

## DATED 2023

**Between**

1. **THE CITY OF WAKEFIELD COUNCIL**

**And**

1. **GLEEDS COST MANAGEMENT LIMITED**

### \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Call Off Contract for Construction Professional Services pursuant to Crown Commercial Services Framework Agreement RM6165 (INCORPORATING THE NEC4 Professional Services**

**Contract JUNE 2017 (including amendments issued January 2019 and October 2020) AND contract data**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**TABLE OF CONTENTS**

**FORM OF AGREEMENT 1**

**CONTRACT DATA - PART ONE – DATA PROVIDED BY THE *CLIENT* 3**

**CONTRACT DATA - PART TWO – DATA PROVIDED BY THE *CONSULTANT* 13**

**SCHEDULE 1 – SCHEDULE OF AMENDMENTS TO NEC4 16**

**SCHEDULE 2 – SCOPE 44**

**SCHEDULE 3 – PRICE LIST (PART A), TASK ORDER PROCESS AND TASK ORDER**

**FORM (PART B), FORM OF APPLICATION FOR PAYMENT (PART C) 45**

**SCHEDULE 4 – INCENTIVE SCHEDULE 46**

**SCHEDULE 5 - FINANCIAL DISTRESS 47**

**SCHEDULE 6 – DATA PROTECTION 51**

**SCHEDULE 7 – SECURITY PROVISIONS 52**

**SCHEDULE 8 - CYBER ESSENTIALS 61**

**SCHEDULE 9 – STAFF TRANSFER 63**

**SCHEDULE 10 – SOCIAL VALUE COMMITMENTS 64**

**SCHEDULE 11: SUB-CONSULTANT WARRANTY 65**

**SCHEDULE 12: ULTIMATE HOLDING COMPANY GUARANTEE 69**

**SCHEDULE 13: FORM OF PERFORMANCE BOND 72**

**SCHEDULE 14: MOBILISATION PLAN 74**

**SCHEDULE 15: TUPE SURCHARGE 75**

**SCHEDULE 16: REDUNDANCY SURCHARGE 76**

**SCHEDULE 17: CONTINUOUS IMPROVEMENT 77**

**SCHEDULE 18: BACKGROUND CHECKS 78**

## FORM OF AGREEMENT

**THIS AGREEMENT BY DEED is made the day of 2023 PARTIES:**

1. **THE CITY OF WAKEFIELD** **COUNCIL** **of** Wakefield Town Hall, Wood Street,

Wakefield, WF1 2HQ (the "***Client***"); and

1. **GLEEDS COST MANAGEMENT LIMITED** which is a company incorporated in and in accordance with the laws of England and Wales (Company No. 06472932 whose registered office address is at 95 New Cavendish Street, London, W1W 6XF(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 construction professional services for the benefit of public sector bodies.
2. The *Consultant* was appointed to Lot 1 of the framework and executed the framework agreement (with reference number RM6165) which is dated 1 October 2021(the “**Framework Agreement**”). In the Framework Agreement, the Consultant is identified as the “Supplier”.
3. On the 31 May 2023 the *Client*, invited the *Consultant* along with other framework suppliers (CCS tender number CPS1-25215-2023)to tender for the *Client’s* construction professional team services requirements in accordance with the Call Off Procedure (as defined in the Framework Agreement).
4. On the 18 July 2023 the *Consultant* submitted a tender response and was subsequently selected by the *Client* to provide the *service*.
5. The *Consultant* has agreed to Provide the Services in accordance with this agreement and the Framework Agreement.

**IT IS AGREED AS FOLLOWS:**

1. The *Client* will pay the *Consultant* the amount due and carry out his duties in accordance with the *conditions of contract* identified in the Contract Data and the schedules (the “Contract Schedules”).
2. The *Consultant* will Provide the Service in accordance with the *conditions of contract* identified in the Contract Data and the Contract Schedules.
3. This contract incorporates the conditions of contract in the form of the NEC4 Professional Services Contract June 2017 Edition incorporating amendments January 2019 and October 2020 and incorporating the following Options:
	* Option A (Priced contract with activity schedule);
	* Option W2 (Resolving and avoiding disputes – used when the United Kingdom Housing Grants, Construction and Regeneration Act 1996 applies);
	* Option X1 (Price adjustment for inflation)
	* Option X2 (Changes in the law);
	* Option X8 (Undertakings to others);
	* Option X9 (Transfer of rights);
	* Option X11 (Termination by the C*lient*);
	* Option X13 (Performance Bond);
	* Option X18 (Limitation of Liability);
	* Option X20 (Key Performance Indicators;)
	* Option Y(UK)2 (The Housing Grants, Construction and Regeneration Act

1996); and

which together with the *additional conditions of contract* specified in Option Z, and the amendments specified in Option Z, form this contract together with the documents referred to in it including the Contract Schedules. References in the NEC4 Professional Services Contract June 2017 Edition incorporating amendments January 2019 and October 2020 to "the contract" are references to this contract.

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

### Executed as a deed

**EXECUTED AS A DEED** by the parties on the date which first appears in this Deed.

**EXECUTED** (but not delivered until ) the date hereof) **AS A DEED** by ) **GLEEDS COST MANAGEMENT LIMITED** ) acting by: -

REDACTED TEXT under FOIA Section 40, Personal Information.

Director

 REDACTED TEXT under FOIA Section 40, Personal Information.

Director/Secretary/Witness

If signed by a director in the presence of a witness, please ensure the witness completes the following:

REDACTED TEXT under FOIA Section 40, Personal Information

Witness name (ALL CAPITALS)

 REDACTED TEXT under FOIA Section 40, Personal Information.

………………..............................................

………………………………………………..

Witness address (ALL CAPITALS)

REDACTED TEXT under FOIA Section 40, Personal Information.

………………..............................................

Witness occupation (ALL CAPITALS)

**THE COMMON SEAL** of **THE CITY** ) **OF WAKEFIELD COUNCIL** was hereto ) affixed to this Deed in the presence of ) the Head of Legal / Designated Officer )

REDACTED TEXT under FOIA Section 40, Personal Information.

Duly Authorised Officer

**Professional Services Contract Contract Data**

**PART ONE – DATA PROVIDED BY THE CLIENT**

**1. General** The *conditions of contract* are the core clauses and the clauses for the following main option, the option for resolving and avoiding disputes and the and secondary Options of the NEC4 Professional Services Contract June 2017 incorporating amendments January 2019 and October 2020.

Main Option A

Option for resolving and avoiding disputes W2

Secondary Options X1, X2, X8, X9, X11, X13, X18, X20, Y(UK)2 and Z.

The *service* is

project management office services including construction professional services.

The *Client* is The City of Wakefield Council.

*Address for communications:*

REDACTED TEXT under FOIA Section 40, Personal Information.

*Address for electronic communications:*

REDACTED TEXT under FOIA Section 40, Personal Information.

The *Service Manager* is

REDACTED TEXT under FOIA Section 40, Personal Information.

*Address for communications:*

REDACTED TEXT under FOIA Section 40, Personal Information.

*Address for electronic communications*

REDACTED TEXT under FOIA Section 40, Personal Information.

The Scope is in Schedule 2.

 The*language of the contract* is English.

*The* *law of the contract* is the law of England and Wales and the Courts of the country selected above, shall have exclusive jurisdiction with regard to any dispute in connection with this Agreement and the Parties irrevocably agree to submit to the jurisdiction of those courts.

The *period for reply* is 10 working days except that:

The *period for reply* may be agreed separately in exceptional circumstances.

The *period for retention* is 12 years following Completion or earlier termination.

The following matters will be included in the Early Warning Register

* a matter which has or is likely to have an impact on the cost of Providing the Services;
* a matter which has or is likely to have an impact on timely Provision of the Services;
* a matter which has or is likely to have an impact on the quality of the Provision of the Services;
* a matter which has or is likely to have political or reputational implications for the C*lient;*
* a shortage of *Consultant* personnel or the departure of a key person which has or is likely to have an impact of the Provision of the Services;
* Capacity for Provision of the Services in the event that the *Client* needs to instruct a high volume of the *services* at the same time; and
* an anticipated Task Order which would meet the criteria set out in optional clause X13 for giving the *Client* the option of requesting that the *Consultant* provides a performance bond.

Early warning meetings are held at intervals no longer than bi-monthly

2 The Consultant’s main responsibilities

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

The *key dates* and *conditions* to be met are

|  |  |
| --- | --- |
| ***Condition* to be met**  | ***Key date***  |
| Mobilisation  | 31 October 2023  |
| Platform to be accessible for use  | 31 October 2023  |
| Provision of *Consultant’s* organisational structure to the Client  | 1st October 2023  |
| Provision of names of Consultant’s People, CVs and job descriptions  | 20th October 2023  |

|  |  |
| --- | --- |
| Commencing work on an instruction once an Order is placed  | Within 48 hours or within the timescales set out in the Order Form  |

**If Option A is used** The *Consultant* prepares forecasts of the total *expenses* at intervals no longer than 30 days

**3 Time** *The starting date* is 31 October 2023

The *Client* provides access to the following persons, places and things

* access to *access date*
* 8 desk spaces in Wakefield One 31 October 2023

|  |
| --- |
| The *Consultant* submits revised programmes at intervals no longer than  |
|  | bi-monthly.  |
| **If the *Client* has decided the *completion date* for the whole of the *service***  | The *completion date* for the whole of the *service* is 30 October 2026 (unless extended for a period of up to 2 further years). However, Completion in relation to each Task Order issued under this contract in accordance with Schedule 3 will have a separate completion date (“Task Completion Date”).  |
| **If no programme is identified in part two of the Contract Data**  | The period after the Contract Date within which the *Consultant* is to submit a first programme for acceptance is 4 weeks (28th November 2023)  |
| **4 Quality Management**  | The period after the Contract Date within which the *Consultant* is to submit a quality policy statement and quality plan is 4 weeks. The period between Completion of the whole of the *service* and the *d*e*fects date* is 12 months from contract expiry*.* However, there will be a separate defects date in relation to each Task Order issued under this contract in accordance with Schedule 3 (“Task Defects Date”).  |
| **5 Payment**  | The *currency of the contract* is the pound sterling (£). The *assessment interval* is monthly.  |
| **If the *Client* states any *expenses***  | The *expenses* stated by the *Client* are Item Amount  |

N/A – no allowance for the *Consultant* to claim expenses as all

expenditure is deemed included in the rates set out in the Price List (Schedule 3).

The *interest rate* is, 3% per annum above the Bank of England base rate in force from time to time.

###### If the period in The period within which payments are made is 30 days

###### which payments

###### are made is not

### three weeks and

### Y(UK)2 is not used

|  |  |  |
| --- | --- | --- |
| **6 Compensation events**  |  |   |
| **If there are additional compensation events**  |  | These are additional compensation events Not Applicable  |
| **8 Liability and insurance**  |  |   |
| **~~If there are~~ ~~additional~~ *~~Client~~*** **~~liabilities~~**  |  | ~~These are additional~~ *~~Client~~* ~~liabilities~~ 1. ~~[ ]~~
2. ~~[ ]~~
3. ~~[ ]~~

The amounts of insurance and the periods for which the *Consultant*  |
| maintains insurance are  |  |
|  |  | **event** The *Consultant’s* failure to use the skill and care normally used by professionals providing services similar to the *service*  | **cover** £10,000,000 in respect of each and every claim and £10,000,000 in the aggregate annually in relation to claims in respect of pollution, contamination and/or asbestos and/or fire safety.  | **Period** from the *starting date* until 12 years following completion of the whole of the *service* or earlier termination   |
|  |  | loss of or damage to property or death of or bodily injury to a person (not an employee of the *Consultant*) arising from or in connection with the *Consultant* Providing the Service  | £10,000,000 in respect of each event, without limit to the number of events | from the *starting* *date* until all notified Defects have been corrected or earlier termination  |
|  | death of or bodily £10,000,000 in respect of from the *starting* injury to employees each event, without limit to *date* until all notified of the *Consultant* the number of events Defects have been arising out of and in corrected or earlier the course of their termination employment in connection with this contract  |
| ***If the Client provides insurances from the Insurance table***  | The *Client* provides these insurances from the insurance table Not Applicable  |
| ***If additional insurances are provided***  |  | The *Client* provides these additional insurances 1. ~~Insurance of archive and museum exhibits~~

 ~~Minimum amount of cover is [….]~~  ~~The deductibles are [….]~~  1. Insurance of listed buildings

Minimum amount of cover is N/A these are self-insured  The deductibles are £250,000 The *Consultant* provides these additional insurances Not Applicable *The* *Consultant*'s total liability to the *Client* for all matters arising under or in connection with the contract, other than the excluded matters, is limited to: * + £10,000,000 for each and every claim and
	+ £10,000,000 in the annual aggregate in respect of claims relating to pollution, contamination, asbestos or fire safety.
 |
| **Resolving and avoiding disputes**  |  | The *tribunal* is litigation  |
| **If the *tribunal* is arbitration**  |  | Does not apply    |
|  |  | The *Representatives* of the *Client* are REDACTED TEXT under FOIA Section 40, Personal Information |

*Address for communications:.*

REDACTED TEXT under FOIA Section 40, Personal Information

*Address for electronic communications:*  REDACTED TEXT under FOIA Section 40, Personal Information

|  |  |
| --- | --- |
|  | The *Senior Representatives* of the *Client* are REDACTED TEXT under FOIA Section 40, Personal Information*Address for communications*  REDACTED TEXT under FOIA Section 40, Personal Information*Address for electronic communications* REDACTED TEXT under FOIA Section 40, Personal Information |
|  | REDACTED TEXT under FOIA Section 40, Personal Information*(legal Services Manager)* *Address for communications*  REDACTED TEXT under FOIA Section 40, Personal Information |
|  | The *Adjudicator* is the person agreed by the Parties from the list of *Adjudicator*s published by the Royal Institution of Chartered Surveyors or nominated by the *Adjudicator nominating body* in the absence of agreement*Address for communications*  REDACTED TEXT under FOIA Section 40, Personal Information*Address for electronic communication*REDACTED TEXT under FOIA Section 40, Personal Information |
|  | The *Adjudicator nominating body* is REDACTED TEXT under FOIA Section 43 Commercial Interests |
| **Option X1 Price adjustment for inflation (used only with options A and** **C)**  | **If Option X1 is used** The proportions used to calculate the Price Adjustment Factor are Not Applicable The base date for indices is January in each contract year. The first uplift takes place in April 2025 and then on 1st April every year thereafter during the contract term. The *index* is the Consumer Price Index (CPI) - as published by the Office for National Statistics.  |
| **Option X2 Changes in the law**  | **If Option X2 is used** *The* *law of the project* is the law of England and Wales  |
| **Option X5 Sectional Completion**  | Not Used  |
| **Option X6 Bonus for early** **Completion**  | **If Option X6 is used** Not Used  |
| **Option X7 Delay damages**  |  | **If Option X7 is used** Does not apply.  |
| **Option X8** **Undertakings to** **Others**  |   | **If Option X8 is used** *undertakings to Others* are not required ~~third party~~ ~~[….]~~ ~~[….]~~ ~~[….]~~ ~~[….]~~ ~~[….]~~ The *subconsultant undertakings to Others* are the subconsultant collateral warranties in the form attached as Contract Schedule 12 and shall be made in favour of the *Client* and upon the request of the *Client* in relation to any Task Order in respect of any discipline within the Scope or instructed under a Task Order which is subcontracted by the *Consultant* including but not limited to the following: [….] [….] [….] [….] [….]  |
| **Option X10 Information modelling**  |  | **If Option X10 is used** Not Used  |
| **Option X12 Multiparty collaboration (not to be used with** **X20)**  |  | **If Option X12 is used** Not Used  |
| **X13 Performance bond**  |  | **Option X13 is used**  |
|  |  | The *Client* may request the provision of a performance bond as a condition of the instruction of any Task Order which satisfies the criteria for the *Client* to request a performance Bond as set out in clause X13.2.  |

The amount of each performance bond shall be £2,000,000 (Two Million Pounds) or such other amount as the *Client* shall advise.

|  |  |
| --- | --- |
| **Option X18 Limitation of liability**  | **If Option X18 is used** The *Consultant’s* liability to the *Client* for indirect or consequential loss is limited to £2,000,000 for each and every claim and in the aggregate annually in relation to claims in respect of pollution, contamination and/or asbestos and/or fire safety. The *Consultant’s* liability to the *Client* for Defects that are not found until after the *defects date* is limited to £5,000,000 for each and every claim for each and every claim and in the aggregate annually in relation to claims in respect of pollution, contamination and/or asbestos and/or fire safety. The *end of liability* date is 12 years after Completion of the whole of the *service*.  |
| **Option X20 Key performance indicators *(not for use 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 Schedule 4. A report of performance against each Key Performance Indicator is provided quarterly. Where X20 is used, the amount due under clause 50 is adjusted to account for the application of the *incentive schedule.*  |
| **Option Y(UK)2 The** **Housing Grants,** **Construction and Regeneration Act**  | **If Y(UK)2 is used**    |
| **If Y(UK)2 is used and the final date**  | The period for payment is 30 days after the date on which a payment becomes due  |

### for payment is not 14 days after the date when payment is due

|  |  |
| --- | --- |
| **Option Z**  | The *additional conditions of contract* are contained in Schedule 1 as follows: |
| **Contract Data relating to Z clauses**  |   |
| **Option Z2**  | **Identified and defined terms** Applies  |
| **Option Z4**  | **Admittance to Client’s Premises** Applies  |
| **Option Z5**  | **Prevention of fraud and bribery** Applies |
| **Option Z6**  | **Equality and diversity**  |

Applies

|  |  |
| --- | --- |
| **Option Z7**  | **Legislation and Official Secrets** Not Used |
| **Option Z8**  | **Conflict of interest** Applies |
| **Option Z9**  | **Publicity and Branding** Applies |
| **Option Z10**  | **Freedom of information** Applies |
| **Option Z13**  | **Confidentiality and Information Sharing** Applies |
| **Option Z14**  | **Security Requirements** Applies  |
| **Option Z16**  | **Tax Compliance** Applies |
| **Option Z22**  | **Fair payment** Applies |
| **Option Z42**  | **The Housing Grants, Construction and Regeneration Act 1996** Does not apply – only for contracts in Northern Ireland |
| **Option Z44**  | **Intellectual Property Rights** Applies |
| **Option Z45**  | **HMRC Requirements** Does not apply |
| **Option Z46**  | **MoD DEFCON Requirements** Does not apply |
| **Option Z47**  | **Small and Medium Sized Enterprises (SMEs)** Does not apply |
| **Option Z48**  | **Apprenticeships** Applies |
| **Option Z49**  | **Change of Control** Applies |
| **Option Z50**  | **Financial Standing**  |

Applies

|  |  |
| --- | --- |
| **Option Z51**  | **Financial Distress** Applies |
| **Option Z52**  | **Records, audit access and open book data** Applies |
| **Option Z100**  | **Data Protection** Applies |
| **Option Z101**  | Cyber Essentials Applies  |
| **Option Z102**  | **Staff Transfer** Applies  |
| **Option Z103**  | **Non-exclusivity**  |

Applies

**Other additional conditions of contract:**

See Schedule 1 (Schedule of Amendments to the NEC4 PSC)



## PART TWO – DATA PROVIDED BY THE CONSULTANT

**1 Statements** The *Consultant* is Gleeds Cost Management Limited **given in all**

 **contracts** *Address for communications*

**REDACTED TEXT under FOIA Section 40, Personal Information**.

*Address for electronic communications*

**REDACTED TEXT under FOIA Section 40, Personal Information**.

The *fee percentage* is 0%

The *key persons* are

Name **REDACTED TEXT under FOIA Section 40, Personal Information**.

Job

**REDACTED TEXT under FOIA Section 40, Personal Information**.

The following matters will be included in the Early Warning Register

 • Risk related to TUPE obligations

### 2 The *Consultant’s* main responsibilities

**If the Consultant is to** The Scope provided by the *Consultant* is in accordance with Volume 2 of **provide the Scope** the tender documents.

### 3 Time

**If a programme is to** The programme identified in the Contract Data is 1 September 2023 **be identified in the Contract Data**

RM6165: Construction Professional Services

*Scope*

Copyright - 2021

1

|  |  |
| --- | --- |
| **If the *Consultant*  is to decide the *completion date* for the whole of the *service***  | The *completion date* for the whole of the *service* is 1 September 2026  |
| **5 Payment**  |   |
| **If the *Consultant* states any *expenses***  | The *expenses* stated by the *Consultant* are  |

|  |  |
| --- | --- |
| • **item**  | • **amount**   |
| • Not applicable as these are covered in the *Consultant’s* overheads contained within the Management Overhead Fee.  | • Not applicable  |

|  |  |  |
| --- | --- | --- |
|  |  |   |
|  |  |   |
| **If Option A or C is used**  |  | The *activity schedule* is included in each Task Order according to the activities required for that specific Task Order and is referred to as a Task Activity Schedule. The tendered total of the Prices is not applicable.  |
| **Resolving and avoiding disputes**  |  | The *Representatives* of the *Consultant* are **REDACTED TEXT under FOIA Section 40, Personal Information**.*Address for communications* **REDACTED TEXT under FOIA Section 40, Personal Information**.*Address for electronic communications* **REDACTED TEXT under FOIA Section 40, Personal Information**. |
|  |  | The *Senior Representatives* of the *Consultant* are  |

**REDACTED TEXT under FOIA Section 40, Personal Information**.

*Address for communications*

**REDACTED TEXT under FOIA Section 40, Personal Information**.

*Address for electronic communications*

**REDACTED TEXT under FOIA Section 40, Personal Information**.

|  |  |
| --- | --- |
| **Option X10 Information modelling**  | **If Option X10 is used**   |
| **If an *information execution plan* is to be identified in the Contract Data**  | The Information Execution Plan identified in the Contract Data is Not applicable  |
| **Option Y(UK)1 Project bank account**  | **If Option Y(UK)1 is used**   |
|  | The *project bank* is not applicable  |
|  | *named suppliers* are not applicable  |
| **Data for the** **Schedule of Cost** **Components (used only with Option A)**  |   |
|  | The *people rates* are  |
|  |  |

**SCHEDULE 1 – SCHEDULE OF AMENDMENTS TO NEC4**

**PROFESSIONAL SERVICES CONTRACT**

**CORE CLAUSES**

|  |  |
| --- | --- |
| Clause 11.2(5)  | Insert three new bullet points as follows: * the collusion with any other party in the tendering or award of a contract
* the demonstrated black-listing of workers
* the payment of money or other consideration to a person, the receipt of which is an offence under section 117(2) of the Local Government Act

1972  |
| Clause 11.2  | After 11.2 (14), add or amend the following definitions as appropriate:  |

“Fixed Fees” means the lump sum amounts that apply to the activities set out in the Price List in Schedule 3, Part A;

“Group Company” is any subsidiary or holding company of the *Consultant* or another subsidiary or holding company of such company, as ‘subsidiary’ and ‘holding company’ are defined in s1159 of the Companies Act 2006.

“Management Overhead Fee” is the lump sum amount set out in the Price List (Schedule 3, Part A) and is split into thirty six (36) equal components to be paid monthly to the *Consultant* in accordance with the contract.

“Mobilisation” means the carrying out of preparatory tasks for the provision of the *service* before the *starting date*.

“Mobilisation Period” means the period commencing 11 September 2023 and ending on 31 October 2023

“Mobilisation Plan” is contained in Schedule 14 Delete the definition of “People Rates”.

“Price List” is the list setting out the Management Overhead Fee, the Fixed Fees and the Project Fees contained in Part 1 of Schedule 3 which are used to inform the Task Activity Schedule in each Task Order.

“Project(s)” means the *Client’s* capital projects.

“Project Fees” means the schedule of rates set out in Part 3 of the Price List

(Schedule 3) that applies to the roles/disciplines required for specific Projects;

“Task Activity Schedule” is the *activity schedule* related to a specific Task Order and which the *Consultant* completes each time a Task Order is placed based on the Fixed Fees or Project Fees set out in the Price List as appropriate to the Task Order.

“Task Order” is the *Client’s* instruction to the *Consultant* to provide various components of the *service* in relation to a specific Project according to the Task Activity Schedule attached to a Task Order Form.

“Task Order Form” is the form in Schedule 3, Annex 1 which the *Client* uses to record the particulars of a Task Order.

|  |  |
| --- | --- |
| Clause 11.2(20)  | Delete the definition of Price for Service Provided to Date and replace with:  |
|   | “The Price for Service Provided to Date is the total of the Prices for: * each month after the *starting date* one thirty sixth of the Prices for the Management Overhead Fee
* the Price for a proportion of each activity based on a Fixed Fee in relation to all current Task Orders which the *Consultant* has completed or which are in progress at the relevant assessment date; and
* the Price for Project Fees incurred by the *Consultant* in relation to Task Orders which the *Consultant* has completed or which are in progress at the relevant assessment date.
 |
| Clause 11.2(22)  | Delete the definition of Prices and replace with:  |
|   |   | “The Prices are * the lump sum prices for each Fixed Fee
* the rates stated in the Price List as Project Fees to reflect the different categories of people that the *Consultant* may need to provide in relation to the *service*
 |
|   |   | unless later changed in accordance with this contract.  |
| Clause 12.1  |  | Delete this clause and replace with the following: “In this Contract, except where the context shows otherwise: * words in the singular also mean in the plural 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."
 |
| Clause 12.4  |  | Add to the end of the clause: “but this does not affect the remedies available to the parties at common law for breach of contract”.  |

|  |  |  |
| --- | --- | --- |
| Clause 12.5  |   | Insert new clause:  |
|   |  | “The failure of either of the Parties to exercise any right or remedy does not constitute a waiver of that right or remedy. No waiver has effect unless it has been agreed, confirmed in writing and signed by the Parties and no such waiver as arises from a breach of contract constitutes a waiver of any other breach of contract.  |
| Clause 12.6  |   | Insert new clause: “The present tense is used in this Contract to express the contractual obligations of the Parties.”  |
| Clause 15.1  |   | Add after the final bullet point the following further bullet point:  |
|   |  | “prevent or restrict the *Consultant’*s ability to Provide the Services during the remainder of the duration of the Contract”.  |
| Clause 15.2  |   | Delete this clause and replace it with the following:  |
|   |  | “The *Service Manager* prepares a first Early Warning Register and issues it to the *Consultant* within one week of the starting date. The *Service Manager* instructs the *Consultant* to attend a first early warning meeting within two weeks of the *starting date*.  |
|   |  | Later early warning meetings are held * If the *Service Manager* instructs the *Consultant* to attend an early warning notice meeting (if any);
* at no longer interval than the interval stated in the Contract Data until Completion of the whole of the *service.*
 |
|   |  | The *Service Manager* may also instruct other people to attend the early warning meeting.  |
|   |  | A Subconsultant attends an early warning meeting if its attendance would assist in deciding the actions to be taken”.  |
| Clause 16.1  |  | Delete the first line and replace with: “The *Consultant* notifies the *Service Manager* as soon as he becomes aware of”.  |
| Clause 16.2  |  | Delete the first line and replace with: “The *Consultant* notifies the *Service Manager* as soon as he becomes aware of”.  |
| Clause 18  |  | Delete this clause.  |
| **Clause 2**  |  | **The *Consultant’s* Main Responsibilities**  |
| Clause 20.1  |  | Insert at the end of the sentence “, the Contract and Applicable Law”.  |
| Clause 20.2  |   | Delete and replace with the following:  |
|   |  | “The *Consultant* warrants that in Providing the *Services* and its obligations under the Contract, it has exercised and will continue to exercise the reasonable skill, care and diligence to be expected of an appropriately qualified professional consultant (including a designer where a Task Order requires design consultancy services to be provided by a sub-contractor) who is experienced in carrying out projects of a similar size, scope and complexity as the *services*.  |
| Clause 20.3  |   | Insert new clause: “The *Consultant* warrants that it has used and continues to use the standard of skill, care and diligence required by clause 20.2 above to ensure that there are not used or specified in the services or in any Project or in any Task Order any materials that by their nature or application contravene any British Standard or EU equivalent or which are considered to be deleterious in the UK construction industry at the time of use or specification or which contravene the recommendations in the publication “Good Practice in Selection of Construction Materials” (2011; British Council for Offices)”.  |
| Clause 20.4  |   | Insert new clause: “Without prejudice to its general obligation to comply with Applicable Law, the *Consultant*’s designs comply with, and in Providing the Services, the *Consultant* complies in all respects with all planning permissions, building regulations and all other statutory and other legal consents and licences. The *Consultant* – without prejudice to its obligations to comply with the Scope and Applicable Law – complies with the Client’s health and safety requirements, sustainability requirements and any other policies produced by the *Client* and provided to the *Consultant* from time to time, including without limitation the Client’s Policies”.  |
| Clause 20.5  |   | Insert new clause:  |

“The *Consultant* carries out all necessary investigations in respect of the *services* in order to satisfy itself of the scope and nature of the *services* and the level of staffing, resources, materials, equipment and other items needed to Provide the Services. No failure by the *Consultant* to comply with this clause shall be a compensation event under clause 6.

Except as may be expressly set out in the Contract, the *Client* does not warrant the accuracy of any representation or statement of fact or law (including, without limitation, the frequencies or volumes set out in the Scope or other tender document) given to the *Consultant* by the *Client* or *Service Manager*, their servants or agents at any time before the execution of this Contract. The *Client* shall not be liable to the *Consultant* for any loss or damage which the *Consultant* may sustain as a result of relying on any such other representation, statements, information or advice whether in contract, tort, under the Misrepresentation Act 1967 or otherwise, save in so far as any such other representation, statement, information or advice was made or given fraudulently by the *Client* or *Service Manager*, their servants or agents acting in the course of their employment.

|  |  |  |
| --- | --- | --- |
| Clause 20.6 **People**  |   | Insert new clause as follows: “The *Consultant* provides those Collateral Warranties required by the *Client* and duly executed by the relevant party within fourteen (14) days of the *Client* reques*t.”*  |
| Clause 21.2  |   | After the words “one day” add the following words: “or such other reasonable time as the *Service Manager* may require and identify to the *Consultant*”.  |
| Clause 21.3  |   | Insert new clause:  |

Without prejudice to any other provision of this Contract, the *Consultant* shall employ sufficient staff to ensure that the *services* are provided in accordance with the contract, including (without limitation) during periods of absence of its staff due to sickness, maternity leave, staff holidays, staff training or otherwise.

### Working with the Client and Others

|  |  |
| --- | --- |
| Clause 22.3 **Subcontracting**  | Delete the final sentence.  |
| Clause 23.3  | Delete the first bullet point.  |
| Clause 23.4  | Insert new clause:  |

It is a condition of the *Service Manager’s* acceptance of the Subconsultant that the *Consultant* delivers to the *Service Manager* all Collateral Warranties required from the Subconsultant in accordance with clause 20.6 above. If this condition is not fulfilled, the *Service Manager*’s approval of the relevant Subconsultant is null and void and the *Consultant* ceases to employ that Subconsultant.

### Other responsibilities

|  |  |
| --- | --- |
| Clause 24.2  | Delete “in accordance with this contract” and replace with “lawful”.  |
| Clause 24.3  | At the end of the clause, add “and all relevant health and safety legislation (and any amendment or re-enactment thereof), including but not limited to the Health and Safety at Work Act 1974 and the Construction and Design (Management) Regulations 2015 (as applicable).”  |

### Assignment

|  |  |
| --- | --- |
| Clause 25.1  | Delete and replace with the following: “The *Consultant* does not, without the prior written consent of the *Client*, assign or transfer this Contract, or any part, share or interest in it. In the absence of the *Client’s* consent under this clause, no sum of money becoming due under this Contract is payable to anyone other than the *Consultant*.  |
| Clause 25.2  | Insert new clause: The *Client* may in its absolute discretion assign or otherwise transfer this Contract or any part thereof and will give written notice to the *Consultant* of any assignment or transfer. This clause in this Contract executed by the *Consultant* shall stand as the *Consultant’s* consent to the transfer of the benefit, burden or the whole of the contract.  |
| **Clause 3** **The Programme**  | **Time**  |
| Clause 31.3  | Delete the final sentence beginning with the words “If the failure continues […]”  |
| **Clause 4**  | **Quality Management**  |
| **Correcting Defects**  |
| Clause 41.2  | Delete third sentence and replace with: “If the *Consultant* does not correct a Defect within the time required by this Contract, the *Service Manager* assesses the cost to the *Client* of having the Defect corrected (or, if applicable, omission made good) by other people or itself and, without prejudice to any other right or remedy of the *Client*, the *Consultant* pays this amount or the *Service Manager* deducts this amount from the amount due to the *Consultant*. The *Client may* either itself make good a Defect or employ other people so to do”.  |
| Clause 41.3  | Insert new clause: “For the avoidance of doubt, the Consultant shall be responsible for obtaining any additional approvals and consents from Others necessary in order to correct the Defect.”  |
| **Clause 5**  | **Payment**  |
| Clause 50.2  | Delete ‘the Scope’ at the end of the clause and replace with ‘Schedule 3, Part C’.  |
| Clause 50.3  | After the word “retained” in the fourth bullet point, add the words “deducted or withheld”.  |
| Clause 51.1  | Replace the words “one week” in line 1 with the words “four weeks”.  |
| Clause 51.2  | Delete the first sentence (including both bullet points) and replace with: “Each payment is made in accordance with Secondary Option Clause Y(UK)2.  |

|  |  |
| --- | --- |
| Clause 51.4  | Delete and replace with: “Interest is calculated annually on a simple basis”.  |
| **Clause 6**  | **Compensation Events**  |
| Clause 60.1(1)  | After the words “the Scope” insert the following words “which affects the carrying out of the *services* except:” Insert new bullet points as follows: * “a change made to correct an ambiguity or discrepancy in or between any of the documents forming part of this Contract; or
* a change which constitutes development of the *service* by the *Client* insofar as such development is allowed or not precluded by any other term of the Scope or by this Contract; or
* an instruction which does not have a material impact on the *Consultant*’s ability to Provide the Services.”
 |
| Clause 60.1(5)  | At the end of the clause insert: “and this has a material impact on the *Consultant’s* ability to Provide the Services”.  |
| Clause 60.1(8)  | In line 1 after “*Service Manager*” add “unreasonably” and in line 2 delete “for a reason not stated in this Contract”.  |
| Clause 60.1(11)  | Add the word “material” before the word “breach”.  |
| Clause 61.3  | Delete the words in the final paragraph from “unless the event arises from…” until the end of the sentence.  |
| Clause 61.4  | After the word “Consultant” in the third bullet point, add the words “and/or any act, breach of contract, negligence, omission or default of any Subconsultant”.  |
|   | Delete the final sentence beginning with the words “If the failure continues […]”  |
| Clause 62.6  | Delete the final sentence.  |
| Clause 63.13  | Delete “People Rates” in lines 1 and 3 and replace with “Fixed Fees or Project Fees” in both instances.  |
|   | After the words “category of person” in line 2 insert “or activity”.  |
| Clause 64.4  | Delete the final sentence.  |
| Clause 66.1  | Delete the third bullet point and replace with: “it is so determined under **Option W2** or as the parties may agree.”  |
| **Clause 7**  | **Rights to Material**  |
| Clause 70.1  | Add “and the Intellectual Property Rights therein” after both appearances of the word “material”.  |

|  |  |  |
| --- | --- | --- |
| **Clause 8**  |  | **Liabilities and Insurance**  |
| Clause 82.1  |  | At the end of the sentence, add: “as a deduction from the amount due to the *Contractor*, in accordance with Clause 50.3.”  |
| Clause 82.2  |  | At the end of the sentence, delete the words “is paid by the *Client*” and replace with: “is treated as a compensation event, pursuant to Clause 60.1(9).”  |
| Clause 83.4  |   | Insert new clause as follows: “For the avoidance of doubt, it is agreed that nothing in this clause relieves the *Consultant* from any of its obligations and liabilities under this contract”.  |
| Clause 83.5  |   | Insert the following new clause: “Neither Party by any act or neglect causes any insurance policy to be void or voidable or entitles the insurer to refuse any claim (in whole or in part) in respect of any risk or amount for which such policy is expressed to provide indemnity.”  |
| Clause 84.3  |   | Add the following new clause: “Save for any required professional indemnity cover, all insurances provided by the *Consultant* contain an indemnity to principal clause.  |
| Clause 85.1  |   | Delete and insert new clause as follows: “If, without the approval of the *Client* the *Consultant* fails to effect and maintain any insurance that it is required to effect and maintain under this clause 81 or obtains a different policy of insurance or fails to provide a copy of insurance certificates or brokers’ letters evidencing such insurance when required to do so, the *Client* may, but is not required to, effect and maintain appropriate insurance cover and deduct the cost of doing so from any payment due to the *Consultant* under this Contract, or recover such sum from the *Consultant* as a debt”.  |
| **Clause 9**  |  | **Termination**  |
| Clause 91.1  |  | After the word “Party” in the second main bullet point, add the words “or its Group Company”. Add a third main bullet point as follows: “If the *Consultant* or its Group Company has become insolvent within the meaning of the relevant Applicable Law”.  |
| Clause 91.3  |  | Add a third bullet point to read: “the *Client* has given three calendar months’ notice of its intention to terminate the Consultant’s employment (in whole or in part) under this Contract.”  |
| Clause 91.9  |   | Add the following new clause: “The *Client* may terminate 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 *service.* In that event: 91.9.1 with regard to the part of the *services* terminated, the procedures followed and the amounts due on termination are in accordance with clause 93; 91.9.2 the provisions of clause 9 of this Contract which would have been applicable if the *services* had been terminated in its entirety are applicable to the part of the *service* terminated; and 91.9.3 all other provisions of this Contract continue to apply to the part or parts of the *services* which are not terminated”.  |
| Clause 92.1  |  | Add the following at the end of the final sentence of the clause 92.1:  |
|   |  | “which he has not so far provided in accordance with the Contract”.  |

Add the following clauses 92.3 to 92.5:

“92.3 any payments which have become due shall cease to be due to the *Consultant* whether or not a pay less notice has been served;

92.4 the Consultant promptly provides the Client with all relevant receipts and documents that the Client reasonably requests in order for the Client to prepare an account;

92.5 the *Consultant* provides to the *Client* information and other things which the Scope states he is to provide at the end of the Contract.”

