include if used]* | **If Option X13 is used**   * The amount of the performance bond is [….] | | | |
| Option X18  *[Include if used]* | **If Option X18 is used**   * The *Consultant’s* liability to the *Employer* for indirect or consequential loss is limited to [….]. * The *Consultant’s* liability to the *Employer* for Defects that are not found until after the *defects date* is limited to [….]. * The *end of liability* date is [….] years after Completion of the whole of the *services*. | | | |
| Option X20  *[Include if used; not used with Option X12]* | **If Option X20 is used (but not if Option X12 is also used)**   * *The* *incentive schedule* for Key Performance Indicators is in [….]. * A report of performance against each Key Performance Indicator is provided at intervals of [….] months. | | | |
| Option Y(UK)1  *[If Project Bank Account is used, and Employer is to pay charges and be paid interest’]* | **If Option Y(UK)1 is used and the Employer is to pay any charges made and is paid any interest paid by the project bank**   * The *Employer* is to pay and charges made and is paid any interest paid by the *project bank* | | | |
| Option Y(UK)3  *Option YUK(3) gives the third parties listed the right to rely on terms of the contract which confer a benefit on them. If it is being used, list the relevant contract conditions and Z clauses under the term heading and the relevant third party under ‘person or organisation’. If Y(UK)1 and Y(UK)3 are being used, see below for the relevant contract data entry* | * **If Option Y(UK)3 is used**  |  |  | | --- | --- | | **term** | **person or organisation** | | [list conditions and Z clauses] | [insert name] | | | | |
|  | * **If Options Y(UK)1 and Y(UK)3 are being used**  |  |  | | --- | --- | | **term** | **person or organization** | | The provisions of Option Y(UK)1 | Named Suppliers | | | | |
| Option Z | * The *additional conditions of contract* are clauses [Z1 to Z[ ]] set out at [ ], save for: * *[list any Z clauses which do not apply to a particular call off contract]* | | | |

|  |  |
| --- | --- |
| Part two – Data provided by the *Consultant* | |
| 1 General – statements given in all contracts | * The *Consultant* is   Name ………………………………….  Address …………………………………. |
|  | * The *key people* are * Name [ ] * Job [ ] * Responsibilities [ ] * Experience [ ] * *[repeat as necessary]*   **OR**   * The *key people* are the people listed in the *key people schedule.* * *[delete as applicable. Option referring to key people schedule is Highways England specific]* |
|  | * The *staff rates* are: * Name/job title Rate * [ ] [ ] * [ ] [ ] * [ ] [ ] |
|  | * The following matters will be included in the Risk Register   …………………………………. |
| Optional statements | **If the *Consultant* is to decide the *completion date* for the whole of the *services***  The *completion date* for the whole of the *services* is [… .] |
|  | **If the programme is to be identified in the Contract Data**   * The programme identified in the Contract Data is …………………………………. |
| *Include where expenses are being stated by the Consultant* | **If the *Consultant* states any *expenses***   * The *expenses* stated by the *Consultant* are  |  |  | | --- | --- | | **item** | **amount** | | [ ] | [ ] |  * The *resource cost schedule* is ………………………………….   *[Highways England to consider whether resource cost schedule is applicable]* |
| *[Include if the Consultant requires additional access]* | **If the *Consultant* requires additional access**  The *Employer* provides access to the following persons, places and things  access to *access date*  ………………………………….…………………………………. |
| *[Include if Option A or C being used]* | **If Option A or C is used**   * The *activity schedule* is …………………………………. * The tendered total of the Prices is ................................................... |
| *[Include if Option G being used]* | **If Option G is used**   * The *task schedule* is [the document entitled Task Schedule] [insert other reference] |
| *[Include if Option Y(UK)1 is used]* | **If Option Y(UK(1 is used**   * The *project bank* is …………………………………. * The *named suppliers* are …………………………………. |
| Contract Data relating to Z clauses |  |
|  | **If Clause Z33 applies**   * the required level of *professional indemnity insurance* is [ ] |
|  | **If Clause Z34 applies**   * the *failure level* is [ ] |
|  | **If Clause Z45 applies**   * the *Consultant* provides *collateral warranty agreements* in favour of [ ]. * the Consultant procures *collateral warranty agreements* from the following SubConsultants: * [ ]   in favour of the following parties [ ] |
|  | **If Clause Z48 applies** [ if using longer enhanced software version of Z48 only]   * The *software schedule* is in the document called “theSoftware Schedule”. |
|  | **If clause Z49 applies**  The *credit ratings* at the Contract Date and the rating agencies issuing them are   |  |  |  | | --- | --- | --- | | party | rating agency | *credit rating* | | *[Consultant]* | [ ] | [ ] | | [Consortium Member] | [ ] | [ ] | | [Guarantor] | [ ] | [ ] | |

