**NEC3 Professional Services Contract**

**Architectural Services at Station Approach, Winchester**

**Additional conditions of contract**

**The Z clauses as referenced
in the Contract Data Part 1**

**April 2013**

***Note:***

This document details amendments to a standard Option A Professional Services Contract.

For the purposes of tendering, if there are any contradictions between the terms of the contract (including these amendments) and the payment procedures set out in the Invitation to Tender and the documents attached to that Invitation, the *Consultant* should adopt the payment procedures required in the Invitation to Tender and documents.

**ADDITIONAL CONDITIONS OF CONTRACT**

**z clauses**

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| **Amendments to Core and Main Option clauses** | **Z1** |  |
|  | Z1.1 | The following amendments and additions are made to the Core and Main Option clauses: |

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| **Clause 11.2****11.2(4)****11.2(15)** |  | Delete the current wording and insert “The Contract Date is the date of execution of this contract or (if earlier) the date when the *Consultant* first begins to Provide the Services.”Delete the words “which would delay immediately following work”. |
|  **11.2(26)** |  | Add new clause 11.2(26)“Best Value means the functions of a best value authority in Part I of the Local Government Act 1999.” |
| **11.2(27)** |  | Add new clause 11.2(27)“Business Continuity Plan is a plan showing how the *Consultant* can continue to Provide the Services throughout the first week after any incident that disrupts the *Consultant’s* normal operations including a fire or the loss of electrical power to the *Consultant’s* or a Subconsultant’s premises.” |
| **11.2(28)****11.2(29)** |  | Add new clause 11.2(28)“Change in Control means there is a change of control of the *Consultant* within the meaning of section 1124 of the Corporation Tax Act (or any event analogous to the this in a jurisdiction other than England and Wales).”Add new clause 11.2(29)“Codes of Practice is all relevant Codes of Practice and Guidance issued by the Information Commission or Ministry of Justice in relation to the DPA or FOIA including any Codes of Practice on the discharge of the functions of Public Authorities under Part 1 of the FOIA.” |
| **11.2(30)** |  | Add new clause 11.2(30)“Confidential Information is any information which has been notified as confidential by either Party to the other or which ought to be considered as confidential (however it is communicated or on whatever media it is stored) including information relating to the business, affairs, properties, assets, trading practices, services, developments, trade secrets, patents or copyright or other intellectual property rights, know-how, personnel, customers and suppliers of either Party and all Personal Data and sensitive personal data (within the meaning of the DPA).” |
| **11.2(31)** |  | Add new clause 11.2(31)“Contract Manager is the *Consultant’s* manager of this contract.” |
| **11.2(32)** |  | Add new clause 11.2(32)“Data Controller has the meaning given in the DPA.” |
| **11.2(33)** |  | Add new clause 11.2(33)“Data Subject has the meaning given in the DPA.” |
| **11.2(34)** |  | Add new clause 11.2(34)“DPA is the Data Protection Act 1998.” |
| **11.2(35)** |  | Add new clause 11.2(35)“Employer Data” are all data, information, text, drawings, diagrams, images, records or sound embodied in any electronic or tangible medium which the *Employer* supplies or gives access to the *Consultant* under this contract or which the *Consultant* produces or obtains under this contract.” |
| **11.2(36)** |  | Add new clause 11.2(36)“The End Date is the earlier of the end of the contract period or the termination date.” |
| **11.2(37)** |  | Add new clause 11.2(37)“Environmental Information Regulations means the Environmental Information Regulations 2004.” |
| **11.2(38)** |  | Add new clause 11.2(38)“Equality and Diversity Legislation is all European and UK Legislation preventing discrimination including discrimination on the basis of colour, nationality, ethnic or national origins, gender, marital or civil partnership status, maternity and pregnancy, sexual orientation, gender reassignment, religion or belief, age, disability, part time, fixed term or agency worker status, or any other protected characteristic.” |
| **11.2(39)** |  | Add new clause 11.2(39)“Extremist is a person who is vocally or actively opposed to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs and including a person who calls for the death of members of the British armed forces whether in this country or overseas.” |
| **11.2(40)** |  | Add new clause 11.2(40)“FOIA means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to this legislation.” |
| **11.2(41)** |  | Add new clause 11.2(41)“Information has the meaning given by section 84 of the FOIA.” |
| **11.2(42)** |  | Add new clause 11.2(42)“Intellectual Property Rights is all intellectual property rights including, patents, trademarks, designs, design rights, database rights, copyright, inventions, trade secrets, know-how and confidential information.” |
| **11.2(43)** |  | Add new clause 11.2(43)“Personal Data has the meaning given in the DPA.” |
| **11.2(44)** |  | Add new clause 11.2(44)“Radicalisation is the process by which a person comes to support terrorism and Extremist ideologies associated with terrorist groups.” |
| **11.2(45)** |  | Add new clause 11.2(45)“Request for Information has the meaning set out in FOIA and includes any apparent request for information under the FOIA or the Environmental Information Regulations.” |
| **11.2(46)** |  | Add new clause 11.2(46)“Subject Access Request has the meaning given in the DPA.” |
| **11.2(47)** |  | Add new clause 11.2(47)“Terrorism Prevention Duty is the duty to have due regard to the need to prevent people from being drawn into terrorism under section 26 of the Counter Terrorism and Security Act 2015.” |
| **11.2(48)** |  | Add new clause 11.2(48)“Terrorism Prevent Programme is the Prevent programme as set out in the Prevent Strategy presented to Parliament by the Secretary of State for the Home Department in June 2011, being part of the UK Government’s wider counter-terrorism strategy.” |
| **11.2(49)****Clause 12.1** |  | Add new clause 11.2(49)“Whistle Blowing is the exposure of negligence, abuses or dangers, such as professional misconduct or incompetence, which exists in the organisation in which the whistle blower works.”Delete clause 12.1 and replace as follows: |
| **Clause 12.5** |  | “In this contract, except where the context shows otherwise:* words in the singular also mean in the plural and the other way round;
* words in the masculine also mean in the feminine and neuter and the other way round;
* 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; and
* references to a standard include any current relevant standard that replaces it.”