**MAIN OPTION CLAUSES**

**Option W2** is used with the following amendments:

 Clause W2.1(1) Delete the word “is” in the first line and replace with “may be”.

Clause W2.3(2) Delete the words “and Parties agree” from the end of the clause and replace with “so directs”.

 Clause W2.3(3) After the word “Subconsultant” in line 3, add the words “and the *Client*”

Clause W2.3(4) Add a new bullet point to read: “determine more than one dispute under this Contract at the same time, and if requested to do so by either party, shall determine any matter raised by such party in the nature of set-off, abatement or counter-claim at the same time as he determines any other matter referred to him.” Clause W2.3(11) Delete the final sentence.

Clause W2.4(1) Delete this clause and insert: “A Party may refer any dispute under or in connection with this Contract to the *tribunal*.”

 Clause W2.4(2) Delete the final sentence.

**SECONDARY OPTION CLAUSES**

|  |  |
| --- | --- |
| **Option X8**  | ***Undertakings to Others***  |
| Clause X8.2  | Delete the words “the Scope” at the end of the clause and replace with “Schedule 11”.  |
| Clause X8.4  | Insert new clause X8.4 as follows:  |
|   | “The *Client* may request *undertakings to Others* in relation to specific Task Orders where the *Consultant* is sub-contracting the Provision of the Services.  |

###  Option X13 Performance bond

If used, is used with the following amendments:

Clause X13.1 Delete the words “the Scope” in line 3 and replace with “Schedule 13 if stated to be a requirement in respect of a specific Task Order”. Add the following sentence to the end of the clause: “The *Client* withholds 10% of the Price for Services Provided to Date in respect of the specific Task Order until the *Consultant* gives the *Client* the performance bond signed by the *Consultant* and the bondsman.

 Clause X13.2 Insert new clause X13.2 as follows:

 “The *Client* may at its discretion request a performance bond for Task

Orders that meet one or more of the following criteria:

* the Task Order relates to the delivery of a project within the *Client’s* transformational programme or
* the *Client* has received external funding relating to a specific Task Order which is governed by an agreement containing clawback provisions which increases the risk for the *Client* in relation to the delivery of that Task Order.

 Clause X13.3 Insert new clause X13.3 as follows:

The *Client* or the *Service Manager* gives the *Consultant* an early warning under clause 15 as soon as possible if there is the possibility of the *Client* requesting a performance bond in relation to a Task Order which meets the criteria set out in clause X13.2.

The requirement for a performance bond in relation to a Task Order meeting the criteria set out in clause X13.2 is entered into the Early Warning Register and all the provisions of clause 15 in relation to early warnings apply.

 Clause X13.4 Insert new clause X13.4 as follows:

When either the *Client* or the *Service Manager* gives an early warning notification to the *Consultant* in relation to the potential for requesting a performance bond for a specific Task Order, the *Client* includes reasons for the performance bond requirement in that notification.

The *Consultant* considers the *Client’s* request and reasons for requesting a performance bond whether the notification has been given by the *Client* directly or by the *Service Manager* and provides a response to the *Client* within 10 working days of the notification.

 Insert new clause X13.5 Insert new clause X13.5 as follows:

If the outcome of the process in clause X13.4 results in the *Consultant* agreeing to provide the performance bond, the relevant Task Order proceeds in accordance with the contract.

If the *Consultant,* having considered the reasons given by the *Client* for requesting a performance bond,does not agree to provide the performance bond the *Consultant*

* gives reasons as to why they are not amenable to providing a performance bond ensuring that their response addresses each reason that the *Client* has given in its early warning notification in relation to the performance bond requirement and
* discusses with the *Client* whether there are alternatives to providing the performance bond in relation to a relevant Task Order.

The *Client* considers the response from the *Consultant* and issues a decision as to whether a performance bond will be required for the specific Task Order under consideration. The *Consultant* has the option of accepting or declining that Task Order.

If the *Consultant* declines the Task Order this does not disadvantage the *Consultant*:

* in respect of future Task Orders or
* under or in connection with any performance monitoring under this contract and

The *Client* does not consider this factor if deciding whether to extend this contract.

**OPTION Y**

###  Clause Y(UK)2 The Housing Grants, Construction and Regeneration Act 1996

This clause is used with the following amendments:

|  |  |
| --- | --- |
| Y2.2  | Delete “seven” in line 1 and replace with “twenty-one”.  |
| Y2.3  | Delete “seven days” and replace with “the day”.  |
|   | In the third line, insert “on the day such notice is served” before the words “and the basis on which that sum is calculated”.  |
| Y2.5  | Delete this clause. |

**Option Z2 - Identified and defined terms**

Insert new clause 11.3 additional defined terms.

 11.3 (1) Auditor is:

* the *Client’s* internal and external auditors;
* the *Client’s* statutory or regulatory auditors;
* the Comptroller and Auditor General, their staff and/or any appointed

representatives of the National Audit Office;

* HM Treasury or the Cabinet Office;
* any party formally appointed by the *Client* to carry out audit or similar review functions; and
* successors or assigns of any of the above;

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

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

11.3 (4) *Client* Data is the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and

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

11.3 (5) *Client’s* Premises are premises owned, occupied or leased by the *Client* and the site of any works to which the *service* relates.

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

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

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

*Client.*

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

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

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

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

11.3 (13) Data Protection Legislation is (i) all applicable UK law about the Processing of Personal Data and privacy, including but not limited to the UK GDPR, and the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and (ii) (to the extent that it may be applicable) the EU GDPR). The UK GDPR and EU GDPR are defined in section 3 of the Data Protection Act 2018;

11.3 (14) DOTAS is the Disclosure of Tax avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

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

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

11.3 (17) General Anti-Abuse Rule is

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

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

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

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

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

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

* where any tax return of the Consultant submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of
* a Relevant Tax Authority successfully challenging the Consultant under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle or
* the failure of an avoidance scheme which the Consultant was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DASVOIT, DOTAS or VADR or any equivalent or similar regime and where any tax return of the *Consultant* submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Contract Date or to a civil penalty for fraud or evasion.

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

11.3 (23) Prohibited Act is

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

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

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

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

11.3 (27) Security Policy means the *Client*’s security policy attached as Appendix 1 to Contract Schedule 7 (Security Provisions) as may be updated from time to time.

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

**Option Z4 - Admittance to Client’s Premises** Insert new clause 18A:

18A.1 The *Consultant* submits to the *Service Manager* details of people who are to be employed by it and its Subcontractors in Providing the Service. The details include a list of names and addresses, the capabilities in which they are employed, and other information required by the *Service Manager*.

|  |  |
| --- | --- |
| 18A.2  | The *Service Manager* may instruct the *Consultant* to take measures to prevent unauthorised persons being admitted to the *Client’s* Premises.  |
| 18A.3  | Employees of the *Consultant* and its Subcontractors are to carry a *Client’s* pass and comply with all conduct requirements from the *Client* whilst they are on the parts of the Client’s Premises identified in the Scope.  |
| 18A.4  | The *Consultant* submits to the *Service Manager* for acceptance a list of the names of the people for whom passes are required. On acceptance, the *Service Manager* issues the passes to the *Consultant*. Each pass is returned to the *Service Manager* when the person no longer requires access to that part of the *Client’s* Premises or after the *Service Manager* has given notice that the person is not to be admitted to the *Client’s* Premises.  |
| 18A.5  | The *Consultant* does not take photographs of the Client’s Premises or of work carried out in connection with the *service* unless it has obtained the acceptance of the *Service Manager*.  |
| 18A.6  | The *Consultant* takes the measures needed to prevent its and its Subcontractors’ people taking, publishing or otherwise circulating such photographs.  |

**Option Z5 - Prevention of fraud and bribery** Insert new clauses:

17.4.1 The *Consultant* represents and warrants that neither it, nor to the best of its knowledge any of its people, have at any time prior to the 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 or
* been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

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

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

 17.4.3 In Providing the Service the *Consultant*

* establishes, maintains and enforces, and requires that its Subcontractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act,
* keeps appropriate records of its compliance with this contract and make such

records available to the *Client* on request and

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

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

* been subject to an investigation or prosecution which relates to an alleged Prohibited Act,
* been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act or
* received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this contract or otherwise suspects that any person or party directly or indirectly connected with this contract has committed or attempted to commit a Prohibited Act.
	+ 1. If the *Consultant* makes a notification to the *Client* pursuant to clause 17.4.4, the *Consultant* responds promptly to the *Client's* enquiries, co-operates with any investigation, and allows the *Client* to audit any books, records and/or any other relevant documentation in accordance with this contract.
		2. If the *Consultant* breaches Clause 17.4.3, the *Client* may by notice require the *Consultant* to remove from carrying out the *service* any person whose acts or omissions have caused the *Consultant*’s breach.

**Option Z6 – Equality and Diversity**

Insert new clauses:

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

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

 27.2 The *Consultant* takes all necessary steps, and informs the *Client* of the steps taken, to

prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation)

**Option Z7 – Not Used**

**Option Z8 – Conflicts of interest** Insert new clauses:

* 1. The *Consultant* takes appropriate steps to ensure that neither the *Consultant* nor any of its personnel are placed in a position where (in the reasonable opinion of the *Client)* there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the *Consultant* or its personnel and the duties owed to the *Client* under this contract.
	2. The *Consultant* promptly notifies and provides full particulars to the *Client* if such conflict referred to in clause 28.1 arises or may reasonably been foreseen as arising.
	3. The *Client* may terminate the *Consultant’s* obligation to Provide the Service immediately under reason R11 and/or to take such other steps the *Client* deems necessary where, in the reasonable opinion of the *Client*, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the *Consultant* and the duties owed to the *Client* under this contract.

**Option Z9 – Publicity and Branding** Insert new clauses:

 29.1 The *Consultant* does not

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

without approval of the *Client*.

29.2. The *Client* is entitled to publicise the contractin accordance with any legal obligation upon the *Client*, including any examination of the contractby the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

**Option Z10 - Freedom of information** Insert new clauses:

* 1. The *Consultant* acknowledges that unless the *Service Manager* has notified the *Consultant* that the *Client* is exempt from the provisions of the FOIA, the *Client* is subject to the requirements of the Code of Practice on Government Information, the FOIA and the Environmental Information Regulations. The *Consultant* cooperates with and assists the *Client* so as to enable the *Client* to comply with its information disclosure obligations.
	2. The *Consultant*
* transfers to the *Service Manager* all Requests for Information that it receives as soon as practicable and in any event within two working days of receiving a Request for Information,
* provides the *Service Manager* with a copy of all information in its possession, or power in the form that the *Service Manager* requires within five working days (or such other period as the *Service Manager* may specify) of the *Service Manager’s* request,
* provides all necessary assistance as reasonably requested by the *Service Manager* to enable the *Client* to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations and
* procures that its Subcontractors do likewise.
	1. The *Client* is responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.
	2. The *Consultant* does not respond directly to a Request for Information unless authorised to do so by the *Service Manager*.
	3. The *Consultant* acknowledges that the *Client* may, acting in accordance with the Cabinet Office Freedom of Information Code of Practice, be obliged to disclose information without consulting or obtaining consent from the *Consultant* or despite the *Consultant* having expressed negative views when consulted.
	4. The *Consultant* ensures that all information is retained for disclosure throughout the *period for retention* and permits the *Service Manager* to inspect such records as and when reasonably requested from time to time.

### Option Z13 - Confidentiality and Information Sharing

Insert a new clause

26.8 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this contract, each Party shall

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

 26.9 The clause above shall not apply to the extent that

* such disclosure is a requirement of the Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause Z10 (Freedom of Information),
* such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner,
* such information was obtained from a third party without obligation of confidentiality,
* such information was already in the public domain at the time of disclosure otherwise than by a breach of this contract or
* it is independently developed without access to the other party's Confidential Information.
	1. The *Consultant* may only disclose the *Client* Confidential Information to the people who are directly involved in Providing the Service and who need to know the information, (including without limitation its legal and insurance advisors and auditors)1 and shall ensure that such people are aware of and shall comply with these obligations as to confidentiality. The *Consultant* shall not, and shall procure that the *Consultant’s* people do not, use any of the *Client* Confidential Information received otherwise than for the purposes of this contract.
	2. The *Consultant* may only disclose the Client Confidential Information to *Consultant’s* people who need to know the information, and shall ensure that such people are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality.

In the event that any default, act or omission of any *Consultant’s* people causes or contributes (or could cause or contribute) to the *Consultant* breaching its obligations as to confidentiality under or in connection with this contract, the *Consultant* shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any *Consultant’s* people , the *Consultant* shall provide such evidence to the *Client* as the *Client* may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the *Consultant* is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from *Consultant’s* people, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with *Consultant’s* people in connection with obligations as to confidentiality.

* 1. At the written request of the *Client*, the *Consultant* shall procure that those members of

the *Consultant’s* people identified in the *Client*'s request signs a confidentiality undertaking prior to commencing any work in accordance with this contract.

* 1. Nothing in this contract shall prevent the *Client* from disclosing the Consultant's Confidential Information
* to any Crown Body or any other Contracting Bodies. All Crown Bodies or

Contracting Bodies receiving such Confidential Information shall be entitled to further disclose the Consultant’s Confidential Information to other Crown Bodies or other Contracting Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Body,

* to a professional adviser, contractor, consultant, supplier or other person engaged by the *Client* or any Crown Body (including any benchmarking organisation) for any purpose connected with this contract, or any person conducting an Office of Government Commerce Gateway Review,
* for the purpose of the examination and certification of the *Client*'s accounts,
* for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Client* has used its resources,
* for the purpose of the exercise of its rights under this contract or
* to a proposed successor body of the *Client* in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this contract,

and for the purposes of the foregoing, disclosure of the Consultant’s Confidential Information shall be on a confidential basis and subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the *Client* under this clause 26.13.

* 1. The *Client* shall use all reasonable endeavours to ensure that any government department, Contracting Body, people, third party or subcontractor to whom the Consultant's Confidential Information is disclosed pursuant to the above clause is made aware of the *Client*'s obligations of confidentiality.
	2. Nothing in this clause shall prevent either party from using any techniques, ideas or knowhow gained during the performance of the contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.
	3. The *Client* may disclose the Consultant’s Confidential Information
* to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement,
* to the extent that the *Client* (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions.

**Option Z14 - Security Requirements**

The *Consultant* complies with, and procures the compliance of the *Consultant’s* people, with the Security Policy and the Security Management Plan produced by the *Consultant* and the *Consultant* shall ensure that the Security Management Plan fully complies with the Security Policy and Contract Schedule 7

**Option Z16 - Tax Compliance** Insert new clauses:

* 1. The *Consultant* represents and warrants that at the Contract Date, it has notified the *Client* in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance.
	2. If, at any point prior to the *defects date*, an Occasion of Tax Non-Compliance occurs, the

*Consultant* shall

* notify the *Client* in writing of such fact within 5 days of its occurrence and
* promptly provide to the *Client*
* details of the steps which the *Consultant* is taking to address the Occasions of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant and
* such other information in relation to the Occasion of Tax Non-Compliance as

the *Client* may reasonably require.

**Option Z22 - Fair payment** Insert a new clause:

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

**Option Z42 – Not Used**

### Option Z44 - Intellectual Property Rights

Delete clause 70 and insert the following clause In this clause 70 only:

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

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

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

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

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

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

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

 70.7 The *Consultant* supplies copies of the Documents to the *Service Manager* and to the

*Client*’s other contractors and consultants for no additional fee to the extent necessary to enable them to discharge their respective functions in relation to this contract or related service.

70.8 After the termination or conclusion of the *Consultant*’s employment hereunder, the *Consultant* supplies the *Service Manager* with copies and/or computer discs of such of

the Documents as the *Service Manager* may from time to time request and the *Client* pays the *Consultant*’s reasonable costs for producing such copies or discs.

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

**Option Z45 – Not Used**

**Option Z46 – Not Used**

**Option Z47 - Small and Medium Sized Enterprises (SMEs)** Insert new clause:

 23.4

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

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

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

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

**Option Z48 - Apprenticeships** Insert new clause:

23.5

23.5.1 The *Consultant* takes all reasonable steps to employ apprentices, and reports to the *Client* the numbers of apprentices employed and the wider skills training provided, during the delivery of the *service*.

23.5.2 The *Consultant* takes all reasonable steps to ensure that no less than a percentage of its people (agreed between the Parties) are on formal apprenticeship programmes or that a similar proportion of hours worked in Providing the Service*,* (which may include support staff and Subcontractors) are provided by people on formal apprenticeship programmes.

 23.5.3 The *Consultant* makes available to its people and Subcontractors working on the contract,

information about the Government’s Apprenticeship programme and wider skills opportunities.

23.5.4 The *Consultant* provides any further skills training opportunities that are appropriate for its people engaged in Providing the Service.

23.5.5 The *Consultant* provides a report detailing the following measures in its regular contract management monthly reporting cycle and is prepared to discuss apprenticeships at its regular meetings with the *Service Manager*

* the number of people during the reporting period employed on the contract, including support staff and Subcontractors,
* the number of apprentices and number of new starts on apprenticeships directly initiated through this contract,
* the percentage of all people taking part in an apprenticeship programme,
* if applicable, an explanation from the *Consultant* as to why it is not managing to meet the specified percentage target,
* actions being taken to improve the take up of apprenticeships and
* other training/skills development being undertaken by people in relation to this contract, including:
	+ 1. work experience placements for 14 to 16 year olds,
		2. work experience /work trial placements for other ages,
		3. student sandwich/gap year placements,
		4. graduate placements,
		5. vocational training,
		6. basic skills training and
		7. on site training provision/ facilities.

**Option Z49 – Change of Control** Insert new clauses:

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

91.9 The *Client* may terminate the *Consultant’s* obligation to Provide the Service (which shall take effect as termination under reason R11) within six months from

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

**Option Z50 – Financial Standing**

91.10 The *Client* may terminate the *Consultant’s* obligation to Provide the Service (which shall take effect as termination under reason R11) where in the reasonable opinion of the *Client* there is a material detrimental change in the financial standing and/or the credit rating of the *Consultant* which:

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

**Option Z51 – Financial Distress**

The *Consultant* complies with the provisions of Schedule 5 (Financial Distress) in relation to the assessment of the financial standing of the *Consultant* and the consequences of a change to that financial standing.

**Option Z52 – Records, audit access and open book data** Insert new clauses:

|  |  |
| --- | --- |
| 26A.1  | The *Consultant* keeps and maintains for the *period for retention* full and accurate records and accounts of the operation of this contract including the *service* provided under it, any subcontracts and the amounts paid by the *Client*.  |
| 26A.2  | The *Consultant*  |

* keeps the records and accounts referred to in clause 26A.1 in accordance with Law
* affords any Auditor access to the records and accounts referred to in clause 26A.1 at the *Consultant’s* premises and/or provides records and accounts (including copies of the *Consultant’s* published accounts) or copies of the same, as may be required by any Auditor from time to time during the *Consultant* Providing the Service and the liability period under the contract in order that the Auditor may carry out an inspection to assess compliance by the *Consultant* and/or its Subcontractors of any of the *Consultant’s* obligations under this contract including in order to:
* verify the accuracy of any amounts payable by the *Client* under this contract (and proposed or actual variations to them in accordance with this contract)
* verify the costs of the *Consultant* (including the costs of all Subcontractors and any third party suppliers) in connection with Providing the Service
* identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the *Client* has no obligation to inform the *Consultant* of the purpose or objective of its investigations
* obtain such information as is necessary to fulfil the *Client’s* obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General
* enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Client* has used its resources
* subject to the *Consultant’s* rights in respect of Consultant’s Confidential Information, the *Consultant* provides the Auditor on demand with all reasonable co-operation and assistance in respect of
* all reasonable information requested by the *Client* within the scope of the audit
* reasonable access to sites controlled by the *Consultant* and to any *Consultant’s* equipment used to Provide the Service • access to the *Consultant’s* personnel.

|  |  |
| --- | --- |
| 26A.3  | The Parties bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 26A, unless the audit reveals a default by the *Consultant* in which case the *Consultant* reimburses the *Client* for the *Client’s* reasonable costs incurred in relation to the audit.  |
| 26A.4  | This clause does not constitute a requirement or agreement for the purposes of section 6(3)(d) of the National Audit Act 1983 for the examination, certification or inspection of the accounts of the *Consultant* and the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the *Consultant* is not a function exercisable under this contract.  |

**Option Z100 – Data Protection**

Insert new clause Z100 as follows:

The *Client* and the *Consultant* shall comply with the provisions of Schedule 6 (Data Protection).

**Option Z101 – Cyber Essentials**

Insert new clause Z101 as follows:

The *Client* and the *Consultant* shall comply with the provisions of Schedule 8.

**Option Z102 – Staff Transfer** Insert new clause Z102 as follows:

The Parties agree that:

1. where the commencement of the provision of the *service* or any part of the *service* results in one or more Relevant Transfers, Schedule 9 (Staff Transfer) shall apply as follows:
	1. where the Relevant Transfer involves the transfer of Transferring Authority Employees, Part A and Part D of Schedule 9 (Staff Transfer) shall apply;
	2. where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B and Part D of Schedule 9 (Staff Transfer) shall apply;
	3. where the Relevant Transfer involves the transfer of Transferring Authority Employees and Transferring Former Supplier Employees, Parts A, B and D of Schedule 9 (Staff Transfer) shall apply; and
	4. Part C of Schedule 9 (Staff Transfer) shall not apply;
2. where commencement of the provision of the *service* or a part of the *service* does not result in a Relevant Transfer, Part C of Schedule 9 (Staff Transfer) shall apply, Part D of Schedule 9 may apply and Parts A and B of Schedule 10 (Staff Transfer) shall not apply; and
3. Part E of Schedule 9 (Staff Transfer) shall apply on the expiry or termination of the *service* or any part of the *service*.

### Option Z103 – Non-exclusivity

Insert new clause Z103 as follows:

Z103.1 The *Client* shall at all times be entitled to enter into contracts with separate consultants for the provision of any or all services that are the same as or similar to the s*ervice*;

Z103.2 No guarantee or representation shall be deemed to have been made by the *Client* in respect of the total quantities or values of the *service.*

### Option Z104 – Additional Z clauses

|  |  |
| --- | --- |
| Clause Z2.3  | Insert new clause to read: “The *Client* withholds payment of 25% of the Price for Services Provided to Date if the *Consultant* does not commence the *services* on the *starting date* as a result of the *Consultant’s* failure to execute the contract properly.”  |
| Clause Z2.4  | Insert new clause to read: “The *Consultant* does not assign or transfer any rights and/or obligations under the contract without the prior written consent of the *Client.* The *Client* may assign or transfer this Contract and/or its rights under it at any time without the consent of the *Consultant*.”  |
| Clause Z2.5  | Insert new clause to read: “The *Consultant* deals with any complaints received from whatever source in a prompt, courteous and efficient manner. The *Consultant* keeps a written record of all complaints received and of the action taken in relation to such complaints. Such records shall be kept available for inspection by the *Client* at all reasonable times. The *Consultant* notifies the *Client* forthwith in writing of all complaints received and of all steps taken in response thereto.”  |
| Clause Z2.6  | Insert new clause as follows:  |
|   | “Within 7 days of the *Client’s* request (which for the avoidance of doubt may be made at any time after the starting date), the *Consultant* shall enter into a collateral warranty in favour of the *Client* in the form set out in Schedule 11”.  |
| Clause Z2.7  | Insert new clause as follows: The *Client* is the client under the Construction (Design and Management) Regulations 2015 (the “CDM Regulations”), and the *Consultant* is the principal designer under the CDM Regulations”), in respect of the *services*.  |
| Clause Z3  | Insert new clauses Z3.1 to Z3.9 as follows:  |
| Clause Z3.1  | The *Client* 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.  |
| Clause Z3.2  | If the *Client* 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.  |
| Clause Z3.3  | If the *Client* 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 Parties had been released under the law from further performance of the whole of this Contract.  |
| Clause Z3.4 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 Z3.5 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 services included in this Contract includes provisions to the same effect as these provisions.

Clause Z4 Insert new clauses Z4 as follows:

Clause Z4.1 The Consultant complies with the following additional Schedules:

* Schedule 10 (Social Value Commitments);
* Schedule 14 (Mobilisation Plan); • Schedule 17 (Continuous Improvement); and
* Schedule 18 (Background Checks).

**SCHEDULE 2 – SCOPE**

**Contents**

[1. INTRODUCTION 38](#_Toc321339)

[2. *SCOPE* REQUIREMENTS 38](#_Toc321340)

1. **STANDARDS 1**
2. **LEGISLATION AND *CLIENT* PROCESSES AND PROCEDURES 1**
3. **EXISTING FACILITIES 1**
4. **INSURANCES AND WARRANTIES 2**
5. **RESOURCES 2**
6. **COMPLIANCE WITH POLICIES AND PROCEDURES 2**
7. **SUBCONTRACTORS 3**
8. **POLICY 4**
9. **SUSTAINABILITY 5**
10. **SMALL AND MEDIUM-SIZED ENTERPRISES (SMES) 8**
11. **DATA MANAGEMENT AND MANAGEMENT INFORMATION 8**
12. **DATA SECURITY 9**
13. **IT REQUIREMENTS 10**
14. **NOT USEDHEALTH AND SAFETY 11**
15. **QUALITY CONTROL 12**
16. **RISK MANAGEMENT 13**
17. **COMMUNICATIONS AND CO-OPERATION 13**
18. **ACCOUNT MANAGEMENT [AND CONTINUOUS IMPROVEMENT] 14**
19. **COMPLAINTS PROCEDURE 15**
20. **MOBILISATION 15**
21. **PERMITS AND CONSENTS 17**
22. **MEETINGS 17**
23. **STAKEHOLDER MANAGEMENT 18**
24. **SOCIAL VALUE 18**
25. **MODERN SLAVERY 20**
26. **EMPLOYMENT POLICIES AND PRACTICES 20**
27. **WHOLE-LIFE VALUE FOR MONEY 21**
28. **LEAN APPROACHES TO DESIGN AND PROJECT PROGRAMMING AND DELIVERY 23**
29. **GOVERNMENT SOFT LANDINGS (GSL) 23**
30. **BUILDING INFORMATION MODELLING (BIM) 24**
31. **MODERN METHODS OF CONSTRUCTION (MMC) 25**

**36. COMMERCIAL GOVERNANCE – FAIR PAYMENT 25**

## 37 PROCURING GROWTH FOR A BALANCED SCORECARD 25

**ANNEX A: PROJECT TYPES 26**

**ANNEX B PROCUREMENT ROUTES 29**

**ANNEX C GLOSSARY OF TERMS 30**

# 1. INTRODUCTION

1.1. This *Scope* describes the technical requirements for the *service* that the *Consultant* will be required to comply under this contract and for all Task Orders placed under this contract.

1.2. Please note the requirements set out in this *Scope* are not exhaustive. The specific requirements may be refined by the *Client* to reflect the specific requirements for each Task Order (to the extent permitted and set out in the Framework) that will be detailed at Task Order stage.

1.3. The Key Performance Indicators are set out in Schedule 4 (Incentive Schedule) of the contract.

# 2. *SCOPE* REQUIREMENTS

2.1. The *Consultant* shall Provide the Service in accordance with the requirements set out in this document and associated annexes, the contract and as may be further required under any subsequent specific Task Order.

2.2. Specialist requirements for each project will be specified by the *Client* on the Order Form each time a Task Order is placed. For example, such specialist requirements may include, but are not limited to:

 2.2.1. specific security clearances,

 2.2.2. sector specific requirements and/or experience; and

 2.2.3. Standards for the services specific to the Task Order

2.3. The *CCS Construction Professional Services Framework Alliance Contract* is/will be complemented by a suite of other CCS commercial agreements for related supplies and services (e.g. Construction Works and Associated Services, Modular Building Solutions, Building Materials and Equipment etc.) that will collectively enable the *Client* to effectively manage the full life cycle requirements of their built asset and associated strategies on the basis of whole life value considerations.

2.4. The *Scope* of services required and the procurement route will be specified in the Task Order.

 2.5. Project and Service Descriptors

2.5.1. The services provided by the *Consultant* will support the *Client* in the delivery of the indicative types of construction projects/ programmes as indicated in Annex A (Project types).

2.5.2. The existing estate and new build / refurbishments / extensions / alterations / maintenance requirements etc. within the *Client*s estates may vary widely, and is likely to range from historic buildings, structures and infrastructure through to modern ‘state of the art’ buildings, structures and infrastructure.

2.6. *Scope* - *The* *Consultant* shall provide access to a range of industry expert construction professional services at discrete delivery stages, from inception to completion, to support a variety of projects and commissions as outlined in Annex A (Project types) at locations throughout Wakefield.

2.7. The Services that the *Consultant* will be required to provide are detailed in the following table. The *Consultant* will be required to provide some of these services regardless of the volume of projects that are initiated. These are identified below as having a pricing mechanism of Fixed Fee. This will enable the *Client* to have access to the *Consultant’s* expertise and organisational breadth. It is envisaged that the *Consultant* will retain a team dedicated to this contract within, or close to the *Client’s* premises for these purposes.

2.8. The *Consultant* will be required to provide a range of construction professional services on a project specific basis – identified below as having a pricing mechanism of ‘Project Fees’. The *Consultant* is required to assess this requirement and provide a project specific price based on the Project Fees identified in the Pricing Matrix.

|  |  |  |  |
| --- | --- | --- | --- |
| **Ref No:**  | **Service Title**  | **Service Requirements**  | **Pricing** **Mechanism**  |
| PMO01  | Capital Programme Management Support  | The *Consultant* shall support the management of the *Client*’s Capital Programme at all of the sites and provide services as required as part of the RIBA Stage 0 and 1 by: * Bringing a consistent approach to project management and associated professional services
* Taking due consideration of project lifecycle costings
* Identifying opportunities for cost savings through effective procurement and management
* Effectively coordinating all allocated projects and identifying key *Client* interfaces / dependences
* Reporting on project progress, issues and risks
* Supporting the *Client* by providing necessary data, information and updates on all projects
* Attending meetings and site visits on behalf of and alongside the *Client*

The *Consultant* shall support the *Client*’s Corporate Landlord Team developing the capital programme and its prioritisation.  | Fixed Fee  |

|  |  |  |  |
| --- | --- | --- | --- |
| **Ref No:**  | **Service Title**  | **Service Requirements**  | **Pricing** **Mechanism**  |
| PMO02  | Project Procurement Advice  | The *Consultant* shall support and advise the *Client* on the procurement of capital projects, through the *Client*’s established frameworks, and, as part of formal tender exercises, and support with undertaking the procurement, including technical evaluation, and producing tender reports and recommendations for the *Client*. The *Consultant* shall support with the production of *Scope*, drawings, project tender documents and other technical procurement documents as appropriate. The *Consultant* should also advise the *Client* if there are any new Frameworks to consider, and also make them aware of any updates to existing Frameworks, if applicable.  | Project Fees  |
| PMO03  | Project Procurement  | The *Consultant* shall, where required by the *Client*, run procurement processes on the *Client*’s behalf to identify contractors to deliver Capital Projects. For the avoidance of doubt this may include: * Creating *Scope*s
* Creating tender documents
* Issuing documents to bidders
* Managing clarifications and site visits from bidders
* Attending site visits with bidders
* Receiving tenders / bids
* Evaluation
* Moderation
 | Project Fees  |

|  |  |  |  |
| --- | --- | --- | --- |
| **Ref No:**  | **Service Title**  | **Service Requirements**  | **Pricing** **Mechanism**  |
|  |  | * Drafting of award reports
* Placing contracts on the *Client’*s behalf
* Further relevant support as required
* Collate contract packs
* Draft form of agreement
* Liaison with the *Client*’s legal services and procurement teams
 |  |
| PMO04  | Preparation of Briefing Notes  | The *Consultant* shall provide information, as requested, for inclusion in *Client* briefing notes relating to all current and potential future projects. The *Consultant* shall provide briefing notes on sector and specific issues relating to all projects being undertaken upon request by the *Client*.  | Fixed Fee  |
| PMO005  | Strategic Briefs  | The Consultant shall support the Client by reviewing strategic briefs, project initiation documents and business cases produced by the Client’s service and department teams to ensure they are able to be developed into detailed project instructions. | Fixed Fee  |
| PMO06  | Instructing Officer  | The *Consultant* shall provide an Instructing Officer who shall act for the *Client* commissioning Project Professional Services, supervising, coordinating and monitoring Project Professional Services, signing off Professional Services work and liaising with the *Client* and its Directorates.  | Fixed Fee  |
| PMO07  | Project related  | The *Consultant* shall provide Professional  | Project Fees  |

|  |  |  |  |
| --- | --- | --- | --- |
| **Ref No:**  | **Service Title**  | **Service Requirements**  | **Pricing** **Mechanism**  |
|  | Professional Services  | Services to the *Client* for all Project Professional Services commissioned by the *Client* team as part of the Capital Programme or to inform the *Client* upon request, subject to value testing. To include Property and Professional Services tasks undertaken in RIBA Work Plan Stages 2 to 7. Project Professional Services to include (but are not limited to): * Project Manager
* Architect
* Surveying services including but not limited to;
	+ Quantity surveyor o Building surveyor o Party wall surveyor o Planning and development surveyor
	+ Legionella surveyor o Geotechnician o Structural surveyor o Mechanical and electrical surveyor
	+ Condition surveyor o Land surveyor o Quality control surveyor
* Procurement advisor
* Contracts officer whose role will include but not be limited to:
	+ Liaising with the *Client's* legal advisors and advise on use and/or amendment of bespoke forms of contract or contribute to drafting of particular *Client*
 |  |

|  |  |  |  |
| --- | --- | --- | --- |
| **Ref No:**  | **Service Title**  | **Service Requirements**  | **Pricing** **Mechanism**  |
|  |  | requirements including reviewing and drafting of contracts (including NEC and JCT forms of contract); o Drafting of tender documentation; * Evaluating tenders and compliance;
* Advising on dispute resolution; o Advising on health and safety; and
* Compensation events and force majeure.
* Energy / Environmental advisor
* Engineer services including but not limited to:
	+ Building services engineer o Civil engineer o Mechanical and electrical engineer
	+ HVAC engineer o Gas / combustion engineer o Structural engineer o Acoustic engineer o Hydrologist / flood engineer
* Conservation advisor
* CAD technician
* Equality and access advisor
* Clerk of works
* Cost consultant
* Space planner
* Planning consultant
* Domestic energy assessor
 |  |

|  |  |  |  |
| --- | --- | --- | --- |
| **Ref No:**  | **Service Title**  | **Service Requirements**  | **Pricing** **Mechanism**  |
|  |  | * Drone pilot
* Health and safety advisor
* Ecologist

Whilst delivering Project Professional Services the *Consultant* shall: * Be responsible for the design & delivery of Projects on time, on *Scope* and within price.
* In relation to schools projects take account of building bulletin and other DfE design guidance documents.
* Take account of the timeline for any school statutory processes which could have an impact on the procurement and delivery of Projects.
* Take account of new cost effective construction methods, cost effective sustainable technologies and support the *Client* to achieve reductions in carbon emissions.
* Provide construction programmes for each project, updated monthly.
* Management of preliminary works.
* Preparation of documents for and submission of planning applications in a timely way so as not to impact on programme.
* Project delivery including financial elements to support the delivery of the project within set budgets. Change control process to be agreed but all changes to be approved by the *Client* before being implemented.
* Full management of all meetings relating to the project (from RIBA Stage 2 onwards) including being responsible for arranging, minuting and circulating minutes to all attendees and requested *Client* representatives. Contract
 |  |

|  |  |  |  |
| --- | --- | --- | --- |
| **Ref No:**  | **Service Title**  | **Service Requirements**  | **Pricing** **Mechanism**  |
|  |  | administration, contract finance and compliance with CDM and all construction regulations including conflict resolution, cash flow monitoring, contract payments and provision of cost statements. * Undertaking detailed technical surveys and/or feasibility assessments.
* Preparation of gateway reviews for the *Client*. Gateway reviews to include references to project management documentation (format and documents to be agreed).

