



National Estates Property Surveying Contract

ATAMIS reference:



Call-off for OFAS - Land Agent Resources



This agreement is made between the *Client*, the *Consultant* and the Named Suppliers.

Terms in this agreement have the meanings given to them in the contract between the [REDACTED] and [REDACTED] for the provision of Oxford Flood Alleviation Scheme Land Agent Resource Services (the *service*).

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

The *Consultant* was appointed to the framework and executed the framework agreement (with reference: National EA Estates Property Surveying Framework (NEPS) project code 36271).

Executed under hand

by

[REDACTED] (*Client*)

[REDACTED] (*Name*)

[REDACTED] (*Signature*)

. . .Project Director (FSuD) . (*Position*)

For and on behalf of [REDACTED] (*Consultant*)

[REDACTED] (*Name*)

[REDACTED] . (*Signature*)

Director (*Position*)

(Named Suppliers)

AGREEMENT

BETWEEN

(1) [REDACTED] (*Client*) acting through the [REDACTED] and its executive agencies, and

(2) [REDACTED] Limited whose registered office is at [REDACTED] [REDACTED] (*Consultant*) and was appointed to deliver the following Service;

Lot /Region	Service
National	NEPS Service A - Rural & Commercial Project Support Call-off Contract for OFAS Land Agent Resource Services

RECITALS

(A) The *Client* intends to procure the service from the *Consultant* and/or other professional services specified above on its own behalf or for the benefit of the Contracting Authorities in accordance with this contract. The Contracting Authorities will be identified in individual Task Orders if they are not the [REDACTED]

(B) The *Consultant* has agreed to Provide the Service as described above in accordance with this contract.

(C) The *Client* and the *Consultant* have agreed to incorporate and amend the NEC4 Professional Service Contract Option A 2017 (with amendments October 2020) as set out in this Agreement and contract.

IT IS AGREED as follows: -

1. This contract incorporates the NEC4 Professional Service Contract Option A June 2017 (with amendments October 2020), except that:

1.1. the Contract Data are replaced in their entirety by the Contract Data attached to this Agreement;

1.2. the core clauses are amended as provided in this Agreement, the Contract Data, the Option Z Schedule and the Appendices attached to this Agreement; and

1.3. the clauses for Main and Secondary Options are as indicated in the Contract Data attached to this Agreement and amended as provided in this Agreement, the Contract Data, the Option Z Schedule and the Appendices attached to this Agreement.

2. In this contract, words and expressions have the same meanings as are respectively assigned to them in the NEC4 Professional Service Contract Option A June 2017 (with amendments October 2020) ("**NEC4 PSC**"), as amended as provided in this Agreement, the Contract Data and the Option Z Schedule attached to this Agreement.

3. The following documents form part of this contract:

3.1. this Agreement and the Contract Data, the Option Z Schedule and the Appendices attached to this Agreement;

3.2. the NEC4 PSC as amended by this Agreement, the Contract Data, the Option Z Schedule and the Appendices attached to this Agreement;

3.3. the Scope;

4. Any disputes, differences or questions arising out of or relating to this contract are to be resolved in accordance with the adjudication and/or litigation provisions of this contract.

5. If there is ambiguity or inconsistency in or between the documents comprising this contract (or any other contract entered into in accordance with this contract), the priority of the documents is in accordance with the following sequence:

5.1. the *additional conditions of contract* at Option Z Schedule 1;

5.2. the *other conditions of contract*;

5.3. Contract Data Part 1;

5.4. Scope;

5.5. Contract Data Part 2;

5.6. any other document forming part of this contract (or any other contract as the case may be).