Add new clause 12.5“The term "including" does not limit the breadth of the words which precede it and the ejusdem generis rule of legal construction does not apply to this contract.” |
| **Clause 12.6** |  | Add new clause 12.6“The applicable law includes any statute, subordinate legislation, enforceable European community right and any statutory guidance, directions, determinations, or codes of practice having the force of law together with any amendment or modification to it.” |
| **Clause 12.7** |  | Add new clause 12.7“If a Party* fails to exercise or delays in exercising any right, power or remedy, this is not a waiver of that right, power or remedy, or
* exercises or partially exercises a right, power or remedy, this does not prevent a further exercise of that right, power or remedy.”
 |
| **Clause 12.8** |  | Add new clause 12.8“Nothing in this contract* requires the *Employer* to do anything that is inconsistent with his statutory duties or obligations as a local authority or
* fetters the *Employer* in discharging his statutory functions.”
 |
| **Clause 14.1****Clause 15.1****Clause 21.2** |  | Delete clause 14.1 and replace as follows:“The Parties agree that neither:* any communication from the *Employer*;
* any acceptance by the *Employer* of a communication from the

*Consultant*; nor* any inspection, test or acceptance by the *Employer*,

changes the *Consultant*’s obligations under this contract (including the *Consultant*’s responsibility to Provide the Services, and its liability for Defects and its design).”Add the following bullet point after the first bullet point in clause 15.1:* “increase the overall cost of the project,”

At the end of the clause insert “The *Consultant* uses all reasonable endeavours to mitigate the effects of any delay in the performance of its obligations”.Delete the existing clause 21.2 and insert the following wording“The *Consultant* agrees to exercise all the reasonable skill, care and diligence to be expected of a properly qualified, experienced and competent professional undertaking Services similar to the Services in relation to projects of a similar scale and character to the development.” |
| **Clause 21.4** |  | Insert a new clause 21.4“The *Consultant* exercises the degree of skill, care and diligence set out in clause 21.2 not to specify any products or materials for use in the development (to the extent that the *Consultant* specifies any products or materials) which:* are not in accordance with the version of the publication Good Practice in the Selection of Construction Materials published by the British Council for Offices in force at the time of their specification;
* do not conform with European or British Standards or Codes of Practice or good building practice; or
* are generally known to be deleterious to health and safety and/or to the durability of buildings or structures in the particular circumstances in which they are used.”

The *Consultant* informs the *Employer* immediately if the *Consultant* becomes aware whilst performing the services that any of the items referred to in this clause have been specified for use or used.” |
| **Clause 22.1****Clause 22.2****Clause 24.2****Clause 24.3** |  | Insert the following as a new final sentence in clause 22.1:“An alternative reason for not accepting the person may be based upon the*Employer*’s previous experience of the proposed replacement.”In clause 22.2 after “arranges” insert:"at no cost to the *Employer*".Delete clause 24.2 and replace as follows:“The *Consultant* submits the name of any proposed Subconsultant to the *Employer* for acceptance. A reason for not accepting the Subconsultant is that his appointment will not allow the *Consultant* to Provide the Services, the *Employer* is concerned (on reasonable grounds) with the financial standing or expertise or experience or insurance cover of the proposed Subconsultant, or the *Employer* requires a collateral warranty and the Subconsultant is unable to provide a collateral warranty to the *Employer* in a form which is acceptable to the *Employer*. The Consultant does not appoint a proposed Subconsultant until the *Employer* has accepted such Subconsultant. The *Consultant* does not suspend or terminate the appointment of any accepted Subconsultant without the *Employer*'s prior written consent.”Delete the existing clause 24.3Replace with “The *Consultant* appoints a Subconsultant on this form of contract (NEC3 Professional Services Contract) or submits the proposed conditions of contract for each subcontract to the *Employer* for acceptance.The *Consultant* does not appoint a Subconsultant on the proposed subcontract conditions submitted until the *Employer* has accepted them. A reason for not accepting them is that* they will not allow the *Consultant* to Provide the Services,
* they do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation,
* they do not provide for any required collateral warranties,
* they include unacceptable termination provisions,
* they do not include the obligations on the Subconsultant that this contract requires are imposed on the Subconsultant,
* they do not secure similar rights of access for the *Employer,* his auditors or anyone with a statutory or other legal right to inspect or audit the *Employer* for the purpose of conducting any audit investigation of the contract similar to those applying to the *Consultant* or
* they do not include provisions having substantially the same effect as those applying to the *Consultant* under this contract.”
 |
| **Clause 24.5** |  | Add a new clause 24.5“The *Consultant* does not appoint a Subconsultant or supplier if there are compulsory grounds for excluding the Subconsultant or supplier under regulation 57 of the Public Contracts Regulations 2015.” |
| **Clause 24.6** |  | Add a new clause 24.6“”The *Consultant* includes in any subcontract awarded by him provisions requiring that* payment due to the Subconsultant or supplier under the subcontract is made no later than 30 days after receipt of a valid and undisputed invoice, unless this contract requires the *Consultant* to make earlier payment to the Subconsultant or supplier,
* invoices for payment submitted by the Subconsultant or supplier are considered and verified by the *Consultant* in a timely fashion,
* undue delay in considering and verifying invoices is not sufficient justification for failing to regard an invoice as valid and undisputed and
* any contract awarded by the Subconsultant or supplier for work included in this contract includes provisions to the same effect as these provisions.”
 |
| **Clause 24.7** |  | Add a new clause 24.7“In addition to the name, the *Consultant* submits to the *Employer* the contact details and the legal representatives of each Subconsultant when the *Consultant* appoints him. The *Consultant* notifies the *Employer* of any changes to this information as soon as the *Consultant* becomes aware of them.” |
| **Clause 24.8****k** |  | Add a new clause 24.8“The *Employer* may, having stated his reasons, instruct the *Consultant* to remove a Subconsultant.” |
| **Clause 25.5****Clause 31.3****Clause 51.4** |  | Add a new clause 25.5 as follows:“The Consultant complies with:* any rules, regulations, policies and procedures (including health and safety policies and quality assurance procedures) issued by the *Employer*; and
* any planning permissions notified by the *Employer* to the *Consultant*.”