Gateway Reviews to be approved by the *Client* before the next stage of the project commences. * Acting as the *Client*’s representative as required.

Update condition data, Net Capacity Assessments and CAD plans following the completion of projects and make updates available to *Client* in an electronic format. The *Consultant* shall undertake Post Completion Evaluations and report back to the *Client* in an agreed format with agreed/defined timescales.  |  |
| PMO08  | Project Reporting  | The *Consultant* shall produce reports on Projects including monthly progress reports on all Projects (format to be agreed with the *Client*) being project managed by the *Consultant*. The *Consultant* shall also provide information upon requests on projects for inclusion in  | Project Fee  |
| **Ref No:**  | **Service Title**  | **Service Requirements**  | **Pricing** **Mechanism**  |
|  |  | Cabinet, CMT and DMT Reports.  |  |
| PMO09  | Independent verification and value testing  | The *Consultant* shall, at the request of the *Client*, work with any independent bodies to provide supervision of projects to ensure that best value is being delivered.  | Project Fee  |
| PMO010  | Risk Register  | The *Consultant* shall contribute to the *Client*’s risk registers including capital program risk registers.  | Fixed Fee  |
| PMO11  | Project Risk Reporting  | The *Consultant* shall manage a comprehensive risk register for each project that quantifies the initial impact and likelihood of the risk (and produces a product to create the initial risk score), owner, mitigation strategy and the mitigated impact and likelihood (and produces a product to create a managed risk score)  | Project Fee  |
| PMO12  | Access Audit & suitability assessments  | The *Consultant* shall undertake and review access audits and suitability assessments on all applicable *Client* buildings, including schools to support the *Client* with its duties under Disability Discrimination (Equality Act 2010) legislation, giving option appraisals for reasonable adjustments where necessary.  | Project Fee  |



## 3. STANDARDS

3.1. The *Consultant* shall for the term of the contract and any individual Task Order, comply with the relevant standards for the *Scope* of the services required, including but not limited to, the following:

3.1.1. A Quality Management System supported by the International Organisation for Standardisation ISO9001 Quality Management System, or the current European Foundation for Quality Management (EFQM) Excellence Model criteria or equivalent;

3.1.2. An Environmental Management System supported by the International Organisation for Standardisation ISO14001 Environmental Management System or equivalent;

3.1.3. Cyber Essential Scheme requirements (see Section 15 Cyber Essentials below) which can be located at; [https://www.gov.uk/government/publications/cyberessentials-schemeoverview,](https://url.avanan.click/v2/___https%3A/www.gov.uk/government/publications/cyber-essentials-schemeoverview___.YXAxZTpzaGFycGVwcml0Y2hhcmQ6YTpvOjNiNTQ4NDU1MjljMGVlODcxOTI1ODk3MmNmYTBlMTM5OjY6NmYzZDpmNDk0OGQ3NGMzMGY3NzQyN2Q2MDg0NzA4ZjEyYTczMzQ1YzgzMjI0NTIwMzA1OTFlNWM1NjU0MGYzMDQyMWRiOnA6VA) and;

3.1.4. A Business Continuity Plan and Crisis Management Plan in accordance with the principles and operation of ISO22301 and ISO22313 and any new or emergent or updated relevant standards.

## 4. LEGISLATION AND *CLIENT* PROCESSES AND PROCEDURES

4.1 The *Consultant* shall ensure that their services are at all times compliant with the *law* of the United Kingdom, as applicable to the jurisdiction applicable to the Project Contract.

4.2 Such compliance shall include all relevant primary and secondary legislation relevant to the contract.

4.3 The *Consultant* shall support the *Client* in ensuring compliance with all regulations, including the implementation of any relevant procedures.

4.4 The *Consultant* will follow industry best practice to deliver the Project Contract along the principles typically set out in APM Body of Knowledge (BOK) 7 methodology throughout the RIBA 2020 Plan of work stages.

## 5. EXISTING FACILITIES

Working in existing assets and facilities

5.1. Unless stated otherwise in the Task Order, the responsibility for the maintenance of the existing building and infrastructure rests with the *Client*.

5.2. In the event that the *Consultant* manages sub-consultants in relation to a Task Order and the Task Order includes the role of Principal Designer then the Consultant shall act as Principal

RM6165: Construction Professional Services

*Scope*

Copyright - 2021

1

Designer under the Construction (Design & Management) Regulations 2015 (CDM 2015 Regulations).

## 6. INSURANCES AND WARRANTIES

6.1. The *Consultant* shall ensure that it will have in place and maintain the insurances detailed in the Contract Data*.* Additional levels of insurance, if required, which will be detailed in the Order Form for a Task Order, and the *Consultant* shall comply with the same.

## 7. RESOURCES

7.1. The *Consultant* shall provide personnel who have the relevant qualifications, technical skills and experience for each Task Order to which they are appointed. The *Consultant* shall also ensure that the Personnel have appropriate knowledge of the relevant safety and environmental standards, relevant for each Task Order.

7.2. The *Consultant* shall provide Personnel whose standard of security clearance is compliant with each *Client’s* requirements, as stipulated within their Project Contract.

7.3. In the event of the absence of Personnel previously allocated to a Project Contract, the *Consultant* shall ensure that subsequent replacement Personnel shall be of the same level of relevant experience, and have the required level of security clearance.

7.4. The *Consultant* shall ensure that any replacement Personnel are agreed in accordance with the provisions of each Project Contract and that suitable arrangements are made for handover to enable a smooth transition.

7.5. The *Consultant* shall undertake all reasonable measures to ensure continuity of Personnel at both Framework Contract and Project Contract level.

7.6. Where additional costs may arise as a result of change of Personnel requested by the *Consultant*, the *Consultant* shall obtain prior consent from the *Client*, unless otherwise agreed by the Parties; the *Consultant* shall meet all additional costs in this instance

7.7. Where additional costs may arise as a result of change of personnel requested by the *Client*, the *Consultant* shall obtain prior consent from the *Client*, unless otherwise agreed by the Parties; any additional costs will be agreed between the *Consultant* and the *Client* prior to implementing the change.

## 8. COMPLIANCE WITH POLICIES AND PROCEDURES

8.1. The *Consultant* shall ensure that all services fully comply with all of the policies and procedures detailed in the contract.

8.2. Where the *Clients* has specialist requirements relating to individual projects and/or service provisions, these are be specified by the *Client* in the Project Contract/Task Order. For example, such specialist requirements may include, but are not limited to: specific security clearances; sector specific requirements and/or experience and other provisions; and standards connected to delivery of the Services to the *Client*.

8.3. The *Consultant* shall ensure full compliance with any estate and asset management strategy detailed in the contract and any strategy and/or policy set out by Cabinet Office, Office of Government Property or Government Estate in the delivery of the services.

8.4. The *Consultant* where applicable shall provide information to update the property and asset records, where any changes to the property and assets results from the Project Contract (See Section 33 on Government Soft Landings).

## 9. SUBCONTRACTORS

9.1. The *Consultant* shall select its Subcontractors through fair, open and transparent competition. The *Consultant* shall establish and develop relationships and contractual arrangements with its Subcontractors that are complementary to the relationships and contractual arrangements under the Framework Contract and Project Contract, in line with PPN 01/18 Subcontractors Visibility.

9.2. The *Consultant* shall manage its Subcontractors to ensure that the required standards for the delivery of the services are consistently achieved.

9.3. The *Consultant* shall ensure the coordination of all outputs provided by its Subcontractors in the delivery of the services, and shall effectively manage all interface risks to provide a seamless service for the Project Contract.

9.4. The *Consultant* shall have robust performance management and benchmarking processes in place to ensure the objective measurement and assessment of the performance of its Subcontractors.

9.5. The *Consultant* shall improve Subcontractors arrangements to achieve continuous improvement in the delivery of the services, as set out in the *Construction Professional Services Framework Alliance Contract*. The *Consultant* shall also measure any ‘added value’ provided by its Subcontractors in the delivery of the services, including but not limited to, research and development contributions, improved sustainability and improved employment and skills.

9.6. The *Consultant* shall ensure the coordination of all outputs provided by its Subcontractors in the delivery of the services and shall effectively manage all interface risks to provide a seamless service to the *Client*.

9.7. The *Consultant* shall establish and develop relationships and contractual arrangements with its Subcontractors that are complementary to the relationships and contractual arrangements under the Framework Agreement and the contract.

9.8. The *Consultant* shall have robust processes in place to ensure that Key Performance Indicators capture the performance of its Subcontractors. The *Consultant’s* Subcontractors will be required to align to the Key Performance Indicators included within the contract and the Framework Alliance Contract.

9.9. Subcontractors performance management shall include measurement of success measures and targets in relation to cost, programme and quality of the services delivered.

9.10. The *Consultant* shall manage its Subcontractors to ensure that the required standards for the delivery of the services are consistently achieved ‘first time’.

9.11. The *Consultant* shall appoint a responsible duty holder to be accountable for the performance of its Subcontractors and shall advise the *Client* as to who this is.

## 10. POLICY

10.1. Building on the Government Construction Strategy 2016-2020, the *Consultant* shall follow the policies set out in the Construction Playbook. The *Consultant* shall support the adoption of measures aimed to improve efficiency and value for money to assist in the achievement of the targets set out in the Construction Playbook at both Framework Contract and Project Contract level.

10.2. The Construction Playbook has a number of key priorities aimed at delivering better, faster and greener solutions that support recovery from the COVID-19 pandemic and build the economy of the future, while improving building and workplace safety. The *Consultant* shall support these priorities through measures such as;

10.2.1. Setting clear and appropriate outcome based *Scope*s that are designed to drive continuous improvement and innovation;

 10.2.2. Standardising designs, components and interfaces;

 10.2.3. Driving innovation and Modern Methods of Construction (MMC);

 10.2.4. Advancing digital and data capability;

10.2.5. Creating sustainable (‘win-win’) contracting arrangements that incentivise better outcomes;

10.2.6. Strengthening the financial assessment of *Consultant*s and preparing for the rare occasions when things go wrong;

 10.2.7. Increasing the speed of end-to-end project and programme delivery;

 10.2.8. Improving building and workplace safety;

10.2.9. Taking strides towards 2050 net zero commitment and focus on a whole life carbon approach;

 10.2.10. Promoting social value.

10.3. The *Consultant* shall also support the adoption of measures set out in government policy, guidance and standards including:

10.3.1. The Construction Playbook (Government Guidance on sourcing and contracting public works projects and programmes)

 10.3.2. Government Soft Landings (GSL);

 10.3.3. Building Information Modelling (BIM);

10.3.4. Common Minimum Standards (CMS) for procurement of the built environment in the public sector;

 10.3.5. Government Buying Standards;

 10.3.6. The Government Buying Standard for Construction Projects;

 10.3.7. Building a Safer Future;

 10.3.8. Article 6 of the Energy Efficiency Directive;

10.3.9. Procurement Policy Note (PPN) 14/15: Supporting Apprenticeships and Skills Through Public Procurement;

 10.3.10. Construction Sector Deal and Transforming Infrastructure Performance; and

 10.3.11. Hansford Review of Rail Infrastructure [https://thehansfordreview.co.uk/](https://url.avanan.click/v2/___https%3A/thehansfordreview.co.uk/___.YXAxZTpzaGFycGVwcml0Y2hhcmQ6YTpvOjNiNTQ4NDU1MjljMGVlODcxOTI1ODk3MmNmYTBlMTM5OjY6OWEwNTpjMGU2ZWVkYWE2MjdhODY5YTkxNTgzNTdlZTMwM2Q2YjkwODcwYjczOGZhN2I0MTlkOWEzMjNhMTFhY2IyNjNiOnA6VA)

 10.3.12. Achieving a Balanced Scorecard

[https://www.gov.uk/government/publications/procurement-policy-note-0916procuring-for-growth-balanced-scorecard](https://url.avanan.click/v2/___https%3A/www.google.com/url?q=https://www.gov.uk/government/publications/procurement-policy-note-0916-procuring-for-growth-balanced-scorecard&sa=D&source=hangouts&ust=1547303751362000&usg=AFQjCNFa9XyPEP1unq6iSHoBwvCQBtlitQ___.YXAxZTpzaGFycGVwcml0Y2hhcmQ6YTpvOjNiNTQ4NDU1MjljMGVlODcxOTI1ODk3MmNmYTBlMTM5OjY6ZGVkMjpiMDAxYjRmYTQ5ZTUwZWYxNzcwYWViZTg0ZWEwNmFhMTg1MWUyMjNhOGM2ZjM4MGMxZThkMDBhZDAzMmM2MTM0OnA6VA)

 10.3.13. *Consultant* Code of Conduct.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/a ttachment\_data/file/779660/20190220-*Consultant*\_Code\_of\_Conduct.pdf](https://url.avanan.click/v2/___https%3A/assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf___.YXAxZTpzaGFycGVwcml0Y2hhcmQ6YTpvOjNiNTQ4NDU1MjljMGVlODcxOTI1ODk3MmNmYTBlMTM5OjY6NTNhZDpmY2E5MzZkNjgzYWRmMDZmZDk2OGVlNTA5MGEwMGJhNWUwMDQ4ZDg3Mjg4MmM3YmE0N2I2ZDM4Y2E1ZmE0ZDlkOnA6VA)

10.3.14. Common Minimum Standards for procurement of the built environment in the public sector

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/a ttachment\_data/file/600885/2017-03-](https://url.avanan.click/v2/___https%3A/assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/600885/2017-03-15_Construction_Common__Minimum_Standards__final___1_.pdf___.YXAxZTpzaGFycGVwcml0Y2hhcmQ6YTpvOjNiNTQ4NDU1MjljMGVlODcxOTI1ODk3MmNmYTBlMTM5OjY6Y2I3NjoyMTI5YmU5MjQ5NTkzYzA5MTdkYjk1N2ViNGZjZGY0ZDhlYmJlOTk3NTk3MmRmNWQyNmQ3ZTdjYTU2MjQyNTA2OnA6VA)

[15\_Construction\_Common\_\_Minimum\_Standards\_\_final\_\_\_1\_.pdf](https://url.avanan.click/v2/___https%3A/assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/600885/2017-03-15_Construction_Common__Minimum_Standards__final___1_.pdf___.YXAxZTpzaGFycGVwcml0Y2hhcmQ6YTpvOjNiNTQ4NDU1MjljMGVlODcxOTI1ODk3MmNmYTBlMTM5OjY6Y2I3NjoyMTI5YmU5MjQ5NTkzYzA5MTdkYjk1N2ViNGZjZGY0ZDhlYmJlOTk3NTk3MmRmNWQyNmQ3ZTdjYTU2MjQyNTA2OnA6VA)

10.4. Government guidance, recommendations and policy requirements will from time to time be updated, amended and withdrawn. The *Consultant* will be expected to adhere to the latest edition at the time of the Project Contract.

## 11. SUSTAINABILITY

11.1. The UK Government is committed to sustainability and places great importance on working with *Consultant*s to deliver services with sustainability embedded. The *Client* is committed to optimising the positive impact of construction activities and minimising any adverse impacts that construction has on the environment. The *Consultant* shall support the *Client*, in achieving these goals across the life-cycle of the project through the design process, materials selection, construction techniques and construction methods implemented.

11.2. The *Consultant* shall ensure that it adheres to Government guidance and best practice and shall provide support to a number of strategic priorities related to the environment within wider Government policy including but not limited to;

11.2.1. Reducing greenhouse gas emissions across the Government estate by 100% by 2050, as per the Climate Change Act 2008 (2050 Target Amendment) Order

2019, and any such updates relevant to the Greening Government Commitments;

 11.2.2. Alignment with the sustainability principles set out in the Construction Playbook;

11.2.3. Reducing the amount of waste (including construction waste) generated and diverting waste from landfill;

11.2.4. Reducing water consumption, particularly in areas subject to water stress, while increasing water recycling;

11.2.5. Adopting a whole life cost approach to design cost and carbon and water reduction in the built environment, and assisting the *Client* in meeting departmental climate change targets;

11.2.6. Increasing liquidity in the Subcontractors through initiatives such as Subcontractors Finance scheme, Project Bank Accounts (PBAs), and the Enterprise Finance Guarantee;

11.2.7. Ensuring that Government (through its *Consultant*s) purchases more sustainable and efficient products;

11.2.8. Ensuring that redundant Information and Communications Technology equipment is re-used (within Government, the public sector or wider society) or responsibly recycled;

 11.2.9. Using sustainable urban drainage systems where appropriate;

11.2.10. Promoting, conserving and enhancing biodiversity, including use of Biodiversity Action Plans or equivalent, and the management of Sites of Special Scientific Interest (SSSIs);

11.2.11. Avoiding flooding and helping recovery in the event of flooding and other weather-related hazards;

11.2.12. Adopting the application of BRE’s Environmental Assessment Methodology (BREEAM)

 11.2.13. Promoting incorporation of The WELL Building Standard;

 11.2.14. Delivering apprenticeships;

 11.2.15. Supporting ex-offender employment opportunities

[https://www.gov.uk/government/publications/unlock-opportunity-employerinformation-pack-and-case-studies/employing-prisoners-and-ex-offenders](https://url.avanan.click/v2/___https%3A/www.gov.uk/government/publications/unlock-opportunity-employer-information-pack-and-case-studies/employing-prisoners-and-ex-offenders___.YXAxZTpzaGFycGVwcml0Y2hhcmQ6YTpvOjNiNTQ4NDU1MjljMGVlODcxOTI1ODk3MmNmYTBlMTM5OjY6YzRjYzo3ODlkYTVhOTExY2VhMDFkMTMwNDQ1MWJhZDc0ZWQ2ZGM5Y2JlNWM0NTYxZDE2NjhjM2I2MzIwNTI0NTIyOThlOnA6VA)

11.2.16. Supporting sustainable skills development through major construction and infrastructure projects, in accordance with Procurement Policy Note (PPN) 06/15;

11.2.17. Compliance with the Public Equality Duty to promote diversity, to assist sector capacity and increase the employment of protected groups;

11.2.18. Following the principles of the Green Public Procurement (GPP) voluntary instrument;

11.2.19. Compliance with Procurement Policy Note (PPN) 16/15, procuring steel in major projects;

11.2.20. Compliance with the Timber Procurement Policy (20th October 2014);

11.2.21. Compliance with Digital Built Britain, including Building Information Modelling (BIM);

11.2.22. Embedding Government Buying Standards in departmental and centralised procurement contracts, where appropriate;

 11.2.23. Improving and publishing data on government Subcontractors impacts;

 11.2.24. Leadership in whole-life approaches and climate change adaptation;

11.2.25. Supporting “green” economic growth by encouraging “green” technologies, promoting innovation, working with small businesses and protecting the environment, whilst also delivering value for money; and

 11.2.26. The Armed Forces Covenant enacted under the Armed Forces Act 2011.

11.3. The *Consultant* shall work proactively with its Subcontractors to help quantify and reduce the environmental impacts of the services. When requested by the *Client*, the *Consultant* shall communicate annually on progress and reductions made on the environmental impact of the work and services the *Consultant* has undertaken, in accordance with the terms of the *CCS Construction Professional Services Framework Alliance Contract*. The *Consultant* may also be required to report on other specific achievements, the detail of which will be noted in the Project Contract.

11.4. Where specified within the Project Contract, the *Consultant* shall ensure that the delivery of the services are fully compliant with the relevant BREEAM standard and/or that targets for carbon reduction, waste reduction and water consumption, set out therein, are achieved.

11.5. The *Consultant* shall comply with the legislative requirements and shall ensure that any goods required by the *Consultant* to fulfil the service requirements are compliant with the Energy Efficiency Directive (EED). All office equipment including network and desktop printers and multifunction devices, which are wholly or partially used by the *Consultant* for the delivery of the services, shall meet the requirements of the EED. It should be noted that this requirement does not necessitate that a *Consultant* is required to upgrade their existing equipment. However, any new equipment purchased for the purposes of delivering the services shall meet the levels set out in the EED.

11.6. If requested by the *Client*, the *Consultant* shall make a declaration of compliance no less frequently than on an annual basis regarding the purchase of any new equipment purchased either wholly or partially to the delivery of the services, as covered in the EED.

11.7. The *Consultant* shall deliver the obligations in respect of CO2 reporting requirements, on travel undertaken as part of the delivery of the services. CO2 emissions shall be calculated in accordance with the DEFRA guidelines for measuring environmental impacts. The *Consultant* shall ensure that the version used for calculation is current at the time the figures are produced. The current version may be accessed using the link below: [https://www.gov.uk/guidance/measuring-and-reporting-environmental-impacts-guidancefor-businesses](https://url.avanan.click/v2/___https%3A/www.gov.uk/guidance/measuring-and-reporting-environmental-impacts-guidance-for-businesses___.YXAxZTpzaGFycGVwcml0Y2hhcmQ6YTpvOjNiNTQ4NDU1MjljMGVlODcxOTI1ODk3MmNmYTBlMTM5OjY6MzEwYzpiMGU0NTQ2NGYxMjFmODUzNWJiN2Q5MjVhZTlhZTE1MTBmYmEzYjMzMDJmYzYxMDkzNTRlMjliYzg4YzYzNmEyOnA6VA)

11.8. The *Consultant* shall identify the relative environmental merits of each option in the feasibility studies and present this to the *Client*, in accordance with the requirements of the Task Order.

11.9. The *Consultant* shall operate a waste management system, which adheres to the Project Contract requirements, which may include exceeding regulatory requirements.

Requirements shall be defined for each Project Contract.

11.10. The *Consultant* shall, as part of each Project Contract consider and propose methods for designing out waste and designing for destruction.

## 12. SMALL AND MEDIUM-SIZED ENTERPRISES (SMES)

 12.1. *Consultants* shall provide opportunities for the inclusion of SMEs in their Subcontractors.

 12.2. *Consultants* shall widely advertise all contract opportunities as per PPN 07/16.

 12.3. *Consultants* shall consider the following when tendering for contracts in their

Subcontractors;

* Contracts are broken into “Lots” to facilitate bids from SMEs;
* Contract documents are simplified, with a degree of standardisation.
* Requirements are clearly stated, up front;
* Contract lengths are geared to achieve the best combination of price and product;
* Longer-term contracts are offered to provide stability;
* Tenders are widely advertised;
* Potential bidders are advised on how to tender for contracts;
* Projects to help SMEs do business are undertaken;
* Social enterprises are encouraged to compete for contracts;
* SMEs and *Consultants* are made aware of other subcontractors/*Consultant*s, so that they know who to do business with; and
* Competition on quality rather than brand.

 12.4. Fair Treatment of Subcontractors

* + 1. *Consultants* of services provide fair and prompt payment terms for their Subcontractors in accordance with Procurement Policy Note (PPN) 04/19: [https://www.gov.uk/government/publications/procurement-policy-note-0419taking-account-of-a-*Consultant*s-approach-to-payment-in-the-procurement-ofmajor-contracts--2](https://url.avanan.click/v2/___https%3A/www.gov.uk/government/publications/procurement-policy-note-0419-taking-account-of-a-suppliers-approach-to-payment-in-the-procurement-of-major-contracts--2___.YXAxZTpzaGFycGVwcml0Y2hhcmQ6YTpvOjNiNTQ4NDU1MjljMGVlODcxOTI1ODk3MmNmYTBlMTM5OjY6MGQ1ZTo5ZDA0ZjUzMzRlY2VlYjc0ZDg0MGViOGRkNWY2MTZmYWIxMTlkYTk1NzYyNzAzY2QyMmM4MTM4N2M3OGI0MGYwOnA6VA)
		2. Length of contracts and notice period are agreed fairly with other *Consultant*s.

## 13. DATA MANAGEMENT AND MANAGEMENT INFORMATION

13.1. The *Consultant* is required to input data relating to the Contract into the FM asset management systems (e.g. computer aided facilities management (CAFM) system) that the *Client* identifies to the *Consultant* is to be used for this purpose.

13.2. The *Consultant* shall provide *the Client* with the required Management Information completed on the recommended template, in accordance with *CCS Construction Professional Services Framework Alliance Contract* Schedule 7 and the data set out in each Project Brief. This may cover a number of elements, including but not limited to, evidence of Social Value and value for money, for example.

13.3. The *Consultant* shall provide the data each month, or upon request by the *Client.* And as set out in the contract and within the required timeframe to enable timely decision making, and to prevent any adverse impact to the delivery of the contract. Where data is to be provided by the Subcontractors or third parties, the *Consultant* shall ensure that adequate notice is given to allow for its timely provision.

13.4. The *Consultant* shall ensure that all data held is up-to-date and accurate. The *Consultant* shall notify and thereafter rectify all non-conformances and shall notify all relevant parties.

13.5. All data held by the *Consultant* shall be held in accordance with the Framework Contract, or as otherwise specified in the contract.

13.6. The *Consultant* shall, as a minimum, meet the requirements of the Government Digital Service Open Standards.

13.7. The *Consultant* shall provide data, as requested, to assist with third party enquiries as noted in the Task Order.

13.8. The Alliance Management Team shall collect project data from the *Consultant*. This data will be utilised to enable benchmarking and to monitor trends and performance in a standardised manner across the Framework Contract. All data will remain with the *Client* on a secure webbased system and will not be accessible by other *Consultants*.

13.9. Commercial confidentiality will be maintained, where summarised data is made available to other Parties, for the purposes of reporting and benchmarking.

## 14. DATA SECURITY

14.1. This section describes the mandatory data security requirements that the *Consultant* shall fulfil in its entirety as part of the delivery of the services.

14.2. The *Consultant* shall comply with the data protection provisions set out in Schedule 6 (Data Protection) of the contract t and the Government Security Classification [https://www.gov.uk/government/publications/government-security-classifications](https://url.avanan.click/v2/___https%3A/www.gov.uk/government/publications/government-security-classifications___.YXAxZTpzaGFycGVwcml0Y2hhcmQ6YTpvOjNiNTQ4NDU1MjljMGVlODcxOTI1ODk3MmNmYTBlMTM5OjY6ZDUzNjowZWRhZmY5NjIwMjIyMzllNTJjOGY4OGRkYzkxMWYxOTNjMmQ4NDMwZjY5Zjg5ZTdmZWFjOGE0ZDk5OTNjYmQwOnA6VA)

14.3. The *Consultant* shall recognise that some data provided under the contract and in specific Task Orders will be protectively marked and/or may contain potentially sensitive information. The *Consultant* shall protect such data, in accordance with the relevant security classification, and shall also ensure that UKGDPR compliant data management systems are in place. Further information and/or requirements in respect of sensitive data will be provided in each Task Order.

 14.4. The data security classification for this Framework Contract shall be OFFICIAL TIER.

14.5. If Project Contracts require a security classification in excess of OFFICIAL TIER, this will be specified within the Project Contract e.g. List X and/or enhanced security classifications. [www.gov.uk/government/publications/security-requirements-for-list-x-contractors](https://url.avanan.click/v2/___http%3A/www.gov.uk/government/publications/security-requirements-for-list-x-contractors___.YXAxZTpzaGFycGVwcml0Y2hhcmQ6YTpvOjNiNTQ4NDU1MjljMGVlODcxOTI1ODk3MmNmYTBlMTM5OjY6MDZkNTpiMmMxNjlmZmFkMjlmZTIyNjQyMmYzNTI5NTQzZWRiNDU0MDc3ZDIyM2ZjMTYxMDU2MzI2MTI4MzQ1NmQ5Zjk0OnA6VA)

## 15. IT REQUIREMENTS

15.1. The *Consultant*’s solution must be delivered as a wholly externally hosted solution. This means that all of the *Consultant*’s IT systems and data repositories are hosted externally to the *Client*’s network on the *Consultant*’s servers or at a third party data centre managed and paid for by the *Consultant*.

 15.2. All data must be hosted within the UK and comply with relevant UK law

15.3. The *Consultant*s’ solution, web portals, and any associated reporting from a data warehouse must support additional multi-factor authentication (MFA). This means a solution user is only granted access to a client, web portal etc. after successfully presenting two or more distinct pieces of evidence to an authentication mechanism: i.e. a minimum of two different factors from the list of something you know (password), something you have (device), or something you are (biometrics).

15.4. It is our strong preference that the solution include an additional element of physical ‘token based’ security (e.g. multi-factor authentication/code to mobile phone) as detailed in the functional specification. This multi-factor authentication must apply to both client software, web portals and to any secure connections made to data warehouse servers for reporting purposes.

15.5. The solution must be purely browser based. All functionality should work with all current web browsers without the need for the installation of client software or plug-ins. Our current corporate standard is Chromium Edge and your solution must be fully compatible with this.

15.6. It is essential, to ensure compliance with UK accessibility regulations, that, the solution meets:

▪ WCAG 2.1 level A for internal (*Client*) facing websites ▪ WCAG 2.1 level AA for public facing sites.

15.7. Your web site or application must use a responsive design so as to maximise usability on mobile devices and browsers.

15.8. If the delivery method for any client side element of your solution requires a local client install or 'fat' client, this must be delivered by client virtualisation, specifically through the use of Microsoft App-V sequenced applications. Your application should wherever appropriate utilise the security features of the target O/S to secure *Client* data and sandbox / encrypt it (wherever possible).

15.9. The *Client*’s PC operating system of choice is Microsoft Windows 10 Enterprise edition, any client side solutions must be compatible with this operating system.

15.10. Any mobile ‘app’ solution must available via the commercial Android store. All functionality should work with all recent versions of our standard corporate mobile operating system (O/S) and environment, which is Android 10+. Your application should wherever appropriate utilise the security features of the target O/S to secure *Client* data and sandbox / encrypt it (wherever possible).

15.11. The solution must meet WCAG App accessibility standards. This is essential to meet UK accessibility regulations.

**16. NOT USED**

## 17. HEALTH AND SAFETY

17.1. The *Consultant* shall fully understand its duties under the Construction Design and Management (CDM) Regulations 2015 (“CDM Regs 2015”) and must discharge these duties accordingly.

17.2. Application of the Construction (Design and Management) Regulations 2015 will be identified for each Task Order, the requirements of which the *Consultant* shall implement accordingly.

17.3. Where specified, the *Consultant* shall act as the Principal Designer as per the definition of this role in the CDM Regs 2015.

 17.4. The *Consultant* shall manage health and safety in line with the requirements for individual

Project Contracts which may include, but is not limited to;

 17.4.1. undertaking, managing and monitoring risk assessments;

17.4.2. the provision of safe systems of work, including method statements and permits to work;

 17.4.3. applying for permits to work;

17.4.4. ensuring adequate resources are available to undertake the services in compliance with all *law* and the *Client’s* health and safety policies;

 17.4.5. ensuring that all relevant documentation is available on site at all times;

 17.4.6. conducting regular site inspections;

 17.4.7. reporting of hazards and risks;

17.4.8. monitoring, following up and reporting on corrective actions and nonconformances as they are identified;

17.4.9. monitoring and reviewing incident reports, third-party reports for example Health and Safety Executive (“HSE”) and complaints;

17.4.10. holding regular health and safety meetings with all relevant stakeholders as required;

17.4.11. ensuring that all of their employees and Subcontractors have the correct training, knowledge and equipment to carry out the services safely (including relevant induction);

 17.4.12. conducting and reporting on regular safety inspections as required;

17.4.13. occupational health in line with OHSAS 18001 or 45001, Occupational Health and Safety Assessment Series;

 17.4.14. coordinating and cooperating with the *Clients*’ representatives, as required;

17.4.15. establishing and maintaining effective housekeeping to support a safe environment;

17.4.16. ensuring that its Subcontractors is competent (by undertaking a relevant health and safety assessment to establish this); and

 17.4.17. managing its Subcontractors engaged on the services.

## 18. QUALITY CONTROL

18.1. The *Consultant (*unless stated otherwise in the Task Order) shall prepare and implement a quality plan for each Project Contract.

This plan will cover, but is not limited to, the following areas;

 18.1.1. roles and responsibilities;

 18.1.2. communications and governance;

 18.1.3. quality, time, risk and price monitoring, reporting and control;

 18.1.4. Subcontractors management;

 18.1.5. project *Scope* controls;

 18.1.6. inspections, witnessing and commissioning;

18.1.7. Detailed design, sign off and audit, when design by the *Consultant* is included in the Project Contract.

18.2. The *Consultant* shall test the services against the *Scope* and KPIs set out in Schedule 4 (Incentives Schedule) of the contract.

18.3. In addition to the *Consultant* administered inspections, the Project Contract may also prescribe inspection of the services to be undertaken by a third party. The *Consultant* may also be subject to regulatory and/or other inspections including, but not limited to, those undertaken by:

 18.3.1. Health and Safety Executive (HSE);

 18.3.2. building control;

 18.3.3. planning inspectorate(s);

 18.3.4. insurance inspections;

 18.3.5. environmental health officer;

 18.3.6. fire officer;

 18.3.7. Crown Property Fire Inspection Group;

 18.3.8. archaeologists;

 18.3.9. funding bodies; and

 18.3.10. National Audit Office (NAO).

## 19. RISK MANAGEMENT

19.1. The *Consultant* shall work with its Subcontractors to proactively manage risks, and undertake value engineering and value management, to deliver mutual benefits and the most successful outcome for the Project Contract.

19.2. The *Consultant* (unless stated otherwise in the contract) shall work with its Subcontractors to identify and rank the risks, agree a risk management strategy and prepare an Early Warning Register for the contract, which reflects the risk allocation to be utilised within the Project Contract and the roles and responsibilities set out therein.

19.3. The *Consultant* shall review and update the Early Warning Register with its Subcontractors, not less frequently than a monthly basis, or as otherwise set out in the Project Contract.