1. PROFESSIONAL SERVICES CONTRACT ANNEX D – OPTIONAL Z CLAUSES

|  |  |  |  |
| --- | --- | --- | --- |
| **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. | |
| **Clause Z2** | | **Corrupt practices**  Z2.1 The *Consultant* does not:   * offer or give to any person in the service of the *Employer* any gift or consideration of any kind as an inducement or reward in relation to the obtaining or execution of this contract or any other contract with the *Employer* or for showing favour or disfavour to any person in relation to this contract or any other contract with the *Employer*; or * enter into this contract or any other contract with the *Employer* if, in connection with this contract or any such other contract, commission has been paid or an agreement for the payment of commission has been made by him or on his behalf or to his knowledge.   Z2.2 A failure to comply with this clause is treated as a substantial failure by the *Consultant* to comply with his obligations. | |
| **Clause Z3** | | **Recovery of sums due from *Consultant***  *[Option for Crown Bodies]*  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.  *[Alternative option for non Crown Bodies]*  Z3.1 Where under this contract or any other contract between the *Consultant* and the *Employe*r 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*.  *[delete one of above options]* | |
| **Clause Z4**  *[Include Z4.3 if required. Use the first bullet only where the contract is for design services and is to be novated to a design/build consultant]* | | **Assignment**  Z4.1 The *Consultant* does not assign, transfer or charge the benefit of this contract or any part of it or any benefit or interest under it without the prior agreement of the *Employer*.  Z4.2 The *Employer*’s ability to assign this contract or any part of it or any benefit or interest under it is unrestricted.  Z4.3 If requested by the *Employer*, the *Consultant* executes a novation agreement transferring the benefit and burden of this contract to   * a consultant engaged by the *Employer* for the design and construction of works to which the *services* relate, * another Department or Office of Her Majesty's Government, * a local authority * an organisation established to take over the *Employer*’s functions or part of them or * any other body (including private sector body) exercising similar functions   The novation agreement is in the form set out in the Scope or such other form as the *Employer* may reasonably require. | |
| **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 Providing 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 employed by the *Consultant* is required to carry out any activity alongside the *Employer*’s employees in any premises, 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. | |
| **Clause Z7** | | **Merger, take-over or change of control**  Z7.1 In clauses Z7, Z49 [Financial Distress] and Z50 [Change of Control – new guarantee] and Z51 [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.   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*. A change is material if it * directly or indirectly affects the performance of this contract by the *Consultant* or * is considered substantial in accordance with Regulation 72(8) of the Public Contract Regulations 2015.   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 NEC3 Adjudicator’s Contract (April 2013) 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 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**  *[Include Z9 if Option Y(UK)1 is used]* | | **Project Bank Account**  Z9.1 Option Y(UK)1 from the NEC3 Professional Services Contract (April 2013) applies to this contract.  Z9.2 Clause Y1.6 is amended by inserting the following after the second sentence:  “The *Employer* may propose that a Supplier is added to the Named Suppliers. The *Consultant* accepts the proposal if the addition of the Supplier to the Named Suppliers is practicable.”  Z9.3 The *Employer* may notify the *Consultant* that payments under this contract will no longer be made using the Project Bank Account. This notice is a compensation event. Within one week of the *Employer*’s notice, the *Consultant* notifies the Named Suppliers that the Project Bank Account is no longer to be used and proposes an alternative method to ensure that the Named Suppliers receive payments in accordance with their contracts. | |
| **Clause Z10** | | **Prevention of fraud and bribery**  **[Guidance note: The first option for this Clause Z10 is only for use by Highways England. All other Customers must use the second option. Delete as applicable]**  [Z10.1 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.   Z10.2 In this clause Z10, Prohibited Act meansany of the following:   * 1. to directly or indirectly offer, promise or give any person working for or engaged by the *Employer* a financial or other advantage to:      1. induce that person to perform improperly a relevant function or activity; or      2. reward that person for improper performance of a relevant function or activity;   2. 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;   3. committing any offence:      1. under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or      2. under legislation creating offences concerning fraud; or      3. at common law concerning fraud; or   committing (or attempting or conspiring to commit) fraud.]  **OR**  [Z10.1 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.   Z10.2 During the *services period* 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, Consultants, sub-Consultants or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements   Z10.3 During the *services period* 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.   Z10.4 The *Consultant* immediately notifies the *Employer* in writing if it becomes aware of any breach of clause Z10.1, 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.   Z10.5 If the *Consultant* makes a notification to the *Employer* pursuant to clause Z10.4, 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.  Z10.6 If the *Consultant* breaches Clause Z10.3, the *Employer* may by notice require the *Consultant* to remove from Providing the Service any *Consultant* employee whose acts or omissions have caused the *Consultant*’s breach.  Z10.7 In this Clause Z10, Prohibited Act meansany of the following:   * 1. to directly or indirectly offer, promise or give any person working for or engaged by the *Employer* a financial or other advantage to:      1. induce that person to perform improperly a relevant function or activity; or      2. reward that person for improper performance of a relevant function or activity;   2. 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;   3. committing any offence:      1. under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or      2. under legislation creating offences concerning fraud; or      3. at common law concerning fraud; or   committing (or attempting or conspiring to commit) fraud.] | |
| **Clause Z11**  *[The period should be 12 years if the contract is executed as a deed and 6 years in other cases]* | | ***Employer*’s Codes of Conduct**  Z11.1 The *Consultant* complies (and ensures that any person employed by him or acting on his behalf complies) with the *Employer*’s Anti Bribery Code of Conduct and Anti Fraud Code of Conduct, collectively ‘the Codes’. The *Consultant* complies with the Codes until Completion and with   * paragraph 4 of the *Employer*’s Anti Bribery Code of Conduct and * paragraph 3 of the *Employer*’s Anti Fraud Code of Conduct   for a period of [6/12] years after Completion.  Z11.2 A failure to comply with this clause is treated as a substantial failure by the *Consultant* to comply with his obligations. | |
| **Clause Z12**  *[Include if project bank account drafting being used]* | | **Payment for subcontracted services**  Z12.1 In assessing the amount due at an assessment date, the Time Charge for *services* provided by a Subconsultant (other than a Named Supplier) is retained from the *Consultant* unless, at the assessment date, the *Consultant* has paid the Subconsultant for the *services*.  Z12.2 An amount retained is included in the amount due at the assessment date after the *Consultant* has paid the Subconsultant for the *services*.  Z12.3 When submitting an invoice, the *Consultant* demonstrates that payment has been made for the Time Charge included in the invoice in respect of *services* provided by a Subconsultant. | |
| **Clause Z13** | | **Fair payment**  Z13.1 The *Consultant* assesses the amount due to a Subconsultant without taking into account the amount assessed under this contract.  Z13.2 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*.   Z13.3 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.  Z13.4 A failure to comply with this condition is treated as a substantial failure by the *Consultant* to comply with his obligations. | |
| **Clause Z14** | | **Confidentiality**  Z14.1 A new clause 70.3 is deleted and replaced by the following:  “The *Consultant* keeps (and ensures that his employees and Subconsultants keep) confidential and does not:   * disclose to any person the terms of this contract nor * use (except for the purposes of this contract) or disclose to any person any confidential or proprietary information (including Personal Data) provided to or acquired by the *Consultant* in the course of Providing the Services   except that the *Consultant* may disclose information   * to his legal or other professional advisers, * to his employees and Subconsultants as needed to enable the *Consultant* to Provide the Services, * where required to do so by law or by any professional or regulatory obligation or by order of any court or governmental agency, provided that prior to disclosure the *Consultant* consults the *Employer* and takes full account of the *Employer*’s views about whether (and if so to what extent) the information should be disclosed, * which it receives from a third party who lawfully acquired it and who is under no obligation restricting its disclosure, * which is in the public domain at the time of disclosure other than due to the fault of the *Consultant* or * with the consent of the *Employer*.   Z14.2 The *Consultant* may only disclose the *Employer*’s Confidential Information to its personnel who are directly involved in Providing the Services and who need to know the information, and shall ensure that such personnel are aware of and shall comply with these obligations as to confidentiality.  Z14.3 The *Consultant* may only disclose the *Employer*’s Confidential Information to its personnel who need to know the information, and shall ensure that its 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 of the *Consultant*’spersonnel 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 of the *Consultant’s* 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 the *Consultant’*s personnel, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with the *Consultant*’s personnel in connection with obligations as to confidentiality.  Z14.4 At the written request of the *Employer,* the *Consultant* shall procure that those members of the *Consultant*’s personnel identified in the *Employer*’s notice signs a confidentiality undertaking prior to commencing any work in accordance with this contract.  Z14.5 Where the *Employer* supplies the *Consultant* with press cuttings provided to the *Employer* under the terms of the *Employer*’s licence with the Newspaper Licensing Agency (“NLA”), the *Consultant* does not reproduce the cuttings or forward them to any third party unless the *Consultant* has first entered into an agreement with NLA authorising it to do so. | |
| **Clause Z15** | | **Security Requirements**  Z15.1 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 contained in the Scope; and * the Security Provisions contained in the Scope.   Z15.2 The *Consultant* shall ensure that the Security Management Plan produced by the *Consultant* fully complies with the Security Policy. | |
| **Clause Z16** | | **Official Secrets Act**  Z16.1 The Official Secrets Act 1989 applies to this contract from the *starting date* until the *defects date* or earlier termination.  Z16.2 The *Consultant* notifies his employees and Subconsultants of their duties under the Official Secrets Act 1989.  Z16.3 A failure to comply with this clause is treated as a substantial failure by the *Consultant* to comply with his obligations.  [Z16.4 The *Consultant* complies with the staff vetting and training requirements stated in the Scope.] *[Include if applicable]* | |
| **Clause Z17**  *[Use these clauses in whole or part as appropriate for the contract being prepared]* | | **Data protection**  Z17.1  (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) Personal Data is information collected by the *Consultant* on behalf of the *Employer* in relation to this contract, which relates to living individuals who can be identified   * from that information or * from that information combined with other details in (or likely to come into) the possession of the *Employer*.   Z17.2 For the purposes of this contract and the Data Protection Acts   * the *Employer* is the Data Controller and * the *Consultant* is the Data Processor.   Z17.3 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.  Z17.4 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.   Z17.5 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.   Z17.6 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.   Z17.7 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.  Z17.8 The *Consultant* immediately notifies the *Employer* on becoming aware of any breach of this clause or of the Data Protection Acts.  Z17**.**9 The *Consultant* does not process Personal Data outside the European Economic Area (the “EEA”) without the prior written agreement of the *Employer*.  Z17.10 If the *Consultant* becomes aware that Personal Data will be transferred or processed outside the EEA, the Consultant sends the *Employer* details of:  Z17.10.1 the Personal Data which will be processed outside the EEA;  Z17.10.2 the countries where the Personal Data will be processed;  Z17.10.3 any Subconsultants or other third parties who will be processing and/or receiving Personal Data outside the EEA; and  Z17.10.4 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.  Z17.11 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 Z18** | | **Disclosure of information**  Z18.1 A Disclosure Request is a request for information relating to this contract received by the *Employer* pursuant to the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or otherwise.  Z18.2 The *Consultant* acknowledges that the *Employer* may receive Disclosure Requests and that the *Employer* may be obliged (subject to the application of any relevant exemption and, where applicable, the public interest test) to disclose information (including commercially sensitive information) pursuant to a Disclosure Request. Where practicable, the *Employer* consults with the *Consultant* before doing so in accordance with the relevant [Code of Practice]. The *Consultant* uses his best endeavours to respond to any such consultation promptly and within any deadline set by the *Employer* and acknowledges that it is for the *Employer* to determine whether or not such information should be disclosed.  Z18.3 When requested to do so by the *Employer*, the *Consultant* promptly provides information in his possession relating to this contract and assists and co-operates with the *Employer* to enable the *Employer* to respond to a Disclosure Request within the time limit set out in the relevant legislation.  Z18.4 The *Consultant* promptly passes any Disclosure Request which it receives to the *Employer*. The *Consultant* does not respond directly to a Disclosure Request unless instructed to do so by the *Employer*.  Z18.5 The *Consultant* acknowledges that the *Employer* is obliged to publish the provisions of this contract in accordance with the Cabinet Office Efficiency Reform Group Guidance Note entitled “Transparency – Publication of New Central Government Contracts” dated December 2010 (or any later revision) except to the extent that any information in it is exempt from disclosure pursuant to the Freedom of Information Act 2000. The *Employer* consults with the *Consultant* before deciding whether information is exempt, but the *Consultant* acknowledges that the *Employer* has the final decision. The *Consultant* co-operates with and assists the *Employer* to publish this contract in accordance with the *Employer*’s obligation. | |