Add the following additional bullet point to Clause 31.3:* “it is more onerous on the Employer or Others”.

In clause 51.4, delete“or has been delayed because of disagreement.” |
| **Clause 55.4** |  | Add new clause 55.4 “If Task Completion is after the Completion Date, the *services* to be provided by the *Consultant* are only that needed for * this Task and
* any other Task where the Task was not completed before the Completion Date.”
 |
| **Clause 61.4****Clause 62.2** |  | Delete the first bullet point of clause 61.4 and replace as follows:* “arises by reason of any act, omission, breach or default of the *Consultant*, any Subconsultant or supplier, or any other person for whom the *Consultant* is responsible.”

Add second paragraph“If the *Consultant* and *Employer* agree, the effect of a single or group of minor compensation events is evaluated in the next revised programme. |
| **Clause 70.5** |  | Add new clause 70.5:“The right to use the material provided by one Party to the other is in the form of an irrevocable, non-exclusive, royalty-free licence (including the right to grant sub-licences) to copy, use, adapt and modify all designs and documents he makes available in connection with this contract.” |
| **Clause 71.1****Clause 81.1** |  | Delete existing clause 71.1Replace with“The *Consultant* does not, and ensures that Subconsultants do not, give information concerning the *services* for publication in the press or on radio, television, internet or any other medium without the written consent of the *Employer.”*In the Insurance Table at clause 81.1, delete "Liability of the *Consultant* for claims made against him arising out of his failure to use the skill and care normally used by professionals providing services similar to the services" and replace with "Liability of the *Consultant* for claims made against him arising out of his failure to use the level of skill and care required by this contract". |
| **Clause 81.2****Clause 82.1** |  | Delete clause 81.2 and replace as follows:“As and when reasonably required by the *Employer*, the *Consultant* produces for inspection satisfactory documentary evidence that the insurances required by this contract are in force and that the premiums due under them are fully paid.”In clause 82.1, add the following new bullet point:* “loss of or damage to any property owned or occupied by the Employer” (other than the property which is the subject of the services)”.

Delete clause 82.2.  |
| **Clause 90.1** |  | Delete existing bullet 4 of second list.Replace with“given notice of its intention to enter into administration, had an administrator appointed or had an administration order made against it,” |
| **Clause 90.1** |  | Delete “or” from the end of bullet 5 of second list, and replace with a comma. |
| **Clause 90.1** |  | Delete full stop from the end of bullet 6 of second list, and replace with “or”. |
| **Clause 90.1** |  | Add new bullet 7 of second list:“become subject to any other insolvency related procedure similar or equivalent to these procedures.” |
| **Clause 90.3****Clause 90.6** |  | Add the following new bullet points to clause 90.3:* “the *Consultant* breaches clause Z25;
* the *Consultant* breaches clauses 24.2 or 24.3; and
* there is a Change in Control of the *Consultant*.

Add new clause 90.6:“The *Employer* may terminate the *Consultant’s* obligation to Provide the Services by notifying the *Consultant* if* the *Consultant* or anyone employed by him or a Subconsultant or anyone acting on the *Consultant’s* or Subconsultant’s behalf (whether without or with the knowledge of the *Consultant* or the Subconsultant) commits any offence under the Bribery Act 2010 or
* the *Consultant* breaches his obligations relating to bribes, gifts, considerations, financial advantages or payments of undisclosed commission.”
 |
| **Clause 90.7** |  | Add new clause 90.7:“The *Employer* may terminate the *Consultant’s* obligation to Provide the Services if he gives at least 6 (six) weeks’ notice to the *Consultant*.Other than any amount due in clause 92.1, in the event of such termination the *Consultant* is not entitled (whether under this contract, under common law or otherwise) to any sums in respect of loss of anticipated profit, loss of contracts, consequential or economic losses or any other losses and expenses arising by reason of or in connection with such termination.” |
| **Clause 90.8** |  | Add new clause 90.8:“The *Employer* may terminate the *Consultant’s* obligation to Provide the Services if any of the provisions of paragraph 73(1) of The Public Contracts Regulations 2015 apply. If the *Employer* terminates under the provisions of paragraph 73(1)(b) of the Public Contracts Regulations 2015 as a result of information not disclosed by the *Consultant* at the Contract Date, the procedures and amounts due on termination are the same as if the *Consultant* has substantially failed to comply with his obligations. If the *Employer* otherwise terminates under the provisions of paragraph 73(1) of the Public Contracts Regulations 2015, the procedures and amounts due on termination are the same as if the *Employer* no longer requires the *services*.” |
| **Clause 90.9** |  | Add new clause 90.9:“The *Employer* may terminate the *Consultant’s* obligation to Provide a part only of the Services if it is practicable for the *Consultant* to continue to provide separately the remaining part or parts of the *services*. In that event* with regard to the part of the *services* terminated, the procedures followed and the amounts due on termination are in accordance with terminating the *Consultant’s* obligation to Provide the Services,
* the provisions which would have been applicable if the *services* had been terminated in its entirety are applicable to the part of the *services* terminated and
* all other provisions of the contract continue to apply to the part or parts of the *services* which are not terminated.”
 |
| **Clause 91.1****Clause 91.2** |  | ”Delete the final sentence of clause 91.1 (after "After the final payment has been made….") and replace as follows:“Upon termination for whatever reason, the *Consultant* gives to the *Employer* all hard copy and electronic data (including material prepared by any Subconsultant) obtained or prepared by or on behalf of the *Consultant* under this contract. The *Employer* has the right to use such material for completion of the services and the project.”Add new clause 91.2"Termination of this contract is without prejudice to* the rights and duties of each Party up to the date of termination,
* any rights accrued to either Party at the date of termination, and
* any terms of this contract that are intended to survive its termination."
 |
| **Clause 91.3****Clause 91.4****Clause 92.1** |  | Add new clause 91.3 as follows:"On termination the *Consultant*:* promptly takes all necessary steps to stop performance of the services in an orderly manner and with reasonable speed and economy;
* delivers to the *Employer* all documents belonging to the *Employer* that shall for the time being be under the control of the *Consultant* or any Subconsultant; and
* ceases to access any of the *Employer*’s property or computer systems to which it previously had access.