6. The *Consultant* shall perform the Tasks to the *Client* for the benefit of the *Client* and any Contracting Authority specified in a Task Order. Contracting Authorities shall have all of the rights granted to the *Client* in respect of a Task. Accordingly, where the context requires in order to assure the Contracting Authority's rights and benefits in respect of a Task, and unless the *Client* otherwise specifies in a Task Order, references to the *Client* in the terms governing a Task shall be deemed to include a reference to the applicable Contracting Authority. Each of the Contracting Authorities shall be a third party beneficiary for the purposes of the Contracts (Rights of Third Parties Act 1999 ("CRTPA")) and may enforce the relevant provisions of a Task Order pursuant to CRTPA.

7. The *Client* and *Consultant* (but not a Contracting Authority) may in accordance with the *conditions of contract* vary or terminate this contract or any part of it, without the consent of a Contracting Authority.

8. The enforcement rights granted to Contracting Authorities under paragraph 6 are subject to the following provisions:

8.1. the *Client* may enforce any provision of a Task Order on behalf of a Contracting Authority;

8.2. any claim from a Contracting Authority under the CRTPA to enforce a Task Order shall be brought by the *Client* if reasonably practicable for the *Client* and the Contracting Authority to do so; and

8.3. the *Consultant's* limits and exclusions of liability in this contract shall apply to any claim to enforce a Task Order made by the *Client* on behalf of a Contracting Authority and to any claim to enforce a Task Order made by a Contracting Authority acting on its own behalf.

9. Notwithstanding that Contracting Authorities shall each receive the same services in relation to a Task from the *Consultant*; the following adjustments will apply in relation to how the Task Order will operate in relation to the *Client* and the Contracting Authority:

9.1. the services to be provided in relation to a Task shall be provided by the *Consultant* to each Contracting Authority and *Client* separately;

9.2. the *Consultant's* obligation in regard to reporting will be owed to each Contracting Authority and *Client* separately;

9.3. the *Client* and Contracting Authorities shall be entitled to separate invoices and applications for payment in respect of the provision of the Tasks and the payment and other relevant *conditions of contract* shall be construed to give effect to this principle;

9.4. the separate applications for payment and invoices shall correlate to the services provided to the respective *Client* and Contracting Authority;

9.5. the Price for Services Provided to Date in respect of any Task Orders shall be calculated on a per Contracting Authority and *Client* basis and each Contracting Authority and the *Client* shall be responsible for paying any sums due in respect of the Task Orders for which they are the primary beneficiary; and

9.6. such further adjustments as the *Client* and each Contracting Authority may notify to the *Consultant* from time to time.

10. If there is a breach or default by the *Consultant* in relation to any Task any liability of the *Consultant* as a result of such breach or default shall be resolved or determined between the *Consultant* and the *Client* under the terms of this contract and any Task Order regardless of whether the ultimate beneficiary of the Task is a Contracting Authority.

11. Where compliance with any obligation or responsibility of the *Client* in relation to a Task Order is necessary in order to enable the *Consultant* to fulfil a Task Order to a Contracting Authority, responsibility for compliance shall remain with the *Client* but compliance by the Contracting Authority shall be deemed to be compliance by the *Client*.

12. *Consultant* Execution of this Contract is carried out in accordance with the 1999 EU Directive 99/93 (Communication Framework for Electronic Signatures) and the UK Electronic Communications Act 2000. This Contract is formed on the date on which both the *Client* and the *Consultant* have communicated acceptance of its terms on the Authority's e-tendering system ('Atamis').

Contract Data Part 1

PART ONE – DATA PROVIDED BY THE CLIENT

1 General

The *conditions of contract* are the core clauses, the following Option for resolving and avoiding disputes and secondary Options of the NEC4 Professional Service Contract June 2017 (with amendments October 2020)

Option for resolving and avoiding disputes W2

Secondary Options X2, X10, X11, X18, Y(UK)2

The *service* is Provision of land agent services and supplier team members to work as part of the *Client's* team providing land agent services to the Oxford Flood Alleviation Scheme project.