| **Clause Z19** | | **Records and Audit Access**  Z19.1 The *Consultant* keeps documents and information obtained or prepared by the *Consultant* or any Subconsultant in connection with the contract for a period of *[6/12]* years after the end date. *[select 6 or 12 years as appropriate – 6 years for simple contracts, 12 years for deeds]*  Z19.2 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.  Z19.3 The *Consultant* provides such oral or written explanations as the *Employer* or Comptroller and Auditor General considers necessary.  Z19.4 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. The *Consultant* permits the Comptroller and Auditor General to examine documents held or controlled by the *Consultant* or any Subconsultant. The *Consultant* provides such oral or written explanations as the Comptroller and Auditor General considers necessary. | |
| **Clause Z20**  *[Include Z20.6 only if Option A chosen]* | | **Reporting: Small and Medium Enterprises**  Z20.1 In this clause Z17 SME is   * a Subconsultant or * a subconsultant to a Subconsultant   and   * is autonomous, * is a European Union enterprise not owned or controlled by a 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.   Z20.2 For each SME employed on the *services*, the *Consultant* reports to the *Employer* each quarter 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 of the contract undertaken by the SME, * the monthly amounts paid to the SME in the quarter and * the aggregated value paid to the SME since the *starting date*.   Z20.3 The *Consultant* acknowledges that the *Employer* may   * publish the information supplied under clause Z20.2, along with the *Consultant*’s name and this contract name and * pass the information supplied under this clause Z20 to any Government Department who may then publish it along with the names of the SMEs, the *Consultant*’s name and this contract name.   Z20.4 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 Z20.2 and * obligations substantially similar to those set out in this clause Z20.   Z20.5 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 Z20.4.  Z20.6 The *Consultant* keeps accounts and records of his Time Charge and expenses and allows the *Employer* to inspect them at any time within working hours. | |
| **Clause Z21**  *Omit the sections in square brackets if Option E is chosen.* | | **Changes to rates and prices**  Z21.1 The Parties may at any time agree a reduction to the percentage for business overheads and profits stated in the Schedule of Cost Components [and to the Prices].  Z21.2 The reduced percentage [and Prices] apply to any *services* performed after the reduction is agreed.  Z21.3 If the *Consultant* does not agree a reduction requested by the *Employer*, the *Employer* may terminate the *Consultant*’s obligation to Provide the Services by notifying the *Consultant*. | |
| **Clause Z22** | | **Euro functionality**  Z22.1 The *Consultant* Provides the Services in such a way that the services   * would not be prejudiced by the implementation of the Euro, * comply with all legal requirements applicable to the Euro in the United Kingdom, including, but without limitation, the rules on conversion and rounding set out in the EC Regulation 1103/97, * are capable of utilising all symbols and codes adopted by the EU Commission in relation to the Euro and * are in accordance with the *Employer*’s requirements both for Sterling and for the Euro. | |
| **Clause Z23**  *[Include if Option C chosen]* | | **Payment of the *Consultant*’s share**  Z23.1 If, prior to Completion of the whole of the *services*, the Price for Services Provided to Date exceeds the total of the Prices, the *Employer* makes an assessment of the *Consultant*’s share of the difference between the total of the Prices and the Price for Services Provided to Date at each assessment date. The total of the Prices includes the *Employer*’s interim assessment of the changes to the Prices for a compensation event which has not been implemented at the assessment date. | |
| **Clause Z24**  *[Include if Employer’s liability is limited]* | | **The *Employer*’s liability**  Z24.1 The *Employer*’s total liability to the *Consultant* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to £[ ], and applies in contract, tort or delict or otherwise to the extent allowed under the *law of the contract*.  Z24.2 The excluded matters are the amounts payable to the *Consultant* as stated in this contract for   * the total of the Prices if Option A applies, * the Price for Services Provided to Date and the *Consultant*’s share if Option C applies and * the Price for Services Provided to Date if Option E applies.   Z24.3 The *Employer*’s liability to the *Consultant* is limited to that proportion of the *Consultant*’s losses for which the *Employer* is responsible under this contract. | |
| **Clause Z25**  *[Include for contracts with an estimated value in excess of £5M]* | | **Tax Non-Compliance**  Z25.1   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.  Z25.2 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*.   Z25.4 The *Consultant* is treated as having substantially failed to comply with his obligations if   * the warranty given by the *Consultant* under clause Z25.2 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 Z26** | | **Quality Management Points**  Z26.1 Quality Management Points are points accrued by the *Consultant* in accordance with the Quality Table. 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  Z26.2 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.  Z26.3 The *Consultant* maintains a register of the number of Quality Management Points in effect, showing when Quality Management Points accrue and are removed.  Z26.4 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.   Z26.5 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.  Z26.6 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.  Z26.7 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 *Employer* | 10 per failure | Until the records are made available | | Failure to allow access for *Employer* audits | 10 per failure | Until *Employer* audit is carried out | | Failure by *Consultant* to accrue Quality Management Points that should have been accrued | The number of Quality Management Points that should have been accrued | Applicable to the failure that should 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 Z27**  *[Compiler Note: for PSC Option G only. If Option G not being used, delete this clause and insert “Not used”]* | | **Transfer of work**  Z27.1 If the *Employer* wishes to have work carried out within the Scope and  • the *Employer* is unable to issue a Task Order to the *Consultant* due to a conflict of interest,  • the *Consultant’*s average monthly [performance threshold] score has been below [six] for a period of [three months] or more,  • the *Consultant*’s proposals for improvement have not been accepted,  • the *Employer* does not accept the *Consultant*’s resources or the *Consultant*’s forecast of the Prices for a proposed Task,  • the *Consultant* has more than 25 Quality Management Points in effect,  the *Employer* may issue a Task Order for the work to another *Consultant***.** | |
| **Clause Z28**  *[Compiler Note: If TUPE applies and the Employer is Highways England, use this clause Z28 and delete alternative clause Z28 below]*  *[Compiler Note: If TUPE applies and the Employer is a different entity, delete this clause and use alternative clause Z28 below]*  *[Compiler Note: If TUPE does not apply at all, delete this clause Z28 and alternative clause Z28 below and insert “Not used”]* | | **Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”)**  Z28.1 The *Consultant* provides to the *Employer* within 10 days of the *Employer*’s request such information in connection with TUPE as the *Employer* may require. The *Consultant* promptly notifies the *Employer* of any later change to information provided by it.  Z28.2 The *Consultant* acknowledges that the *Employer* may disclose information provided by the *Consultant* to  • any replacement provider of services similar to the services and  • any person tendering to become a replacement provider.  The *Employer* obtains undertakings from any person to whom the information is disclosed not to disclose it to any other person (unless required to do so by law).  Z28.3 During the 8 month period immediately prior to the Completion Date, the *Consultant* submits for the acceptance of the *Employer* any proposals to  • materially amend the terms and conditions of employment of any employee whose work, wholly or mainly falls within the scope of this contract,  • materially increase the number of employees whose work (or any part of it) is work undertaken for the purposes of this contract or  • move or deploy any key person away from the performance of the services.  The *Employer* may withhold acceptance if the proposal would increase the cost to the *Employer* of this or any future contract for the services.  Z28.4 The *Consultant* does not do anything which may adversely affect the orderly transfer of responsibility for provision of the services.  Z25.5 The *Consultant* complies with, and ensures that any Subconsultant complies with, the Code of Practice on Workforce Matters in Local Customer Service Contracts (as currently contained in COPM Circular 3/03, Annex O) or any similar code applicable to persons engaged on service contracts for any department or office of Her Majesty’s Government.  *[include Z25.5 if it is possible that Consultant’s staff have been transferred from the public sector]* | |
| **Clause Z28**  *[see above compiler notes - this clause Z28 is for use where the Employer is not Highways England]* | | **Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”)**  Delete Core Clause 82.1 and replace with:  82.1 Each Party indemnifies the other:   * against claims, proceedings, compensation and costs due to an event which is at his risk; and * in accordance with the indemnities that apply to this contract in Contract Annex G – Staff Transfer. | |
| **Clause Z29**  *[For Option G only]*  **Clause Z29 (HE alternative)** | | **Extension of the contract**  Z29.1 The *Employer* may notify the *Consultant* that the Completion Date is to be delayed by [one year].  Z29.2 The *Employer* does not notify the *Consultant* of any delay to the Completion Date later than […] months after the Contract Date.  **Change to the Completion Date**  Z29.1 On each anniversary of the Contract Date, the *Employer* assesses the performance of the *Consultant* and classifies it as  • good if the *Consultant* has  • incurred no more than […] Quality Points in the relevant year and  • achieved a Performance Measurement Score of 8.0 or more,  • poor if the *Consultant* has  • incurred more than […] Quality Points in the relevant year or  • achieved a Performance Measurement Score of less than 6.0 and  • neutral in all other cases.  Z29.2 The *Employer* notifies the *Consultant* of the classification and of the following actions to be taken as a result of the classification.  • If the performance of the *Consultant* is classified as good and the Completion Date is earlier than the *completion date*, the Completion Date is delayed by six months.  • If the performance of the *Consultant* is classified as good and the Completion Date is not earlier than the *completion date*, a potential extension to the Completion Date of six months is earned.  • If the performance of the *Consultant* is classified as poor, the Completion Date is brought forward by six months.  Z29.3 No later than 11 months before the Completion Date, the *Employer* may notify the *Consultant* that the Completion Date is delayed by an amount not exceeding the potential extension. The amount of the potential extension is reduced by the amount of the delay notified.  Z29.4 The Completion Date is not delayed by more than 12 months in aggregate.  Z29.5 A delay to or bringing forward of the Completion Date notified by the *Employer* is not a compensation event.  *Z29.6* The Performance Measurement Score is the average performance indicator score measured in accordance with the [Collaborative Performance Framework or other performance measurement model]. The average score is calculated from the monthly scores of all indicators during the relevant year. | |