Add new clause 91.4 as follows:“The *Consultant* complies at its own cost with the reasonable requirements of the *Employer* to ensure the orderly hand over of the services to any incoming substitute consultant.”In clause 92.1, delete “a final payment” and insert “Subject to clause 92.2, a final payment”. In clause 92.1 delete “as soon as possible” and insert “within a reasonable time.” |
| **Clause 92.2** |  | Add the following words to the end of clause 92.1:“The *Employer* shall not be liable to the *Consultant* for any other costs, expenses, disbursements or losses (including any indirect or consequential losses such as loss of profit) which may arise as a result of the termination of the contract.”Delete clause 92.2Replace with“If the *Employer* terminates* because of the insolvency of the *Consultant*;
* because the *Consultant* breaches clause 24.2 or 24.3;
* because of a substantial failure of the Consultant to comply with his obligations;
* because of the *Consultant*’s breach of clause Z25;
* breach of the *Consultant’s* obligations on blacklisting,
* breach of the *Consultant’s* obligations on Whistle Blowing or
* substantial failure of the *Consultant* to comply with his obligations,

the amount due on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *services*. If the additional cost exceeds the amount due the *Consultant* pays that excess to the *Employer*.” |
| **Clause 92.3** |  | Add new clause 92.3“If the *Employer* terminates for breach of the prohibitions on bribes, gifts, considerations, financial advantages or payments of undisclosed commission received by the *Consultant* or anyone employed by him or acting on his behalf the amount due on termination includes a deduction of an amount equal to the amount or value of any bribes, gifts, considerations, financial advantages or payments of undisclosed commission received by the *Consultant* plus a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *services*.” |

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| **Amendments to Secondary Option clauses** | **Z2** |  |
|  | Z2.1 | The following amendments and additions are made to the Secondary Option clauses: |

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| **Option W2** |  |  |
| **Clause W2.3(4)****Clause W2.4(1) and (2)****W2.5** |  | Delete the following words from the first bullet point in clause W2.3(4):“and alter a quotation which has been treated as having been accepted”Delete clauses W2.4(1) and W2.4(2).Insert the following as a new clause W2.5:Any compromise of a dispute which is certified in writing by solicitors advising the *Employer* on that dispute as a settlement which is based on a permissible interpretation of the respective rights and obligations of the *Parties* under this contract is to be regarded as having been derived from the terms of this contract and is not to be regarded as a variation to it.  |
| **Option X8** |  | Delete the current Option X8 and insert a new Option X8. |
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| **Option X8.1** |  | The *Consultant* enters into the collateral warranty agreements and procures that all Subconsultantsenter into a collateral warranty agreement in the forms set out in the Scope in favour of:1. the *Employer*;
2. any person providing finance in connection with the development or any part of it;
3. any person who will first purchase (freehold or long leasehold) the development or any part of it; and
4. any person who will first take a lease of the development or any part of it.
 |
| **Option X8.2** |  | The *Consultant* enters into the collateral warranty agreements and procures that all Subconsultantsenter into a collateral warranty agreement within 14 (fourteen) days of being provided with the necessary engrossments. The *Employer* withholds any payment due to the *Consultant* under this contract until such a time as the collateral warranty agreements are provided. |

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| **Other special Clauses** |  |  |
| ***Consultant’s* obligations** | **Z3** |  |
|  | Z3.1 | The *Consultant* does not receive any additional payment for performing these clauses Z5 to Z40. |
| **Prevention of Terrorism** | **Z4** |  |
|  | Z4.1 | The *Consultant*:* does not engage in any Extremist activities or espouse Extremist views,
* ensures that employees, agents, suppliers and Subconsultants (and its Subsconsultants employees agents and suppliers):