## 20. COMMUNICATIONS AND CO-OPERATION

20.1. The *Consultant* shall ensure successful delivery of the Project Contract by establishing and complying with specified communication procedures, as detailed in the Project Contract.

20.2. The *Consultant* shall ensure that sufficient notice is provided in each Project Contract to ensure that all necessary decisions may be made in accordance with the Project Contract in a timely manner, and does not adversely impact upon delivery of the services and/or Project Contract.

20.3. The *Consultant* shall cooperate with all appropriate parties at all times in accordance with the spirit and terms of the Project Contract.

20.4. The *Consultant* shall attend all meetings, to deal with all matters appertaining to the delivery of the project, in accordance with the Project Contract.

20.5. The *Consultant* shall work with the *Client* and all other team members to progress a project through each phase and ensure the successful transition

20.6. The *Consultant* shall work with the *Client* during the post construction phase, and provide a detailed handover to enable the *Client* to operate and maintain the facility safely and effectively

20.7. When launching a phase of a project, the *Consultant* shall work with the *Client* to understand and achieve the *Client’s* project objectives as set out in a Task Order.

20.8. The *Consultant* shall continue to work with the *Client*, and all other team members, from the launch of a project to the handover at the end of a project. The *Consultant* shall ensure a successful handover, with minimal defects, to end user at practical completion and provide the *Client* with plans on how it will manage defects rectification and other post-construction works.

20.9. The *Consultant* shall ensure it can deliver the services in challenging environments, including but not limited, to those subject to high security and/or occupation by the public or vulnerable people, and support the *Client’s* requirements in terms of security and welfare of both facilities and people.

20.10. *Consultant* shall engage with all project stakeholders, including statutory undertakers and neighbouring building occupiers, where applicable, and from these activities the *Consultant* shall deliver all project benefits detailed in a Task Order.

## 21. ACCOUNT MANAGEMENT [AND CONTINUOUS IMPROVEMENT]

21.1 The *Consultant’s* Instructing Officershall have a minimum of Five years’ relevant industry experience.

21.2 The Instructing Officer shall promote, deliver and communicate transparency of pricing and savings, and shall provide the *Client* with the following, as a minimum:

21.2.1 An agreed Continuous Improvement plan, to be submitted three (3) months after the contract *starting date*, with quarterly communication of progress on actions. The entire Continuous Improvement plan shall be updated annually for the duration of the contract and should include as a minimum;

21.2.1.1 Details of Efficiency Savings (these should be included in the Pricing Matrix) and how they will be delivered

21.2.1.2 Ideas for improvement to the Task Order, business case and strategic brief processes and how the *Consultant* can work better with *Client* representatives to improve process

 21.2.1.3 How the *Consultant* can support wider *Client* initiatives

21.2.1.4 Any other ideas that the *Consultant* has about how the contract can be better delivered to improve outcomes for the *Client*

 21.2.2 A quarterly written communication, which includes details of changes,

improvements, risks, issues, complaints, concerns and identified future opportunities in relation to delivery of the services; and

21.2.3 A bi-annual report, to an agreed format, on the innovative proposals by the *Consultant*, alongside expected benefits focussing on carbon reduction and whole life cost improvements. The innovations do not need to have been accepted.

21.3 The Instructing Officer shall attend *Consultant* Review Meetings with the *Client*, in accordance with the requirements of the contract and/or a Task Order. The frequency of these meetings shall be as agreed with the *Client.*

21.4 The *Consultant* shall provide the *Client* with a named Customer Relationship Manager, with relevant industry experience, to be agreed with the *Client* during Mobilisation .

21.5 The Customer Relationship Manager shall hold quarterly or bi-annual operational service review meetings with the *Client*, as agreed within the Project Contract.

21.6 The *Consultant* shall keep records, provide audit access , provide open book data and shall provide transparency reports in accordance with the requirements set out in Option Z52 – Clause 26A.

21.7 The *Consultant* shall provide Continuous Improvement Plans, in accordance with *CCS Construction Professional Services Framework Alliance Contract* Schedule 2: (Timetable).

## 22. COMPLAINTS PROCEDURE

22.1 The *Consultant* shall have a robust and auditable complaints procedure for logging, investigating, managing, escalating and resolving complaints initiated by the *Client*.

 22.2 The complaints procedure shall comply with the following:

22.2.1 All complaints shall be logged and acknowledged within twenty-four (24) hours of receipt;

22.2.2 All complaints shall be resolved within ten (10) working days of the original complaint being made, unless otherwise agreed with the *Client*;

22.2.3 All complaints shall be recorded, together with the actions and timescales taken to resolve the complaint; and

22.2.4 The *Consultant* shall analyse and identify any pattern of complaints and bring these to the attention of the *Client* during *Consultant* Review Meetings, in accordance with *CCS Construction Professional Services Framework Alliance Contract* Schedule 7 (Management).

22.3 The *Consultant* shall have in place an escalation route for any complaints that have not been resolved within the specified timescales, as detailed in Clause 47 the *CCS Construction Professional Services Framework Alliance Contract* Schedule 6 Part 2 Clause 18 (Complaints handling).

22.4 The *Consultant* shall provide the *Client* with one consolidated report per quarter for the duration of this Framework Contract, including all Project Contracts that run beyond the expiry of the Framework that captures all complaints, and any additional complaints processes, including escalation and reporting requirements.

These reports shall include:

* the date the complaint was received;
* complainant contact details;
* the nature of the complaint and actions agreed and taken to resolve the complaint; and
* any changes to the programme and learning from experience.

## 23. MOBILISATION

 23.1 The Mobilisation period will be a two (2) month period immediately prior to the *starting date*.

23.2 During the Mobilisation period, the incumbent supplier shall retain full responsibility for the management of all current and live projects. 23.3 The incumbent supplier shall retain responsibility for managing existing contracts after the *starting date* as identified by the *Client* and notified to the *Consultant.*

23.4 *Consultant* shall work cooperatively with the incumbent provider, the *Client* and the *Client’s* third party contractors as appropriate to set up Services under this contract.

 23.5 The *Consultant* shall:

23.5.1 Refine their Mobilisation Plan (presented in their bid submission) and present to the *Client* an updated and finalised plan no later than 1 week after Contract Award. The Mobilisation Plan should include, as a minimum:

23.5.1.1 Gantt Chart for the Mobilisation with clearly identified milestones, project phases, task owners and task prerequisites

23.5.1.2 Mobilisation governance structure and processes (including approvals)

23.5.1.3 The names and roles of the Mobilisation team (this must include a Mobilisation Manager as the single point of contact for the *Consultant* during the Mobilisation period

23.5.1.4 Any expectations of the *Client* during the Mobilisation period

 23.5.1.5 Defined deliverables and success criteria for Mobilisation

 23.5.1.6 A Mobilisation risk register

23.5.2 Attend Mobilisation progress meetings in line with the Mobilisation Plan. The *Consultant* shall provide agendas and minutes of these meetings and actions and risks must be tracked and managed.

23.5.3 Familiarise itself with the *Client’s* properties, current project pipeline and processes and procedures. The *Consultant* should create process charts and a contract management relationship map with key stakeholders from within the *Client* organisation.

23.5.4 Ensure that they are ready to accept their first Task Order on the *starting date* by having their own systems and processes ready and that all relevant interfaces with the *Client* are established and known.

23.5.5 Work with the *Client* during Mobilisation to identify any existing projects that they will be required to take over from the incumbent contractor at the *starting date*. The *Consultant* should put in place, and demonstrate to the *Client’s* satisfaction that they are ready to take on these project Task Orders

23.5.6 Have successfully captured all data relating to existing projects that they are being asked to take on and have it structured and stored appropriately to allow immediate commencement of project management

23.5.7 Have setup data management processes in line with Section 15 of this Scope of Work prior to the *starting date.*

23.5.8 Have appointed their contract dedicated team (including the Instructing Officer) prior to the *starting date* and that *Client* is aware of the names of the individuals appointed

23.6 *Consultant* shall appoint a Framework Contract Mobilisation team, to ensure that the *Consultant* has met all of its obligations as outlined within the *Scope*, within 30 calendar days of the Framework Contract Commencement Date.

23.7 The *Consultant* shall prepare a Framework Contract Mobilisation plan that is scalable and flexible to reflect any degree of urgency, complexity and/or sensitivity associated with particular requirements, and any change needed in the *Consultant’s* organisation and/or its Subcontractors and/or any required training that will be provided to the *Consultants* or its Subcontractors Personnel.

## 24. PERMITS AND CONSENTS

24.1 The *Consultant* shall liaise with all relevant stakeholders and shall obtain all necessary permits, consents, licences and approvals where required for the proper execution and completion of the services for each Project Contract.

24.2 Defined responsibilities for the obtaining of permits, consents, licences and approvals will be detailed in each Project Contract.

## 25. MEETINGS

25.1 The *Consultant* shall attend regular meetings as required, in line with their roles and responsibilities for the full lifecycle of the project, as defined in the Project Contract. This may include, but is not limited to, the following meetings:

 25.1.1 procurement;

 25.1.2 programme review;

 25.1.3 programme / project board;

 25.1.4 progress;

 25.1.5 *Client* reporting;

 25.1.6 design / development;

 25.1.7 best practice and alliance forums;

 25.1.8 commercial (including value management and engineering);

 25.1.9 stakeholder liaison;

 25.1.10 Subcontractors;

 25.1.11 health and safety;

 25.1.12 environmental and sustainability;

 25.1.13 management; and

 25.1.14 any other meeting necessary to progress and deliver the services.

25.2 The *Consultant* and its Subcontractors shall attend and actively participate in the above meetings, as appropriate and relevant.

25.3 *Consultant* shall prepare, collate and issue to those parties noted in the Project Contract all required documentation and pre-reading in good time prior to each meeting.

25.4 The *Consultant* is responsible for documenting and keeping comprehensive records of all meetings attended. This includes, but is not limited to, administrative support. These records must be made available to those parties noted in the Project Contract.

25.5 At the request of the *Client* the *Consultant* shall attend framework performance meetings together with special interest groups to define methods to enhance the *Client* experience relative to construction services

## 26. STAKEHOLDER MANAGEMENT

26.1 The *Consultant* (unless stated otherwise in the Project Brief) shall develop a stakeholder management plan (SMP) for the lifecycle of each Project Contract.

 26.2 The SMP will identify all stakeholders (internal and external), including:

1. their interest;
2. level of impact;
3. change readiness;
4. issues, opportunities and risks; and
5. Strategies and actions to address issues, opportunities and risks.

26.3 The *Consultant* shall at all times consult with the *Client* with regard to managing and communicating with stakeholders.

## 27. SOCIAL VALUE

27.1. The Public Services (Social Value) Act 2012 places a legal requirement on all public bodies to consider the additional social, economic and environmental benefits that can be realised for individuals and communities through commissioning and procurement activity, and, in Scotland, to deliver them. These benefits are over and above the core deliverables of Contracts. This Framework Contract provides a means of embedding social value through enabling improvements such as community engagement, economic value and sustainable development as detailed in the Project Contract.

27.2. The *Consultant* shall comply with the principles outlined in the Construction Playbook in respect of Social Value:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_d ata/file/941536/The\_Construction\_Playbook.pdf](https://url.avanan.click/v2/___https%3A/assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/941536/The_Construction_Playbook.pdf___.YXAxZTpzaGFycGVwcml0Y2hhcmQ6YTpvOjNiNTQ4NDU1MjljMGVlODcxOTI1ODk3MmNmYTBlMTM5OjY6Y2I1YzozN2EzNzY4NjkxZjY4NzFmMTcxNmE0N2IyNjdiZWU3YzQ2YzU5NmEyYjQ0MDYwM2I0NjUyMTUwZTQ2YWNhMTcyOnA6VA)

27.3. The *Consultant* shall work collaboratively with the *Client* in adopting Social Value across the contract both in terms of how individual projects are managed and in how the *Consultant* manages day to day contract delivery.

27.4. The *Consultant* shall deliver the social value commitments identified in their bid response. The *Client* has the following key social value priorities and would like the *Consultant* to provide their commitments that support the delivery of these:

27.4.1. **Places to be proud of** which includes continual investment in our town centres, improving transport links, cracking down on anti-social behaviour and developing our rich cultural and leisure offer

27.4.2. **An economy that works for everyone** with a focus on bringing more wellpaid jobs to the district, more affordable housing and ensuring everyone can achieve a decent standard of living

27.4.3. **Better healthier and better lives** by helping people live independently in their own homes and tackling abuse or neglect

27.4.4. **Thriving children and families** by creating the best possible learning environments and making sure that children and families receive the right support at the right time

27.4.5. **A greener Wakefield district** by continually investing in parks, open spaces and doing our bit to tackle climate change

27.5. The *Consultant* shall comply with and/or identify proposed social value initiatives, proportionate and relevant to each Task Order. The requirements (comply or identify) will be set out in the Project Contract and may include (but not be limited to) the above;

27.6. The *Client* may identify further specific Social Value priorities based on the priority policy themes and outcomes for public bodies, as outlined in PPN 06/20 and within the National Themes Outcomes and Measures (TOMs) Framework 2018 for social value measurement, published on The Social Value Portal: [https://socialvalueportal.com/national-toms/](https://url.avanan.click/v2/___https%3A/socialvalueportal.com/national-toms/___.YXAxZTpzaGFycGVwcml0Y2hhcmQ6YTpvOjNiNTQ4NDU1MjljMGVlODcxOTI1ODk3MmNmYTBlMTM5OjY6OTdlMzo0NDhiMzcyODYwMzBlNTZjYWYwOTcxYmVkNTJmM2I0YWEyZjkzOWI4NmQ2N2ZmODFiMmIzNmY2MGEzMjg5ODc0OnA6VA)

27.7. The *Consultant* shall deliver measurable benefits in respect of the Social Value priorities identified in the Project Contract.

27.8. The *Consultant* shall record and report performance against the social value requirements detailed in the Project Contract.

 27.9. The specific requirements will be specified for each Project Contract; this may include:

27.9.1. utilisation of a Social Value Procurement Calculator, for example, the TOMs calculator;

27.9.2. utilisation of a Social Value Measurement Calculator; and

27.9.3. Implementing initiatives under the Constructing Excellence Social Value Task Group and / or Construction Innovation Hub Programme.

27.10. The *Client* may require completion of social value outcomes via a central system, in addition to any Project Contract requirements. The *Consultant* will be expected to complete updates as requested.

27.11. Where required, the *Consultant* shall report to the *Client* on a monthly basis, or as otherwiseagreed. The *Consultant* shall ensure that returns are compiled and submitted within the agreed timescales.

27.12. Where implemented, reporting via the Social Value Calculator may include, but not be limited to, the themes mentioned above:

27.13. The *Consultant* shall be responsible for ensuring that social value priorities are cascaded throughout the Subcontractors.

## 28. MODERN SLAVERY

 28.1 *Consultants* must address the risk of modern slavery and exploitation in Subcontractors.

28.2 The *Client* recognises the significant risk of modern slavery and labour standards abuses in the construction sector, and the *Consultant* shall recognise and actively manage the risk of modern slavery and exploitation in construction Subcontractorss at Framework Contract level and in the delivery of each Project Contract. The *Consultant* shall cooperate fully with *Client* to help improve performance in the sector as a whole. The *Consultant’s* Continuous Improvement Plan shall include measures taken to improve management of these risks.

28.2.1 The *Consultant* shall make proper background checks on the agencies who supply them with labour.

28.2.2 The *Consultant* shall ensure that they undertake a risk assessment in their Subcontractors for modern slavery. A clear Subcontractor assessment shall be undertaken to identify and manage this risk.

28.2.3 The *Consultant* shall report the discovery or suspicion of any slavery or trafficking by it or its Subcontractors to the *Client* and Modern Slavery Helpline.

 28.2.4 The *Consultant* is required to agree to the following universal principles:

 28.2.4.1 employment is chosen freely;

 28.2.4.2 freedom of association is respected;

 28.2.4.3 working conditions are safe and hygienic;

 28.2.4.4 child labour is not used;

 28.2.4.5 wages are not lower than minimum wage;

 28.2.4.6 working hours are not excessive;

 28.2.4.7 no discrimination is practised;

 28.2.4.8 regular employment is provided; and

 28.2.4.9 no harsh or inhumane treatment is allowed.

28.2.5 The *Consultant* shall ensure that the above conditions are met within their labour recruitment Subcontractors.

## 29 EMPLOYMENT POLICIES AND PRACTICES

29.1 The Government is committed to the delivery of high quality public services, and recognises that this is critically dependent on a workforce that is diverse, well rewarded, well-motivated, well-led, has access to appropriate opportunities for training and skills development and is

engaged in decision making. These factors are also important for workforce recruitment and retention, and thus continuity of service.

29.2 The *Consultant* shall, as far as practicable, take a similar approach through measures including, but not limited to:

29.2.1 A fair and equal 'pay policy' that includes a commitment to supporting the Living Wage Foundation, including, for example, being a 'Living Wage Accredited Employer';

29.2.2 Ensuring that all Personnel are provided with written and understandable information about their employment conditions in respect of wages before they enter employment and about the particulars of their wages for the pay period concerned each time that they are paid;

 29.2.3 Clear managerial responsibility to nurture talent and help individuals fulfil their

potential, including, for example, a strong commitment to 'Modern Apprenticeships' and the development of the UK’s young workforce;

 29.2.4 Promoting equality of opportunity and developing a workforce which reflects the

population of the UK in terms of characteristics such as age, gender, religion or belief, race, sexual orientation and disability;

29.2.5 Support for learning and development; stability of employment and hours of work, and avoiding exploitative employment practices, including, for example, no inappropriate use of zero hours contracts;

29.2.6 Flexible working (including, for example, practices such as flexi-time and career breaks) and support for family friendly working conditions and wider work life balance; and

29.2.7 Support for progressive workforce engagement, for example Trade Union recognition and representation or other alternative arrangements to give staff an effective voice.

## 30 WHOLE-LIFE VALUE FOR MONEY

31.1 The *Client* aspires to improve the way in which major projects and infrastructure are delivered, including achieving improved buildings and infrastructure performance and whole-life value for money.

31.2 In line with the National Audit Office and HM Treasury approach, value for money is the optimal use of resources to achieve the intended outcomes where ‘optimal’ means ‘the most desirable possible given expressed or implied restriction or constraints’ and is therefore not necessarily about achieving the lowest initial price. For clarity, achieving optimal whole-life value for money is the aim of this Framework Contract, except where other express Success Measures and Targets are set out in the Project Brief.

31.3 To assist with the delivery of the foregoing the *Consultant* shall identify means to improve health and safety performance, accelerate the construction schedule, enhance efficiency and/or reduce the cost of construction, maintenance, occupation and operation and/or achieve alternative benefits to the extent required as set out in each Project Brief while

ensuring that overarching project objectives and *Scope*s are delivered and to effectively manage any risks.

31.4 The *Consultant* shall undertake the services for the *Scope* of the life cycle requirements set out in each Project Brief to achieve value for money. The *Consultant* shall note that this may require the adoption of different approaches to support the following:

31.4.1 lower building energy consumption over the operational life span of the project; 31.4.2 a reduction in maintenance requirements/frequency;

31.4.3 extended service lives of services infrastructure/systems and/or building fabric resulting in fewer replacement intervals and operational disruption; and

31.4.4 dismantling and recycling or reuse of building components.

31.5 The *Consultant* shall note that the opportunity to optimise whole life value for money is greater the earlier in the design stage that this is considered.

31.6 When the *Consultant* is required to provide services for a number of life cycle stages, this may require the *Consultant* to contract on terms and conditions appropriate for each stage as detailed in the relevant Project Contract used.

31.7 In order to evidence the Project Success Measures and Targets which are set out in the Project Brief, the *Consultant* is required to undertake the services, data collection and benchmarking in line with industry best practice and guidance.

31.8 The *Consultant* shall monitor, capture and report to the *Client* and /or Alliance Manager on Project Success Measures and Targets, evidencing value for money as detailed in each Project Brief. The value for money reporting requirements in each Project Brief may cover all or a number of the three criteria used by the National Audit Office (NAO) in assessing value for money of Government spending:

31.8.1 economy (spending less)

 31.8.2 efficiency (spending well); and

 31.8.3 effectiveness (spending wisely).

31.9 Additionally, the value for money assessment will also be informed by the measurement of the value of the product delivered in order to benchmark approaches to design and project programming and delivery. The Project Brief may therefore require the *Consultant* to provide a cost component breakdown to provide a ‘value of product’ calculation to help demonstrate the effective expenditure of budgets. The cost component breakdown may include:

 31.9.1 materials;

 31.9.2 constructor risk and fees;

31.9.3 site overheads / preliminaries (management, plant and Subcontractors) for the *Consultant* and its Subcontractors;

 31.9.4 *Consultant* overheads and profit;

 31.9.5 Subcontractors overheads and profit;

 31.9.6 risk and feed (excluding and including design); and

 31.9.7 other costs, such as specific security measures.

31.10 This methodology is based on the ‘lean’ approach to help drive value for money, as further detailed below.

## 31 LEAN APPROACHES TO DESIGN AND PROJECT PROGRAMMING AND DELIVERY

32.1 The ‘Construction 2025’ report sets out the efficiency challenges targeted by Central Government. The targets of faster delivery, lower costs (whole life-cycle costing) and lower emissions are challenging deliverables and will require different approaches to existing design and project delivery methods. It is therefore a requirement that *Consultants* have a commitment to implementing new ‘lean’ delivery approaches.

32.2 As such, the *Consultant* is expected to understand the concepts of ‘lean’ and commit to their deployment in focusing on a ‘real time’ managed focus on waste (cost and time) reduction and activity tracking, such that prompt and insightful activity data can be used to drive an enhanced level of project reporting, supporting timely and focused interventions designed to maintain ‘on time delivery’ of the projects, and support a continuous improvement learning cycle.

32.3 Lean reporting and/or commercial requirements to be provided/delivered by the *Consultant* will be defined by the *Client* in each Project Brief.

## 32 GOVERNMENT SOFT LANDINGS (GSL)

33.1 Unless specified to the contrary in the Project Brief, the *Consultant* will be required to apply the GSL Framework, including design workshops, commissioning management, fine tuning & post occupancy evaluation.

33.2 The *Consultant* shall implement GSL in line with the guiding principles of the GSL policy, and in accordance with its roles and responsibilities set out in the Task Order, as follows:

33.2.1 as a key element of the design and construction process (thinking of the end at the beginning) maintaining the ‘Golden Thread’ of the building purpose through to delivery and operation;

33.2.2 through early engagement of the end user(s) and inclusion of a GSL champion (if the GSL champion is to be provided by the *Consultant*, this will be set out in the Project Brief), to direct the engagement set out in the Project Brief. This will include the *Client* and other *Consultant*s appointed for the delivery of the Project Brief during the design/construction/maintenance/operation as relevant to the Project Brief;

33.2.3 commitment to aftercare post construction;

33.2.4 conducting Post Occupancy Evaluation (POE) feedback to capture learning to inform future projects;

33.2.5 production of POE data for storage on the asset information model; and

33.2.6 Building Information Modelling (BIM) to provide fully populated asset data from the BIM model, to support cost reduction of data input to FM asset management systems (e.g. computer aided facilities management (CAFM) system).

## 33 BUILDING INFORMATION MODELLING (BIM)

34.1 In line with the Construction Playbook the *Clients* and *Consultants* should apply the UK Building Information Management (BIM) Framework. This includes standards, guidance and other resources that will deliver BIM interoperability and government soft landings

34.2 Under this Framework Contract, the *Client* aspires to integrate BIM / Information management throughout the project lifecycle. This includes future developments including those put forward in the Digital Built Britain strategy and within The Construction Playbook, for the integration of technologies to transform approaches to building and infrastructure design, development and construction. As such, the *Client* anticipates that during the Framework Contract Period the level of *Consultant* compliance with BIM standards shall increase in Government.

 34.3 Specific BIM requirements shall be set out in each Project Brief. The roles and

responsibilities of the *Consultant* in respect of the BIM / Information Management requirements will be specified in the Project Brief.

34.4 The Exchange (*Client*) Information Requirements (EIR) will be defined in each Project Brief. The *Consultant* will be issued with the EIR and Project Information Requirements (PIR). When these documents are not issued in the Project Brief and, where specified in the Project Brief, the *Consultant* shall liaise with the *Client* to develop an EIR.

34.5 The following will be developed and implemented (for clarity, the roles and responsibilities of the *Consultant* in the development and implementation of the following will be set out in the Project Brief):

 34.5.1 Project BIM Execution Plan (BEP) – pre- and post-contract.

34.5.2 Task and Master Information Delivery Plan (TIDP / MIDP) - with detail aligning to required data exchange points to agreed level of detail and information;

34.5.3 Construction Operations Building Information Exchange (COBie) data exchange requirements; and

 34.5.4 A project Common Data Environment (CDE).

34.6 Unless specified to the contrary in the Project Brief, the deployment of BIM will be in accordance with the PAS / BS suite of documents including ISO 19650 part 1, 2, 3 and 5 PAS1192- 4 (and new ISO 19650 replacements when issued.) Where these documents are amended, withdrawn or replaced, the level of adoption of the new requirements will be as stated in each Project Brief.

34.7 The *Consultant* shall adopt the relevant described additional standards as defined in the Project Brief.

34.8 The Project Brief will identify all data security / confidentiality standards required, aligned to ISO 19650 part 5.

## 34 MODERN METHODS OF CONSTRUCTION (MMC)

35.1 The Government has targeted the increased use of MMC, subject to value for money considerations, as one of the means to, for example, increase the development of manufacturing technologies, to drive UK wide economic growth, to significantly improve the productivity, quality, sustainability and safety of infrastructure and buildings and to increase investment in skills development.

35.2 Under this Framework Contract, the *Client* aspires to align with the MMC principles outlined in the Construction Playbook

35.3 In line with the above, the *Consultant* shall consider the adoption of MMC in delivery of the services where it will deliver the requirements set out in the Project Brief and value for money.

35.4 The *Consultant* shall consider such approaches for the requirements set out in each Project Brief, and shall be proficient in deploying such innovative construction methodologies where implemented. This includes, but is not limited to the following categories:

35.4.1. Pre-manufacturing (3D primary structural systems)

35.4.2. Pre-manufacturing (2D primary structural systems)

35.4.3. Pre-manufacturing components (non-systemised primary structure)

35.4.4. Additive manufacturing (structural and non-structural)

35.4.5. Pre-manufacturing (non-structural assemblies and sub-assemblies)

35.4.6. Traditional building product-led site labour reduction / productivity improvements

35.4.7. Site process-led site labour reduction / productivity / assurance improvements

## 36. COMMERCIAL GOVERNANCE – FAIR PAYMENT

36.1 The *Consultant* shall support the Government’s fair payment guidelines under the Government Construction Strategy (GCS) in its dealings with its Subcontractors.

36.2 The *Consultant* shall agree to be monitored for the purposes of compliance and to consider the performance of its Subcontractors when awarding contracts.

## 37 PROCURING GROWTH FOR A BALANCED SCORECARD

37.1 The *Consultant*s must support the *Client* where required in applying the requirements of PPN 09/16, Procuring Growth Balanced Scorecards.

Annex A: Project Types

The indicative project types outlined within this Annex A provide an indication of the types of projects that the *CCS Construction Professional Services Framework Alliance Contract* may support. Projects and commissions may be across a variety of sectors in the Public Sector.

General project types including but not limited to;

* Construction;
* Infrastructure;
* New Build;
* Demolition;
* Maritime & Coastal;
* Runways & Airfields;
* Bridges & Tunnels;
* Fuel Storage;
* Refurbishment;
* Regeneration;
* Accommodation & Housing Programmes;
* Environmental and Remediation Services;
* Government Secure Facilities;
* Alterations/extension;
* Conservation and Preservation of Buildings and/or Structures;
* Security/counter terrorism defence.

 *(This list is not exhaustive and Clients will be clear in their Project Contracts the nature of the project and the Services and Disciplines they require)*

The Lot Specific project types detailed below provide an indication of the types of projects that the *CCS Construction Professional Services Framework Alliance Contract* may support.

|  |
| --- |
| **Lot 1 -Built Environment & General Infrastructure**  |
| Multi-Disciplinary Construction Professional Consultancy Services to support a wide range of projects and Programmes to the *Client*’s Sites including but not limited to; * General offices (Customer & non-customer facing)
* Restaurants & catering facilities
* Schools
* FE Colleges
* Community centres
* Libraries
* Museums
* Art galleries
* Heritage assets
* External areas (allotments / car parks, grounds etc.) and any outbuildings
* Crematoriums
* Workshops / garages
* Shopping centres
* Fitness / training establishments (incl. Leisure Centres and facilities)
* Residential buildings
* Mothballed / vacant properties
* Bridges / tunnels
* Parks
 |

**This list is not exhaustive and *Clients* will be clear in their *Project Contracts* the nature of the project and the Services and Disciplines they require.**

### ANNEX B PROCUREMENT ROUTES

1. The *Consultant* shall ensure that it complies with the Government Guidance and Best Practice as set out in the Government Construction Strategy 2016 - 2020 and align with the principles of the Construction Playbook.

 •

1. The *Consultant* shall facilitate the utilisation of different RIBA Plan of Work Stages (2020) construction procurement types and align to the principles of the following approaches, as required:

* + Design and Build: Single Stage
	+ Design and Build: Two Stage
	+ Traditional
	+ Two Stage Open Book
	+ Cost Led Procurement
	+ Integrated Project Insurance

1. Alternative procurement routes may be available by agreement the *Client* and *Consultant*

 •

1. Building on the Government Construction Strategy 2016-2020, the *Consultant* shall follow the policies set out in the Construction Playbook to deliver better value from design and construction, maintenance and operation, and by engaging with the *Client* early and promoting collaborative working.

 •

1. The *Client* and *Consultants* where applicable shall comply with the Common Minimum Standards for procurement of the built environment in the public sector. <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment> d [ata/file/600885/2017-03](https://url.avanan.click/v2/___https%3A/assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/600885/2017-03-15_Construction_Common__Minimum_Standards__final___1_.pdf___.YXAxZTpzaGFycGVwcml0Y2hhcmQ6YTpvOjNiNTQ4NDU1MjljMGVlODcxOTI1ODk3MmNmYTBlMTM5OjY6Y2I3NjoyMTI5YmU5MjQ5NTkzYzA5MTdkYjk1N2ViNGZjZGY0ZDhlYmJlOTk3NTk3MmRmNWQyNmQ3ZTdjYTU2MjQyNTA2OnA6VA) [15\_Construction\_Common\_\_Minimum\_Standards\_\_final\_\_\_1\_.pdf](https://url.avanan.click/v2/___https%3A/assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/600885/2017-03-15_Construction_Common__Minimum_Standards__final___1_.pdf___.YXAxZTpzaGFycGVwcml0Y2hhcmQ6YTpvOjNiNTQ4NDU1MjljMGVlODcxOTI1ODk3MmNmYTBlMTM5OjY6Y2I3NjoyMTI5YmU5MjQ5NTkzYzA5MTdkYjk1N2ViNGZjZGY0ZDhlYmJlOTk3NTk3MmRmNWQyNmQ3ZTdjYTU2MjQyNTA2OnA6VA)

1. Payment Mechanism and Price Approach

1. The *Consultant* shall support and advise the *Client* in the selection of the most optimum payment and price approach that aligns with the principles set out in the Construction Playbook.

1. It is envisaged that the *Client* will from time to time have a requirement to deliver Project Contracts using a percentage project fee approach (Aligned to RIBA plan of work stages 2020).

RM6165: Construction Professional Services 29

*Scope*

Copyright - 2021

ANNEX C GLOSSARY OF TERMS

|  |  |
| --- | --- |
| **Term**  | **Definition**  |
| Added Value  | A deliverable provided by the *Consultant* that exceeds the minimum requirement set out in the Scope or as part of the Task Order and that supports the *Consultant’s* overall objectives  |
| Continuous Improvement  | The process by which the *Consultant* continually reviews their processes and service outputs to identify ways of improving them to benefit the *Client*, its staff and customers. This may include deliverables and / or financial benefits  |
| Efficiency Savings  | Commitments by the *Consultant* to how they may reduce the *Fixed Fee* price by implementing Continuous Improvement initiatives  |
| Fixed Fee  | Elements of the *Consultant’s* price that is fixed and will be paid to them regardless of the volume of Task Orders that are placed with the *Consultant.* The *Consultant*  should note that there are various service elements that need to be delivered to the *Client* for this Fixed Fee.  |
| Instructing Officer  | The *Consultant’s* nominated contract manager. This role must be dedicated to this contract.  |
| Management Information  | Any data relating to any Task Order or Fixed Fee service  |
| Mobilisation  | The process the *Consultant* will go through to set services up immediately prior to the *starting date*. The obligations of the Mobilisation period are set out in Section 22 of this Scope  |
| Post Occupancy Evaluation  | The process the *Consultant* must go through no later than 3 months (unless otherwise set out in the Task Order) after the agreed end of each project to assess its success and impact on the *Client,* its staff and customers  |
| Trade Union  | Any recognised Trade Union that the *Consultant* comes into contact with either through the management of its own staff within the contract or as part of defining and delivering Task Orders where outcomes may affect Trade Union members.  |

30

RM6165: Construction Professional Services

*Scope* Copyright - 2021

**SCHEDULE 3 – PRICE LIST (PART A), TASK ORDER PROCESS AND TASK ORDER FORM**

**(PART B), FORM OF APPLICATION FOR PAYMENT (PART C)**

**PRICE LIST (PART A) Part A: Price List**

* **Management Overhead Fees** • **Fixed Fees**

Fixed Fee Services tab

TUPE tab

Total Fixed Charges tab

Mobilisation tab

* **Project Fees** Project Fees tab

31

RM6165: Construction Professional Services

*Scope*

Copyright - 2021

## Management Overhead Fees

**REDACTED TEXT under FOIA Section 43 Commercial Interests**.

## Fixed Fees

**REDACTED TEXT under FOIA Section 43 Commercial Interests**.

## Project Fees

**REDACTED TEXT under FOIA Section 43 Commercial Interests**.

**TASK ORDER PROCESS AND TASK ORDER FORM (PART B)**

For the purposes of this Schedule 3 and any Task Order placed under the contract, the following definitions apply:

* "**Project Checklist**” is the *Client’s* proforma due diligence checklist attached to this Part B of Schedule 3 as Annex 2 and which the *Client* may attach to a Task Order.

* **“Task Completion Date”** is the date for completion stated in a Task Order unless later changed in accordance with the contract.

1. The *Client* places a Task Order with the *Consultant* as and when required in relation to a Project using the Task Order Form in Annex 1 of Part B of this Schedule 3
2. The *Client* populates each Task Order Form and consults the *Consultant* about the contents of a proposed Task Order before issuing the Task Order Form.
3. The *Consultant* prices each proposed Task Order by completing the Task Activity Schedule for Annex 1 of the Task Order Form based on the Fixed Fees or Project Fees set out in the Price List and submits it to the *Client* for acceptance. Prices for components of the service not included in the Price List are assessed in the same way as compensation events. If the *Client* accepts the *Consultant’s* price, the *Client* issues the Task Order.
4. If the *Client* decides that the *Consultant* has not priced a Task Order correctly, the *Client* may price the Task Order. The *Client* notifies the *Consultant* of the price it has arrived at, gives details and issues the Task Order.
5. The *Consultant* does not start a Task Order until the *Client* has issued a Task Order for it. The *Consultant* provides the *services* so that the Task is completed on or before the Task Completion Date for that Task Order. Prices for services not already included in the Task Activity Schedule are added to the Task Activity Schedule.
6. For the avoidance of doubt, the contract applies in full to each and every Task Order

RM6165: Construction Professional Services 32

*Scope*

Copyright - 2021

PART B: ANNEX 1 – Task Order Form

RM6165: Construction Professional Services 33

*Scope*

Copyright - 2021

**Part C: Form of application for payment**

To be agreed within 2-weeks of the Contract Date as noted in Schedule 14

### SCHEDULE 4 – INCENTIVE SCHEDULE

To be agreed within 2-weeks of the Contract Date as noted in Schedule 14.