| **Clause Z30** | | **Changes to *staff rates* and SubconsultantsSubConsultants**  Z30.1 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) 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.  Z30.2 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*.  Z30.3 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*.  Z30.4 The *Consultant* includes in the conditions of contract for each Subconsultant  • provisions substantially similar to those set out in clause Z30.1,  • a right for the *Employer* to audit any records and certificates provided by the Subconsultant under this clause Z30,  • 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 Z31**  *[Note to Compiler: Applicable to Option G only.]* | | **Payment options**  Z31.1 The *Employer* may notify the *Consultant* that the total of the Prices for a proposed Task Order be treated as a lump sum or target price.  Z31.2 If the *Employer* notifies the *Consultant* that the total of the Prices for a proposed Task Order be treated as a target price,  • If the effect of a compensation event is to reduce the total Time Charge and the event is a change to the Task, other than a change to the Task which the *Consultant* proposed and the *Employer* has accepted, the Prices are reduced.  • The *Employer* assesses the *Consultant*’s share of the difference between the total of the Prices and the Time Charge for the Task. The difference is divided into increments falling within each of the share ranges. The limits of a share range are the Time Charge divided by the total of the Prices, expressed as a percentage. The *Consultant*’s share equals the sum of the products of the increment within each share range and the corresponding *Consultant*’s *share percentage*.  • If the Time Charge is less than the total of the Prices, the *Consultant* is paid his share of the saving. If the Time Charge is greater than the total of the Prices, the *Consultant* pays his share of the excess.  • The *Employer* makes a preliminary assessment of the *Consultant*’s share at Completion of the whole of the services in the Task Order using his forecasts of the final Time Charge and the final total of the Prices. This share is included in the amount due following Completion of the whole of the services in the Task Order.  • The *Employer* makes a final assessment of the *Consultant*’s share using the final Time Charge and the final total of the Prices. This share is included in the final amount due for the services in the Task Order.  • If, prior to Completion of the whole of the services in the Task Order, the Time Charge for the Task exceeds the total of the Prices, the *Employer* makes an assessment of the *Consultant*’s share of the difference between the total of the Prices and the Time Charge for the Task at each assessment date. The total of the Prices includes the *Employer*’s interim assessment of the changes to the Prices for a compensation event which has not been implemented at the assessment date.  If there is a termination, the *Employer* assesses the *Consultant*’s share. His assessment uses the total of the Time Charge which the *Consultant* has paid and which he is committed to pay for work done before termination and a proportion of the total of the Prices which is the proportion of the work which has been completed. The *Employer*’s assessment of the *Consultant*’s share is added to the amount due to the *Consultant* on termination if there has been a saving or deducted if there has been an excess. | |
| **Clause Z32** | | **Insurance cover**  Z32.1 All insurances required to be effected and maintained under this contract are placed with reputable insurers, to whom the other party 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 1930, 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.  Z32.2 Nothing in this clause relieves the *Consultant* from any of its obligations and liabilities under this contract. | |
| **Clause Z33** | | **Professional indemnity insurance**  Z33.1 If required to obtain *professional indemnity insurance*, the *Consultant* obtains and maintains the *professional indemnity insurance* 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 1930 or the Third Parties (Rights Against Insurers) Act (Northern Ireland) 1930 as amended by the Insolvency (Northern Ireland) Order 1989.  Z33.2 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.  Z33.3 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.  Z33.4 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.  Z33.5 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 Z34** | | **Termination and omission of work**  Z34.1 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.  Z34.2 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*”.  Z34.3 The following are treated as a substantial failure by the *Consultant* to comply with his obligations  • a key resource needed by the *Consultan*t to Provide the Services is no longer available and the *Consultant* does not propose an alternative resource acceptable to the *Employer*, or  • the *Consultant*‘s performance as measured in accordance with the current edition of the [collaborative performance framework (or any replacement for it)] is below the *failure level*. *[Compiler note: add relevant performance measurement model here]* | |
| **Clause Z35** | | **Not Used** | |
| **Clause Z36** | | **Termination – PCRs, Regulation 73**  Z36.1 The *Employer* may terminate the *Consultant*‘s obligation to Provide the Services if one 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. This is treated as a termination because of a substantial failure of the *Consultant* to comply with his obligations.  Z36.2 The *Employer* may terminate the *Consultant*‘s obligation to Provide the Services 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 Z37** | | **Value Added Tax (VAT) Recovery**  Z37.1 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 Z38** | | **Tax Arrangements of Public Appointees**  Z38.1   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.   Z38.2   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.  Z38.3   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.  Z38.4    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 Z38.2 and Z38.3 or why those clauses do not apply to it.  Z38.5  If the *Consultant* fails to provide information in response to a request under clause Z38.4   * within the *period for reply* or * which adequately demonstrates either how any member of Staff is complying with clauses Z38.2 and Z38.3 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   Z38.6 If the *Employer* receives or identifies information through any means which demonstrates that a member of Staff is not complying with clauses Z38.2 and Z38.3, the *Employer* may treat such non-compliance as a substantial failure by the *Consultant* to comply with his obligations.  Z38.7   The *Consultant* acknowledges that the *Employer* may   * supply any information which it receives under clauses Z38.4 or Z38.6 or * advise the non-supply of information   to the Commissioners of Her Majesty’s Revenue & Customs [or Revenue Scotland][[1]](#footnote-2)[1] for the purpose of the collection and management of revenue for which they are responsible. | |
| **Clause Z39** | | **Consortia**  Z39.1 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.  Z39.2 If the joint venture arrangement 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.  Z39.3 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 Z40** | | **Subconsulting**  Z40.1 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.   Z40.2 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.  Z40.3 If requested by the *Employer*, the *Consultant* provides further information to support, update or clarify a submission under clause Z40.1.  Z40.4 If, following the acceptance of a submission under clause Z40.2, 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 Z41**  *[Delete if not relevant]* | | **Energy Efficiency Directive**  Z41.1 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 Z42** | | **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 Z43**  *[Delete if not required]* | | **Negotiation**  Z43.1 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.  Z43.2 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.  Z43.3 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. | |
| **Clause Z44**  *[Delete if not required]* | | **Mediation**  Z44.1 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 and which has not been resolved by negotiation is referred to mediation in accordance with the provisions of this clause.  Z44.2 The procedure and associated provisions for mediation pursuant to this clause are as follows:   * a neutral adviser or mediator (‘the Mediator’) is chosen by agreement between the *Employer* and the *Consultant* or, if they are unable to agree upon the identity of the Mediator within ten working days after a request by one Party to the other, or if the Mediator agreed upon is unable or unwilling to act, either Party may within ten working days from the date of the proposal to appoint a Mediator or within ten working days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (“CEDR”) to appoint a Mediator; and * the Parties meet with the Mediator within ten working days of his appointment in order to agree the programme for exchange of all relevant information and the procedure under which negotiations will be held. The Parties may at any stage seek guidance from CEDR regarding a suitable procedure.   Z44.3 Unless otherwise agreed by the Parties, all negotiations connected with the dispute and any settlement agreement relating to it are confidential and without prejudice to the rights of the Parties in any future proceedings.  Z44.4 In the event that the Parties reach agreement on the resolution of the dispute, the agreement is reduced to writing and is binding on both Parties once it is signed by a duly authorised senior officer of the *Employer* and a duly authorised senior officer of the *Consultant*.  Z44.5 Failing agreement, the *Employer* and *Consultant* may agree to invite the Mediator to provide a non-binding but informative opinion in writing. No such invitation is made without the written consent of both Parties. If it is agreed that such an invitation is to be made, the opinion is provided on a without prejudice basis and is not used in evidence in any proceedings relating to this contract without the written consent of both Parties.  Z44.6 The *Employer* and the *Consultant* each bears their own costs in relation to any reference made to the Mediator and the fees and all other costs of the Mediator are borne jointly in equal proportions by both Parties unless otherwise directed by the Mediator.  Z44.7 In the event that the *Employer* and the *Consultant* fail to reach agreement within forty working days after the Mediator’s appointment, or such longer period as may be agreed, the dispute may be referred to the *tribunal*. | |
| **Clause Z45** | | **Collateral Warranty Agreements**  Z45.1 The *Consultant* enters into the *collateral warranty agreements* in the formats appended in [ ] in favour of the parties identified in the Contract Data and delivers executed copies in duplicate to the *Employer* no later than ten working days after the *Employer* has provided the *Consultant* with appropriate *collateral warranty agreements* suitable for execution.  Z45.2 The *Consultant* procures from the Subconsulants identified in the Contract Data *collateral warranty agreements* in the formats appended in [ ] in favour of the parties identified in the Contract Data and delivers executed copies in duplicate to the *Employer* no later than fifteen working days after the *Employer* has provided the *Consultant* with appropriate *collateral warranty agreements* suitable for execution.  Z45.3 If the *Consultant* fails to deliver the required c*ollateral warranty agreements* in the manner and within the time stipulated by this contract, one quarter (1/4) of the Price for Services Provided to Date is retained in assessments of the amount due until the *Consultant* has remedied the failure. | |
| **Clause Z46**  *[MOD contracts only]* | | **Access to MOD sites**  Z46.1 In this clause only:   * “Site” includes any of Her Majesty’s Ships or Vessels and Service Stations; and   “Officer in charge” includes Officers Commanding Service Stations, Ships’ Masters or Senior Officers, and Officers superintending Government Establishments.  Z46.2 The *Employer* issues passes for those representatives of the *Consultant* who are approved for admission to the Site and a representative is not admitted unless in possession of such a pass. Passes remain the property of the *Employer* and are surrendered on demand or on completion of the *service*.  Z46.3 The *Consultant’*s representatives when employed within the boundaries of a Site comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force for the time being for the conduct of personnel at that Site. When on board ship, compliance is with the Ship’s Regulations as interpreted by the Officer in charge. Details of such rules, regulations and requirements are provided on request to the Officer in charge.  Z46.4 The *Consultant* is responsible for the living accommodation and maintenance of its representatives while they are employed at a Site. Sleeping accommodation and messing facilities, if required, may be provided by the *Employer* wherever possible, at the discretion of the Officer in charge, at a cost fixed in accordance with current Ministry of Defence regulations. At Sites overseas, accommodation and messing facilities, if required, are provided wherever possible. The status accorded to the *Consultant*‘s personnel for messing purposes is at the discretion of the Officer in charge who, wherever possible, gives his decision before the commencement of this contract where so asked by the *Consultant*. When sleeping accommodation and messing facilities are not available, a certificate to this effect may be required by the *Employer* and is obtained by the *Consultant* from the Officer in charge. Such certificate is presented to the *Employer* with other evidence relating to the costs of this contract.  Z46.5 Where the *Consultant*’s representatives are required by this contract to join or visit a Site overseas, transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) is provided for them free of charge by the Ministry of Defence whenever possible, normally by Royal Air Force or by MOD chartered aircraft. The *Consultant* makes such arrangements through the Technical Branch named for this purpose in this contract. When such transport is not available within a reasonable time or in circumstances where the *Consultant* wishes its representatives to accompany material for installation which it is to arrange to be delivered, the *Consultant* makes its own transport arrangements. The *Employer* reimburses the *Consultant*’s reasonable costs for such transport of its representatives on presentation of evidence supporting the use of alternative transport and of the costs involved. Transport of the *Consultant*’s representatives locally overseas which is necessary for the purpose of this contract is provided wherever possible by the Ministry of Defence or by the Officer in charge and, where so provided, is free of charge.  