- are trained to recognise a person’s vulnerability to being drawn into terrorism,- are aware of available programmes to deal with Extremist activity and Radicalisation, and- have a good understanding of the Terrorism Prevent Programme, and* does not do or omit to do anything or cause anything to be done that would cause the *Employer* to contravene the Terrorism Prevention Duty or incur any liability in relation to the Terrorism Prevention Duty.
 |
| **Employer Data** | **Z5** |  |
|  | Z5.1 | The *Consultant* acts as bailee of any Employer Data and stores it safely and separately from any data not relating to the *services* and in a manner which makes it readily identifiable as Employer Data. |
|  | Z5.2 | The *Consultant* acknowledges that the Employer Data belongs solely to the *Employer*. The *Consultant* does not delete or remove any copyright notices contained in or relating to the Employer Data. |
|  | Z5.3 | The *Consultant* takes all steps necessary to ensure that he can restore or procure the restoration of the Employer Data if it is lost or corrupted. If the Employer Data is lost or corrupted and the *Employer* so requests the *Consultant* restores or procures the restoration of the Employer Data to its state immediately before the corruption or loss. |
|  | Z5.4 | Subject to the Intellectual Property Rights, ownership in all Employer Data including existing documents and the physical embodiments of designs relating to this contract, transfers from the *Consultant* to the *Employer* on the End Date. Following the End Date, the *Consultant* hands over all such Employer Data to the *Employer* immediately upon request. |
|  | Z5.5 | The *Consultant* ensures that the *Employer* is able to use any software necessary to access and use the Employer Data after the End Date.  |
| **Best Value** | **Z6** |  |
|  | Z6.1 | The *Consultant*, only to the extent of his obligations in this contract, makes arrangements to secure a continuous improvement in the way the *Consultant* and his Subconsultants Provide the Services having regard to a combination of economy efficiency and effectiveness. |
|  | Z6.2 | If the *Employer* reasonablyso requests the *Consultant* undertakes or refrains from undertaking any actions to enable the *Employer* to comply with Best Value including* supporting and assisting the *Employer* in meeting Best Value in the way the *Consultant* Provides the Services and
* complying with requests from the *Employer* for information, data or other assistance to achieve Best Value.
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| **Health and safety** | **Z7** |  |
|  | Z7.1 | The *Consultant* complies with all applicable health and safety law and regulations in Providing the Services. |
|  | Z7.2 | Before the *starting date* the *Consultant* notifies the *Employer* of the name of the person responsible for health and safety. When on premises owned or occupied by the *Employer*, the *Consultant* ensures that his and his Subconsultant’s employees comply with the *Employer's* general health and safety policyand with the lawful requirements of the *Employer*. |
|  | Z7.3 | The *Employer* may suspend the Providing of the Services or any part of the *services* if the *Consultant** does not comply with health and safety legislation,
* has not provided his health and safety policy to the *Employer* or
* has not notified the *Employer* of the person responsible for health and safety.
 |
|  | Z7.4 | Following such suspension the *Consultant* does not Provide the Services or any part of the *services* until the *Employer* is satisfied that the *Consultant* has remedied the failure. An assessment of a compensation event does not include cost and time for the period of the suspension. |
|  | Z7.5 | In Providing the Services the *Consultant* adopts safe methods of work to protect the health, safety and welfare of* the *Consultant’s* employees, agents, suppliers and Subconsultants,
* his Subconsultant’s employees and agents,
* employees and agents of the *Employer* and
* all other persons, including members of the public.
 |
|  | Z7.6 | The *Consultant* complies with the requirements of his own safety policy and safety codes of practices. |
|  | Z7.7 | The *Consultant* provides the information and documents the *Employer* requires as evidence of compliance with his own safety policy and applicable safety codes of practice. The *Consultant* maintains copies of all applicable law, codes of practice and working rules applicable to Providing the Services and permits his employees to use and refer to them. |
|  | Z7.8 | The *Consultant* informs the *Employer* as soon as he becomes aware of any prosecution, pending or likely prosecution or conviction of the *Consultant,* any of his employees, any Subconsultant or agent or any of the Subconsultant’s employees or agents for any offence relating to health and safety. Following this notification the *Consultant* provides the *Employer* with whatever further information and documents the *Employer* requires. |
|  | Z7.9 | The *Consultant* permits the *Employer* without earlier notification and at any reasonable time * to enter and inspect any premises of the *Consultant,* his agents or Subconsultants used or to be used in Providing the Services and
* to inspect any equipment.
 |
| **Equality and diversity** | **Z8** |  |
|  | Z8.1 | The *Consultant* does not discriminate directly, indirectly or arising from a person's disability, or by way of victimisation or harassment, failure to make reasonable adjustments, against any person on grounds of colour, nationality, ethnic or national origins, gender, marital or civil partnership status, maternity and pregnancy, sexual orientation, gender reassignment, religion or belief, age, disability, part time, fixed term or agency worker status, or any other protected characteristic, |
|  | Z8.2 | The *Consultant* recruits for each vacancy by a process that accords with good equality and diversity procedures and Equality and Diversity Legislation. |
|  | Z8.3 | The *Consultant* establishes a procedure for recording and responding to incidents of discrimination and abuse on the basis of colour, nationality, ethnic or national origins, gender, marital or civil partnership status, maternity and pregnancy, sexual orientation, gender reassignment, religion or belief, age, disability, part time, fixed term or agency worker status, or any other protected characteristic. |
|  | Z8.4 | In Providing the Services the *Consultant* observes Equality and Diversity Legislation and follows all relevant codes of good practice including those produced by the Equality and Human Rights Commission or its predecessors. |
|  | Z8.5 | Where the *Consultant*, his Subconsultants, or any of his or their employees are required to Provide the Services on the *Employer's* premises or alongside the *Employer’s* employees on any other premises, the *Consultant* complies with the *Employer's* employment policy and codes of practice relating to equality and diversity, copies of which are available from the *Employer* on request. |
|  | Z8.6 | The *Consultant* notifies the *Employer* as soon as he becomes aware of any investigation of or proceedings brought against the *Consultant* or any Subconsultant under Equality and Diversity Legislation. |
|  | Z8.7 | Where there is a finding against the *Consultant* or a Subconsultant in any investigation conducted or proceedings brought under Equality and Diversity Legislation as a direct or indirect result of any act or omission of the *Consultant*, a Subconsultant, or any of his or their employees, any costs incurred by the *Employer* (including any payment the *Employer* is ordered or required to pay to a third party) are at the *Consultant’s* risk. |
|  | Z8.8 | Where any investigation is undertaken by a person or proceedings are instituted under Equality and Diversity Legislation relating to the *Consultant* or a SubconsultantProviding the Services, the *Consultant* * provides any information the *Employer* requests in the timescale specified in the request,