**SCHEDULE 5 - FINANCIAL DISTRESS**

1. **Definitions**
	1. In this Schedule 5 the following definitions apply:

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

“Financial Distress Event” means the occurrence or one or more of the events listed in this Schedule 5

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

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

1. **Credit rating and duty to notify**
	1. The *Consultant* warrants and represents to the *Client* for the benefit of the *Client* that as at the Contract Date the long-term credit ratings issued for the *Consultant* by the Rating Agency.
	2. The *Consultant* promptly notifies (or procures that its auditors promptly notify) the *Client* and the *Service Manager* if there is any significant downgrade in the credit rating issued by any Rating Agency for the *Consultant* (and in any event within seven days from the occurrence of the downgrade).
	3. If there is any downgrade credit rating issued by any Rating Agency for the *Consultant*, the *Consultant* ensures that the *Consultant’s* auditors thereafter provide the *Client* or the *Service Manager* within 14 days of a written request by the *Client* or the *Service Manager* with written calculations of the quick ratio for the *Consultant* at such date as may be requested by the *Client* or the *Service Manager.* For these purposes the “quick ratio” on any date means:

Where

* + - 1. is the value at the relevant date of all cash in hand and at the bank of the *Consultant*
			2. is the value of all marketable securities held by the *Consultant* determined using closing prices on the working day preceding the relevant date
			3. is the value at the relevant date of all account receivables of the *Consultant* and
			4. is the value at the relevant date of the current liabilities of the *Consultant*.
	1. The *Consultant*:
		+ - regularly monitors the credit ratings of the *Consultant* with the Rating Agencies and
			- promptly notifies (or shall procure that its auditors promptly notify) the *Client* and the *Service Manager* following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event and in any event, shall ensure that such notification is made within 14 days of the date on which the *Consultant* first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event.
	2. For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of paragraph, the credit rating of the *Consultant* shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have rated the *Consultant* at or below the applicable Credit Rating Threshold.
1. **Consequences of a financial distress event**
	1. In the event of:
		1. the credit rating of the *Consultant* dropping below the applicable Credit Rating Threshold;
		2. the *Consultant* issuing a profits warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;
		3. there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the *Consultant*;
		4. the *Consultant* committing a material breach of covenant to its lenders;
		5. a Subcontractor notifying the *Client* that the *Consultant* has not satisfied any

sums properly due for a material specified invoice or sequences of invoices that are not subject to a genuine dispute;

* + 1. any of the following:
			- * commencement of any litigation against the *Consultant* with respect to financial indebtedness or obligations under this contract;
				* non-payment by the *Consultant* of any financial indebtedness; any financial indebtedness of the *Consultant* becoming due as a result of an event of default
				* the cancellation or suspension of any financial indebtedness in respect of the *Consultant* in each case which the *Client* or the *Service Manager* reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance of the *Consultant* in accordance with this contract

then, immediately upon notification of the Financial Distress Event (or if the *Client* or the *Service Manager* becomes aware of the Financial Distress Event without notification and brings the event

to the attention of the *Consultant*), the *Consultant* shall have the obligations and the *Client* shall have the rights and remedies as set out in paragraphs 3.2 – 3.6.

* 1. The *Consultant*:
		1. at the request of the *Client* meets the *Client* and the *Service Manager* as soon as reasonably practicable (and in any event within three working days of the initial notification (or awareness) of the Financial Distress Event or such other period as the *Client* or the *Service Manager* may permit and notify to the *Consultant* in writing) to review the effect of the Financial Distress Event on its continued performance in accordance with this contract and
		2. where the *Client* or the *Service Manager* reasonably believes (taking into account any discussions and representations under paragraph 3.2.1) that the Financial Distress Event could impact on the *Consultant’s* continued performance in accordance with this Contract:
			+ - submits to the *Client* and the *Service Manager* for approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within 14 days from the initial notification (or awareness) of the Financial Distress Event or such other period as the *Client* or the *Service Manager* may permit and notify to the *Consultant* in writing)
				- provides such financial information relating to the *Consultant* as the *Client* or the *Service Manager* may reasonably require.
	2. The *Client* and the *Service Manager* do not withhold approval of a draft Financial Distress Service Continuity Plan unreasonably. If the *Client* and/or the *Service Manager* do not approve the draft Financial Distress Service Continuity Plan, the *Client* and/or the *Service Manager* inform the Consultant of the reasons and the *Consultant* takes those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which the *Consultant*  resubmits to the *Client* and the *Service Manager* within seven days of the rejection of the first or subsequent (as the case may be) drafts. This process is repeated until the Financial Distress Service Continuity Plan is approved by the *Client* and/or the *Service Manager* or referred to the dispute resolution procedure.
	3. If the *Client* and/or the *Service Manager* consider that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the relevant Financial Distress Event, the *Client* and/or the *Service Manager* may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the dispute resolution procedure.
	4. Following approval of the Financial Distress Service Continuity Plan by the *Client* or the *Service Manager*, the *Consultant*
		+ - reviews on a regular basis (which shall not be less than monthly) the Financial Distress Service Continuity Plan and assesses whether it remains adequate and up to date to ensure the continued performance in accordance with this Contract
			- where the Financial Distress Service Continuity Plan is not adequate or up to date in, submits an updated Financial Distress Service Continuity Plan to the *Client* and the *Service Manager* for approval, and the provisions of shall apply to the review and approval process for the updated Financial Distress Service Continuity Plan and
			- complies with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).
	5. Where the *Consultant* reasonably believes that the relevant Financial Distress Event (or the circumstance or matter which has caused or otherwise led to it) no longer exists, the Consultant notifies the *Client* and the *Service Manager* and subject to the agreement of the *Client* and/or the *Service Manager*, the Consultant is relieved of its obligations under paragraph 3.
1. **Termination rights**
	1. The *Client* may terminate the *Consultant’s* obligation to Provide the Service (which shall take effect as termination under reason R11) if
		* + the *Consultant* fails to notify the *Client* and the *Service Manager* of a Financial Distress Event in accordance with paragraph 2.2;
			+ the *Client* and the *Service Manager* fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraph 3 and/or
			+ the *Consultant* fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraph 3.
2. **Primacy of credit ratings**
	1. Without prejudice to the *Consultant’s* obligations and the *Client’s* rights and remedies under paragraph 3, if, following the occurrence of a Financial Distress Event pursuant to paragraph 2 to the Rating Agencies review and report subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then:
		* + the *Consultant* is relieved automatically of its obligations under paragraph 3 and
			+ the *Client* is not entitled to require the Consultant to provide financial information in accordance with paragraph 2.3.

### ANNEX 1: CREDIT RATINGS & CREDIT RATING THRESHOLDS

*Consultant* Credit current rating (long term)

2A (financial strength) and 1 (risk indicator)

Credit Rating Threshold 2A (financial strength) and 3 (risk indicator)

**SCHEDULE 6 – DATA PROTECTION**

**Definitions**

1. In this schedule 6, the following words shall have the following meanings:

|  |  |
| --- | --- |
| **“Central Government Body”**  | 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: 1. Government Department;
2. Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
3. Non-Ministerial Department; or

Executive Agency; |
| **“Confidential Information”**  | is the *Client's* Confidential Information and/or the *Consultant's* Confidential Information. |
| **“Data Protection Impact Assessment”**  | an assessment by the Controller carried out in accordance with section 3 of Chapter IV of the UK GDPR and sections 64 and 65 of the DPA 2018; |
| **“Data Protection Legislation”**  | (i) all applicable UK law about the Processing of Personal Data and privacy, including but not limited to the UK GDPR, and the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and (ii) (to the extent that it may be applicable) the EU GDPR). The UK GDPR and EU GDPR are defined in section 3 of the Data Protection Act 2018; |
| **“Data Protection Officer”**  | has the meaning given to it in the UK GDPR;  |
| **“Data Subject”**  | has the meaning given to it in the UK GDPR;  |
| **“Data Subject Access Request”**  | a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;  |
| **“Data Subject Request”**  | means a Data Subject Access Request;  |
| **“Information Commissioner”**  | the UK’s independent authority which deals with ensuring information relating  |
|  | to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;  |
| **“Personal Data”**  | has the meaning given to it in the UK GDPR;  |
| **“Personal Data Breach”**  | has the meaning given to it in the UK GDPR;  |
| **“Processor Personnel”**  | all directors, officers, employees, agents, consultants and subconsultants of the Processor and/or of any Subprocessor engaged in the performance of its obligations under the contract  |
| **“Processing”**  | has the meaning given to it in the UK GDPR;  |
| **“Protective Measures”**  | appropriate technical and organisational designed to ensure compliance with obligations of the Parties arising under Data Protection Legislation and this Contract, which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it including those outlined in Schedule 7 (Security Provisions);  |
| **“Subprocessor”**  | any third Party appointed to process Personal Data on behalf of that Processor related to the contract;  |
| **“UK GDPR”**  | the retained EU law version of the General Data Protection Regulation (Regulation (EU) 2016/679);  |

**Status of the Controller**

1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under the contract dictates the status of each party under the DPA 2018. A Party may act as:

(a) “Controller” in respect of the other Party who is “Processor”;

(b) “Processor” in respect of the other Party who is “Controller”;

* + - 1. “Joint Controller” with the other Party;
			2. “Independent Controller” of the Personal Data where the other Party is also

“Controller”,

in respect of certain Personal Data under the contract and shall specify in Annex 1 *(Processing Personal Data)* which scenario they think shall apply in each situation.

**Where one Party is Controller and the other Party its Processor**

1. Where a Party is a Processor, the only Processing that it is authorised to do is listed in

Annex 1 *(Processing Personal Data*) by the Controller. The term “processing” and any associated terms are to be read in accordance with Article 4 of the UK GDPR.

1. The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.

1. The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
	* + 1. a systematic description of the envisaged Processing and the purpose of the processing;
			2. an assessment of the necessity and proportionality of the processing

operations in relation to Providing the Service;

* + - 1. an assessment of the risks to the rights and freedoms of Data Subjects; and
			2. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

1. The Processor shall, in relation to any Personal Data processed in connection with its obligations under the contract:
	* + 1. process that Personal Data only in accordance with Annex 1 *(Processing Personal Data*), unless the Processor is required to do otherwise by law. If it is so required the Processor shall notify the Controller before processing the Personal Data unless prohibited by law;
			2. ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event which the Controller may reasonably reject. In the event of the Controller reasonably rejecting Protective Measures put in place by the Processor, the Processor must propose alternative Protective Measures to the satisfaction of the Controller. Failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures. Protective Measures must take account of the:
				1. nature of the data to be protected;
				2. harm that might result from a Personal Data Breach;
				3. state of technological development; and
				4. cost of implementing any measures; (c) ensure that:
				5. the Processor Personnel do not process Personal Data except in accordance with the contract (and in particular Annex 1 *(Processing Personal Data*));
				6. it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:

are aware of and comply with the Processor’s duties under this Schedule 6;

are subject to appropriate confidentiality undertakings with the

Processor or any Subprocessor;

are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by the contract; and

have undergone adequate training in the use, care, protection and handling of Personal Data;

(d) not transfer Personal Data outside of the UK and EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

(i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or section 75 Data Protection Act 2018) as determined by the Controller; (ii) the Data Subject has enforceable rights and effective legal remedies;

* + - * 1. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
				2. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data; and

(e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the contract unless the Processor is required by law to retain the Personal Data.

1. Subject to paragraph 7, the Processor shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with the contract it:
	* + 1. receives a Data Subject Request (or purported Data Subject Request);
			2. receives a request to rectify, block or erase any Personal Data;
			3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
			4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under the contract;
			5. receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law; or (f) becomes aware of a Personal Data Breach.

1. The Processor’s obligation to notify under paragraph 6 shall include the provision of further information to the Controller, as details become available.

1. Taking into account the nature of the Processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 6 (and insofar as possible within the timescales reasonably required by the Controller) including by immediately providing:
	* + 1. the Controller with full details and copies of the complaint, communication or request;
			2. such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
			3. the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
			4. assistance as requested by the Controller following any Personal Data Breach; and/or
			5. assistance as requested by the Controller with respect to any request from the

Information Commissioner’s Office, or any consultation by the Controller with the Information Commissioner's Office.

1. The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Schedule 6. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
	* + 1. the Controller determines that the Processing is not occasional;
			2. the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
			3. the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
2. The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller’s designated auditor.

1. The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.

1. Before allowing any Subprocessor to Process any Personal Data related to the contract, the Processor must:
	* + 1. notify the Controller in writing of the intended Subprocessor and Processing;
			2. obtain the written consent of the Controller;
			3. enter into a written agreement with the Subprocessor which gives effect to the terms set out in this Schedule 6 such that they apply to the Subprocessor; and
			4. provide the Controller with such information regarding the Subprocessor as the Controller may reasonably require.
2. The Processor shall remain fully liable for all acts or omissions of any of its Subprocessors.

1. Not used

1. The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The *Client* may on not less than thirty (30) Working Days’ notice to the *Consultant* amend the contract to ensure that it complies with any guidance issued by the Information Commissioner’s Office.

**Where the Parties are Joint Controllers of Personal Data**

1. In the event that the Parties are Joint Controllers in respect of Personal Data under the contract, the Parties shall implement paragraphs that are necessary to comply with UK GDPR Article 26 based on the terms set out in Annex 2 to this Schedule 6.

**Independent Controllers of Personal Data**

1. With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the joint control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controller.

1. Each Party shall Process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.

1. Where a Party has provided Personal Data to the other Party in accordance with paragraph 8 above, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.

1. The Parties shall be responsible for their own compliance with Articles 13 and 14 UK GDPR in respect of the Processing of Personal Data for the purposes of the contract.

1. The Parties shall only provide Personal Data to each other:
	* + 1. to the extent necessary to perform their respective obligations under the contract;
			2. in compliance with the Data Protection Legislation (including by ensuring all required data privacy information has been given to affected Data Subjects to meet the requirements of Articles 13 and 14 of the UK GDPR); and (c) where it has recorded it in Annex 1 *(Processing Personal Data).*

1. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its Processing of Personal Data as Independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the UK GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.

1. A Party Processing Personal Data for the purposes of the contract shall maintain a record of its Processing activities in accordance with Article 30 UK GDPR and shall make the record available to the other Party upon reasonable request.

1. Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to the contract **(“Request Recipient”)**:
	* + 1. the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or

correspondence, at the cost of the Request Recipient; or

* + - 1. where the request or correspondence is directed to the other Party and/or relates to that other Party's Processing of the Personal Data, the Request Recipient will:
				1. promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
				2. provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.

1. Each Party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other Party pursuant to the contract and shall:
	* + 1. do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Personal Data Breach;
			2. implement any measures necessary to restore the security of any compromised Personal Data;
			3. work with the other Party to make any required notifications to the Information

Commissioner’s Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and

* + - 1. not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by law.

1. Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under the contract as specified in Annex 1 *(Processing Personal Data).*

1. Personal Data shall not be retained or processed for longer than is necessary to perform each Party’s respective obligations under the contract which is specified in Annex 1 *(Processing Personal Data)*.

 •

1. Notwithstanding the general application of paragraphs 2 to 15 of this Schedule 6 to Personal Data, where the *Consultant* is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with paragraphs 16 to 27 of this Schedule 6.

**Annex 1 - Processing Personal Data**

This Annex shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Annex shall be with the *Client* at its absolute discretion.

* 1. The contact details of the *Client’s* Data Protection Officer are: Adele Atkins (DPO@wakefield.gov.uk).
	2. The contact details of the *Consultant*’s Data Protection Officer are: David Benge (david.benge@gleeds.com)
	3. The Processor shall comply with any further written instructions with respect to Processing by the Controller.
	4. Any such further instructions shall be incorporated into this Annex.

|  |  |  |
| --- | --- | --- |
| **Description**  |  | **Details**  |
| Identity of Controller for each Category of Personal Data  |  | **The *Client* is Controller and the *Consultant* is Processor** The Parties acknowledge that in accordance with paragraph 2 to paragraph 15 and for the purposes of the Data Protection Legislation, the *Client* is the Controller and the *Consultant* is the Processor of the following Personal Data:   |
|  | ●  | *Consultant* Personnel concerned with the fulfilment of the obligations arising under this contract  |
|  | ●  | *Client* Personnel concerned with the management of this contract   |
| Subject matter of the processing  |  | The Processing is needed in order to ensure that the Processor (*Consultant)* can effectively Provide the Service.  |
| Duration of the Processing  |  | Up to 7 years after the expiry or termination of the contract. |
| Nature and purposes of the Processing  | •  | To facilitate the fulfilment of the *Consultant’s* obligations arising under the contract, including (but not limited to):  Recruitment  |
|  | •  | Retention of personnel  |
|  | •  | Staff management  |
|  | •  | Contacting *Client* Personnel  |
|  | •  | Statutory compliance   |
| Type of Personal Data being processed  | • • •  | Job descriptions Salary information Personnel remuneration information (including bonuses and overtime)  |
|  | •  | *Consultant* personnel contact details (including name, email, telephone number)   |
| Categories of Data Subject  | •  | *Consultant* personnel concerned with the fulfilment of the obligations arising under this contract  |
|  | • •  | *Client* personnel concerned with the management of this contract   |
| International transfer and legal gateway  |  | All Personal Data must be stored in the UK and be compliant with relevant UK law.  |
| Plan for return and destruction of the data once the Processing is complete   |  | All relevant data to be deleted 7 years after the expiry or termination of this contract unless longer retention is required by law.  |

**Annex 2 - Joint Controller Agreement** **1. Joint Controller Status and Allocation of Responsibilities**

* 1. With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Data Controller in respect of that Personal Data in accordance with the terms of this Annex 2 (Joint Controller Agreement) in replacement of paragraphs 2-15 of this Schedule 6 (Where one Party is Controller and the other Party is Processor) and paragraphs 7-27 of this Schedule 6

(Independent Controllers of Personal Data). Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Data Controllers.

* 1. The Parties agree that the *Client*:
1. is the exclusive point of contact for Data Subjects and is responsible for all steps necessary to comply with the UK GDPR regarding the exercise by Data Subjects of their rights under the UK GDPR;
2. shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;
3. is solely responsible for the Parties’ compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the UK GDPR;
4. is responsible for obtaining the informed consent of Data Subjects, in accordance with the UK GDPR, for Processing in connection with Providing the Service where consent is the relevant legal basis for that Processing; and
5. shall make available to Data Subjects the essence of this Annex (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the [*Consultant’s/Client’s*] privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing). 1.3 Notwithstanding the terms of clause 1.2, the Parties acknowledge that a Data Subject has the right to exercise their legal rights under the Data Protection Legislation as against the relevant Party as Controller.

1. **Undertakings of both Parties**
	1. The *Consultant* and the *Client* each undertake that they shall:
		1. report to the other Party monthly on:
			* 1. the volume of Data Subject Access Requests (or purported Data Subject Access Requests) from Data Subjects (or third parties on their behalf);
				2. the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;
				3. any other requests, complaints or communications from Data Subjects

(or third parties on their behalf) relating to the other Party’s obligations under applicable Data Protection Legislation;

* + - * 1. any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
				2. any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law,

that it has received in relation to the subject matter of the contract during that period;

* + 1. notify each other immediately if it receives any request, complaint or communication made as referred to in Clauses 2.1(a)(i) to (v);
		2. provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Clauses 2.1(a)(iii) to (v) to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation;
		3. not disclose or transfer the Personal Data to any third party unless necessary for the Provision of the Service and, for any disclosure or transfer of Personal Data to any third party, (save where such disclosure or transfer is specifically authorised under the contract or is required by law) ensure consent has been obtained from the Data Subject prior to disclosing or transferring the Personal Data to the third party. For the avoidance of doubt, the third party to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Annex;
		4. request from the Data Subject only the minimum information necessary to Provide the Service and treat such extracted information as Confidential Information;
		5. ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data;
		6. take all reasonable steps to ensure the reliability and integrity of any of its Personnel who have access to the Personal Data and ensure that its Personnel:
			- 1. are aware of and comply with their duties under this Annex 2 (Joint Controller Agreement) and those in respect of Confidential Information;
				2. are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where the that Party would not be permitted to do so; and
				3. have undergone adequate training in the use, care, protection and handling of personal data as required by the applicable Data Protection Legislation;
			1. ensure that it has in place Protective Measures as appropriate to protect against a Personal Data Breach having taken account of the:
			2. nature of the data to be protected;
				1. harm that might result from a Personal Data Breach;
				2. state of technological development; and
				3. cost of implementing any measures;
				4. ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that it holds; and
				5. ensure that it notifies the other Party as soon as it becomes aware of a Personal Data Breach.
	1. Each Joint Controller shall use its reasonable endeavours to assist the other Controller to comply with any obligations under applicable Data Protection Legislation and shall not perform its obligations under this Annex in such a way as to cause the other Joint Controller to breach any of its obligations under applicable Data Protection Legislation to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

1. **Data Protection Breach**
	1. Without prejudice to paragraph 3.2, each Party shall notify the other Party promptly and without undue delay, and in any event within 48 hours, upon becoming aware of any Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the other Party and its advisors with:
		1. sufficient information and in a timescale which allows the other Party to meet any obligations to report a Personal Data Breach under the Data Protection Legislation; and
		2. all reasonable assistance, including:
			* 1. co-operation with the other Party and the Information Commissioner investigating the Personal Data Breach and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;
				2. co-operation with the other Party including taking such reasonable steps as are directed by the other Party to assist in the investigation, mitigation and remediation of a Personal Data Breach;
				3. co-ordination with the other Party regarding the management of public relations and public statements relating to the Personal Data Breach; and/or
				4. providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Personal Data Breach, with complete information relating to the Personal Data Breach, including, without limitation, the information set out in Clause 3.2.
	2. Each Party shall take all steps to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a Personal Data Breach as it was that Party’s own data at its own cost with all possible speed and shall provide the other Party with all reasonable assistance in respect of any such Personal Data Breach, including providing the other Party, as soon as possible and within 48 hours of the Personal Data Breach relating to the Personal Data Breach, in particular:
		1. the nature of the Personal Data Breach;
		2. the nature of Personal Data affected;
		3. the categories and number of Data Subjects concerned;
		4. the name and contact details of the Consultant’s Data Protection Officer or other relevant contact from whom more information may be obtained;
		5. measures taken or proposed to be taken to address the Personal Data Breach; and
		6. describe the likely consequences of the Personal Data Breach.
2. **Audit**
	1. The *Consultant* shall permit:
		1. the *Client*, or a third-party auditor acting under the *Client’s* direction, to conduct, at the *Client’s* cost, data privacy and security audits, assessments and inspections concerning the *Consultant’s* data security and privacy procedures relating to Personal Data, its compliance with this Annex 2 and the Data Protection Legislation; and/or
		2. the *Client*, or a third-party auditor acting under the *Client’s* direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 UK GDPR by the *Consultant* so far as relevant to the contract, and procedures, including premises under the control of any third party appointed by the Consultant to assist in the Provision of the Service.
	2. The *Client* may, in its sole discretion, require the *Consultant* to provide evidence of the Consultant’s compliance with Clause 4.1 in lieu of conducting such an audit, assessment or inspection.

1. **Impact Assessments**
	1. The Parties shall:
		1. provide all reasonable assistance to each other to prepare any Data Protection Impact Assessment as may be required (including provision of detailed information and assessments in relation to Processing operations, risks and measures); and
		2. maintain full and complete records of all Processing carried out in respect of the Personal Data in connection with the contract, in accordance with the terms of Article 30 UK GDPR.

1. **ICO Guidance**

The Parties agree to take account of any guidance issued by the Information

Commissioner and/or any relevant Central Government Body. The *Client* may on not

less than thirty (30) Working Days’ notice to the *Consultant* amend the contract to ensure that it complies with any guidance issued by the Information Commissioner and/or any relevant Central Government Body.

1. **Liabilities for Data Protection Breach**

* 1. If financial penalties are imposed by the Information Commissioner on either the *Client* or the *Consultant* for a Personal Data Breach ("**Financial Penalties**") then the following shall occur:
		1. if in the view of the Information Commissioner, the *Client* is responsible for the Personal Data Breach, in that it is caused as a result of the actions or inaction of the *Client*, its employees, agents, contractors (other than the *Consultant*) or systems and procedures controlled by the *Client*, then the *Client* shall be responsible for the payment of such Financial Penalties. In this case, the *Client* will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such Personal Data Breach. The *Consultant* shall provide to the *Client* and its third-party investigators and auditors, on request and at the *Consultant's* reasonable cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach;
		2. if in the view of the Information Commissioner, the *Consultant* is responsible for the Personal Data Breach, in that it is not a Personal Data Breach that the *Client* is responsible for, then the *Consultant* shall be responsible for the payment of these Financial Penalties. The *Consultant* will provide to the *Client* and its auditors, on request and at the *Consultant’s* sole cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach; or
		3. if no view as to responsibility is expressed by the Information Commissioner, then the *Client* and the *Consultant* shall work together to investigate the relevant Personal Data Breach and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any financial penalties equally if no responsibility for the Personal Data Breach can be apportioned. In the event that the Parties do not agree such apportionment then such an issue shall be subject to dispute resolution measures.
	2. If either the *Client* or the *Consultant* is the defendant in a legal claim brought before a court of competent jurisdiction (“Court”) by a third party in respect of a Personal Data Breach, then unless the Parties otherwise agree, the Party that is determined by the final decision of the court to be responsible for the Personal Data Breach shall be liable for the losses arising from such Personal Data Breach. Where both Parties are liable, the liability will be apportioned between the Parties in accordance with the decision of the Court.
	3. In respect of any losses, cost claims or expenses incurred by either Party as a result of a Personal Data Breach (the “Claim Losses”):
		1. if the *Client* is responsible for the relevant Personal Data Breach, then the *Client* shall be responsible for the Claim Losses;
		2. if the *Consultant* is responsible for the relevant Personal Data Breach, then the *Consultant* shall be responsible for the Claim Losses: and
		3. if responsibility for the relevant Personal Data Breach is unclear, then the *Client* and the *Consultant* shall be responsible for the Claim Losses equally.

* 1. Nothing in either clause 7.2 or clause 7.3 shall preclude the *Client* and the *Consultant* reaching any other agreement, including by way of compromise with a third-party complainant or claimant, as to the apportionment of financial responsibility for any Claim Losses as a result of a Personal Data Breach, having regard to all the circumstances of the Personal Data Breach and the legal and financial obligations of the *Client*.

1. **Termination**

If the *Consultant* is in material default under any of its obligations under this Annex 2 (*Joint Controller Agreement*), the *Client* shall be entitled to terminate the contract in accordance with clause 91.2 (R11) on the contract.

1. **Sub-Processing**
	1. In respect of any Processing of Personal Data performed by a third party on behalf of a Party, that Party shall:
		* + 1. carry out adequate due diligence on such third party to ensure that it is capable of providing the level of protection for the Personal Data as is required by the contract, and provide evidence of such due diligence to the other Party where reasonably requested; and
				2. ensure that a suitable agreement is in place with the third party as required under applicable Data Protection Legislation.

1. **Data Retention**

The Parties agree to erase Personal Data from any computers, storage devices and storage media that are to be retained as soon as practicable after it has ceased to be necessary for them to retain such Personal Data under applicable Data Protection Legislation and their privacy policy (save to the extent (and for the limited period) that such information needs to be retained by the a Party for statutory compliance purposes or as otherwise required by the contract), and takinall further actions as may be necessary to ensure its compliance with Data Protection Legislation and its privacy policy.

 **SCHEDULE 7 – SECURITY PROVISIONS**

###  1. SECURITY PROVISIONS

 1.1 Definitions

For the purposes of this schedule the following terms shall have the meanings given below:

|  |  |
| --- | --- |
| **"Affiliates"**  | 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;  |
| **"Breach of Security"**  | in accordance with the Security Requirements and the Security Policy, the occurrence of: 1. any unauthorised access to or use of the service the *Client* Premises, the *Consultant* System and/or any ICT, information or data (including the Confidential Information and the *Client* Data) used by the *Client* and/or the *Consultant* in connection with this contract; and/or
2. the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the *Client* Data), including any copies of such information or data, used by the *Client* and/or the *Consultant* in connection with this contract.
 |
| **"Clearance"**  | means national security clearance and employment checks undertaken by and/or obtained from the Defence Vetting Agency;  |
| **“Consultant Equipment”**  | the hardware, computer and telecoms devices and equipment supplied by the Consultant or its Subcontractors (but not hired, leased or loaned from the *Client*) for the carrying out of the *service*;  |
| **"*Consultant* Software"**  | software which is proprietary to the *Consultant*, including software which is or will be used by the *Consultant* for the purposes of carrying out of the *service*;  |
| **"*Consultant* System"**  | the information and communications technology system used by the *Consultant* in carrying out of the *service* including the *Consultant* Software, the *Consultant* Equipment and related cabling (but excluding the *Client* System);  |
| **"Control"**  | means that a person possesses, directly or indirectly, 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" shall be interpreted accordingly;

|  |  |
| --- | --- |
| **"Default"**  | any breach of the obligations of the relevant party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant party, its employees, servants, agents or Sub Consultants in connection with or in relation to the subject-matter of this contract and in respect of which such party is liable to the other;  |
| **“Dispute Resolution** **Procedure”**  | the dispute resolution procedure set out in this contract (if any) or as agreed between the parties;  |
| **"*Client* Premises"**  | means premises owned, controlled or occupied by the *Client* or its Affiliates which are made available for use by the *Consultant* or its Subcontractors for carrying out of the *service* (or any of them) on the terms set out in this contract or any separate agreement or licence;  |
| **"Client System"**  | the *Client*'s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the *Client* or the *Consultant* in connection with this contract which is owned by or licensed to the *Client* by a third party and which interfaces with the *Consultant* System or which is necessary for the *Client* to receive the *service*;  |
| **“Environmental Information** **Regulations**  | the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issues by the Information Commissioner or relevant Government Department in relation to such regulations;  |
| **“FOIA”**  | 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 or relevant Government Department in relation to such legislation;  |
| **“Good Industry Practice”**  | the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector;  |
| **“ICT”**  | information and communications technology;  |
| **"ICT Environment"**  | the *Client* System and the Consultant *S*ystem;  |
| **"Impact Assessment"**  | an assessment of a Compensation Event;  |

|  |  |
| --- | --- |
| **"Information"**  | has the meaning given under section 84 of the Freedom of Information Act 2000;  |
| **“Information Assets Register”**  | the register of information assets to be created and maintained by the *Consultant* throughout the carrying out of the *service* as described in the contract (if any) or as otherwise agreed between the parties;  |
| **"ISMS"**  | the Information Security Management System as defined by ISO/IEC 27001. The scope of the ISMS will be as agreed by the parties and will directly reflect the scope of the *service*;  |
| **"Know-How"**  | all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the *service* but excluding know how already in the *Consultant*’s or the *Client*’s possession before this contract;  |
| **"List x"**  | means, in relation to a Subcontractor, one who has been placed on List x in accordance with Ministry of Defence guidelines and procedures, due to that Subcontractor undertaking work on its premises marked as CONFIDENTIAL or above;  |
| **"Malicious Software"**  | any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;  |
| **"Process"**  | has the meaning given to it under the Data Protection Legislation but, for the purposes of this contract, it shall include both manual and automatic processing;  |
| **"Protectively Marked"**  | shall have the meaning as set out in the Security Policy Framework.  |
| **"Regulatory Bodies"**  | those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this contract or any other affairs of the *Client* and "Regulatory Body" shall be construed accordingly;  |
| **"Request for Information**” | a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulation  |
| **"Security Management Plan"**  | the *Consultant*'s security plan prepared pursuant to paragraph 1.5.3 of schedule 7 (Security Management Plan) an outline of which is set out in Appendix 1 of schedule 7 (Security Management Plan);  |
| **"Security Policy Framework"**  | means the Cabinet Office Security Policy Framework (available from the Cabinet Office Security Policy Division);  |
| **"Security Requirements"**  | means the requirements in the contract relating to security of the carrying out of the *service* (if any) or such other requirements as the *Client* may notify to the *Consultant* from time to time  |
| **"Security Tests"**  | shall have the meaning set out in Appendix 2 (Security Management Plan) [Guidance: define “Security Tests” in Security Management Plan]  |
| **"Software"**  | Specially Written Software, *Consultant* Software and Third Party Software;  |
| **"Specially Written Software"**  | any software created by the Consultant (or by a third party on behalf of the Consultant) specifically for the purposes of this contract;  |
| **"Staff Vetting Procedures"**  | the *Client*'s procedures and departmental policies for the vetting of personnel whose role will involve the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measures, including, but not limited to, the provisions of the Official Secrets Act 1911 to 1989;  |
| **“Statement of Applicability”**  | shall have the meaning set out in ISO/IEC 27001 and as agreed by the parties during the procurement phase;  |
| **"Standards"**  | the British or international standards, *Client*'s internal policies and procedures, Government codes of practice and guidance together with any other specified policies or procedures referred to in this contract (if any) or as otherwise agreed by the parties;  |
| **"Third Party Software"**  | software which is proprietary to any third party other than an Affiliate of the *Consultant* which is or will be used by the *Consultant* for the purposes of carrying out of the service. |

1.2 Introduction

1.2.1 This schedule covers:

1.2.1.1 principles of protective security to be applied in carrying out of the *service*;

1.2.1.2 wider aspects of security relating to carrying out of the *service*;

1.2.1.3 the development, implementation, operation, maintenance and continual improvement of an ISMS;

1.2.1.4 the creation and maintenance of the Security Management Plan;

1.2.1.5 audit and testing of ISMS compliance with the Security Requirements;

1.2.1.6 conformance to ISO/IEC 27001 (Information Security Requirements Specification) and ISO/IEC27002 (Information Security Code of Practice) and;

1.2.1.7 obligations in the event of actual, potential or attempted breaches of security.

1.3 Principles of Security

1.3.1 The *Consultant* acknowledges that the *Client* places great emphasis on the confidentiality, integrity and availability of information and consequently on the security provided by the ISMS.

1.3.2 The *Consultant* shall be responsible for the effective performance of the ISMS and shall at all times provide a level of security which:

1.3.2.1 is in accordance with Good Industry Practice, the *law of the contract* and this contract;

1.3.2.2 complies with the Security Policy;

1.3.2.3 complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (Tiers 14) available from the Cabinet Office Security Policy Division (COSPD);

1.3.2.4 meets any specific security threats to the ISMS; and

1.3.2.5 complies with ISO/IEC27001 and ISO/IEC27002 in accordance with paragraph 1.3.2 of this schedule;

1.3.2.6 complies with the Security Requirements; and

1.3.2.7 complies with the *Client*’s ICT standards.

1.3.3 The references to standards, guidance and policies set out in paragraph 1.3.2.2 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, from time to time.

1.3.4 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the *Consultant* gives an early warning to the *Service Manager* of such inconsistency immediately upon becoming aware of the same, and the *Service Manager* shall, as soon as practicable, advise the

*Consultant* which provision the *Consultant* shall be required to comply with.

1.4 ISMS and Security Management Plan

1.4.1 Introduction:

1.4.1.1 The *Consultant* shall develop, implement, operate, maintain and continuously improve and maintain an ISMS which will, without prejudice to paragraph 1.3.2, be accepted, by the *Service Manager*, tested in accordance with the provisions relating to testing as set out in the contract (if any) or as otherwise agreed between the Parties, periodically updated and audited in accordance with ISO/IEC 27001

1.4.1.2 The *Consultant* shall develop and maintain a Security Management Plan in accordance with this Schedule to apply during the carrying out of the *service*.

1.4.1.3 The *Consultant* shall comply with its obligations set out in the Security Management Plan.

1.4.1.4 Both the ISMS and the Security Management Plan shall, unless otherwise specified by the *Client*, aim to protect all aspects of the *service* and all processes associated with carrying out of the *service*, including the construction, use, alterations or demolition of the *service*, the *Consultant* System and any ICT, information and data (including the Client Confidential Information and the Client Data) to the extent used by the *Client* or the *Consultant* in connection with this contract.