Z46.6 Out-patient medical treatment given to the *Consultant*’s representatives by a Service Medical Officer or other Government Medical Officer at a Site overseas is free of charge. Treatment in a Service hospital or medical centre, dental treatment, the provision of dentures or spectacles, conveyance to and from a hospital, medical centre or surgery not within the Site and transportation of the *Consultant*’s representatives back to the United Kingdom, or elsewhere, for medical reasons, is charged to the *Consultant* at rates fixed in accordance with current Ministry of Defence regulations.  Z46.7 Accidents to the *Consultant*’s representatives which ordinarily require to be reported in accordance with Health and Safety at Work Act 1974 are reported to the Officer in charge so that the Inspector of Factories may be informed.  Z46.8 No assistance from public funds, and no messing facilities, accommodation or transport overseas is provided for dependants or members of the families of the *Consultant’*s representatives. Medical or necessary dental treatment may, however, be provided for dependants or members of families on repayment at current Ministry of Defence rates.  Z46.9 The *Consultant*, wherever possible, arranges for funds to be provided to its representatives overseas through normal banking channels (e.g. by travellers’ cheques). If banking or other suitable facilities are not available, the *Employer*, upon request by the *Consultant* and subject to any limitation required by the *Consultant*, makes arrangements for payments, converted at the prevailing rate of exchange (where applicable), to be made at the Site to which the *Consultant*’s representatives are attached. All such advances made by the *Employer* are recovered from the *Consultant.* | |
| **Clause Z47**  *[MOD contracts only]* | | **MoD DEFCON Requirements**  Z47.1 This clause is to incorporate MoD special terms and conditions in the form of DEFCONs and DEFORMs as detailed in [ ] | |
| **Clause Z48**  *[use this option if there is no software or escrow involvement]* | | **Intellectual Property Rights**  Z48.1 Intellectual Property Rights are any current and future legal and equitable interests in patents, trademarks, design rights, copyright, know-how and other similar rights, whether or not registered or capable of registration.  Z48.2 All Intellectual Property Rights in documents and other materials created by or on behalf of the *Employer* in connection with the contract are the property of the *Employer* or the Crown.  Z48.3  The *Consultant* hereby assigns to the *Employer* all present and future Intellectual Property Rights in all documents and other materials created by or on behalf of the *Consultant* or any Subconsultantin performing its obligations under, or otherwise in connection with, the contract.  The *Consultant* obtains from Subconsultants equivalent rights over the documents and other materials prepared by the Subconsultant.  This assignment takes effect either on the Contract Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Intellectual Property Rights, as appropriate.  Z48.4 Background IPR means Intellectual Property Rights owned by the *Consultant,*  a Subconsultant or a third party and which are not assigned to the *Employer* pursuant to clause Z48.3.  In respect of Background IPR, the *Consultant* grants a non-exclusive, world-wide, perpetual, irrevocable, royalty free licence (including the right to sub-licence) to the *Employer* to use the Background IPR for all purposes of the *Employer*.  Each licence granted under this clause Z48.4 by the *Consultant* survives the termination or expiry of this contract and cannot be terminated by the *Consultant* or its assignees.  The *Consultant* obtains from the Subconsultants or third parties equivalent rights over Background IPR owned by the Subconsultants or third parties.  Z48.5   The *Employer* grants to the *Consultant,* or procures the direct grant to the *Consultant* of, a non-exclusive, non-transferable, revocable licence to use all Intellectual Property Rights and Background IPR owned (or capable of being so licensed or procured without cost) by the *Employer* and reasonably required by the *Consultant* in order to Provide the Service.  Any such licence is granted for the duration of this contract solely to enable the *Consultant* to comply with its obligations under this contract. | |
| **Clause Z48**  *[use this option if there is software or escrow involved in the project]*  [***Note to drafter*** – Price List to include item for annual escrow payments] | | **Intellectual Property Rights**  Z48.1   In this clause Z48:  **Affiliate** is in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time.  **Central Government Body** is a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:   * Government Department; * Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); * Non-Ministerial Department; or * an Executive Agency of one of the above   and any body corporate that is a wholly owned subsidiary of one of the above.  **Commission Date** for a *relevant service* is the day on which the commissioning of a *relevant service* is successfully completed and its *relevant service conditions* are met.  **Confidential Information** is   * information, including all Personal Data, which (however it is conveyed) is provided by the disclosing Party in connection with this contract that relates to * the Disclosing Party Group or * the operations, business, affairs, developments, Intellectual Property Rights, trade secrets, know-how and/or personnel of the Disclosing Party Group, * other information provided by the disclosing Party in accordance this contract that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient’s attention or into the Recipient’s possession in connection with this contract, * discussions, negotiations, and correspondence between the disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this contract and all matters arising therefrom; and * information derived from any of the above,   but not including any information which   * was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the disclosing Party, * the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient’s knowledge or belief, bound by a confidentiality agreement with the disclosing Party or otherwise prohibited from disclosing the information to the Recipient, * was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this contract or breach of a duty of confidentiality or * was independently developed without access to the Confidential Information.   **Consultant Background IPR** is IPR owned by the *Consultant* or a third party before the Contract Date or created by the *Consultant* or a third partyindependently of this contract, which in each case is or will be used before or during the Contract Period for designing, testing, implementing or Providing the Services, but excluding IPRs owned by the *Consultant* subsisting in the Consultant Software or by any third party in Third Party Software.  **Consultant Equipment** is the hardware, computer and telecoms devices and equipment used by the *Consultant* or its Subconsultants (or any subconsultant of any tier to the *Consultant*) (but not hired, leased or loaned from the *Employer*) for the Providing the Services.  **Consultant Software** is software which is proprietary to the *Consultant* (or an Affiliate of the *Consultant*) and which is or will be used by the *Consultant* for the purposes of Providing the Services, including the software specified as such in the Software Schedule.  **Consultant** **System** is the information and communications technology system used by the *Consultant* in implementing and performing the *services* including the Software, the Consultant Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Employer System).  **Contract Period** is the period commencing on the *starting date* and ending on the Completion Date or on the date of earlier termination of this contract.  **Control** is the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and **Controls** and **Controlled** are to be interpreted accordingly.  **Deposited Software** is the Software the Source Code of which is to be placed in escrow as required by the *Employer* and notified to the *Consultant* from time to time including as identified in the Software Schedule.  **Disclosing Party Group** iswhere the disclosing Party is   * the *Consultant*, the *Consultant* and any Affiliates of the *Consultant*; and * the *Employer*, the *Employer* and any Central Government Body with which the *Employer* or the *Consultant* interacts in connection with this contract.   **Documentation** is descriptions of the *services*, the *Consultant’s* *services* solution, performance measures, details of the Consultant System (including (i) vendors and versions for off-the-shelf components and (ii) source code and build information for proprietary components), relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation as   * is required to be supplied by the *Consultant* to the *Employer* under this contract, * would reasonably be required by a competent third party capable of Good Industry Practice contracted by the *Employer* to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the *service* or make use of the *service*, * is required by the *Consultant* in order to Provide the Services and/or * has been or is generated in order to Provide the Services.   **Employer Background IPR** isIPR owned by the *Employer* before the Contract Date, or created by the *Employer* independently of this contract, and Crown Copyright which is not available to the *Consultant*  otherwise than under this contract, but excluding IPRs owned by the *Employer* subsisting in the Employer Software.  **Employer Software** is software which is owned by or licensed to the *Employer* (other than under or pursuant to this contract) and which is or will be used by the *Consultant* in order to Provide the Services.  **Employer System** is the *Employer*'s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the *Employer* or the *Consultant* in connection with this contract which is owned by the *Employer* or licensed to it by a third party and which interfaces with the Consultant System or which is necessary for the *Employer* to receive the *service*.  **Good Industry Practice** is at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a skilled and experienced person or body engaged in services similar to the *servic*e to a customer like the *Employer*, such supplier seeking to comply with its contractual obligations in full and complying with any applicable laws.  **Indemnified Person** is the *Employer* and each and every person to whom the *Employer* (or any direct or indirect sub-licensee of the *Employer*) sub-licenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with this contract.  **Intellectual Property Rights** or **IPRs** are:   * 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 above that are capable of being registered in any country or jurisdiction; and * all other rights having equivalent or similar effect in any country or jurisdiction**.**   **IPRs Claim** is any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPRs, or the use of the Employer Software by or on behalf of the *Consultant,* in either case for a purpose not reasonably to be inferred from the Scope or the provisions of this contract.  **Object Code** is software and/or data in machine-readable, compiled object code form.  **Open Source Software** is software that has its source code made available subject to an open-source licence under which the owner of the copyright and other IPRs in such software provides the rights to use, study, change and distribute the software to any and all persons and for any and all purposes free of charge.  **OSS** is the Open Source Software listed in the Software Schedule.  **Recipient** is the Party which receives or obtains directly or indirectly Confidential Information.  **Relevant IPR** is IPRs used to Provide the Service or as otherwise provided and/or licensed by the *Consultant* (or to which the *Consultant* has provided access) to the *Employer* or a third party in the fulfilment of the *Consultant*’s obligations under this contract including IPRs in the Specially Written Software, the Consultant Software, the Consultant Background IPRs and the Third Party Software but excluding any IPRs in the Employer Software and the Employer Background IPRs.  **Software** is Specially Written Software, Consultant Software and Third Party Software.  **Software Schedule** is the *software schedule* unless later changed in accordance with this contract.  **Source Code** is computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software.  **Specially Written Software** is any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the *Consultant* (or by a Subconsultant (or any subconsultant of any tier to the *Consultant*) or other third party on behalf of the *Consultant*) specifically for the purposes of this contract, including   * any Consultant Background IPRs that are embedded in or which are an integral part of such software; and * any modifications or enhancements to Consultant Software or Third Party Software created specifically for the purposes of this contract.   **Third Party Software** is software which is proprietary to any third party (other than an Affiliate of the *Consultant*) which in any case is, will be or is proposed to be used by the *Consultant* for the purposes of Providing the Services, including the software specified as such in the Schedule Software and including OSS.  Z48.2   All Intellectual Property Rights in:   * Employer Background IPR; * Employer Software; and * documents and other materials created by or on behalf of the Employer in connection with the contract   are and remain the property of the *Employer* or the Crown, and the *Consultant* does not acquire any right, title or interest therein or thereto.  Z48.3 All Intellectual Property Rights in:   * Consultant Background IPR, * Consultant Software and * Specially Written Software   are and remain the property of the *Consultant*, and neither the *Employer* northeCrownacquire any right, title or interest therein or thereto.  