The *Client* is

Name [REDACTED]

Address for communications [REDACTED]

Address for electronic communications [REDACTED]

The *Service Manager* is

Name [REDACTED]

Address for communications [REDACTED]

Address for electronic communications [REDACTED]

The *Scope* is in OFAS _ Land Agent Services_Scope final V1

The *language of the contract* is

The *law of the contract* is the law of

The *period for reply* is except that

The *period for retention* is year(s) following Completion or earlier termination

The following matters will be included in the Early Warning Register

Early warning meetings are to be held at intervals no longer than

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

	<i>condition</i> to be met	<i>key date</i>
(1)	<input type="text" value="Not used"/>	<input type="text"/>
(2)	<input type="text"/>	<input type="text"/>
(3)	<input type="text"/>	<input type="text"/>

3 Time

The *starting date* is

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

	<i>access</i>	<i>access date</i>
(1)	<input type="text" value="FastDraft"/>	<input type="text"/>
(2)	<input type="text" value="As specified in Task Orders"/>	<input type="text" value="As specified in Task Orders"/>
(3)	<input type="text"/>	<input type="text"/>

The *Consultant* submits revised programmes at intervals no longer than

If the *Client* has decided the *completion date* for the whole of the *service*

The *completion date* for the whole of *service* is

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, if not previously provided by the *Consultant*

The period between Completion of the whole of the service and the *defects date* is

52 weeks

5 Payment

The *currency of the contract* is the

£ sterling

The *assessment interval* is

monthly

If the *Client* states any expenses

The *expenses* stated by the *Client* are

item

amount

To be Included in full cost breakdown on a task by task basis in Task Orders

N/A

N/A

N/A

The *interest rate* is 2 % per annum (not less than 2) above the base rate of the

Bank of England

bank

6 Compensation events




If there are additional

These are additional compensation events

To be dealt with on a Task Order basis

8 Liabilities and insurance

The minimum amount of cover and the periods for which the *Consultant* maintains insurance are

EVENT	MINIMUM AMOUNT OF COVER	PERIOD FOLLOWING COMPLETION OF THE WHOLE OF THE SERVICE OR TERMINATION
The <i>Consultant's</i> failure to use the skill and care normally used by professionals providing services similar to the service		6 years
Loss of or damage to property and liability for bodily injury to or death of a person (not an employee of the <i>Consultant</i>) arising from or in connection with the <i>Consultant</i> Providing the Service	 in respect of each event, without limit to the number of events	12 months
Death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with the contract	 in respect of each event, without limit to the number of events	For the period required by law

The *Client* provides No additional insurances

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 an aggregate of £5,000,000 (five million pounds) per individual task order/Individual event (or series of occurrences arising from any one event).

Resolving and avoiding disputes

The *tribunal* is

Litigation in the courts of England and Wales

The *arbitration procedure* is

TBC

The person or organisation who will choose an arbitrator if the Parties cannot agree a choice or if the *arbitration procedure* does not state who selects an arbitrator is

The *Senior Representatives* of the *Client* are

Name (1)

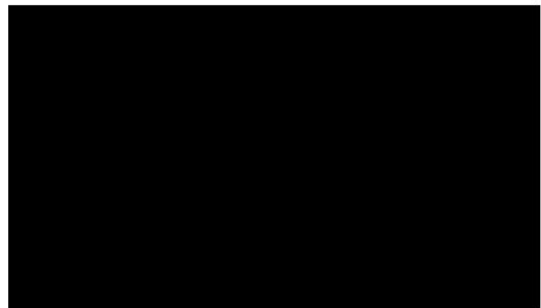
Address for communications

Address for electronic communications

Name (2)

Address for communications

Address for electronic communications



The *Adjudicator* is

Name

TBC

Address for communications

TBC once nominated

Address for electronic communications

TBC once nominated

The *Adjudicator nominating body* is

Royal Institute of Chartered Surveyors

X2: Changes in the law

the *law of the project* is

The law of England and Wales, subject to the jurisdiction of the courts of England and Wales

X10: Information modelling

If Option X10 is used

If no information execution plan is identified in part two of the Contract Data

The period after the Contract Date within which the *Consultant* is to submit a first Information Execution Plan for acceptance is

To be detailed under individual Task Orders if required.