* attends any meetings the *Employer* requires and procures that his and any Subconsultant’s employees involved in the investigation or proceedings also do so,
* promptly gives the *Employer* access to and allows him to investigate any documents or data the *Employer* deems relevant,
* allows any of his employees to appear as witness in any ensuing proceedings and procures that Subconsultants allow their employees to do so and
* co-operates fully and promptly with the person or body conducting the investigation.
 |
| **Intellectual property**  | **Z9** |  |
|  | Z9.1 | Each Party retains Intellectual Property Rights in all designs (if any) and other documents he prepares for this contract.  |
|  | Z9.2 | As beneficial owner each Party grants to the other an irrevocable, non-exclusive, royalty-free licence (including the right to grant sub-licences) to copy, use, adapt and modify all designs and documents he makes available in connection with this contract. The Party granting the licence ensures that it is supported by such rights from third parties as necessary to allow the grant of such licence. |
|  | Z9.3 | Each Party providing a design or other document in connection with this contract bears the risk that he infringes the Intellectual Property Rights of a third party. |
| **Confidentiality** | **Z10** |  |
|  | Z10.1 | Each Party* keeps confidential all Confidential Information belonging to the other Party and in doing so uses the same degree of care that he uses for his own confidential information,
* does not, without the other Party’s written consent, disclose that Party’s Confidential Information other than to his employees, agents, suppliers and Subconsultants involved in Providing the Services and who need to know the Confidential Information in order to do so and
* uses the other Party’s Confidential Information solely in connection with Providing the Services and not for his own benefit or the benefit of any third party.
 |
|  | Z10.2 | A Party may disclose Confidential Information if and to the extent that the disclosure is lawful, not otherwise in breach of this contract and* the information is already in the public domain through no fault of that Party,
* the Party making the disclosure receives the information from a third party who lawfully acquires it and who is under no obligation restricting its disclosure,
* the Party making the disclosure independently develops the information without access to any Confidential Information belonging to the other,
* the Party making the disclosure is required to do so by law or any court order or regulatory or governmental body to which he is subject,
* the information is disclosed to his professional advisers or to the *Adjudicator*,
* the Party to whom the information is Confidential Information has given written consent,
* the disclosure is to enable that Party’s accounts to be audited or
* the disclosure is made by the *Employer* to an actual or potential Incoming Consultant.
 |
|  | Z10.3 | Each Party* makes all persons to whom he discloses Confidential Information as permitted by this contract aware of the confidentiality of that Confidential Information,
* when disclosing Confidential Information as permitted by this contract, to the extent legally possible, imposes the same duty of confidentiality on the person to whom the disclosure is made to that in this contract and
* takes all steps necessary to ensure those persons keep such Confidential Information confidential.
 |
|  | Z10.4 | Each Party may use data processing techniques, ideas or know-how gained in Providing the Services to further his normal business, to the extent that this does not involve disclosing the other Party’s Confidential Information or infringing the other Party’s Intellectual Property Rights. |
| **Data protection** | **Z11** |  |
|  | Z11.1 | The *Consultant* complies (as a Data Controller if necessary) with the DPA in relation to any Personal Data the *Consultant* holds in relation to this contract. This includes* observing the eight data protection principles listed in Part 1 of Schedule 1 to the DPA,
* responding to requests from Data Subjects for access to that Personal Data and
* maintaining a valid and up to date notification to the Information Commissioner under Part II of the DPA which covers all processing of such Personal Data it undertakes under this contract.
 |
|  | Z11.2 | The *Consultant** ensures that he does nothing which places the *Employer* in breach of the *Employer’s* obligations under the DPA,
* at least seven days before the *starting date* inspects the terms of the *Employer’s* notification to the Information Commissioner under the DPA,
* processes Personal Data owned or controlled by the *Employer* only as instructed by the *Employer,*
* in all respects co-operates with the *Employer* so as to enable the *Employer* to comply with his obligations under the DPA and
* promptly implements any further steps which the *Employer* requires to ensure compliance with the DPA.
 |
|  | Z11.3 | If the *Employer* notifies the *Consultant* that the *Employer* has received a Subject Access Request the *Consultant* provides all Personal Data in his possession relating to that Data Subject as requested by the *Employer* within the timescale specified by the *Employer* and in any event within one week of such a request being made. |
|  | Z11.4 | The *Consultant** only processes Personal Data obtained in Providing the Services where it is reasonably required in connection with Providing the Services,
* processes Personal Data only in accordance with the requirements of this contract and the lawful and reasonable instructions of the *Employer* unless the *Consultant* is properly of the opinion that to act on such instructions would be unlawful,
* does not disclose such Personal Data to any third party other than in accordance with the DPA and the *Consultant’s* notification to the Information Commissioner,
* where required by the DPA obtains the consent of Data Subjects to the disclosure of any Personal Data under this contract,
* does not transfer any Personal Data outside the European Economic Area and
* complies fully with all applicable Codes of Practice.
 |
|  | Z11.5 | The *Consultant** brings into effect and maintains all technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including taking reasonable steps to ensure the reliability of staff having access to the Personal Data,
* provides the *Employer* with such information as the *Employer* requires to satisfy himself that the *Consultant* is complying with his obligations under the DPA including a copy of the *Consultant’s* notification under the DPA and
* ensures that each agent, supplier or Subconsultant to the *Consultant* complies with the DPA and that the terms of the contract with them requires them to do so in similar terms to the requirements placed on the *Consultant* under this contract.
 |
|  | Z11.6 | If the *Consultant* becomes aware that he or any of his employees, agents, suppliers or Subconsultants is processing or has processed Personal Data in contravention of this contract the *Consultant* notifies the *Employer* of this within three days with full details of the contravention. |
|  | Z11.7 | The *Consultant* co-operates and provides reasonable assistance with any proceedings or inquiry by the *Employer*, any affected Data Subject and/or the Information Commission or other statutory body responsible for enforcing the DPA. |
|  | Z11.8 | On the request of the *Employer* at any time after the End Date the *Consultant* either returns to the *Employer* or destroys the Personal Data (and all copies of such Personal Data) in the *Consultant's* or a Subconsultant’s possession as directed by the *Employer*. |
| **Freedom of information** | **Z12** |  |