Z48.4  The *Consultant* hereby assigns to the *Employer*, with full title guarantee, title to and all rights interest in all present and future Intellectual Property Rights in all documents and other materials (excluding Specially Written Software) created by or on behalf of the *Consultant* or any Subconsultant(or any subconsultant of any tier to the *Consultant*) in performing its obligations under, or otherwise in connection with, this contract, or procures that the first owner thereof assigns them to the *Employer* on the same basis.  The *Consultant* obtains from Subconsultants (or any subconsultant of any tier to the *Consultant*) equivalent rights over all documents and other materials (excluding Specially Written Software) prepared by the Subconsultant (or any subconsultant of any tier to the *Consultant*).  This assignment takes effect either on the Contract Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Intellectual Property Rights, as appropriate.  Z48.5 The *Consultant* waives or procures a waiver of any moral rights in any copyright works assigned to the *Employer* pursuant to this contract.  Z48.6 The *Consultant* hereby grants, or procures the direct grant, to the *Employer* a perpetual, royalty-free, non-exclusive and irrevocable licences to use (to include the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)) the:   * Consultant Software; * Consultant Background IPR; and * Third Party Software   for any purpose relating to the *services* (or substantially equivalent services) or for any purpose relating to the exercise of the *Employer*’s (or any other Central Government Body’s) business or function. The licence granted under this clause Z48.6 survives the termination or expiry of this contract and cannot be terminated by the *Consultant* or its assignees or any third party.  Z48.7 The *Consultant* hereby grants to the *Employer*, or procures the direct grant to the *Employer* of, a perpetual, worldwide, royalty-free, non-exclusive and irrevocable licence to use for any purpose (which includes the right to load, execute, interpret, store, transmit, display, copy (for the purposes of loading, execution, interpretation, storage, transmission or display), modify, adapt, enhance, reverse compile, decode and translate)   * the Documentation, Source Code and the Object Code of the Specially Written Software; and * all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software (together the “**Software Supporting Materials**”.   The licence granted under this clause Z48.7 survives the termination or expiry of this contract and cannot be terminated by the *Consultant* or its assignees.  Z48.8 The *Consultant* delivers to the *Employer*  the Specially Written Software in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials as necessary to meet its obligations under the contract and upon request by the *Employer* at any time, and provides updates of the Source Code and of the Software Supporting Materials promptly following each new release of the Specially Written Software, in each case on media that is acceptable to the *Employer*. The *Consultant* acknowledges and agrees that the ownership of the media referred to in clause in this clause Z48.8 vests in the *Employer* upon their receipt.  Z48.9 The *Employer* is freely entitled to sub-license the rights granted to the *Employer* under clauses Z48.6 and Z48.7 to any third party on terms no broader than those granted to the *Employer*. Without prejudice to the generality of the foregoing, the terms of any sub-licence granted pursuant to this clause may, in the *Employer*’s absolute discretion, permit any sub-licensee to further sub-licence the sub-licensed rights. In respect of any sub-licence of the rights granted to the *Employer* under clauses Z48.6, if requested by the *Consultant* the sub-licensee executes a confidentiality undertaking in favour of the *Consultant* or third party owner of the relevant rights in such reasonable form as the *Consultant* requires and the *Employer* approves in writing*.*  Z48.10 The *Consultant* informs the *Employer*  of all Specially Written Software that constitutes a modification or enhancement to Consultant Software or Third Party Software.  Z48.11The *Consultant* warrants that   * the Software does not contain any Open Source Software other than OSS and * the OSS is licensed upon terms which permit the use of such Open Source Software by the *Consultant*, the *Employer* and the *Employer*'s end users for all purposes contemplated by this contract.   Z48.12 The *Consultant* warrants to the *Employer* that all components of the Software:   * are free from material design and programming errors, * provide the functionality set out in, and perform in all material respects in accordance with, the relevant specifications contained in * the Scope, * the Quality Statement, * the Documentation and * do not infringe any Intellectual Property Rights,   Z48.13 **[[2]](#footnote-3)**The *Employer* grants to the *Consultant,* or procures the direct grant to the *Consultant* of, a royalty-free, non-exclusive, non-transferable, revocable licence to use all Employer Software and Employer Background IPR reasonably required by the *Consultant* in order to Provide the Service.  Any such licence is granted for the duration of this contract only and solely to enable the *Consultant* to comply with its obligations under this contract.  Z48.14 The *Consultant* at all times, during and after the Contract Period, indemnifies the *Employer* and each other Indemnified Person against all losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.  Z48.15 If an IPRs Claim is made, or the *Consultant* anticipates that an IPRs Claim might be made, the *Consultant*, at its own expense and sole option, either   * procures for the *Employer* or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim or * replaces or modifies the relevant item with non-infringing substitutes provided that: * the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item, * the replaced or modified item does not have an adverse effect on any other services, or the Employer System or the Consultant System, * there is no additional cost to the *Employer* or relevant Indemnified Person (as the case may be) and * the terms and conditions of this contract apply to the replaced or modified *service*.   Z48.16 If the *Consultant*   * procures a licence or * modifies or replaces an item   in accordance with clause Z48.15 but this has not avoided or resolved the IPRs Claim, then   * the *Employer* may treat this IPRs Claim as the *Consultant* having substantially failed to Provide the Services; and * without prejudice to the indemnity set out in clause Z48.14, the *Consultant* is liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.   Z48.17 The *Consultant* keeps the Software Schedule up to date to reflect the Software used to Provide the Service. The *Consultant* provides the *Employer* a copy of the updated Software Schedule within 5 days of any change to the Software.  Z48.18 The *Consultant* deposits, and procures that each owner of the Deposited Software deposits, not less than fourteen (14) days following the relevant Commissioning Date or at such other times as the *Employer* may require, the Source Code of such part of the Software that consists of Deposited Software in escrow with the National Computing Centre ("NCC") (or equivalent approved by the *Employer*)on the basis of their standard single or multi licensee escrow agreement (as applicable) unless another form is stated in the Scope, modified as necessary, and where applicable, to be consistent with the provisions clause Z48.19. The *Consultant* ensures that (and procures that each owner of the Deposited Software ensures that) the deposited version of the Source Code is the current version of the Deposited Software and that the deposited version is kept up-to-date as the Deposited Software is modified or upgraded. [The *Consultant* pays, or procures that each owner of Deposited Software pays, the initial storage fees and any annual fees under the escrow agreement and the *Employer* pays any release fees.]  Z48.19 Where Deposited Software includes Specially Written Software, without prejudice to the provisions of clause Z48.8, the *Consultant* ensures there are no restrictions on the release to the *Employer* of Specially Written Software from escrow, which is released whenever required by the *Employer* and without payment of any release fee, unless the *Employer* has agreed otherwise.  Z48.20 Where the *Consultant* is unable to procure compliance with the provisions of clause Z48.18 in respect of any Third Party Software that is Deposited Software, it provides the *Employer* with written evidence of its inability to comply with these provisions and agrees with the *Employer*  a suitable alternative to escrow that affords the *Employer* the nearest equivalent protection. The *Consultant* is excused from its obligations under clause Z48.18 only to the extent that the *Consultant* and the *Employer* have agreed on a suitable alternative.  Z48.21 In circumstances where the *Employer* obtains the release of the Source Code from escrow, the *Consultant* hereby grants (and procures that any owner of Deposited Software grants) to the *Employer* a perpetual, worldwide, assignable, royalty-free, irrevocable and non-exclusive licence to use and support (which includes the right to load, execute, interpret, store, transmit, display, copy (for the purposes of loading, execution, interpretation, storage, transmission or display), modify, adapt, enhance, reverse compile, decode and translate) the Source Code version of the Deposited Software to the extent necessary for the receipt of the *services* (or substantially equivalent services) or for any purpose relating to the exercise of the *Employer*’s (or any other Central Government Body’s) business or function. The licence granted under this clause Z48.21 survives the termination or expiry of this contract and cannot be terminated by the *Consultant* or its assignees or any third party. | |
| **Clause 49** | | **Financial Distress**  Z49.1 In this clause Z49 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.  Z49.2 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.  Z49.3 If any of the events listed in clause Z49.2 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)  • meets the Credit Rating Test and  • has a Credit Rating at least equal to the *credit rating* for the person to whom the event listed in clause Z49.2 has occurred.  Z49.4 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 Z49.3 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.  Z49.5 If  • the *Consultant* fails to notify the *Employer* that an event listed in clause Z49.2 has occurred,  • neither the Controller nor any alternative guarantor proposed by the *Consultant* complies with clause Z49.3,  • 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 Z49.3 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 50** | | **Change of Control – new guarantee**  Z50.1 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  • meets the Credit Rating Test and  • 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).  Z50.2 If the Controller does not comply with the tests in clause Z50.1 or (if applicable) does not provide the legal opinion required in clause Z50.6, the *Consultant* may propose an alternative guarantor to the *Employer* for acceptance. The *Consultant* provides to the *Employer* the details set out in clause Z50.1 and (if applicable) the legal opinion required in clause Z50.6 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 Z50.1 or (if applicable) does not provide the legal opinion required in clause Z50.6.  Z50.3 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*.  Z50.4 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 Z50.1 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.  Z50.5 If  • neither the Controller nor any alternative guarantor proposed by the *Consultant* complies with the tests in clause Z50.1 or provides the legal opinion required by clause Z50.6,  • 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 Z50.1 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.  Z50.6 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 51** | | **Parent Company Guarantee**  Z51.1 If required by the *Employer*, the *Consultant* gives to the *Employer* a Parent Company Guarantee. If the Parent Company Guarantee was not given by the Contract Date, it is given to the *Employer* within four weeks of the Contract Date or the *Employer‘s* request, whichever is later. Parent Company Guarantees are given by  • for a standalone company – the Controller,  • for an unincorporated JV (“more than one party”) – the Controller of each Consortium Member or  • for an incorporated JV – the Controller of each Consortium Member.  In all cases it is for the *Employer* to decide (in its discretion) whether it will accept a Parent Company Guarantee from a company other than the Controller.  Z51.2 A failure to comply with this condition is treated as a substantial failure by the *Consultant* to comply with his obligations. | |
| **Clause 650** | | **Offshoring of data** | |
|  | | Z650.1 In this clause  **Risk Assessment** is a full risk assessment and security review carried out by the *Employer* in accordance with [HMG Security Policy Framework (SPF) including HMG IA Standard No. 1 - Technical Risk Assessment, October 2009, Issue No: 3.51 and ICT Offshoring (International Sourcing) Guidance dated July 2011] or any later revision or replacement. | |
|  | | Z650.2The 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 Project Manager 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. | |
|  | | Z650.3 The Consultant ensures that no premises are used in Providing the Works until   * such premises have passed a Risk Assessment or * the Project Manager confirms to the Consultant that no Risk Assessment is required. | |
|  | | Z650.4 The Consultant complies with a request from the Project Manager 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 Z650.2 or * conduct a Risk Assessment for any premises in accordance with Z650.3. | |
|  | | Z650.5 The Consultant ensures that any subcontract (at any stage of remoteness from the Employer) contains provisions to the same effect as this clause. | |
|  | | Z650.6 A failure to comply with this condition is treated as a substantial failure by the Consultant to comply with his obligations. | |