1.4.2 Development of the Security Management Plan:

1.4.2.1 Within 20 Working Days after the Contract Date and in accordance with paragraph 1.4.4 (Amendment and Revision), the *Consultant* will prepare and deliver to the *Service Manager* for acceptance a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan set out in Appendix 2 of this Part 2 of this Contract Schedule 7.

1.4.2.2 If the Security Management Plan, or any subsequent revision to it in accordance with paragraph 1.4.4 (Amendment and Revision), is accepted by the *Service Manager* it will be adopted immediately and will replace the previous version of the Security Management Plan at Appendix 2 of this Part 2 of this Contract Schedule 7. If the Security Management Plan is not accepted by the *Service Manager* the *Consultant* shall amend it within 10 Working Days or such other period as the parties may agree in writing of a notice of non- acceptance from the *Service Manager* and re-submit to the *Service Manager* for accepted. The parties will use all reasonable endeavours to ensure that the acceptance process takes as little time as possible and in any event no longer than 15 Working Days (or such other period as the parties may agree in writing) from the date of its first submission to the *Service Manager*. If the *Service Manager* does not accept the Security Management Plan following its resubmission, the matter will be resolved in accordance with the

Dispute Resolution Procedure. No acceptance to be given by the *Service Manager* pursuant to this paragraph 1.4.2.2 of this schedule may be unreasonably withheld or delayed. However any failure to accept the Security Management Plan on the grounds that it does not comply with the requirements set out in paragraph 1.4.3.4 shall be deemed to be reasonable.

1.4.3 Content of the Security Management Plan:

1.4.3.1 The Security Management Plan will set out the security measures to be implemented and maintained by the *Consultant* in relation to all aspects of the *service* and all processes associated with carrying out of the *service* and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the *service* comply with the provisions of this schedule (including the principles set out in paragraph 1.3);

1.4.3.2 The Security Management Plan (including the draft version) should also set out the plans for transiting all security arrangements and responsibilities from those in place at the Contract Date to those incorporated in the *Consultant*’s ISMS at the date notified by the *Service Manager* to the *Consultant* for the *Consultant* to meet the full obligations of the Security Requirements.

1.4.3.3 The Security Management Plan will be structured in accordance with ISO/IEC27001 and ISO/IEC27002, cross-referencing if necessary to other schedules of this contract which cover specific areas included within that standard.

1.4.3.4 The Security Management Plan shall be written in plain English in language which is readily comprehensible to the staff of the *Consultant* and the *Client* engaged in the *service* and shall only reference documents which are in the possession of the *Client* or whose location is otherwise specified in this schedule.

1.4.4 Amendment and Revision of the ISMS and Security Management Plan:

1.4.4.1 The ISMS and Security Management Plan will be fully reviewed and updated by the *Consultant* annually or from time to time to reflect:

1. emerging changes in Good Industry Practice;
2. any change or proposed change to the *Consultant* System, the *service* and/or associated processes; (c) any new perceived or changed security threats; and (d) any reasonable request by the *Service Manager*.

1.4.4.2 The *Consultant* will provide the *Service Manager* with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Management Plan at no additional cost to the *Client*. The results of the review should

include, without limitation:

1. suggested improvements to the effectiveness of the ISMS;
2. updates to the risk assessments;
3. proposed modifications to the procedures and controls that effect information security to respond to events that may impact on the ISMS; and
4. suggested improvements in measuring the effectiveness of controls.

1.4.4.3 On receipt of the results of such reviews, the *Service Manager* will accept any amendments or revisions to the ISMS or Security Management Plan in accordance with the process set out at paragraph 1.4.2.2.

1.4.4.4 Any change or amendment which the *Consultant* proposes to make to the ISMS or Security Management Plan (as a result of a *Service Manager’s* request or change to the *service* or otherwise) shall be subject to the early warning procedure and shall not be implemented until accepted in writing by the *Service Manager*.

1.4.5 Testing

*1.4.5.1* The *Consultant* shall conduct Security Tests of the ISMS on an annual basis or as otherwise agreed by the parties. The date, timing, content and conduct of such Security Tests shall be agreed in advance with the *Service Manager.*

1.4.5.2 The *Service Manager* shall be entitled to witness the conduct of the Security Tests. The *Consultant* shall provide the *Service Manager* with the results of such tests (in a form accepted by the *Client* in advance) as soon as practicable after completion of each Security Test.

1.4.5.3 Without prejudice to any other right of audit or access granted to the *Client* pursuant to this contract, the *Service Manager* and/or its authorised representatives shall be entitled, at any time and without giving notice to the *Consultant*, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the *Consultant*'s compliance with the ISMS and the Security Management Plan. The *Service Manager* may notify the *Consultant* of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the carrying out of the *service*. If such tests adversely affect the *Consultant*’s ability to carry out the *service* in accordance with the Scope, the *Consultant* shall be granted relief against any resultant under-performance for the period of the tests.

1.4.5.4 Where any Security Test carried out pursuant to paragraphs 1.4.5.2 or 1.4.5.3 above reveals any actual or potential Breach of Security, the *Consultant* shall promptly notify the *Service Manager* of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the *Consultant* proposes to make in order to correct such failure or weakness. Subject to the *Service Manager*'s acceptance in accordance with paragraph (i), the *Consultant* shall implement such changes to the ISMS and the Security Management Plan in accordance with the timetable agreed with the *Service Manager* or, otherwise, as soon as reasonably possible. Where the change to the ISMS or Security Management Plan is made to address a non-compliance with the Security Policy or Security Requirements, the change to the ISMS or Security Management Plan is Disallowed Cost.

1.5 Compliance with ISO/IEC 27001

1.5.1 Unless otherwise agreed by the parties, the *Consultant* shall obtain independent certification of the ISMS to ISO/IEC 27001 within 12 months of the Contract Date and shall maintain such certification until the Defects Certificate or a termination certificate has been issued.

1.5.2 In the event that paragraph 1.5.1 above applies, if certain parts of the ISMS do not conform to Good Industry Practice, or controls as described in ISO/IEC 27002 are not consistent with the Security Policy, and, as a result, the *Consultant* reasonably believes that it is not compliant with ISO/IEC 27001, the *Consultant* shall promptly notify the *Service Manager* of this and the *Client* in its absolute discretion may waive the requirement for certification in respect of the relevant parts.

1.5.3 The *Service Manager* shall be entitled to carry out such regular security audits as may be required and in accordance with Good Industry Practice, in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001.

1.5.4 If, on the basis of evidence provided by such audits, it is the *Service Manager*'s reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 is not being achieved by the *Consultant*, then the *Service Manager* shall notify the *Consultant* of the same and give the *Consultant* a reasonable time (having regard to the extent and criticality of any noncompliance and any other relevant circumstances) to become compliant with the principles and practices of ISO/IEC 27001. If the *Consultant* does not become compliant within the required time then the *Service Manager* has the right to obtain an independent audit against these standards in whole or in part.

1.5.5 If, as a result of any such independent audit as described in paragraph 1.5.4 the *Consultant* is found to be non-compliant with the principles and practices of ISO/IEC 27001 then the *Consultant* shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the *Client* in obtaining such audit.

 1.6 Breach of Security

1.6.1 Either party shall give an early warning to the other in accordance with the agreed security incident management process as defined by the ISMS upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.

1.6.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 1.6.1, the *Consultant* shall:

 1.6.2.1 immediately take all reasonable steps necessary to:

1. remedy such breach or protect the integrity of the ISMS against any such potential or attempted breach or threat; and
2. prevent an equivalent breach in the future.such steps shall include any action or changes reasonably required by the *Service Manager*; and

1.6.2.2 as soon as reasonably practicable provide to the *Service Manager* full details (using such reporting mechanism as defined by the ISMS) of the Breach of Security or the potential or attempted Breach of Security.

**APPENDIX 1 – SECURITY POLICY**

[https://www.wakefield.gov.uk/media/5rpbqcht/information-security-policy.pdf](https://url.avanan.click/v2/___https%3A/www.wakefield.gov.uk/media/5rpbqcht/information-security-policy.pdf___.YXAxZTpzaGFycGVwcml0Y2hhcmQ6YTpvOjNiNTQ4NDU1MjljMGVlODcxOTI1ODk3MmNmYTBlMTM5OjY6MWRlMTo4MTFhNTg3MWMzZmQ3MWE3OGE4ZmFjMWQ5NzU1OGVhZTNmNjEyOWNjODExYjEzOTAwZGVlNTJkM2U4NzI1MTZhOnA6VA)

**Appendix 2 – Security Management Plan**

To ensure the *Consultant’s* people properly manage data security in connection with this contract, the *Consultant* will:

* Determine the *Client’s* security objectives and additional security controls that we need to implement
* Ascertain contract-specific security risks, and establish how we will mitigate and manage risks appropriately
* Plan its programme-specific approach to data security (covering physical, personnel, cyber, and technical security aspects)
* Ensure that work on all projects commissioned under this contract is assigned to competent and appropriately skilled people with the required level of security clearance.

By embedding these practices, the *Consultant* will create a robust framework for data security management, instilling a security-conscious mindset within its personnel and effectively mitigating risks associated with this contract.

Within 20 Working Days after the Contract Date the *Consultant* will prepare and deliver to the *Service Manager* for acceptance a fully complete and up to date Security Management Plan which will be based on the draft below. This will be tailored to the specific needs and requirements of the *Client* and reviewed every six months.

**DRAFT PLAN**

The *Consultant* will outline the strategies and measures to be implemented for ensuring data security, including:

* Purpose and scope of the SMP
* Security objectives and goals
* Roles and responsibilities
* Risk assessment and management
* Physical security
* Personnel security
* Information security
* Network and systems security
* Third-party management (suppliers)
* Compliance and Audit
* Training and Awareness
* Review and Improvement
* Contract completion requirements, including return or disposal of data.

***Risk management***

The *Consultant* has established a comprehensive security and privacy risk management framework within our organisation, outlined in our Information Security Risk Assessment and Treatment Methodology. This framework enables us to effectively identify, assess and mitigate security-related risks across our projects.

To enhance its risk management capabilities, the *Consultant* has recently invested in Vigilant Software’s Risk platform. This tool provides the *Consultant* with advanced insight into projectrelated security risks and facilitates the identification and implementation of appropriate risk treatment measures.

***Access Control***

The *Consultant* strictly adhere to principles of ‘need to know’ and ‘everything is generally forbidden unless expressly permitted’ when it comes to accessing its systems.

Access is granted at the minimum level required for individuals to fulfil their roles, and any additional access is closely monitored and controlled.

To ensure clarity and accountability, we will implement a Permissions Matrix for personnel involved in this contract. This matrix will clearly define and document the specific access permissions and privileges granted to individuals for various systems, information, applications, and resources.

The Project Lead will own the Permissions Matrix, which can be reviewed by the *Client* upon request.

The Permissions Matrix will include:

* Resource/asset: systems, information (project files/ folders), applications, or resources to which access is required
* User: the individual user who requires access
* Justification/rationale: for granting access;
* Access: levels and permissions
* Granting Authority: the Project Lead/Director granting access
* Effective dates: for granting and revoking access.

***Security clearance***

The *Consultant* will collaborate closely with the *Client* to expedite the personnel security clearance process. The *Consultant’s* goal will be to obtain the necessary security clearances for required levels of personnel within a month, ensuring that projects can commence without delays.

In addition to managing security clearances for its own people, the *Consultant* will take on the responsibility of administering security clearance for any suppliers engaged by the consultant who work are to work on projects under this contract. Through coordination with the Client Vetting Team, we will ensure that all required clearances are obtained before granting access to sensitive information or project sites.

As part of the *Consultant’s* commitment to maintaining a secure environment, it will enforce a policy that requires its people and subcontractors to visibly display their security passes at all times while entering and being present on project sites. This visible display enhances identification and enables efficient monitoring of personnel within the site.

Furthermore, the *Consultant* will emphasise the importance of promptly removing or concealing security passes after leaving the site to prevent unauthorised access or misuse.

The *Consultant* has partnered with Electranet (Capita) to facilitate the security clearance process by providing proxy sponsorship/holding of UKSV granted clearances for our employees upon request. Clearance levels based on Contracting Authority and project requirements, which may include: BPSS (Baseline Personnel Security Standard), SC (Security Check), DV (Developed Vetting). or CTC (Counter Terrorism Check).

This approach ensures a comprehensive and appropriate level of security based on the unique needs of each project.

***Increasing security awareness***

To foster a security-aware culture, the *Consultant* prioritises ongoing training, communication, and individual responsibility. Mandatory awareness training is provided through itsonline ‘Training Academy’, covering topics such as information security, ISO 27001, cyber security, and privacy awareness.

By regularly updating and reinforcing its security training, promoting open communication, and emphasising individual responsibility, the *Consultant* creates a culture where every team member actively contributes to information protection and project security. Training is delivered via e-learning modules and tests are conducted to ensure comprehension. The *Consultant* maintains records showing a 98% completion rate for all courses.

***ISO 27001-certified Information Security Management System (ISMS)***

The *Consultant* ISMS ensures data security across its projects. Compliance with its ISMS is mandatory for all employees. The *Consultant* will integrate additional security requirements specific to the *Client* into its ISMS through a *Client*-specific Security Management Plan. The *Consultant’s* ISMS includes various security controls such as risk assessment, data classification, access control, encryption, user access control, strong authentication (multifactor authentication), encryption, data handling procedures, security and cyber awareness training, incident reporting, mobile device security, regular security updates, and ongoing monitoring and auditing. David Benge, Group Compliance Director, oversees security requirements and compliance with Government Functional Standard GovS 007: Security. He is the *Consultant’s* ‘named Security Representative’.

**SCHEDULE 8 - CYBER ESSENTIALS**

### 1. DEFINITIONS

1.1 In this Schedule, the following words shall have the following meanings:

**"Cyber Essentials Scheme"** the Cyber Essentials Scheme developed by the Government which provides a clear statement of the basic controls all organisations should implement to mitigate the risk from common internet based threats (as may be amended from time to time). Details of the Cyber Essentials Scheme can be found here:

[https://www.ncsc.gov.uk/cyberessentials/overview;](https://url.avanan.click/v2/___https%3A/www.ncsc.gov.uk/cyberessentials/overview___.YXAxZTpzaGFycGVwcml0Y2hhcmQ6YTpvOjNiNTQ4NDU1MjljMGVlODcxOTI1ODk3MmNmYTBlMTM5OjY6YzU3YzoyMDkxZjMzYTBhMzVjZDJmOGJiMDEyYWUyMTRlZWE0ZjhiOTkyMTM3ZjUwZDMyYzViYjc3MzY0MDExMzdmYTY5OnA6VA)

**"Cyber Essentials Basic** the certificate awarded on the basis of self**Certificate"** assessment, verified by an independent certification body, under the Cyber Essentials Scheme and is the basic level of assurance;

**"Cyber Essentials Certificate"** Cyber Essentials Basic Certificate, the Cyber Essentials Plus Certificate or the Cyber Essential Scheme certificate equivalent to be provided by the

*Consultant* as set out in the Framework Data Sheet;

 **"Cyber Essential Scheme** sensitive and personal information and other

 **Data"** relevant information as referred to in the Cyber

Essentials Scheme; and

 **"Cyber Essentials Plus** the certification awarded on the basis of external

**Certificate"** testing by an independent certification body of the *Consultant's* cyber security approach under the Cyber Essentials Scheme and is a more advanced level of assurance.

### 2. CYBER ESSENTIALS OBLIGATIONS

2.1 Where the Scope requires that the *Consultant* provide a Cyber Essentials Certificate prior to the execution of the *service* the *Consultant* shall provide a valid Cyber Essentials Certificate, then on or prior to the commencement of the *service* the *Consultant* delivers to the *Client* evidence of the same. Where the *Consultant* fails to comply with this paragraph it shall be prohibited from commencing the carrying out of the *service* under any contract until such time as the *Consultant* has evidenced to the *Client* its compliance with this paragraph 2.1.

2.2 Where the *Consultant* continues to Process Cyber Essentials Scheme Data during the carrying out of the *service* the *Consultant* delivers to the *Client* evidence of renewal of the Cyber Essentials Certificate on each anniversary of the first applicable certificate obtained by the *Consultant* under paragraph 2.1.

2.3 Where the *Consultant* is due to Process Cyber Essentials Scheme Data after the commencement of the *service* but before completion of the *service* the *Consultant* delivers to the *Client* evidence of:

2.3.1 a valid and current Cyber Essentials Certificate before the *Consultant*

Processes any such Cyber Essentials Scheme Data; and

2.3.2 renewal of the valid Cyber Essentials Certificate on each anniversary of the first Cyber Essentials Scheme certificate obtained by the *Consultant* under paragraph 2.1.

2.4 In the event that the *Consultant* fails to comply with paragraphs 2.2 or 2.3 (as applicable), the *Client* reserves the right to terminate this contract for material Default.

2.5 The *Consultant* ensures that all sub-contracts with Sub-Consultants who Process Cyber Essentials Data contain provisions no less onerous on the Sub-Consultants than those imposed on the *Consultant* under this contract in respect of the Cyber Essentials Scheme under paragraph 2.1 of this Schedule

2.6 This Schedule shall survive termination or expiry of this contract.

**SCHEDULE 9 – STAFF TRANSFER**

1. **Definitions**
	1. In this Schedule, the following words have the following meanings and they shall supplement the defined terms in clause 11 of the contract:

|  |  |
| --- | --- |
| **“Acquired Rights Directive”**  | the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or reenacted from time to time;  |
| **“Dispute Resolution Procedure”**  | the dispute resolution set out in Option W2 of the NEC4 PSC;  |
| **"Employee Liability"**  | 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: a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;  |
|  | b) unfair, wrongful or constructive dismissal compensation;  |
|  | c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;  |
|  | d) compensation for less favourable treatment of part-time workers or fixed term employees;  |
|  | e) outstanding employment debts and unlawful deduction of wages including any PAYE and National Insurance Contributions;  |

|  |  |
| --- | --- |
|  | f) employment claims whether in tort, contract or statute or otherwise;  |
|  | g) any investigation relating to employment matters 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;  |
| **"Former *Consultant*"**  | a supplier supplying services to the *Client* before the Relevant Transfer Date that are the same as or substantially similar to the *service* (or any part of the *service*) and shall include any Subcontractor of such supplier (or any Subcontractor of any such Subcontractor);  |
| **"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 including: 1. any amendments to that document immediately prior to the Relevant Transfer Date; and
2. any similar pension protection in accordance with the Annexes D1-D3 inclusive to Part D of this Schedule as notified to the *Consultant* by the *Client*;
 |
| **“Old Fair Deal”**  | HM Treasury Guidance “*Staff Transfers from Central* *Government: A Fair Deal for Staff Pensions*” issued in June 1999 including the supplementary guidance “*Fair Deal for Staff pensions: Procurement of Bulk Transfer* *Agreements and Related Issues*” issued in June 2004;  |
| **"Partial Termination"**  | the partial termination of the relevant Contract to the extent that it relates to the provision of any part of the *service* as further provided for in Clause 10.4 (When CCS or the *Client* can end this contract) or 10.5 (When the *Consultant* can end the contract);  |
| **"Relevant Transfer"**  | a transfer of employment to which the Employment Regulations applies;  |
| **"Relevant Transfer Date"**  | in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place. For the purposes of Part D: Pensions and its Annexes, where the  |

|  |  |
| --- | --- |
|  | *Consultant* or a Subcontractor was the Former *Consultant* and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the *Consultant* (or Subcontractor), references to the Relevant Transfer Date shall become references to the Start Date;  |
| **"Staffing** **Information"**  | in relation to all persons identified on the *Consultant*'s Provisional *Consultant* Personnel List or *Consultant*'s Final *Consultant* Personnel List, as the case may be, such information as the *Client* may reasonably request (subject to all applicable provisions of the Data Protection Legislation), but including in an anonymised format: (a) their ages, dates of commencement of employment or engagement, gender and place of work;  |
|  | (b) details of whether they are employed, selfemployed contractors or consultants, agency workers or otherwise;  |
|  | (c) the identity of the employer or relevant contracting Party;  |
|  | (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;  |
|  | (e) their wages, salaries, bonuses and profit sharing arrangements as applicable;  |
|  | (f) 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;  |
|  | (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);  |
|  | (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;  |
|  | (i) 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  |
|  | (j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;  |
| **"*Consultant*'s Final** ***Consultant*** **Personnel List"**  | a list provided by the *Consultant* of all *Consultant* Staff who will transfer under the Employment Regulations on the Service Transfer Date;  |
| **"*Consultant*'s Provisional** ***Consultant*** **Personnel List"**  | a list prepared and updated by the *Consultant* of all *Consultant* Staff who are at the date of the list wholly or mainly engaged in or 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*;  |
| **"Term"**  | the period commencing on the Start Date and ending on the expiry of the Initial Period or any Extension Period or on earlier termination of the relevant Contract;  |
| **"Transferring *Client* Employees"**  | those employees of the *Client* to whom the Employment Regulations will apply on the Relevant Transfer Date;  |
| **"Transferring Former** ***Consultant*** **Employees"**  | in relation to a Former *Consultant*, those employees of the Former *Consultant* to whom the Employment Regulations will apply on the Relevant Transfer Date.  |

1. **INTERPRETATION**
	1. Where a provision in this Schedule imposes any obligation on the *Consultant* including (without limit) to comply with a requirement or provide an indemnity, undertaking or warranty, the *Consultant* shall procure that each of its Subcontractors shall comply with such obligation and provide such indemnity, undertaking or warranty to CCS, the *Client*, Former *Consultant*, Replacement *Consultant* or Replacement Subcontractor, as the case may be and where the Subcontractor fails to satisfy any claims under such indemnities the *Consultant* will be liable for satisfying any such claim as if it had provided the indemnity itself.
	2. The provisions of Paragraphs 2.1 and 2.6 of Part A, Paragraph 3.1 of Part B, Paragraphs 1.5, 1.7 and 1.9 of Part C, Part D and Paragraphs 1.4, 2.3 and 2.8 of Part E of this Schedule (together “Third Party Provisions”) confer benefits on third parties (each such person a “Third Party Beneficiary”) and are intended to be enforceable by Third Party Beneficiaries by virtue of the CRTPA.
	3. Subject to Paragraph 2.2 above, a person who is not a Party to this contract has no right under the CRTPA to enforce any term of this contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
	4. No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the *Client*, which may, if given, be given on and subject to such terms as the *Client* may determine.
	5. Any amendments or modifications to this contract may be made, and any rights created under Paragraph 2.2 above may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.
2. **Which parts of this Schedule apply**

Only the following parts of this Schedule shall apply to this contract:

* + - Part A Not used
		- Part B (Staff Transfer at the Start Date – Transfer from a Former

*Consultant*) o Part C Not used

* + - Part D (Pensions)
			* Annex D1 Not used
			* Annex D2 Not used
			* Annex D3 (LGPS)
			* Annex D4 (Other Schemes)

o Part E (Staff Transfer on Exit)

**Part A: Not used**

**Part B: Staff transfer at the Start Date**

**Transfer from a Former *Consultant***

1. **What is a relevant transfer**
	1. The *Client* and the *Consultant* 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

* + 1. 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 any Subcontractor and each such Transferring Former *Consultant* Employee.
	1. The *Client* 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 (without limit) 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 *Client* shall procure that each Former *Consultant* makes, any necessary apportionments in respect of any periodic payments.
1. **Indemnities given by the Former *Consultant***
	1. Subject to Paragraph 2.2, the *Client* shall procure that each Former *Consultant* shall indemnify the *Consultant* and any Subcontractor against any Employee Liabilities arising from or as a result of:
		1. any act or omission by the Former *Consultant* in respect of any Transferring Former *Consultant* Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former *Consultant* Employee 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;

* + 1. 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 Subcontractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
		2. 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;
		3. 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 Subcontractor as appropriate may be liable by virtue of the relevant Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
		4. 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 Subcontractor to comply with regulation 13(4) of the Employment Regulations.

* 1. The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the *Consultant* or any Subcontractor 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 Subcontractor to occur in the period from (and including) the Relevant Transfer Date; or
		2. arising from the failure by the *Consultant* and/or any Subcontractor to comply with its obligations under the Employment Regulations.
	2. If any person who is not identified by the Former *Consultant* as a Transferring Former *Consultant* Employee claims, or it is determined in relation to any person who is not identified by the Former *Consultant* 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 Subcontractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
		1. the *Consultant* shall, or shall procure that the Subcontractor shall, within 5 Working Days of becoming aware of that fact, notify the *Client* and in writing and, where required by the *Client*, notify the relevant Former *Consultant* in writing; and
		2. the Former *Consultant* may offer (or may procure that a third party may offer) employment to such person, or take such other steps as the Former *Consultant* considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law, within 15 Working Days of receipt of notice from the *Consultant* and/or the Subcontractor (as appropriate).
	3. If an offer referred to in Paragraph 2.3.2 is accepted, , or if the situation has otherwise been resolved by the Former *Consultant* and/or the *Client*, the *Consultant* shall, or shall procure that the Subcontractor shall, immediately release the person from his/her employment or alleged employment.
	4. If by the end of the 15 Working Day period referred to in Paragraph 2.3.2:
		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 any Subcontractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person;
	5. Subject to the *Consultant* and/or any Subcontractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law and subject also to Paragraph 2.7, the *Client* shall procure that the Former *Consultant* will indemnify the *Consultant* and/or the relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment pursuant to the provisions of Paragraph 2.5 provided that the *Consultant* takes, or shall procure that the Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.
	6. The indemnity in Paragraph 2.6:
		1. shall not apply to:

(a) 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 Subcontractor; or

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

* + 1. shall apply only where the notification referred to in Paragraph 2.3.1 is made by the *Consultant* and/or any Subcontractor (as appropriate) to the *Client* and, if applicable, the Former *Consultant*, within 6 months of the Start Date.
	1. If Subcontract or any such person as is described in Paragraph 2.3 is neither re-employed by the Former *Consultant* nor dismissed by the *Consultant* and/or any Subcontractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the *Consultant* and/or any Subcontractor and the *Consultant* shall, or shall procure that the Subcontractor shall, comply with such obligations as may be imposed upon it under applicable Law.
1. **Indemnities the *Consultant* must give and its obligations**
	1. Subject to Paragraph 3.2, the *Consultant* shall indemnify the *Client* and/or the Former *Consultant* against any Employee Liabilities arising from or as a result of:
		1. any act or omission by the *Consultant* or any Subcontractor in respect of any Transferring Former *Consultant* Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former *Consultant*

Employee whether occurring before, on or after the Relevant Transfer Date;

* + 1. the breach or non-observance by the *Consultant* or any

Subcontractor 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 Subcontractor is contractually bound to honour;
		1. 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 Subcontractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
		2. any proposal by the *Consultant* or a Subcontractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former *Consultant* Employees to their material detriment on or after their transfer to the *Consultant* or a Subcontractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former *Consultant* Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
		3. any statement communicated to or action undertaken by the *Consultant* or a Subcontractor 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 *Client* and/or the Former *Consultant* in writing;
		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 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 Subcontractor, 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;
		5. a failure of the *Consultant* or any Subcontractor 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;
		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 *Consultant* or any Subcontractor 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; and
		7. a failure by the *Consultant* or any Subcontractor to comply with its obligations under Paragraph 2.8 above

* 1. The indemnities in Paragraph 3.1 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.
	2. The *Consultant* shall comply, and shall procure that each Subcontractor 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 all its obligations in respect of all the Transferring Former *Consultant* Employees, on and from the Relevant Transfer Date (including (without limit) 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 and all such sums due under the Admission Agreement 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*.

1. **Information the *Consultant* must give**

The *Consultant* shall, and shall procure that each Subcontractor shall, promptly provide to the *Client* and/or at the *Client*’s direction, the Former *Consultant*, in writing such information as is necessary to enable the *Client* and/or the Former *Consultant* to carry out their respective duties under regulation 13 of the Employment Regulations. The *Client* shall procure that the Former *Consultant* shall promptly provide to the *Consultant* and any Subcontractor in writing such information as is necessary to enable the *Consultant* and any Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.

1. **Cabinet Office requirements**
	1. The *Consultant* shall, and shall procure that each Subcontractor shall, comply with any requirement notified to it by the *Client* relating to pensions in respect of any Transferring Former *Consultant* Employee as set down in:
		1. the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007; 5.1.2 Old Fair Deal; and/or

 5.1.3 The New Fair Deal.

* 1. Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Variation Procedure.
1. **Limits on the Former *Consultant*’s obligations**

Notwithstanding any other provisions of this Part B, where in this Part B the *Client* 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 *Client*’s contract with the Former *Consultant* contains a contractual right in that regard which the *Client* may enforce, or otherwise so that it requires only that the *Client* must use reasonable endeavours to procure that the Former *Consultant* does or does not act accordingly.

1. **Pensions**
	1. The *Consultant* shall, and shall procure that each Subcontractor shall, comply with:
		1. the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment

(Pension Protection) Regulations 2005 for all transferring staff; ; and

* + 1. Part D: Pensions (and its Annexes) to this Schedule.

**Part C: Not used Part D: Pensions**

1. **Definitions**

In this Part D and Part E, the following words have the following meanings and they shall supplement the defined terms in clause 11 of the contract, and shall be deemed to include the definitions set out in the Annexes to this Part D:

|  |  |
| --- | --- |
| **"Actuary"**  | a Fellow of the Institute and Faculty of Actuaries;  |
| **"Admission Agreement"**  | either or both of the CSPS Admission Agreement (as defined in Annex D1: CSPS) or the LGPS Admission Agreement (as defined in Annex D3: LGPS), as the context requires;  |
| **“Best Value Direction”**  | the Best Value Authorities Staff Transfers (Pensions) Direction 2007 or the Welsh Authorities Staff Transfers (Pensions) Direction 2012 (as appropriate);   |
| **"Broadly Comparable"**  | (a) in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary’s Department of a broad comparability certificate; and/or  |
|  | (b) in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme’s certificate of broad comparability issued by the Government Actuary’s Department, and "**Broad Comparability**" shall be construed accordingly;  |
| **"CSPS"**  | the schemes as defined in Annex D1 to this Part D;  |
| **“Direction** **Letter/Determination”**  | has the meaning in Annex D2 to this Part D;   |

|  |  |
| --- | --- |
| **“Fair Deal Eligible Employees”**  | each of the CSPS Eligible Employees, the NHSPS Eligible Employees and/or the LGPS Eligible Employees (as applicable) (and shall include any such employee who has been admitted to and/or remains eligible to join a Broadly Comparable pension scheme at the relevant time in accordance with paragraph 10 or 11 of this Part D);   |
| **"Fair Deal Employees"**  | any of:  (a) Transferring *Client* Employees;  |
|  |  (b) Transferring Former *Consultant* Employees;  |
|  | (c) employees who are not Transferring *Client* Employees or Transferring Former *Consultant* Employees but to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the *Consultant* or a Subcontractor, and whose employment is not terminated in accordance with the provisions of Paragraphs 2.5 of Parts A or B or Paragraph 1.4 of Part C;  |
|  | (d) where the *Consultant* or a Subcontractor was the Former *Consultant*, the employees of the *Consultant* (or Subcontractor);  |
|  | who at the Relevant Transfer Date are or become entitled to New Fair Deal or Best Value Direction protection in respect of any of the Statutory Schemes or a Broadly Comparable pension scheme provided in accordance with paragraph 10 of this Part D as notified by the *Client*;  |
|  |   |
| **"Fund Actuary"**  | a Fund Actuary as defined in Annex D3 to this Part D;  |
| **"LGPS"**  | the scheme as defined in Annex D3 to this Part D;  |
| **"NHSPS"**  | the schemes as defined in Annex D2 to this Part D;  |
|  | (a)  |
|  | (b)  |
| **"Statutory Schemes"**  | means the CSPS, NHSPS or LGPS.  |

1. ***Consultant* obligations to participate in the pension schemes**
	1. In respect of all or any Fair Deal Employees Annex D3: LGPS shall apply, as appropriate.
	2. The *Consultant* undertakes to do all such things and execute any documents (including any relevant Admission Agreement and/or Direction Letter/ Determination, if necessary) as may be required to enable the *Consultant* to participate in the appropriate Statutory Scheme in respect of the Fair Deal Employees and shall bear its own costs in such regard.
	3. The *Consultant* undertakes:
		1. to pay to the Statutory Schemes all such amounts as are due under the relevant Admission Agreement and/or Direction Letter/ Determination or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required; and
		2. subject to paragraph 5 of Annex D3: LGPS to be fully responsible for all other costs, contributions, payments and other amounts relating to its participation in the Statutory Schemes, including for the avoidance of doubt any exit payments and the costs of providing any bond, indemnity or guarantee required in relation to such participation.
	4. Where the *Consultant* is the Former *Consultant* (or a Subcontractor is a Subcontractor of the Former *Consultant*) and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the *Consultant* (or Subcontractor) at the Start Date, this Part D and its Annexes shall be modified accordingly so that the *Consultant* (or Subcontractor) shall comply with its requirements from the Start Date or, where it previously provided a Broadly Comparable pension scheme, from the date it is able to close accrual of its Broadly Comparable pension scheme (following appropriate consultation and contractual changes as appropriate) if later. The *Consultant* (or Sub- contractor) shall make arrangements for a bulk transfer from its Broadly Comparable pension scheme to the relevant Statutory Scheme in accordance with the requirements of the previous contract with the *Client*2.