|  | Z12.1 | The *Consultant* acknowledges that the *Employer* is subject to the FOIA and the Environmental Information Regulations. The *Consultant* assists and co-operates with the *Employer* and ensures that his Subconsultants and agents do so to enable the *Employer* to comply with the *Employer’s* Information disclosure requirements under the FOIA and the Environmental Information Regulations. |
|  | Z12.2 | The *Consultant* ensures that he and his Subconsultants* transfer any Request for Information received to the *Employer* as soon as practicable after its receipt and in any event within two working days,
* do not respond directly to any Requests for Information unless expressly authorised to do so by the *Employer*;
* provide the *Employer* with a copy of all Information in their possession, power or control in the form that the *Employer* requires within five working days (or such other period as the *Employer* specifies) of the *Employer* requesting that information and
* provide all assistance the *Employer* reasonably requests to enable the *Employer* to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
 |
|  | Z12.3 | The *Consultant* acknowledges that the *Employer* is responsible for determining, at his absolute discretion (having regard to the Codes of Practice)* whether any information is exempt from disclosure under the FOIA,
* in the case of a qualified exemption whether the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption and
* whether any information is to be disclosed in response to a Request for Information.
 |
|  | Z12.4 | If the *Consultant* considers that all or any Confidential Information provided to the *Employer* under this contract is a “trade secret” under section 43(1) of FOIA, or a duty of confidentiality applies under section 41(1) of the FOIA, or is otherwise exempt from disclosure under the FOIA, the *Consultant* ensures that the relevant information and the claimed exemption is clearly identified as such to the *Employer*. Despite such identification, the *Employer* determines at his absolute discretion whether such Information and/or any other information is exempt from disclosure or is to be disclosed in response to a Request for Information. |
|  | Z12.5 | Where the *Employer* receives a Request for Information relating to any Confidential Information, the *Employer* (unless the *Employer* has decided not to disclose that information either because the FOIA does not apply or because it is exempt from disclosure under the FOIA) where reasonably practicable* notifies the *Consultant* of that Request for Information in accordance with Part VII of the Code of Practice issue by the Secretary of State under section 45 of the FOIA and
* considers any representations made by *Consultant* before disclosing that Confidential Information under the FOIA.
 |
|  | Z12.6 | The *Consultant* acknowledges that the *Employer* may, acting in accordance with the Code of Practice, be obliged under the Codes of Practice, the FOIA, or the Environmental Information Regulations to disclose Information* without consulting with the *Consultant* or
* following consultation with the *Consultant* and having considered his views.
 |
|  | Z12.7 | If the *Employer* decides to disclose any Confidential Information under the FOIA, he shall use all reasonable endeavours to notify the *Consultant* of this decision before making the disclosure. |
|  | Z12.8 | Where the *Consultant* holds information on behalf of the *Employer* the *Consultant** has regard to the Codes of Practice issued under section 46 of the FOIA,
* complies with any practice recommendation issued to him under section 48 of the FOIA and
* complies with any retention and destruction of information policy which the *Employer* notifies to the *Consultant*.
 |
|  | Z12.9 | The *Consultant* * ensures that all Information produced under this contract or relating to the contract is retained for disclosure and
* permits the *Employer* to inspect such information during normal working hours as the *Employer* requires.
 |
| **Business continuity planning** | **Z13** |  |
|  | Z13.1 | Within four weeks of the Contract Date the *Consultant* submits a draft Business Continuity Plan. |
|  | Z13.2 | The Business Continuity Plan shows* which services the *Consultant* in Providing the Services provides that must continue within the first week following an incident that disrupts his normal operations,
* the minimum number of people, Equipment and Plant and Materials (including employees, accommodation, IT, telephones etc.) needed to continue to Provide the Services,
* details of key personnel (whether or not key persons) and their role in an emergency,
* a register of all employees used in Providing the Services under the Business Continuity Plan with contact details (to be kept by the *Consultant* for emergency purposes) and
* any other information required by the Scope.
 |
|  | Z13.3 | If the *Employer* does not accept the Business Continuity Plan, he notifies the *Consultant* and specifies those areas that require revision. The *Consultant* submits a revised plan within the period the *Employer* allows for reply and continues to do so until the Business Continuity Plan is accepted by the *Employer*. A reason for not accepting a Business Continuity Plan is that* the *Consultant’s* plans are not practicable,
* it does not show the information which this contract requires,
* it does not represent the *Consultant’s* plans realistically,
* it does not comply with the Scope or
* it does not continue the Provision of the Services.
 |
| **Corrupt gifts and payments of commission** | **Z14** |  |
|  | Z14.1 | The *Consultant* does not, and ensures that his employees, Subconsultants and his Subconsultants’ employees do not* commit any offence under the Bribery Act 2010,
* commit any offence under legislation creating offences in respect of fraudulent acts,
* offer, give or agree to give any bribe, gift, consideration or financial or other advantage to any employee of the *Employer* as an inducement or reward for doing or not doing or for having done or not done any act in relation to the obtaining or execution of this or any other contract with the *Employer* or showing or not showing favour or disfavour to any person in relation to this or any other contract with the *Employer,*
* enter into this or any other contract with the *Employer* in connection with which commission has been paid or agreed to be paid by him or on his behalf or to his knowledge unless before the contract is made particulars of any commission and of the terms and conditions of any agreement for the payment of the commission are disclosed to the *Employer*,or
* fail to terminate a subcontract when instructed to do so by the *Employer* because of a corrupt gift or commission given or offered by the Subconsultant.
 |
|  | Z14.2 | The *Consultant* maintains adequate procedures to prevent a breach of the Bribery Act 2010 or any of his obligations under this clause. |
|  | Z14.3 | In each subcontract, the *Consultant* incorporates obligations which entitle the *Consultant* to terminate that subcontract because of a bribe, gift, consideration, commission or financial or other advantage given by or offered by the Subconsultant. Those obligations are similar to those applying to the *Consultant* under this contract. If a Subconsultant breaches those obligations and the *Employer* so instructs, the *Contractor** terminates the subcontract and bears the risk of such termination and
* pays to the *Employer* an amount equal to the value of any corrupt gift or consideration paid by the Subconsultant to the *Consultant*.
 |
|  | Z14.4 | The *Employer* may terminate the *Contractor’s* obligation to Provide the Services immediately if * the *Consultant* or anyone employed by him or a Subconsultant or anyone acting on the *Consultant’s* or Subconsultant’s behalf (whether without or with the knowledge of the *Contractor* or the Subconsultant) commits any offence under the Bribery Act 2010 or