1. PROFESSIONAL SERVICES CONTRACT ANNEX E – THE SCOPE

[NOTE: PLEASE SEE FRAMEWORK SCHEDULE 2 FOR THE FULL EXTENT OF SERVICES AVAILABLE TO CONTRACTING AUTHORITIES. CONTRACTING AUTHORITIES SHOULD POPULATE THE SCOPE IN LIGHT OF AND IN ACCORDANCE WITH FRAMEWORK SCHEDULE 2. IT SHOULD DETAIL TYPES OF SERVICES THAT YOU REQUIRE TOGETHER WITH ANY RESPONSE TIMES, DATA PACK (INC SERVICE STANDARDS), STANDARDS, SERVICE LEVELS ENVISAGED UNDER THE FRAMEWORK AND AS REFINED DURING FURTHER COMPETITION. FURTHERMORE, CONTRACTING AUTHORITIES MUST MAKE SURE THAT THE SCOPE CONTAINS ALL OF THE REQUIRED INFORMATION AND REQUIREMENTS ENVISAGED BY THE NEC3 PSC. THE SERVICES INFORMATION MUST BE ALIGNED WITH THE NEC3 PSC AND IF EITHER THE CCS OR A CONTRACTING AUTHORITY REQUIRES ADVICE OR GUIDANCE ON COMPILING THE SCOPE THEN THE NEC CAN OFFER THIS TRAINING]

[INSERT OR APPEND HERE THE SCOPE INFORMATION DEVELOPED DURING THE FURTHER COMPETITION PROCEDURE].

1. PROFESSIONAL SERVICES CONTRACT ANNEX F – PRICE LIST

[Insert or append here the Price List]

1. PROFESSIONAL SERVICES CONTRACT ANNEX g – STAFF TRANSFER

***[Guidance Note: this schedule only contains general provisions on the application of***

***TUPE and related issues and is essentially designed to alert Employers to the range of issues that may need to be considered where the entering into of a Call Off Agreement (and/or its subsequent expiry) is likely to entail a TUPE transfer. Employers should always take specialist legal advice on the specific TUPE and pensions drafting requirements (e.g. whether the New Fair Deal applies, whether there will be a Relevant Transfer etc) relevant to their project]***

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

|  |  |
| --- | --- |
|  |  |
| **“Consultant’s Final Personnel List”** | means a list provided by the *Consultant* 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 *Consultant* of all staff who are engaged in or wholly or mainly assigned to the provision of the *service* or any relevant part of the *service* which it is envisaged as at the date of such list will no longer be provided by the *Consultant* |
| **“Employee Liabilities”** | 1. 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:    1. redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;    2. unfair, wrongful or constructive dismissal compensation;    3. 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;    4. compensation for less favourable treatment of part-time workers or fixed term employees;    5. outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the *Employer* or the Replacement Consultant to a Transferring Consultant Employee which would have been payable by the *Consultant* or the Sub-Consultant if such payment should have been made prior to the Service Transfer Date;    6. claims whether in tort, contract or statute or otherwise;    7. 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; |
| **"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 [www.gov.uk/government/publications/principles-of-good-employment-practice](http://www.gov.uk/government/publications/principles-of-good-employment-practice) ; |
| **“Replacement Consultant”** | means any third party provider of Replacement Services appointed by or at the direction of the *Employer* from time to time or where the *Employer* is providing Replacement Services for its own account, shall also include the *Employer* |
| **“Replacement Services”** | means any services which are substantially similar to any of the *service* and which the *Employer* receives in substitution for any of the *service* following the end of the *service period* or earlier termination, whether those services are provided by the *Employer* 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 *service* (or any part of the *service*), for whatever reason, from the *Consultant* or any subConsultant to a Replacement Consultant or a Replacement Sub-Consultant |
| **“Service Transfer Date”** | means the date of a Service Transfer; |
| **"Staffing Information"** | 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 *Employer* may reasonably request (subject to all applicable provisions of the Data Protection Legislation), but including in an anonymised format:  their ages, dates of commencement of employment or engagement and gender;  details of whether they are employed, self employed Consultants or consultants, agency workers or otherwise;  details of contracted working hours;  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. RelevantTransfers
   1. The *Employer* and the *Consultant* agree that:
      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
      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.
   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
   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:
      1. any act or omission by the *Employer* occurring before the Relevant Transfer Date;
      2. the breach or non-observance by the *Employer* before the Relevant Transfer Date of:
         1. any collective agreement applicable to the Transferring Employer Employees; and/or
         2. any custom or practice in respect of any Transferring Employer Employees which the *Employer* is contractually bound to honour.
      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;
      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:
         1. 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
         2. 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.
      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;
      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
      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. 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:
      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. arising from the failure by the *Consultant* or any Sub-Consultant to comply with its obligations under the Employment Regulations.
   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:
      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. 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*.
   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.
   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:
      1. no such offer of employment has been made;
      2. such offer has been made but not accepted; or
      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.