1. ***Consultant* obligation to provide information**
	1. The *Consultant* undertakes to the *Client:*
		1. to provide all information which the *Client* may reasonably

request concerning matters referred to in this Part D as expeditiously as possible; and

* + 1. not to issue any announcements to any Fair Deal Employee prior to the Relevant Transfer Date concerning the matters stated in this Part D without the consent in writing of the *Client* (such consent not to be unreasonably withheld or delayed);
		2. retain such records as would be necessary to manage the pension aspects in relation to any current or former Fair Deal Eligible Employees arising on expiry or termination of the relevant Contract.
1. **Indemnities the *Consultant* must give**
	1. The *Consultant* shall indemnify and keep indemnified CCS, the *Client* and/or any Replacement *Consultant* and/or any Replacement Subcontractor on demand from and against all and any Losses whatsoever suffered or incurred by it or them which:
		1. arise out of or in connection with any liability towards all and any Fair Deal Employees arising in respect of service on or after the

Relevant Transfer Date which arise from any breach by the

 *Consultant* of this Part D, and/or the Direction

Letter/Determination and/or the LGPS Admission Agreement;

* + 1. relate to the payment of benefits under and/or participation in a pension scheme (as defined in section 150(1) Finance Act 2004) provided by the *Consultant* or a Subcontractor on and after the Relevant Transfer Date until the date of termination or expiry of the relevant Contract, including the Statutory Schemes or any Broadly Comparable pension scheme provided in accordance with paragraphs 10 or 11 of this Part D;
		2. relate to claims by Fair Deal Employees of the *Consultant* and/or of any Subcontractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:

Subcontractor:

* + - * 1. relate to any rights to benefits under a pension scheme (as defined in section 150(1) Finance Act 2004) in respect of periods of employment on and after the Relevant Transfer

Date until the date of termination or expiry of the relevant Contract; or

* + - * 1. arise out of the failure of the *Consultant* and/or any relevant Subcontractor to comply with the provisions of this Part D before the date of termination or expiry of the relevant Contract; and/or

* 1. The indemnities in this Part D and its Annexes:
		1. shall survive termination of the relevant Contract; and
		2. shall not be affected by the caps on liability contained in Clause 11 the Core Terms (How much you can be held responsible for).
1. **What happens if there is a dispute**
	1. The Dispute Resolution Procedure will not apply to any dispute (i) between the CCS and/or the *Client* and/or the *Consultant* or (ii) between their respective actuaries and/or the Fund Actuary about any of the actuarial matters referred to in this Part D and its Annexes shall in the absence of agreement between the CCS and/or the *Client* and/or the *Consultant* be referred to an independent Actuary:
		1. who will act as an expert and not as an arbitrator;
		2. whose decision will be final and binding on the CCS and/or the *Client* and/or the *Consultant*; and
		3. whose expenses shall be borne equally by the CCS and/or the *Client* and/or the *Consultant* unless the independent Actuary shall otherwise direct.
	2. The independent Actuary shall be agreed by the Parties or, failing such agreement the independent Actuary shall be appointed by the President for the time being of the Institute and Faculty of Actuaries on the application by the Parties.
2. **Other people’s rights**
	1. The Parties agree Clause 20 the Core Terms (Other people’s rights in this contract) does not apply and that the CRTPA applies to this Part D to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to him or her or it by the *Consultant* under this Part D, in his or her or its own right under section 1(1) of the CRTPA.
	2. Further, the *Consultant* must ensure that the CRTPA will apply to any SubContract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them by the Subcontractor in his or her or its own right under section 1(1) of the CRTPA.
3. **What happens if there is a breach of this Part D**
	1. The *Consultant* agrees to notify the *Client* should it breach any obligations it has under this Part D and agrees that the *Client* shall be entitled to terminate its Contract for material Default in the event that the *Consultant*:
		1. commits an irremediable breach of any provision or obligation it has under this Part D; or
		2. commits a breach of any provision or obligation it has under this Part D which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice from the *Client* giving particulars of the breach and requiring the *Consultant* to remedy it.
4. **Transferring Fair Deal Employees**
	1. Save on expiry or termination of the relevant Contract, if the employment of any Fair Deal Eligible Employee transfers to another employer (by way of a transfer under the Employment Regulations or other form of compulsory transfer of employment) the *Consultant* shall or shall procure that any relevant Subcontractor shall:
		1. notify the *Client* as far as reasonably practicable in advance of the transfer to allow the *Client* to make the necessary arrangements for participation with the relevant Statutory Scheme(s);
		2. consult with about, and inform those Fair Deal Eligible

Employees of the pension provisions relating to that transfer; and

* + 1. procure that the employer to which the Fair Deal Eligible Employees are transferred (the **"New Employer"**) complies with the provisions of this Part D and its Annexes provided that references to the "*Consultant*" will become references to the New Employer, references to "Relevant Transfer Date" will become references to the date of the transfer to the New Employer and references to "Fair Deal Employees" will become references to the Fair Deal Eligible Employees so transferred to the New Employer.
1. **What happens to pensions if this Contract ends**
	1. The provisions of Part E: Staff Transfer On Exit (Mandatory) apply in relation to pension issues on expiry or termination of the relevant Contract.
	2. The *Consultant* shall (and shall procure that any of its Subcontractors shall) prior to the termination of the relevant Contract provide all such co-operation and assistance (including co-operation and assistance from the Broadly Comparable pension scheme’s Actuary) as the Replacement *Consultant* and/or the relevant Administering *Client* and/or the *Client* may reasonably require, to

enable the Replacement *Consultant* to participate in the appropriate Statutory Scheme in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection following a Service Transfer.

1. **Broadly Comparable Pension Schemes on the Relevant Transfer Date**
	1. If the terms of any of paragraphs 4 of Annex D3: LGPS applies, the *Consultant* must (and must, where relevant, procure that each of its Subcontractors will) ensure that, with effect from the Relevant Transfer Date until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme, and then on such terms as may be decided by the *Client*.
	2. Such Broadly Comparable pension scheme must be:
		1. established by the Relevant Transfer Date3;
		2. a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
		3. capable of receiving a bulk transfer payment from the relevant Statutory Scheme or from a Former *Consultant*’s Broadly

Comparable pension scheme (unless otherwise instructed by the *Client*);

* + 1. capable of paying a bulk transfer payment to the Replacement *Consultant*’s Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the *Client*); and
		2. maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the *Client*).
	1. Where the *Consultant* has set up a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 10, the *Consultant* shall (and shall procure that any of its Subcontractors shall):
		1. supply to the *Client* details of its (or its Subcontractor’s) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the Relevant Transfer Date) covering all relevant Fair Deal Employees, as soon as it is able to do so before the Relevant Transfer Date (where possible) and in any event no later than seven (7) days after receipt of the certificate;
		2. be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995;
		3. instruct any such Broadly Comparable pension scheme’s Actuary to provide all such co-operation and assistance in agreeing bulk transfer process with the Actuary to the Former *Consultant*’s Broadly Comparable pension scheme or the Actuary to the relevant Statutory Scheme (as appropriate) and to provide all such co-operation and assistance with any other Actuary appointed by the *Client* (where applicable). This will be with a view to the bulk transfer terms providing day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme in respect of any Fair Deal Eligible Employee who consents to such a transfer4; and
		4. provide a replacement Broadly Comparable pension scheme in accordance with this paragraph 10 with immediate effect for those Fair Deal Eligible Employees who are still employed by the *Consultant* and/or relevant Subcontractor and are still eligible for

New Fair Deal protection in the event that the *Consultant* and/or Subcontractor's Broadly Comparable pension scheme is terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).

* 1. Where the *Consultant* has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 10, the *Consultant* shall (and shall procure that any of its Subcontractors shall) prior to the termination of the relevant Contract:
		1. allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement *Consultant*’s Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be on a past service reserve basis which should be calculated allowing for projected final salary at the assumed date of retirement, leaving service or death (in the case of final salary benefits). The actuarial basis for this past service reserve basis should be aligned to the funding requirements of the Broadly Comparable

pension scheme in place at the time the bulk transfer terms are offered. The bulk transfer terms shall be subject to an underpin in relation to any service credits awarded in the Broadly Comparable pension scheme in accordance with paragraph 10.3.3 such that the element of the past service reserve amount which relates to such service credits shall be no lower than that required by the bulk transfer terms that were agreed in accordance with paragraph 10.3.3 but using the last day of the Fair Deal Eligible Employees’ employment with the *Consultant* or Subcontractor (as appropriate) as the date used to determine the actuarial assumptions; and

* + 1. if the transfer payment paid by the trustees of the Broadly Comparable pension scheme is less (in the opinion of the Actuary to the Replacement *Consultant*’s Broadly Comparable pension scheme (or to the relevant Statutory Scheme if applicable)) than the transfer payment which would have been paid had paragraph 10.4.1 been complied with, the *Consultant* shall (or shall procure that the Subcontractor shall) pay the amount of the difference to the Replacement *Consultant*’s Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) or as the *Client* shall otherwise direct. The *Consultant* shall indemnify the *Client* or the Replacement *Consultant*’s Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the *Client* directs) for any failure to pay the difference as required under this paragraph.

1. **Broadly Comparable Pension Scheme in Other Circumstances**
	1. If the terms of any of paragraphs 2.2 of Annex D3: LGPS apply, the *Consultant* must (and must, where relevant, procure that each of its Subcontractors will) ensure that, with effect from the cessation of participation in the Statutory Scheme, until the day before the Service Transfer Date, the relevant Fair Deal Eligible Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme at the date of cessation of participation in the relevant Statutory Scheme, and then on such terms as may be decided by the *Client*.
	2. Such Broadly Comparable pension scheme must be:
		1. established by the date of cessation of participation in the Statutory Scheme5;
		2. a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
		3. capable of receiving a bulk transfer payment from the relevant Statutory Scheme (where instructed to do so by the *Client*);
		4. capable of paying a bulk transfer payment to the Replacement *Consultant*’s Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the *Client*); and
		5. maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the *Client*).
	3. Where the *Consultant* has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 11, the *Consultant* shall (and shall procure that any of its Subcontractors shall):
		1. supply to the *Client* details of its (or its Subcontractor’s) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the date of cessation of participation in the Statutory Scheme) covering all relevant Fair Deal Eligible Employees, as soon as it is able to do so before the cessation of participation in the Statutory Scheme (where possible) and in any event no later than seven (7) days after receipt of the certificate;
		2. be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995;
		3. where required to do so by the *Client*, instruct any such Broadly Comparable pension scheme’s Actuary to provide all such cooperation and assistance in agreeing a bulk transfer process with the Actuary to the relevant Statutory Scheme and to provide all such co-operation and assistance with any other Actuary appointed by the *Client* (where applicable). The *Consultant* must ensure that day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme are provided in respect of any Fair Deal Employee who consents to such a transfer from the Statutory Scheme and the *Consultant* shall be fully responsible for any costs of providing those credits in excess of the bulk transfer payment received by the Broadly Comparable pension scheme6; and
		4. provide a replacement Broadly Comparable pension scheme in accordance with this paragraph 11 with immediate effect for

those Fair Deal Eligible Employees who are still employed by the *Consultant* and/or relevant Subcontractor and are still eligible for New Fair Deal protection in the event that the *Consultant* and/or Subcontractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).

* 1. Where the *Consultant* has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 11, the *Consultant* shall (and shall procure that any of its Subcontractors shall) prior to the termination of the relevant Contract allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement *Consultant*’s Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be sufficient to secure day for day and/or pound for pound credits (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) in the

Replacement *Consultant*’s Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the Replacement *Consultant*’s Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) to fund the required credits (“**the Shortfall**”), the *Consultant* or the Subcontractor (as agreed between them) must pay the Replacement *Consultant*’s Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) the Shortfall as required, provided that in the absence of any agreement between the *Consultant* and any Subcontractor, the Shortfall shall be paid by the *Consultant*. The *Consultant* shall indemnify the *Client* or the Replacement *Consultant*’s Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the *Client* directs) for any failure to pay the Shortfall under this paragraph.

1. **Right of Set-off**
	1. The *Client* shall have a right to set off against any payments due to the *Consultant* under the relevant Contract an amount equal to:

 12.1.1

12.1.2 any unpaid employer’s contributions or employee’s contributions or any other financial obligations under the LGPS or any LGPS Admission Agreement in respect of the LGPS Eligible Employees whether due from the *Consultant* or from any relevant Subcontractor or due from any third party under any indemnity, bond or guarantee;

1.1.1.1 and shall pay such set off amount to the relevant Statutory Scheme.

* 1. The *Client* shall also have a right to set off against any payments due to the *Consultant* under the relevant Contract all reasonable costs and expenses incurred by the *Client* as result of Paragraphs 12.1 above.

**Annex D1: Not used**

**Annex D2: Not used Annex D3:**

**Local Government Pension Schemes (LGPS) 1. Definitions**

In this Annex D3: LGPS to Part D: Pensions, the following words have the following meanings and they shall supplement the defined terms in clause 11 of the contract:

|  |  |
| --- | --- |
| **“2013 Regulations”**  | the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) (as amended from time to time);  |
| "**Administering *Client***"  | in relation to **the Fund** the relevant Administering *Client* of that Fund for the purposes of the 2013 Regulations;  |
| "**Fund Actuary**"  | the actuary to a Fund appointed by the Administering *Client* of that Fund;  |
| "**Fund**"  | **The West Yorkshire Pension Fund within the LGPS;**  |
| **“Initial Contribution Rate”**  | 17.1% of pensionable pay (as defined in the 2013 Regulations) from the Contract Date, 16.7% from 1 April 2024 and 16.3% from 1 April 2025; |
| "**LGPS**"  | the Local Government Pension Scheme as governed by the LGPS Regulations, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the Local Government Pension Scheme;  |
| "**LGPS Admission Agreement**"  | an admission agreement within the meaning in Schedule 1 of the 2013 Regulations;  |
| "**LGPS Admission Body**"  | an admission body (within the meaning of Part 3 of Schedule 2 of the 2013 Regulations);  |
| "**LGPS Eligible Employees**"  | any LGPS Fair Deal Employee who at the relevant time is an active member or eligible to participate in the LGPS under an LGPS Admission Agreement;  |
| "**LGPS Fair Deal Employees**"  | any Fair Deal Employee who at the Relevant Transfer Date is or becomes entitled to protection in respect of the LGPS or a pension scheme that is Broadly Comparable to the LGPS in accordance with the provisions in accordance with the provisions of New Fair Deal and/or the Best Value Direction;  |
| "**LGPS Regulations**"  | the 2013 Regulations and The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (SI 2014/525), and any other regulations (in each case as amended from time to time) which are from time to time applicable to the LGPS.  |

1. ***Consultant* to become an LGPS Admission Body**
	1. In accordance with the principles of New Fair Deal and/or the Best Value Direction, the *Consultant* and/or any of its Subcontractors to which the employment of any LGPS Fair Deal Employee compulsorily transfers as a result of either the award of the relevant Contract or a Relevant Transfer, if not a scheme employer which participates automatically in the LGPS, shall each become an LGPS Admission Body by entering into an LGPS Admission Agreement on or before the Relevant Transfer Date to enable the LGPS Fair Deal Employees to retain either continuous active membership of or eligibility for the LGPS on and from the Relevant Transfer Date for so long as they remain employed in connection with the delivery of the *service* under the relevant Contract.

**OPTION 1**

* 1. Any LGPS Fair Deal Employees who:
		1. were active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date shall be admitted to the LGPS with effect on and from the Relevant Transfer Date; and
		2. were eligible to join the LGPS (or a Broadly Comparable pension scheme) but were not active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date shall retain the ability to join the LGPS on or after the Relevant Transfer Date if they wish to do so.

2.2.3

* 1. The *Consultant* will (and will procure that its Subcontractors (if any) will) provide at its own cost any indemnity, bond or guarantee required by an Administering *Client* in relation to an LGPS Admission Agreement.
1. **Broadly Comparable Scheme**
	* + 1. 3.1 If the *Consultant* and/or any of its Subcontractors is unable to obtain an LGPS Admission Agreement in accordance with paragraph 2.1 because the Administering *Client* will not allow it to participate in the Fund, the *Consultant* shall (and procure that its Subcontractors shall), with effect from the Relevant Transfer Date, offer the LGPS Fair Deal Employees membership of a pension scheme which is Broadly Comparable to LGPS on the Relevant Transfer Date in accordance with the provisions of paragraph 10 of Part D.
			2. 3.2 If the *Consultant* and/or any of its Subcontractors becomes an LGPS Admission Body in accordance with paragraph 2.1 but the LGPS Admission Agreement is terminated during the term of the relevant Contract for any reason at a time when the *Consultant* or Subcontractors still employs any LGPS Eligible Employees, the *Consultant* shall (and procure that its Subcontractors shall) at no extra cost to the *Client*, offer the remaining LGPS Eligible Employees membership of a pension scheme which is Broadly Comparable to the LGPS on the date the LGPS Eligible Employees ceased to participate in the LGPS in accordance with the provisions of paragraph 11 of Part D.
2. **Discretionary Benefits**

**Where the *Consultant* and/or any of its Subcontractors is an LGPS**

**Admission Body, the *Consultant* shall (and procure that its**

**Subcontractors shall) comply with its obligations under regulation 60 of the 2013 Regulations in relation to the preparation of a discretionary policy statement.**

1. **LGPS Risk Sharing7**
	1. Subject to paragraphs 5.4 to 5.10, if at any time during the term of the relevant Contract the Administering *Client*, pursuant to the LGPS Admission Agreement or the LGPS Regulations, requires the *Consultant* or any Subcontractor to pay employer contributions or other payments to the Fund in aggregate in excess of the Initial Contribution Rate, the excess of employer contributions above the Initial Contribution Rate for the relevant Contract Year (the “Excess Amount”) shall be paid by the *Consultant* or the Subcontractor, as the case may be, and the *Consultant* shall be reimbursed by the *Client*.
	2. Subject to paragraphs 5.4 to 5.9 and 5.11, if at any time during the term of the relevant Contract, the Administering *Client*, pursuant to the LGPS Admission

Agreement or the LGPS Regulations, requires the *Consultant* or any

Subcontractor to pay employer contributions or payments to the Fund in aggregate below the Initial Contribution Rate for the relevant Contract Year, the *Consultant* shall reimburse the *Client* an amount equal to A–B (the “Refund Amount”) where:

* + - * 1. **= the amount which would have been paid if contributions and payments had been paid equal to the Initial Contribution Rate for that Contract Year; and**
				2. **= the amount of contributions or payments actually paid by the *Consultant* or Subcontractor for that Contract Year, as the case may be, to the Fund.**
	1. Subject to paragraphs 5.4 to 5.10, where the Administering *Client* obtains an actuarial valuation and a revised rates and adjustment certificate under the LGPS Regulations and/or the terms of the LGPS Admission Agreement when the LGPS Admission Agreement ceases to have effect and the *Consultant* or any Subcontractor is required to pay any exit payment under Regulation 64(2) of the 2013 Regulations (the “**Exit Payment**”), such Exit Payment shall be paid by the *Consultant* or any Subcontractor (as the case may be) and the *Consultant* shall be reimbursed by the *Client*.
	2. The *Consultant* and any Subcontractors shall at all times be responsible for the following costs:
		1. any employer contributions relating to the costs of early retirement benefits arising on redundancy or as a result of business efficiency under Regulation 30(7) of the 2013 Regulations or otherwise;
		2. any payment of Fund benefits to active members on the grounds of ill health or infirmity of mind or body under Regulation 35 of the 2013 Regulations or otherwise8;
		3. any payment of Fund benefits to deferred or deferred pensioner

members on the grounds of ill health or infirmity of mind or body under Regulation 38 of the 2013 Regulations or otherwise;

* + 1. any employer contributions relating to the costs of early or flexible retirement where the actuarial reduction is waived in whole or in part or a cost neutral reduction is not applied with the consent of the *Consultant* or any relevant Subcontractor including without limitation any decision made under Regulation 30(8) of the 2013 Regulations or Schedule 2 of The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014;
		2. any employer contributions relating to the costs of enhanced benefits made at the discretion of the *Consultant* or any relevant

Subcontractors including without limitation additional pension awarded under Regulation 31 of the 2013 Regulations or otherwise;

* + 1. any increase to the employer contribution rate resulting from the award of pay increases by the *Consultant* or relevant Subcontractors in respect of all or any of the LGPS Eligible Employees in excess of the pay increases assumed in the Fund's most recent actuarial valuation (unless the *Consultant* and/or any Subcontractor is contractually bound to provide such increases on the Relevant Transfer Date);
		2. to the extent not covered above, any other costs arising out of or in connection with the exercise of any discretion or the grant of any consent under the LGPS Regulations by the *Consultant* or any relevant Subcontractors where a member does not have an absolute entitlement to that benefit under the LGPS;
		3. any cost of the administration of the Fund that are not met through the *Consultant*'s or Subcontractor’s employer contribution rate, including without limitation an amount specified in a notice given by the Administering *Client* under Regulation 70 of the 2013 Regulations;
		4. the costs of any reports and advice requested by or arising from an instruction given by the *Consultant* or a Subcontractor from the Fund Actuary; and/or
		5. any interest payable under the 2013 Regulations or LGPS Administration Agreement.
	1. For the purposes of calculating any Exit Payment, Excess Amount or Refund Amount, any part of such an amount which is attributable to any costs which the *Consultant* or Subcontractors are responsible for in accordance with paragraph 5.4 above shall be disregarded and excluded from the calculation. In the event of any dispute as to level of any cost that should be excluded from the calculation, the opinion of the Fund Actuary shall be final and binding.
	2. Where the Administering *Client* obtains an actuarial valuation and a revised rates and adjustment certificate under the LGPS Regulations and/or the terms of the LGPS Admission Agreement when the LGPS Admission Agreement ceases to have effect and the *Consultant* or any Subcontractor receives payment of an exit credit payment under Regulation 64(2) of the 2013 Regulations (the “**Exit Credit**”), the *Consultant* shall (or procure that any Subcontractor shall) reimburse the *Client* an amount equal to the Exit Credit within twenty (20) Working Days of receipt of the Exit Credit.
	3. The *Consultant* shall (or procure that the Subcontractor shall) notify the *Client* in writing within twenty (20) Working Days:
		1. of the end of each Contract Year of any Excess Amount or Refund Amount due in respect of the Contract Year that has just

ended and provide a reasonable summary of how the Excess Amount or Refund Amount was calculated; and

* + 1. of being informed by the Administering *Client* of any Exit Payment or Exit Credit that is determined by as being due from or to the *Consultant* or a Subcontractor and provide a copy of any revised rates and adjustments certificate detailing the Exit Payment or Exit Credit and its calculation.
	1. Within twenty (20) Working Days of receiving the notification under paragraph

5.7 above, the *Client* shall either:

* + 1. notify the *Consultant* in writing of its acceptance of the Excess Amount, Refund Amount or Exit Payment;
		2. request further information or evidence about the Excess Amount, Refund Amount or Exit Payment from the *Consultant*; and/or
		3. request a meeting with the *Consultant* to discuss or clarify the information or evidence provided.
	1. Where the Excess Amount, Refund Amount or Exit Payment is agreed following the receipt of further information or evidence or following a meeting in accordance with paragraph 5.8 above, the *Client* shall notify the *Consultant* in writing. In the event that the *Consultant* and the *Client* are unable to agree the amount of the Excess Amount, Refund Amount or Exit Payment then they shall follow the Dispute Resolution Procedure.
	2. Any Excess Amount or Exit Payment agreed by the *Client* or in accordance with the Dispute Resolution Procedure shall be paid by the *Client* within timescales as agreed between *Client* and *Consultant*. The amount to be paid by the *Client* shall be an amount equal to the Excess Amount or Exit Payment less an amount equal to any corporation tax relief which has been claimed in respect of the Excess Amount or Exit Payment by the *Consultant* or a Subcontractor.
	3. Any Refund Amount agreed by the *Client* or in accordance with the Dispute Resolution Procedure as payable by the *Consultant* or any Subcontractor to the *Client* shall be paid by the *Consultant* or any Subcontractor forthwith as the liability has been agreed. In the event the *Consultant* or any Subcontractor fails to pay any agreed Refund Amount, the *Client* shall demand in writing the immediate payment of the agreed Refund Amount by the *Consultant* and the *Consultant* shall make payment within seven (7) Working Days of such demand.
	4. This paragraph 5 shall survive termination of the relevant Contract.

**Annex D4: Other Schemes NOT USED**

**Part E: Staff Transfer on Exit 1. Obligations before a Staff Transfer**

 1.1 The *Consultant* agrees that within 20 Working Days of the earliest of:

* + 1. receipt of a notification from the *Client* of a Service Transfer or intended Service Transfer;
		2. receipt of the giving of notice of early termination or any Partial Termination of the relevant Contract;
		3. the date which is 12 Months before the end of the Term; and
		4. receipt of a written request of the *Client* at any time (provided that the *Client* shall only be entitled to make one such request in any

6 Month period),

it shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, the *Consultant*'s Provisional *Consultant*

Personnel List, together with the Staffing Information in relation to the *Consultant*'s Provisional *Consultant* Personnel List and it shall provide an updated *Consultant*'s Provisional *Consultant* Personnel List at such intervals as are reasonably requested by the *Client*.

* 1. At least 20 Working Days prior to the Service Transfer Date, the *Consultant* shall provide to the *Client* or at the direction of the *Client* to any Replacement *Consultant* and/or any Replacement Subcontractor (i) the *Consultant*'s Final

*Consultant* Personnel List, which shall identify the basis upon which they are Transferring *Consultant* Employees and (ii) the Staffing Information in relation to the *Consultant*’s Final *Consultant* Personnel List (insofar as such information has not previously been provided).

* 1. The *Client* shall be permitted to use and disclose information provided by the *Consultant* under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement *Consultant* and/or Replacement Subcontractor.
	2. The *Consultant* warrants, for the benefit of the *Client*, any Replacement *Consultant*, and any Replacement Subcontractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
	3. From the date of the earliest event referred to in Paragraph 1.1.1, 1.1.2 and 1.1.3, the *Consultant* agrees that it shall not, and agrees to procure that each Subcontractor shall not, assign any person to the provision of the *service* who is not listed on the *Consultant*’s Provisional *Consultant* Personnel List and shall not without the approval of the *Client* (not to be unreasonably withheld or delayed):

* + 1. replace or re-deploy any *Consultant* Staff listed on the *Consultant*

Provisional *Consultant* Personnel List other than where any

replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces

* + 1. make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the *Consultant* Staff (including pensions and any payments connected with the termination of employment);
		2. increase the proportion of working time spent on the *service* (or the relevant part of the *service*) by any of the *Consultant* Staff save for fulfilling assignments and projects previously scheduled and agreed;
		3. 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 *Consultant* Personnel List;
		4. increase or reduce the total number of employees so engaged, or deploy any other person to perform the *service* (or the relevant part of the *service*);
		5. terminate or give notice to terminate the employment or contracts of any persons on the *Consultant*'s Provisional *Consultant* Personnel List save by due disciplinary process;

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

1.6 On or around each anniversary of the Start Date and up to four times during the last 12 Months of the Term, the *Client* may make written requests to the *Consultant* for information relating to the manner in which the *service* is organised. Within 20 Working Days of receipt of a written request the *Consultant* shall provide, and shall procure that each Subcontractor shall provide, to the *Client* such information as the *Client* may reasonably require relating to the manner in which the *service* is organised, which shall include:

* + 1. the numbers of employees engaged in providing the *service*;
		2. the percentage of time spent by each employee engaged in providing the *service*;
		3. the extent to which each employee qualifies for membership of any of the Statutory Schemes or any Broadly Comparable scheme set up pursuant to the provisions of any of the Annexes to Part D (Pensions) (as appropriate); and
		4. a description of the nature of the work undertaken by each employee by location.

1.7 The *Consultant* shall provide, and shall procure that each Subcontractor shall provide, all reasonable cooperation and assistance to the *Client*, any Replacement *Consultant* and/or any Replacement Subcontractor 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 5 Working Days following the Service Transfer Date, the *Consultant* shall provide, and shall procure that each Subcontractor shall provide, to the *Client* or, at the direction of the *Client*, to any Replacement *Consultant* and/or any Replacement Subcontractor (as appropriate), in respect of each person on the *Consultant*'s Final *Consultant* 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. **Staff Transfer when the contract ends**
	1. The *Client* and the *Consultant* acknowledge that subsequent to the commencement of the provision of the *service*, the identity of the provider of the *service* (or any part of the *service*) may change (whether as a result of termination or Partial Termination of the relevant Contract or otherwise) resulting in the *service* being undertaken by a Replacement *Consultant* and/or a Replacement Subcontractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The *Client* and the

*Consultant* 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 Subcontractor (as the case may be) and each such Transferring *Consultant* Employee.

* 1. The *Consultant* shall, and shall procure that each Subcontractor 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 Subcontractor 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 (without limit) 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 and all such sums due as a result of any Fair Deal Employees' participation in the Schemes 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 Subcontractor (as appropriate); and (ii) the Replacement *Consultant* and/or Replacement Subcontractor.
	2. Subject to Paragraph 2.4, the *Consultant* shall indemnify the *Client* and/or the Replacement *Consultant* and/or any Replacement Subcontractor against any Employee Liabilities arising from or as a result of:
		1. any act or omission of the *Consultant* or any Subcontractor in respect of any Transferring *Consultant* Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring *Consultant*

Employee whether occurring before, on or after the Service Transfer Date;

* + 1. the breach or non-observance by the *Consultant* or any Subcontractor occurring on or before the Service Transfer Date of:

any collective agreement applicable to the

Transferring *Consultant* Employees; and/or

any other custom or practice with a trade union or staff association in respect of any Transferring *Consultant*

 Employees which the *Consultant* or any

Subcontractor is contractually bound to honour;

* + 1. 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 Subcontractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
		2. 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:

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

in relation to any employee who is not identified in the *Consultant*’s Final *Consultant* Personnel List, 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 *Client* and/or Replacement *Consultant* and/or any Replacement Subcontractor, 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;

* + 1. a failure of the *Consultant* or any Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring *Consultant* Employees in respect of the period up to (and including) the Service Transfer Date);
		2. any claim made by or in respect of any person employed or formerly employed by the *Consultant* or any Subcontractor other than a Transferring *Consultant* Employee identified in the *Consultant*’s Final *Consultant* Personnel List for whom it is alleged the *Client* and/or the Replacement *Consultant* and/or any Replacement Subcontractor may be liable by virtue of the relevant Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
		3. 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 Subcontractor 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 *Client* and/or Replacement *Consultant* to comply with regulation 13(4) of the Employment Regulations.

* 1. The indemnities in Paragraph 2.3 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 Subcontractor 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 Subcontractor to occur in the period on or after the Service Transfer Date); or

* + 1. arising from the Replacement *Consultant*’s failure, and/or Replacement Subcontractor’s failure, to comply with its obligations under the Employment Regulations.

* 1. If any person who is not identified in the *Consultant*'s Final *Consultant*

Employee List claims, or it is determined in relation to any employees of the *Consultant*, that his/her contract of employment has been transferred from the *Consultant* to the Replacement *Consultant* and/or Replacement Subcontractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

* + 1. the *Client* shall procure that the Replacement *Consultant* and/or Replacement Subcontractor will, within 5 Working Days of becoming aware of that fact, notify the *Client* and the *Consultant* in writing; and
		2. the *Consultant* may offer (or may procure that a Subcontractor may offer) employment to such person, or take such other reasonable steps as it considered appropriate to deal the matter provided always that such steps are in compliance with Law, within15 Working Days of receipt of notice from the Replacement *Consultant* and/or Replacement Subcontractor.
	1. If such offer of is accepted, or if the situation has otherwise been resolved by the *Consultant* or a Subcontractor, *Client* shall procure that the Replacement *Consultant* shall, or procure that the and/or Replacement Subcontractor shall, immediately release or procure the release the person from his/her employment or alleged employment;
	2. If after the 15 Working Day period specified in Paragraph 2.5.2 has elapsed:
		1. no such offer has been made:
		2. such offer has been made but not accepted; or
		3. the situation has not otherwise been resolved the *Client* shall advise the Replacement *Consultant* and/or Replacement Subcontractor (as appropriate) that it may within 5 Working Days give notice to terminate the employment or alleged employment of such person;
	3. Subject to the Replacement *Consultant*'s and/or Replacement Subcontractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7 and in accordance with all applicable proper employment procedures set out in applicable Law and subject to Paragraph 2.9 below, the *Consultant* will indemnify the Replacement *Consultant* and/or Replacement Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the *Consultant*'s employees pursuant to the provisions of Paragraph 2.7 provided that the Replacement *Consultant* takes, or shall procure that the Replacement Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.
	4. The indemnity in Paragraph 2.8:
		1. shall not apply to:

 (a) 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 Subcontractor, or

(b) any claim that the termination of employment was unfair because the Replacement *Consultant* and/or

Replacement Subcontractor neglected to follow a fair dismissal procedure; and

* + 1. shall apply only where the notification referred to in Paragraph 2.5.1 is made by the Replacement *Consultant* and/or Replacement Subcontractor to the *Consultant* within 6 months of the Service Transfer Date..
	1. If any such person as is described in Paragraph 2.5 is neither re-employed by the *Consultant* or any Subcontractor nor dismissed by the Replacement *Consultant* and/or Replacement Subcontractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring *Consultant* Employee. .
	2. The *Consultant* shall comply, and shall procure that each Subcontractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Subcontractor shall perform and discharge, all its obligations in respect of any person identified in the *Consultant*’s Final *Consultant* Personnel List before and on 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 and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme 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:

the *Consultant* and/or any Subcontractor; and

the Replacement *Consultant* and/or the Replacement Subcontractor.

* 1. The *Consultant* shall, and shall procure that each Subcontractor shall, promptly provide the *Client* and any Replacement *Consultant* and/or Replacement Subcontractor, in writing such information as is necessary to enable the *Client*, the Replacement *Consultant* and/or Replacement Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations. The *Client* shall procure that the Replacement *Consultant* and/or Replacement Subcontractor, shall promptly provide to the *Consultant* and each

Subcontractor in writing such information as is necessary to enable the *Consultant* and each Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.

* 1. Subject to Paragraph 2.14, the *Client* shall procure that the Replacement *Consultant* indemnifies the *Consultant* on its own behalf and on behalf of any

Replacement Subcontractor and its Subcontractors against any Employee

Liabilities arising from or as a result of:

* + 1. any act or omission of the Replacement *Consultant* and/or Replacement Subcontractor in respect of any Transferring

*Consultant* Employee in the *Consultant*’s Final *Consultant* Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring *Consultant* Employee;

* + 1. the breach or non-observance by the Replacement *Consultant* and/or Replacement Subcontractor on or after the Service Transfer Date of:

any collective agreement applicable to the Transferring *Consultant* Employees identified in the

*Consultant*’s Final *Consultant* Personnel List; and/or

any custom or practice in respect of any Transferring

*Consultant* Employees identified in the *Consultant*’s

Final *Consultant* Personnel List which the

Replacement *Consultant* and/or Replacement

Subcontractor is contractually bound to honour;

* + 1. any claim by any trade union or other body or person representing any Transferring *Consultant* Employees identified in

the *Consultant*’s Final *Consultant* Personnel List arising from or connected with any failure by the Replacement *Consultant* and/or Replacement Subcontractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;

* + 1. any proposal by the Replacement *Consultant* and/or Replacement Subcontractor to change the terms and conditions of employment or working conditions of any Transferring *Consultant* Employees identified in the *Consultant*’s Final *Consultant* Personnel List on or after their transfer to the Replacement *Consultant* or Replacement Subcontractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the *Consultant*’s Final *Consultant* Personnel List 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 Service Transfer Date as a result of or for a reason connected to such proposed changes;
		2. any statement communicated to or action undertaken by the Replacement *Consultant* or Replacement Subcontractor to, or in respect of, any Transferring *Consultant* Employee identified in the *Consultant*’s Final *Consultant* Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the *Consultant* in writing;
		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 *Consultant* Employee identified in the *Consultant*’s Final *Consultant* Personnel List, 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 identified in the *Consultant*’s Final *Consultant* Personnel List, 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 Subcontractor, to the Replacement *Consultant* or Replacement Subcontractor 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;

* + 1. a failure of the Replacement *Consultant* or Replacement Subcontractor 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 identified in the *Consultant*’s Final *Consultant* Personnel List in respect of the period from (and including) the Service Transfer Date; and
		2. any claim made by or in respect of a Transferring *Consultant* Employee identified in the *Consultant*’s Final *Consultant* Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring *Consultant* Employee relating to any act or omission of the Replacement *Consultant* or Replacement Subcontractor in relation to obligations under regulation 13 of the Employment Regulations.

* 1. The indemnities in Paragraph 2.13 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 Subcontractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the *Consultant* and/or any Subcontractor (as applicable) to comply with its obligations under the Employment Regulations.

**SCHEDULE 10 – SOCIAL VALUE COMMITMENTS**

**REDACTED TEXT under FOIA Section 43 Commercial Interests**

**SCHEDULE 11: SUB-CONSULTANT WARRANTY**

**THIS DEED** is made on the day of 202[ ]

**BETWEEN**

1. [ ] whose registered office is at [ ] (the “Sub-

Consultant”);

1. **GLEEDS COST MANAGEMENT LIMITED** which is a company incorporated in and in accordance with the laws of England and Wales (Company No. 06472932 whose registered office address is at REDACTED TEXT under FOIA Section 40, Personal Information); and
2. **THE** **CITY OF WAKEFIELD COUNCIL** whose registered office is at REDACTED TEXT under FOIA Section 40, Personal Information (the “Beneficiary”) which expression shall where the context so admits include its permitted successors and assigns.

**RECITALS**

1. By a contract entered into between [ ]/[the Beneficiary] and the Consultant (the “Consultancy Contract”), the Consultant was appointed to provide professional services in relation to [ ] (the “Project”).
2. By a subcontract entered into between the Consultant and the Sub-Consultant (the “Sub-Contract”), the Sub-Consultant was appointed to carry out those professional services in relation to the Project (“the Sub-Contract Services”).
3. The Sub-Consultant has agreed to enter into this warranty deed (the “Deed”) in favour of the Beneficiary on the terms set out below.