* the *Consultant* breaches his obligations under this clause.
 |
| **Audit and inspection** | **Z15** |  |
|  | Z15.1 | The *Consultant* provides all facilities and allows the *Employer*,his auditors, or anyone with a statutory or other legal right to inspect or audit the *Employer* full access to conduct any audit investigation of the contract. This includes access to* all premises owned or occupied by the *Consultant*,
* all documents in the possession, custody or control of the *Consultant* used in Providing the Services,
* all technology, resources, systems and procedures used or to be used in Providing the Services and
* the *Consultant's* employees, Subconsultants, the Subconsultants’ employees and key persons who are Providing the Services.
 |
|  | Z15.2 | Throughout the contract period and the 6 years following the End Date* the *Consultant* gives the *Employer* or any member of the *Employer’s* internal audit team or external auditors immediate access to, permission to copy and remove any copies of, and if the *Employer* reasonably instructs, permission to remove the originals, of
* any books, records and information in the possession or under the control of the *Consultant* or any Subconsultant which in any way relate to the *services* or
* any such data and any such information stored on the *Consultant’s* or a Subconsultant’s computer system and
* the *Consultant* does not and procures that his Subconsultants do not destroy any such books, records or information without the approval of the *Employer*.
 |
| **Local Government Ombudsman** | **Z16** |  |
|  | Z16.1 | The *Consultant* fully co-operates with any enquiry or investigation by the Local Government Ombudsman or the *Employer* which in any way concerns, affects or relates to the *services*. This includes providing access to* the originals or copies of documents, letters, notes, minutes, records or any other information (whether held or stored electronically, in hard copy format or otherwise) which relate to the investigation,
* premises, vehicles, plant, equipment (including IT hardware and software) or other assets used by the *Consultant* Providing the Services and
* the *Consultant’s* employees Providing the Services (including management or supervisory staff) or who may be the subject of, or be named in any enquiry or investigation by the Local Government Ombudsman (including providing suitable facilities for interviewing the employees).
 |
|  | Z16.2 | The *Consultant* pays to the *Employer* the whole or an appropriate part of any compensation paid or the value of any other benefit given by the *Employer* to any person following a report or investigation by the Local Government Ombudsman which clearly identifies the *Consultant* or any Subconsultant as being wholly or partly responsible for any maladministration or other failure and recommends compensation to be paid.  |
|  | Z16.3 | If the *Consultant* disputes the amount of any compensation paid or the value of any benefit given by the *Employer*, following a Local Government Ombudsman report or investigation the assessment of that amount or value is referred to the dispute resolution escalation procedure in the Scope. |
| **Complaints about service provision** | **Z17** |  |
|  | Z17.1 | The *Consultant* deals with any complaints received from whatever source in a prompt, courteous and efficient manner and in accordance with the *Employer’s* service standards for complaints as set out in the Scope. |
|  | Z17.2 | The *Consultant* keeps a record of all complaints received and of the action taken in relation to such complaints. This record is kept available for inspection by the *Employer* at all reasonable times. The *Consultant* notifies the *Employer* of all complaints received and of all steps taken in response to them in accordance with the Scope. |
|  | Z17.3 | Where compensation is payable to a complainant, the procedure and amount will be determined as set out in the Scope*.* |
| **No partnership or agency** | **Z18** |  |
|  | Z18.1 | This contract does not create a legal partnership or joint venture between the Parties. |
|  | Z18.2 | This contract does not make either Party the agent of the other or give either Party any authority or power to contract in the name of or create a liability against the other Party except where it states otherwise. |
| **Assignment** | **Z19** |  |
|  | Z19.1 | The *Consultant* does not assign this contract without the written consent of the *Employer*. |
| **Novation** | **Z20**Z20.1 | The *Employer* novates this contract to any person who accepts responsibility for the payments due to the *Consultant* and the *Consultant* accepts the instructions of the party to whom the contract is novated and continues to perform the Services under the contract. The *Consultant* enters into a deed of novation in the form set out in the Scope. |
| ***Employer* training** | **Z21** |  |
|  | Z21.1 | The *Consultant* ensures that if and when so instructed by the *Employer* people employed by the *Consultant* and Subconsultants in Providing the Services attend training sessions provided by the *Employer.* |
| **CDM Regulations** | **Z22** |  |
|  | **Z22.1** | The *Consultant* warrants as the principal designer that, he * has the skills, knowledge, experience and organisational capability to act as the principal designer under the CDM Regulations in a manner that secures the health and safety of any person affected by the service or part of the service; and
* performs all the functions and obligations required to be performed by the principal designer under the CDM Regulations.
 |
| **Modern slavery** | **Z23** |  |
|  | Z23.1 | The *Consultant* warrants that neither he nor any of his employees* + - have been convicted of any offence involving slavery or human trafficking or
		- have, to the best of the *Consultant’s* knowledge, been the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
 |
|  | Z23.2 | The *Consultant* takes appropriate steps to ensure that there is no slavery or human trafficking in his supply chains and in connection with this the *Consultant** implements due diligence procedures for his Subconsultants,
* requires all Subconsultants to warrant that neither they nor any of their employees

have been convicted of any offence involving slavery or human trafficking orhave, to the best of their knowledge, been the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking and* requires all Subconsultants to include provisions having the same effect as this modern slavery clause in all subcontracts (at any stage of remoteness in the supply chain) relating to Providing the Services.
 |
| **Recovery of sums due from the *Consultant*** | **Z24** |  |
| **Corrupt practices** | Z24.1Z25 | When under the contract any sum of money is recoverable from or payable by the *Consultant* this sum may be deducted from or reduced by the amount of any sum or sums then due or which at any time later may become due to the *Consultant* under the contract or any other contract with the *Employer*.The *Consultant* warrants that in entering into this contract he has not:* communicated to any person other than the *Employer*, or a person duly authorised by the *Employer*, the amount or approximate amount of the tender or submission, or proposed tender or submission, leading to this contract except where the disclosure, in confidence, of the approximate amount of the tender or submission was necessary to obtain insurance premium quotations required for the preparation of the tender or submission; or
* entered into any agreement or arrangement with any person, or requested of any person, that he or they shall refrain from tendering or competing, that he or they shall withdraw any tender or submission once offered or that he or they will vary the amount of any tender or submission to be submitted.
 |