* 1. 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. The indemnity in paragraph 2.6 of Part A of this Annex G
     1. shall not apply to:
        1. any claim for

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

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;

* + - 1. 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
    1. 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.
  1. 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*.

1. *Consultant* Indemnities and Obligations
   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:
      1. any act or omission by the *Consultant* or any Sub-Consultant whether occurring before, on or after the Relevant Transfer Date;
      2. the breach or non-observance by the *Consultant* or any Sub-Consultant on or after the Relevant Transfer Date of:
         1. any collective agreement applicable to the Transferring Employer Employees; and/or
         2. any custom or practice in respect of any Transferring Employer Employees which the *Consultant* or any Sub-Consultant is contractually bound to honour;
      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;
      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;
      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;
      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:
         1. 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
         2. 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;
      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
      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.
   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. 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 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*.
2. Information
   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.
3. Principles of Good Employment Practice
   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.
   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:
      1. the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
      2. HM Treasury's guidance “Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
      3. HM Treasury's guidance: “Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues” of June 2004; and/or
      4. The New Fair Deal.
4. Pensions
   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.

12/08/2013

**ANNEX TO PART A: PENSIONS**

1. Participation
   1. The *Consultant* undertakes to enter into the Admission Agreement.
   2. The *Consultant* and the *Employer*:
      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;
      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;
      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
      4. agree that the *Employer* may terminate this Call Off Contract for material default in the event that the *Consultant* breaches the Admission Agreement.
   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
   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.
   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.
   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.
3. Funding
   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.
   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
   1. The *Consultant* and the *Employer* respectively undertake to each other:
      1. to provide all information which the other party may reasonably request concerning matters:

referred to in this Annex; and

set out in the Admission Agreement

and shall supply such information as expeditiously as possible; and

* + 1. 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).

1. Indemnities
   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.
2. Employer Obligation
   1. The *Consultant* shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.
3. Subsequent Transfers
   1. The *Consultant* shall:
      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
      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.
      3. for the period either:
         1. 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
         2. 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.

12/08/2013

**PART B**

**Transferring Former Consultant Employees at commencement of the provision of Services**

1. Relevant Transfers
   1. The parties agree that:
      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
      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.
   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
   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:
      1. any act or omission by the Former Consultant arising before the Relevant Transfer Date;
      2. the breach or non-observance by the Former Consultant arising before the Relevant Transfer Date of:
         1. any collective agreement applicable to the Transferring Former Consultant Employees; and/or
         2. any custom or practice in respect of any Transferring Former Consultant Employees which the Former Consultant is contractually bound to honour.
      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:
         1. 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
         2. 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;
      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;
      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
      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. 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:
      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. arising from the failure by the *Consultant* and/or any Sub-Consultant to comply with its obligations under the Employment Regulations).
   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:
      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. 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*.
   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.
   5. If by the end of the 15 Working Day period specified in paragraph 2.3.2 of Part B of this Annex G:
      1. no such offer of employment has been made;
      2. such offer has been made but not accepted; or
      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.

* 1. 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. The indemnity in paragraph 2.6 of Part B of this Annex G
     1. shall not apply to:
        1. any claim for

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

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

* + - 1. 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
    1. 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.
  1. 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*.

1. Consultant Indemnities and Obligations
   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:
      1. any act or omission by the *Consultant* or any Sub-Consultant whether occurring before, on or after the Relevant Transfer Date;
      2. the breach or non-observance by the *Consultant* or any Sub-Consultant on or after the Relevant Transfer Date of:
         1. any collective agreement applicable to the Transferring Former Consultant Employee; and/or
         2. 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. 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;
      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;
      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;
      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:
         1. 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
         2. 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;
      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
      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.
   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.
   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.
2. Information
   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.
3. Principles of Good Employment Practice
   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:
   2. the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
   3. HM Treasury's guidance “Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
   4. HM Treasury's guidance: “Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues” of June 2004; and/or
   5. the New Fair Deal.
4. Procurement Obligations
   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.
5. Pensions
   1. The *Consultant* shall, and shall procure that each Sub-Consultant shall, comply with the pensions provisions in the following Annex.

12/08/2013

**ANNEX TO PART B: PENSIONS**

1. Participation
   1. The *Consultant* undertakes to enter into the Admission Agreement.
   2. The *Consultant* and the *Employer*:
      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;
      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;
      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
      4. agree that the *Employer* may terminate this Call Off Contract for material default in the event that the *Consultant* breaches the Admission Agreement.
   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
   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. 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.
   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.
   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
   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.
   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
   1. The *Consultant* and the *Employer* respectively undertake to each other:
      1. to provide all information which the other party may reasonably request concerning matters:

referred to in this Annex; and

set out in the Admission Agreement

and shall supply such information as expeditiously as possible; and

* + 1. 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).

1. Indemnities
   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.
2. Employer Obligation
   1. The *Consultant* shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.
3. Subsequent Transfers
   1. The *Consultant* shall:
      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
      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.
      3. for the period either:
         1. 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
         2. 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.

12/08/2013

**PART C**

**No transfer of employees at commencement of the provision of Services**

1. Procedure in the Event of Transfer
   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.
   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:
      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
      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*.
   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.
   4. If by the end of the fifteen (15) Working Day period specified in paragraph 1.2.2
      1. no such offer of employment has been made;
      2. such offer has been made but not accepted; or
      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.

1. Indemnities
   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:
      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
      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.
   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*.
   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.
   4. The indemnities in paragraph 2.1 of Part C of this Annex G
      1. shall not apply to:
         1. any claim for

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

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

* + - 1. 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
    1. 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.

1. Procurement Obligations
   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.

12/08/2013

**PART D**

**Employment Exit Provisions**

1. Pre-service Transfer Obligations
   1. The *Consultant* agrees that within twenty (20) Working Days of the earliest of:
      1. receipt of a notification from the *Employer* of a Service Transfer or intended Service Transfer;
      2. receipt of the giving of notice of early termination or any partial termination of this contract;
      3. the date which is twelve (12) months before the end of the *service period*; and
      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. 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. the Consultant's Final Personnel List, which shall identify which of the Staff are Transferring Consultant Employees; and
     2. the Staffing Information in relation to the Consultant’s Final Personnel List (insofar as such information has not previously been provided).
  2. 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.
  3. 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.
  4. 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. 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;
     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);
     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;
     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;
     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
     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. 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.
  2. 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. the most recent month's copy pay slip data;
     2. details of cumulative pay for tax and pension purposes;
     3. details of cumulative tax paid;
     4. tax code;
     5. details of any voluntary deductions from pay; and
     6. bank/building society account details for payroll purposes.

1. Employment Regulations Exit Provisions
   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. 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.
   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:
      1. any act or omission of the *Consultant* or any Sub-Consultant whether occurring before, on or after the Service Transfer Date;
      2. the breach or non-observance by the *Consultant* or any Sub-Consultant occurring on or before the Service Transfer Date of:
         1. any collective agreement applicable to the Transferring Consultant Employees; and/or
         2. 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;
      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;
      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:
         1. 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
         2. 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 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;
      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);
      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
      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.
   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:
      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. arising from the Replacement Consultant’s failure, and/or Replacement Sub-Consultant’s failure, to comply with its obligations under the Employment Regulations.
   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:
      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. 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*.
   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.
   7. If after the fifteen (15) Working Day period specified in paragraph 2.5.2 of Part D of this Annex G has elapsed:
      1. no such offer of employment has been made;
      2. such offer has been made but not accepted; or
      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.

* 1. 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. The indemnity in paragraph 2.8 of Part D of this Annex G
     1. shall not apply to:
        1. any claim for

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

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

* + - 1. 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
    1. 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.
  1. 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. 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:
     1. the *Consultant* and/or any Sub-Consultant; and
     2. the Replacement Consultant and/or the Replacement Sub-Consultant.
  3. 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.
  4. 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:
     1. any act or omission of the Replacement Consultant and/or Replacement Sub-Consultant;
     2. the breach or non-observance by the Replacement Consultant and/or Replacement Sub-Consultant on or after the Service Transfer Date of:
        1. any collective agreement applicable to the Transferring Consultant Employees; and/or
        2. 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;
     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;
     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;
     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;
     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:
        1. 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
        2. 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;
     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
     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.
  5. 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.

12/08/2013

**ANNEX 1: LIST OF NOTIFIED SUBCONSULTANTS**

***[Guidance Note: list of Notified Sub-Consultants to be inserted here as required.*]**

1. PROFESSIONAL SERVICES CONTRACT ANNEX H – [ ]

[Insert reference to any other documents which should form part of the call off contract]

1. [↑](#footnote-ref-2)
2. [↑](#footnote-ref-3)