**NOW IT IS AGREED** as follows:-

1. **SUB-CONSULTANT’S OBLIGATIONS**
	1. In consideration of the sum of ten pounds (receipt of which is hereby acknowledged), the Sub-Consultant warrants that it has:
		1. been engaged by the Consultant to carry out the Sub-Contract Services in

relation to the Project;

* + 1. complied and will continue to comply with the terms of the Sub-Contract; and
		2. exercised and will continue to exercise all the reasonable skill and care expected of a qualified and competent sub-consultant who is experienced in carrying out work of a similar size, scope and complexity to the Sub-Contract Services, in the performance of the Sub-Contract Services.
	1. The Sub-Consultant warrants that it has used and shall continue to use the standard of skill, care and diligence required under the Sub-Contract to see that there are not used or specified in the Project any materials which by their nature or application contravene any British Standard or EU equivalent or which are considered to be deleterious in the UK building industry at the time of use or specification or which contravene the recommendations of the publication “Good Practice in Selection of Construction Materials” (2011: British Council for Offices).
	2. The Sub-Consultant shall be entitled in any action or proceedings by the Beneficiary to rely on any limitation in the Sub-Contract and to raise the equivalent rights in defence of liability (excluding set-offs or counterclaims) as it would have had if the Beneficiary had been named as the client under the Sub-Contract, save that it shall not be a defence to any action brought against the Sub-Consultant by the Beneficiary that the Consultant has suffered no loss under the Sub-Contract.
1. **PROFESSIONAL INDEMNITY INSURANCE**
	1. The Sub-Consultant warrants that it has in effect and shall maintain for a period of 12 years from the date of practical completion of the Project professional indemnity insurance with a limit of indemnity of not less than £[ ] in respect of each and every claim, provided always that such insurance is available at reasonable commercial rates.
	2. The Sub-Consultant shall, whenever it is requested to do so, produce for inspection documentary evidence which confirms that the insurance referred to in Clause 2.1 is being maintained and that the current year’s premiums have been paid.
	3. The Sub-Consultant shall immediately inform the Beneficiary if the insurance referred to in Clause 2.1 ceases to be available at reasonable commercial rates so that the parties can discuss the best means of protecting each other’s interests.
2. **COPYRIGHT**
	1. Copyright in material prepared by the Sub-Consultant in relation to the Project (“the Documents”) shall remain vested in the Sub-Consultant. The Sub-Consultant hereby grants to the Beneficiary an irrevocable, perpetual, royalty-free, non-exclusive licence to copy and use the Documents and to reproduce the designs contained in them for any purpose whatsoever relating to the Project. Such licence shall entitle the Beneficiary to copy and use the Documents for the extension of the Project but such use shall not include a licence to reproduce the designs contained in them for any extension of the Project. The Beneficiary shall be entitled to grant sub-licences in relation to the Documents.
	2. To the extent that the copyright in any of the Documents is not vested in the SubConsultant, it shall procure in favour of the Beneficiary a licence in terms equivalent to Clause 3.1 from the owner of such copyright.
	3. The Sub-Consultant warrants that the Documents are the Sub-Consultant’s original work and the use and reproduction of the Documents will not infringe the rights of any third party. The Sub-Consultant will indemnify the Beneficiary for any losses that the Beneficiary may suffer as a result of the Sub-Consultant’s breach of its obligations under this clause.
	4. The Sub-Consultant hereby undertakes upon payment of its reasonable copying and incidental charges to provide to the Beneficiary copies of the Documents as the Beneficiary may reasonably require.

#### *[Clause 4 only applies to beneficiaries with step-in rights]*

1. **STEP IN RIGHTS**
	1. The Sub-Consultant will not exercise or seek to exercise any right which may be or become available to it to terminate, or treat as terminated, the Sub-Contract or its engagement under it without first giving to the Beneficiary not less than 21 days’ prior written notice specifying the Sub-Consultant’s ground for terminating or treating as terminated the Sub-Contract or its engagement under it, and stating the amount (if any) of monies outstanding under the Sub-Contract.
	2. Within such period of notice, the Beneficiary may give written notice to the SubConsultant that the Beneficiary will thenceforth become the client under the SubContract to the exclusion of the Consultant and thereupon the Sub-Consultant will admit that the Beneficiary is its client under the Sub-Contract and the Sub-Contract will be and remain in full force and effect notwithstanding any of the said grounds.
	3. The Beneficiary may by notice in writing to the Sub-Consultant appoint another person to exercise its rights under this clause 4, subject to the Beneficiary remaining liable to the Sub-Consultant as guarantor for its appointee in respect of its obligations under this deed.
	4. If the Beneficiary has given notice under clause 4.2 or clause 4.3, the Beneficiary will, from the service of such notice, become responsible for all sums properly payable to the Sub-Consultant under the Sub-Contract after the service of such notice.
	5. The Beneficiary will not be under any obligation to the Sub-Consultant, nor will the SubConsultant have any claim or cause of action against the Beneficiary, unless and until the Beneficiary has given written notice to the Sub-Consultant pursuant to clause 4.2 or clause 4.3.
2. **ASSIGNMENT**
	1. The Beneficiary may assign all or any of its rights under this Deed to any party without the consent of the Sub-Consultant.
	2. The Sub-Consultant shall not be entitled to contend that any person to whom this Deed is assigned is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of the Sub-Contract or this Deed by reason that such person is an assignee and not the named beneficiary hereunder.
3. **GENERAL**
	1. This Deed is subject to English law and the English courts shall have jurisdiction with regard to all matters arising out of or in connection with it.
	2. For the avoidance of doubt, no act or omission by the Beneficiary shall mitigate, affect, diminish or reduce the responsibilities or liabilities of the Sub-Consultant under the SubContract or this Deed.
	3. No action or proceedings for any breach of this Deed shall be commenced against the Sub-Consultant after the expiry of 12 years from the date of practical completion of the Project under the Building Contract.
	4. Any notices to be given by either party hereunder will be sufficiently served if sent by hand or recorded or registered post to the registered office or if there is none the last known address of the party to be served. Any notice sent by hand will be deemed to be served on the date of delivery and any notice sent by post will be deemed to have been duly served at the expiration of 48 hours after the time of posting.

**In Witness** whereof the parties have executed this Deed on the date before written.

EXECUTED AS A DEED BY) **[SUB-CONSULTANT]** ) acting by: )

REDACTED TEXT under FOIA Section 40, Personal Information

Director

REDACTED TEXT under FOIA Section 40, Personal Information

 Director/Company Secretary

EXECUTED AS A DEED BY)

**GLEEDS COST** )

#### MANAGEMENT LIMITED ) acting by: )

REDACTED TEXT under FOIA Section 40, Personal Information

Director

REDACTED TEXT under FOIA Section 40, Personal Information

Director/Company Secretary

**THE COMMON SEAL OF** )

**THE CITY OF** ) **WAKEFIELD COUNCIL** ) was hereto affixed to this Deed ) in the presence of the Head of )

Legal / Designated Officer )

REDACTED TEXT under FOIA Section 40, Personal Information

 Duly Authorised Officer

**SCHEDULE 12:**

**NOT USED**

118

RM6165: Construction Professional Services

*Scope*

Copyright - 2021

**SCHEDULE 13: FORM OF PERFORMANCE BOND**

BOND

DATE 202[ ]

PARTIES

1. THE *CONSULTANT* named in the Schedule as principal.
2. THE GUARANTOR named in the Schedule as guarantor.
3. THE *CLIENT* named in the Schedule.

RECITALS

1. By a contract (the “Contract”) entered into or to be entered into between the *Client* and the *Consultant* particulars of which are set out in the Schedule the Consultant has agreed with the *Client* to provide professional services (the “Services”) upon and subject to the terms and conditions therein set out.
2. The Guarantor has agreed with the *Client* at the request of the *Consultant* to guarantee the performance of the obligations of the *Consultant* under the Contract upon the terms and conditions of this Bond subject to the limitations set out in clause 2.

NOW THIS DEED WITNESSES as follows:

1. The Guarantor guarantees to the *Client* that in the event of a breach of the Contract by the *Consultant* or determination of the Contract by the *Client* under clause 9 of the Contract, the Guarantor shall subject to the provisions of this Bond satisfy and discharge the damages and expenses sustained by the Client as established and ascertained pursuant to and in accordance with the provisions of or by reference to the Contract.
2. The maximum aggregate liability of the Guarantor and the *Consultant* under this Bond shall not exceed the sum set out in the Schedule (the “Bond Amount”) but subject to such limitation and to clause 4 the liability of the Guarantor shall be no less than the liability of the *Consultant* under the Contract.
3. The Guarantor shall not be discharged or released by any alteration of any of the terms conditions and provisions of the Contract or in the extent or nature of the services and no allowance of time by the *Client* under or in respect of the Contract or the services shall in any way release reduce or affect the liability of the Guarantor under this Bond.
4. Whether or not this Bond shall be returned to the Guarantor the obligations of the Guarantor under this Bond shall be released and discharged absolutely upon Expiry (as defined in the Schedule) save in respect of any breach of the Contract or determination of the *Consultant’s* employment which has occurred and in respect of which a claim in writing containing particulars of such breach or determination has been made upon the Guarantor before Expiry.
5. The *Consultant* having requested the execution of this Bond by the Guarantor undertakes to the Guarantor (without limitation of any other rights and remedies of the *Client* or the Guarantor against the *Consultant*) to perform and discharge the obligations on its part set out in the Contract.

119

RM6165: Construction Professional Services

*Scope*

Copyright - 2021

1. This Bond and the benefits thereof may be assigned with the prior written consent of the Guarantor (such consent not to be unreasonably withheld or delayed).
2. This Bond shall be governed by and construed in accordance with the laws of England and Wales and only the courts of England and Wales shall have jurisdiction hereunder.

120

RM6165: Construction Professional Services

*Scope*

Copyright - 2021

THE SCHEDULE

|  |  |
| --- | --- |
| The *Consultant*:  | Gleeds Cost Management Limited (Registered No. 06472932 whose registered office address is at REDACTED TEXT under FOIA Section 40, Personal Information.  |
| The Guarantor:  | [ ] (Registered No. [ ]) whose registered office it at [ ]  |
| The *Client*:  | The City of Wakefield Council of Wakefield One, REDACTED TEXT under FOIA Section 40, Personal Information (including its assigns);  |
| The Contract:  | A contract dated [ ] 202[] between the Client and the Consultant for the [provision of professional services]  |
| The Bond Amount:  | The sum of Two Million pounds sterling (£2,000,000)  |
| Expiry:  | [Note: to be confirmed for each individual project, depending on requirements]  |

In Witness whereof the parties have executed this Deed on the date before written.

THE COMMON SEAL OF )

THE CITY OF )

WAKEFIELD COUNCIL ) was hereto affixed to this Deed ) in the presence of the Head of )

Legal / Designated Officer )

REDACTED TEXT under FOIA Section 40, Personal Information

Duly Authorised Officer

EXECUTED as a DEED by )

*CONSULTANT* acting by: )

REDACTED TEXT under FOIA Section 40, Personal Information

Director

REDACTED TEXT under FOIA Section 40, Personal Information

Director/Secretary

EXECUTED as a DEED by )

GUARANTOR acting by: )

REDACTED TEXT under FOIA Section 40, Personal Information.

Director

REDACTED TEXT under FOIA Section 40, Personal Information

Director/Secretary

122

**SCHEDULE 14: MOBILISATION PLAN**

#### Form of application for payment process

The parties hold a workshop as part of the mobilisation phase to formulate a form of application for payment for acceptance by the *Service Manager*. The form of application for payment is agreed and accepted within two weeks of the Contract Date and is then the form of application for payment incorporated into Schedule 3, Part C of the Contract.

#### Key Performance Indicators

The parties hold a workshop as part of the mobilisation phase to formulate a schedule of Key

Performance Indicators for acceptance by the *Service Manager*. The Key Performance

Indicators are agreed within two weeks of the Contract Date and then become the Key Performance Indicators for the purposes of the Incentive Schedule at Schedule 4 of the Contract.

123

REDACTED TEXT under FOIA Section 43 Commercial Interests.

**SCHEDULE 15: TUPE SURCHARGE**

|  |
| --- |
| In this schedule, the following words shall have the following meanings and they shall supplement: (i) the defined terms in clause 11 in the contract and (ii) Schedule 9 (Staff Transfer):  |
| **DEFINITION**  | **MEANING**  |
| **“Annual Pension Cost”**  | means Employer Pension Contributions, subject to the Employer Pension Contribution Cap;  |
| **“Cost of Change”**  | means any costs that will be incurred in managing the transition of an individual who is listed as a TUPE employee, and will not be required to fulfil a role as part of the new contract, within the contract pricing methodology. Examples could include but not be limited to: staff consultation, redeployment costs, short-term salary cover associated with redeployment or release of labour, and temporary staffing;  |
| **"Employer Pension Contribution"**  | means standard employer pension contributions paid in accordance with the relevant pension scheme rules and used in the calculation of the TUPE Risk Premium less any costs recoverable under Annex D3: LGPS of Part D Pensions of Schedule 9 Staff Transfer;  |
| **"Employer Pension Contribution Cap"**  | means the 6% maximum rate of Employer Pension Contribution used in the calculation of the TUPE Risk Premium;  |
| **“Further Competition”**  | Means a mini competition undertaken under the Construction Professional Services Framework Alliance Contract  |
| **"Other Pension Cost"**  |  means: 1. in respect of CSPS Eligible Employees those sums set out at Clauses 7.1.1 (annual administration charges covering core services), 7.1.5 (employer

contributions), 7.1.7 (the ASLC) and 7.1.8 (flat charges applicable to the Partnership Pension Account) of the CSPS Admission Agreement; 1. in respect of NHSPS Eligible Employees, the standard employer contribution rate applicable to NHS Pensions employers during the Contract
 |

|  |  |
| --- | --- |
|  | Period and payable by the *Consultant* (but no other costs, contributions, charges or surcharges payable by the *Consultant* to or in respect of NHS Pensions or in respect of any NHS Premature Retirement Rights, unless otherwise agreed in writing by the *Client*); 1. in respect of LGPS Eligible Employees, the standard employer contribution rate applicable to LGPS Eligible Employees during the Contract Period and payable by the *Consultant* such sums expressed and set out in the rates and adjustments certificate under regulation 62 of the LGPS Regulations (but no other costs, contributions, charges or surcharges payable by the *Consultant* to or in respect of the LGPS unless otherwise agreed in writing by the Authority) less any costs recoverable under Annex D3: LGPS of Part D Pensions of Schedule 9 Staff Transfer; and
2. such other pension contributions, charges or costs incurred by the *Consultant* which have been expressly agreed by the *Client* in writing to constitute “Other Pension Costs”
 |
| **"TUPE Count"**  | means the total number of Transferring Former *Consultant* Employees and/or Transferring *Client* Employees identified in the Employee Liability Information;  |
| **"TUPE Risk Premium"**  | means the amount payable on an annual basis based on the difference between: 1. the costs to employ Transferring Former *Consultant* Employees or where the Former *Consultant* becomes the *Consultant* those Former *Consultant* employees providing the *service* at the *starting date* and/or Transferring *Client*

Employees (as the case may be); and 1. the equivalent costs to employ staff

used by the *Consultant* at Further Competition, in respect of payments due under contracts of employment in respect of the following: i) annual salary;  |
|  | ii) annual national insurance cost; iii) Annual Pension Cost; iv) annual life insurance cost; v) annual sick pay entitlement; vi) maternity/paternity costs; and vii) any other cost arising directly from the contract of employment of the Transferring Former *Consultant* Employee and or Transferring *Client* Employee, as set out in paragraph 2 of Schedule 15 (TUPE Surcharge);  |
| **"TUPE Risk Premium Average"**  | means the average calculated by dividing the TUPE Risk Premium by the lower of either: 1. Labour Count; or
2. the TUPE Count.
 |

#### 1. TUPE Risk Premium

1.1. The TUPE Risk Premium shall be priced for as set out in Annex 1 - Call Off Schedule 5 (Pricing Details)

1.1.1. Where a Relevant Transfer takes place, or will take place, the *Consultant* shall, no later than 20 Working Days after the Relevant Transfer Date, submit to the *Client*:

1. notice that no adjustment is required and the TUPE Risk Premium submitted at Call-Off Tender will be used.

or

1. its updated calculation of the TUPE Risk Premium together with a breakdown and supporting evidence as may be reasonably required for the *Client* to corroborate and assess the calculation of the TUPE Risk Premium.

##### 1.2. TUPE Risk Premium, when post award adjustment

1.2.1. The *Consultant* may request a TUPE Risk Premium adjustment, and the *Client* may grant the request, if:

1. the *Consultant* can evidence any inaccuracies or omissions in the information in the following areas provided during the Further Competition:
	1. TUPE Count;
	2. any costs covered by the TUPE Risk Premium; and/or
2. there are any other unknown costs arising directly from the contract of

employment of the Transferring Former *Consultant* Employee and/or Transferring *Client* Employee,

and where a full breakdown and supporting evidence is submitted in support of a request to adjust the TUPE Risk Premium.

1.2.2. receipt of the *Consultant’*s calculation of the TUPE Risk Premium and, if applicable, a request for a TUPE Risk Premium adjustment, the *Client* shall either:

1. Notify the *Consultant* in writing of acceptance of the TUPE Risk Premium

and, if applicable, the TUPE Risk Premium adjustment relating to the Relevant Transfer;

1. Request further information/evidence; and/or
2. Request a meeting to discuss/clarify the evidence provided.

1.2.3. Where the TUPE Risk Premium is agreed following the receipt of further information/evidence or following a meeting, the *Client* shall notify the *Consultant* in writing and confirm the TUPE Risk Premium to apply.

1.2.4. Where the *Consultant* requests a TUPE Risk Premium adjustment and it is agreed by the *Client*, the TUPE Risk Premium shall be adjusted accordingly.

1.2.5. In the event that the Parties are unable to agree either the Risk Premium or, if applicable, the TUPE Risk Premium adjustment, the Parties shall follow the Dispute Resolution Procedure.

1.2.6. On agreement of the Risk Premium the TUPE Risk Premium Average shall be calculated and this will be used as the basis for the annual review of the TUPE Risk Premium.

##### 1.3. Annual review of TUPE Risk Premium

1.3.1. The TUPE Risk Premium shall be reviewed by the *Client* at the commencement of each Contract Year.

1.3.2. The *Consultant* shall submit to the *Client*, no later than 20 Working Days prior to the beginning of each Contract Year, evidence of any change to the TUPE Count in the previous Contract Year or since it was last adjusted.

1.3.3. Where the TUPE Count is less than the TUPE Count in the previous Contract Year, the TUPE Risk Premium shall be adjusted using the following calculation:

(a) Difference in TUPE Count (Previous Contract Year less current Contract Year) x TUPE Risk Premium Average.

1.3.4. The *Client* shall cease to be liable to pay the TUPE Risk Premium Average in respect of a particular Transferring Former *Consultant* Employee or a Transferring *Client* Employee from the date upon which he ceases to be employed by the *Consultant* or engaged on this Contract (whichever occurs the earliest).

(a) If an employee ceases to be employed part way through the year, the TUPE Risk Premium Average allocated to that employee will be deducted on a pro rata basis.

1.3.5. On receipt of the *Consultant*’s calculation of the TUPE Risk Premium submitted pursuant to paragraph 2.3.2 the *Client* shall either:

1. Notify the *Consultant* in writing of acceptance of the adjusted TUPE Risk Premium; or
2. Request further information/evidence; and/or
3. Request a meeting to discuss/clarify the evidence provided.

1.3.6. Where the adjustment to the TUPE Risk Premium is agreed following the receipt of further information/evidence or following a meeting, the *Client* shall notify the *Consultant* in writing and confirm the TUPE Risk Premium that will apply.

1.3.7. In the event that the *Consultant* and the *Client* are unable to agree the adjustment to the TUPE Risk Premium, they shall follow the Dispute Resolution Procedure.

1.3.8. The adjusted Risk Premium shall be used as the benchmark in the subsequent annual review of the TUPE Risk Premium.

1.3.9. Where the adjusted TUPE Risk Premium is more than the TUPE Risk Premium in the previous Contract Year, the TUPE Risk Premium shall not be adjusted**.**

##### 1.4. Right of audit

1.4.1. The *Client* reserves the right to review and audit the calculation of the TUPE Risk Premium at any time.

1.4.2. Where an overpayment of the TUPE Risk Premium is identified following a review and/or audit carried out or by any other means, the *Consultant* shall repay to the *Client* any over payment of the UPE Risk Premium within 20 Working Days of being notified or becoming aware of the overpayment.

#### 2. Employer Pensions Contribution Cap & other pension cost

2.1. The following provisions shall apply.

2.1.1. Where any Annual Pension Cost would have included Employer Pension Contribution in excess of the 6% Employer Pension Contribution Cap or Other Pension Costs, the *Consultant* may request a pension adjustment to cover the additional cost. Such request for a pension adjustment must be submitted to the *Client* no later than 20 Working Days after the end of the relevant Contract Year.

2.1.2. If the *Consultant* requests a pension adjustment in accordance with the provisions of paragraph 2.1.1. above the TUPE Risk Premium, they must provide sufficient evidence to the *Client* to justify the pension adjustment.

2.1.3. On receipt of the *Consultant's* calculation of the pension adjustment the *Client* shall either:

2.1.4. Notify the *Consultant* in writing of acceptance of the pension adjustment;

2.1.5. Request further information/evidence; and/or

2.1.6. Request a meeting to discuss/clarify the evidence provided.

2.1.7. Where the pension adjustment in Paragraph 2.1.1 is agreed following the receipt of further information/evidence or following a meeting, the *Client* shall notify the *Consultant* in writing.

2.1.8. In the event that the *Consultant* and the *Client* are unable to agree the pension adjustment, they shall follow the Dispute Resolution Procedure.

2.1.9. If paragraph 2.1.4 above applies, the excess amount calculated for the pension adjustment is not included in any calculation of the TUPE Risk Premium Average.

2.1.10. Any pension adjustment agreed by the *Client* over the Employer Pension Contribution Cap or in respect of Other Pension Cost shall be paid within timescales as agreed between *Client* and *Consultant*

#### 3. Cost of Change

3.1. The following provisions will apply to the TUPE Risk Premium.

3.1.1. If the *Consultant* requests a post award adjustment, they must provide sufficient evidence to the *Client* to justify the post award adjustment.

3.1.2. On receipt of the *Consultant’s* calculation of the post award adjustment the *Client* shall either:

1. Notify the *Consultant* in writing of acceptance of the Cost of Change adjustments, or
2. Request further information/evidence; and/or
3. Request a meeting to discuss/clarify the evidence provided.

**SCHEDULE 16: REDUNDANCY SURCHARGE**

#### Definitions

1.1 For the purposes of this Schedule 16, the following terms shall have the following meanings:

|  |  |
| --- | --- |
| **“Affected Employee”**  | means an employee of the *Consultant* (or, if relevant, a notified Sub-Contractor) who is at risk of redundancy as a result of either of the occurrence of either of the events set out in paragraph 2.1 of this Schedule;  |
| **"Early Retirement Right"**  | any right to retirement benefit arising on termination for redundancy, whether such benefit is reduced or otherwise and whether such right arises on retirement or otherwise;  |
| **“Redundancy Payment”**  | means any and all of the following payments which may be made by the *Consultant* (or, if relevant, the notified SubContractor) to any Affected Employee: 1. statutory redundancy payments made in accordance with section 162 of the Employment Rights Act 1996;
2. contractual redundancy payments (which for this purpose shall mean redundancy payments made in accordance with the terms and conditions of employment to which the relevant Affected Employee was entitled at the Reference Date and for the avoidance of doubt, in each employee's case, shall not include any ex gratia payment, payment for accrued holiday or any other payment made as compensation for the termination of employment);
3. where it is not reasonably practicable to require the Affected Employee to work their notice period, in respect of each Affected Employee, either:

 i) payment of damages for breach of the applicable statutory notice entitlement or, if higher, the notice entitlement under the terms and conditions of employment to which the relevant employee was entitled at the Reference Date; or ii) payment in lieu of any such notice entitlement, made pursuant to such terms and conditions of employment, but for the avoidance of doubt, shall not include any payment of salary or wages or of any benefit in respect of any period of continuing employment (whether during a notice period or otherwise); 1. any payment made in satisfaction of any Early

Retirement Right to which the relevant employee was entitled under his or her terms and conditions of employment on the Reference Date;   |
| **“Redundancy Surcharge”**  | means a surcharge on the Prices comprising the following:  |
|  |  i) Redundancy Payment ii) any tribunal awards;   |
| **“Reference Date”**  | means either: 1. the date of commencement of employment, if the Affected Employee became employed by the *Consultant* (or, if relevant, notified Sub-contractor) after the Relevant Transfer

Date; or 1. the Relevant Transfer Date, save that where the *Consultant* (or, if relevant, notified Subcontractor) and Former *Consultant* are the same entity such that the Employment Regulations do not apply to transfer staff, the relevant date shall be either the Contract Date or, if the Affected Employee became employed by the *Consultant* (or, if relevant, notified Sub-contractor) after such date, the date of commencement of employment;

  |
| **“Redundancy Surcharge”**  | means a surcharge on the Prices equal in amount to each relevant Redundancy Payment;  |
| **“Service Change** **Redundancy Surcharge”**  | means in relation to a redundancy as described in Paragraph 4.1, a surcharge on the Prices equal in amount to the Redundancy Payment.  |

#### 2. Introduction

2.1 This Schedule 16 sets out the process for determining the Redundancy Surcharge in the event that:

2.1.1 following a Relevant Transfer, a Transferring Former *Consultant* Employee and/or a Transferring *Client* Employee is made redundant by the *Consultant* as a result of an economic technical organisational reason entailing changes to the workforce; and

2.1.2 the *Client* makes a change to the *service* which results in the removal of any component of the *service* or closure of any of the *Client* Premises.

1. Redundancy Surcharge
	1. Where a Relevant Transfer takes place, or will take place, the *Consultant* shall not make any Transferring Former *Consultant* Employee(s) and/or Transferring *Client* Employee(s) redundant without consulting the *Client*.
	2. The *Consultant* shall mitigate the effects of any Redundancy Surcharge by:
		1. redeploying such people where it is practicable for the *Consultant* to do so; or
		2. where redeployment is not practicable, taking such reasonable mitigation steps to minimise the costs of redundancy where practicable; and
		3. complying with the law and any reasonable instructions from the *Client*.
	3. The Redundancy Surcharge shall be zero unless the *Consultant* has consulted with the *Client*, pursuant to paragraph 3.1 of this Schedule 16 about the particular Transferring Former *Consultant* Employee(s) and/or Transferring *Client* Employee(s) within 12 months of the *starting date*.
	4. Where redundancy is unavoidable, the *Consultant* shall provide the *Client* with its estimate of the Redundancy Surcharge together with a breakdown and supporting evidence as may be reasonably necessary for the *Client* to corroborate and assess the calculation of the Redundancy Surcharge.
	5. On receipt of the *Consultant*’s calculation of the Redundancy Surcharge the *Client* shall either:
		1. notify the *Consultant* in writing of acceptance of the Redundancy Surcharge relating to the Relevant Transfer; and/or
		2. request further information/evidence; and/ or
		3. request a meeting to discuss/clarify the evidence provided.
	6. Where the Redundancy Surcharge is agreed following the receipt of further information/evidence or following a meeting, the *Client* shall notify the *Consultant* in writing.
	7. In the event that the *Consultant* and the *Client* are unable to agree the Redundancy Surcharge, they shall follow the Dispute Resolution Procedure.

1. Building closures/removal of Service(s)

* 1. Subject to Paragraph 4.2, Paragraph 4.3 and Paragraph 4.4 where the *Consultant* or any notified Sub-Contractor makes or intends to make a Redundancy Payment in relation to any termination for redundancy made as a direct result of a *Client* instigated building closure or removal of service(s), the *Consultant* may be entitled to a Service Change Redundancy Surcharge.

* 1. The *Consultant* shall not be entitled to a Service Change Redundancy Surcharge under Paragraph 4.1 unless it has, before any relevant termination for redundancy is made:
		1. consulted the *Client* about the proposal to make any such termination for redundancy;
		2. provided the *Client* with written estimates of any relevant Redundancy Payment together with a breakdown of such estimates and such supporting evidence as the *Client* may reasonably request to corroborate and assess the calculations; and
		3. Provided the *Client* with details of the steps the *Consultant*, or the notified Sub-Contractor (as applicable), has taken (or proposes to take) to mitigate such costs in accordance with paragraph 4.4
	2. The *Consultant* shall not be entitled to a Service Change Redundancy Surcharge under paragraph 4.1 unless it, or the notified Sub-Contractor (as applicable), has followed a fair dismissal procedure and complied with all contractual and legislative requirements (save for a breach of notice entitlement where payment is made on termination in satisfaction of the employee's claim for damages) in respect of each termination for redundancy to which the Service Change Redundancy Surcharge relates.
	3. The *Consultant* shall (or, where relevant, shall procure that the notified SubContractor shall) avoid having to make, or mitigate the extent of, any Redundancy Payment by:
		1. redeploying any relevant person where it is practicable to do so;
		2. where redeployment is not practicable, taking reasonable steps to minimise

the amount of Redundancy Payment, including requiring employees to work their notice where this is practicable;

* + 1. complying with the law and any reasonable instructions.
	1. The *Consultant* shall not be entitled to a Service Change Redundancy Surcharge under paragraph 4.1 unless:
		1. the *Consultant* (or, where relevant, notified Sub-Contractor) has consulted with the *Client*, pursuant to paragraph 4.1, within one month of receiving notice by the *Consultant* of the building closure or removal of service(s); and
		2. the employment of any employee to whom the Redundancy Payment relates is terminated for redundancy no later than one month after the relevant building closure or removal of service(s).
1. On receipt of the *Consultant*’s calculation of the Redundancy Payments in accordance with paragraph 4.2 the *Client* shall either:
	1. notify the *Consultant* in writing of acceptance of the Service Change Redundancy Surcharge relating to the relevant building closure or removal of service(s); and/or
	2. request further information/evidence; and/ or
	3. request a meeting to discuss/clarify the evidence provided.
2. Where the Service Change Redundancy Surcharge is agreed following the receipt of further information/evidence or following a meeting, the *Client* shall notify the *Consultant* in writing.
3. In the event that the *Consultant* and the *Client* are unable to agree the Service Change Redundancy Surcharge, they shall follow the Dispute Resolution Procedure.

Schedule 17: Continuous Improvement

1. *Consultant*’s Obligations
	1. The *Consultant* must, throughout the Contract Period, identify efficiencies in relation to the *services* carried out under Fixed Fees with a view to reducing the *Client*’s costs and/or improving the quality and efficiency of the *service* to the *Client*.
	2. The *Consultant* must adopt a policy of continuous improvement in relation to the Fixed Fee aspects of the *service*, which must include regular reviews with the *Client* of the potential efficiencies and the way it provides them, with a view to reducing the *Client*'s costs and/or improving the quality and efficiency of the Fixed Fee aspects of the *service*. The *Consultant* and the *Client* must provide each other with any information relevant to meeting this objective.
	3. In addition to Paragraph 1.1, the *Consultant* shall produce a plan annually on the anniversary of the *starting date* for improving the provision of the Fixed Fee aspects of the *service* (without adversely affecting the performance of this contract) during that contract year ("Continuous Improvement Plan") for the *Client*'s approval. The Continuous Improvement Plan must include, as a minimum, proposals:
		1. identifying the emergence of relevant new and evolving technologies;
		2. changes in business processes of the *Consultant* or the *Client* and ways of working that would provide cost savings and/or enhanced benefits to the *Client* (such as methods of interaction, supply chain efficiencies, reduction in energy consumption and methods of sale);
		3. new or potential improvements to the provision of the *service* including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the *service*; and
		4. measuring and reducing the sustainability impacts of the *Consultant*'s operations and supply-chains relating to the *service*, and identifying opportunities to assist the *Client* in meeting their sustainability objectives.
	4. The initial Continuous Improvement Plan is submitted by the *Consultant* to the *Client* for approval within one hundred (100) days of the first Task Order or six (6) months following the *starting date*, whichever is earlier.
	5. The *Client* shall notify the *Consultant* of its approval or rejection of the proposed Continuous Improvement Plan or any updates to it within twenty (20) days of receipt. If it is rejected then the *Consultant* shall, within ten (10) days of receipt of notice of rejection, submit a revised Continuous Improvement Plan reflecting the changes required. Once approved, it becomes the Continuous Improvement Plan for the purposes of this contract.
	6. The *Consultant* must provide sufficient information with each suggested improvement to enable a decision on whether to implement it. The *Consultant* shall provide any further information as requested.
	7. Once the first Continuous Improvement Plan has been approved in accordance with Paragraph 1.5:
		1. the *Consultant* shall use all reasonable endeavours to implement any agreed efficiencies in accordance with the Continuous Improvement Plan; and
		2. the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Parties) to review the *Consultant*'s progress against the Continuous Improvement Plan.
	8. The *Consultant* shall update the Continuous Improvement Plan as and when required but at least once every twelve months following the 1st anniversary of the *starting date* in accordance with the procedure and timescales set out in Paragraph 1.3.
	9. All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall have no effect on and are included in the Prices.
	10. Should the *Consultant*'s costs in providing the Fixed Fee components of the *service* to the *Client* be reduced as a result of any changes implemented, all of the cost savings shall be passed on to the *Client* by way of a consequential and immediate reduction in the Prices for Services Provided to Date.

At any time during the Contract Period, the *Consultant* may make a proposal for gainshare. If the *Client* deems gainshare to be applicable then the *Consultant* shall update the Continuous Improvement Plan so as to include details of the way in which the proposal shall be implemented in accordance with an agreed gainshare.

**SCHEDULE 18: BACKGROUND CHECKS**

1. **When you should use this Schedule**

This Schedule should be used where *Consultant* employees must be vetted before working on a Task Order under this contract.

1. **Definitions**

**“Relevant Conviction”** means any conviction listed in Annex 1 to this Schedule.

1. **Relevant Convictions**

3.1.1 The *Consultant* must ensure that no person who discloses that they have a Relevant Conviction, or a person who is found to have any Relevant Convictions (whether as a result of a police check or through the procedure of the Disclosure and Barring Service (DBS) or otherwise), is employed or engaged in any part of the provision of the Deliverables without Approval.

3.1.2 Notwithstanding Paragraph 3.1.1 for each of the *Consultant’s* employees who, in Providing the Service, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the *Client* owes a special duty of care, the *Consultant* must (and shall procure that the relevant Subcontractor must):

* 1. carry out a check with the records held by the Department for Education (DfE);
	2. conduct thorough questioning regarding any Relevant Convictions; and
	3. ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service (DBS),

and the *Consultant* shall not (and shall ensure that any Subcontractor shall not) engage or continue to employ in the Provision of the Service any person who has a Relevant Conviction or an inappropriate record.

#### Annex 1 – Relevant Convictions

A Relevant Conviction is any conviction which directly or indirectly relates to the safeguarding of young people and vulnerable adults and any offence that will never be filtered from a DBS certificate as detailed at - [List of offences that will never be filtered from a DBS certificate - GOV.UK (www.gov.uk)](https://url.avanan.click/v2/___https%3A/links.uk.defend.egress.com/Warning?crId=64513529e75a1c25c015cc3d&Domain=sharpepritchard.co.uk&Lang=en&Base64Url=eNoNy0EOwyAMBdET_bDvbcCYYsWYyDjl-kUaaVavRzzrk9Le-_rO3_Xe6YzdBluk5y0qlEOmrVTLgsoKzHZqbMQL0XNgiyqMD0NhNNFg54rmcyCDXIZYVjjT9ArqTPcfynAtdA%3D%3D___.YXAxZTpzaGFycGVwcml0Y2hhcmQ6YTpvOjNiNTQ4NDU1MjljMGVlODcxOTI1ODk3MmNmYTBlMTM5OjY6MTJhYTo2YTk0YmRkYWM1ZWVmOWVkMGQwYjY2MGQzNTJiM2IzNTRmNGM3YjIyZTljMDYwMGVhYjZjMTI2NzY1ZjU0NjM3OnA6VA)