X11: Termination by the Client

X18: Limitation of liability

If Option X18 is used

The *Consultant's* liability to the *Client* for indirect or consequential loss is limited to (£0) Nil.

The *Consultant's* liability to the *Client* for Defects that are not found until after the defects date is limited to [REDACTED]

The *Consultant's* liability to the *Client* in respect of an individual Task Order will be limited to the sum that is the greater of (1) 10 times the value of that Task Order or (2) [REDACTED]

The end of liability date is 6 years after the Completion of the whole of the service

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

If Option Y(UK)2 is used and the final date for payment is not fourteen days after the date on which payment becomes due

The period for payment is 30 days after the date on which payment becomes due

The Additional conditions of the contract are:

The Schedules referred to within the Additional conditions of the contract are included in Appendix 1 at the end of this section.

- Option Z Z1 - Z18 are amended conditions of contract
 Z19 – Z47 are additional conditions of contract

Amended conditions of contract

- Z1 Clause 11 Identified and defined terms - additions
- 11.2(24) CDM Regulations means the Construction (Design and Management) Regulations 2015 (SI 2015/51).
- 11.2(25) Confidential Information shall mean any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the services, the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party, all personal data and sensitive personal data (within the meaning of the Data Protection Act 2018
- 11.2(26) Deleterious Materials are any substances materials equipment products kit practices or techniques which by their nature or application do not conform with relevant British Standards or Codes of Practice or regulations or good building practice or any European Union equivalent current at the time of permission or specification, nor any substances materials equipment products kit practices or techniques which are generally known or generally suspected within the *Consultant's* trade and/or the construction industry:
- to be deleterious in the particular circumstances in which they are specified for use to the health or safety of any person
 - to be deleterious in the particular circumstances in which they are specified for use to the health, safety, stability, performance, physical integrity and/or durability of the works or any part thereof and/or to other structures, finishes, plant and/or machinery
 - to reduce or possibly reduce the normal life expectancy of works of a type comparable to the works
 - to become deleterious without a level or cost of maintenance which is higher than that which would normally be expected in a works of a type comparable to the works
 - not to comply with or have due regard to the report entitled "Good Practice in the Selection of Construction Materials" (current edition) published by the British Council for Offices and/or
 - to be supplied or placed on the market in breach of the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products Regulation (305/2011/EU), the Construction Products Regulations 1991 (SI 1991/1620) or the Construction Products Directive (89/109/EC)
- 11.2(27) Documents means all drawings, specifications, photographs, plans, surveys, reports, and all other documents and/or information prepared by or on behalf of the *Consultant* in relation to this Contract in whatever format.
- 11.2(28) Intellectual Property Rights means any and all patents, trade marks, service marks, copyright, moral rights, design rights and all or any other intellectual or industrial property rights whether or not registered and whether subsisting in the United Kingdom or any other part of the world.
- 11.2(29) Site means the location identified in the Task Order either by an address or plan being provided.
- 11.2(30) Law means 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.

11.2(31) *Client's* Premises are premises owned, occupied or leased by the *Client* and the site of any works to which the service relates.

11.2(32) 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.

11.2(33) 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.

11.2(34) An Occasion of Tax Non-Compliance is

Where any tax return of the *Consultant* submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of;

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

where any tax return of the *Consultant* submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Contract Date or to a civil penalty for fraud or evasion.

11.2(35) Relevant Tax Authority is HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the *Consultant* is established.

11.2(36) 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).

11.2(37) Change of Control is a change of control within the meaning of Section 450 of the Corporation Tax Act 2010.

11.2(38) 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.

11.2 (39) The Price for Services Provided to Date is the total of the Prices for each completed activity set out in the Task Activity Schedule.

11.2(40) The Prices are the fixed prices for the activities contained in the Task Activity Schedule calculated in accordance with the rates and pricing principles set out in the Task Schedule.

11.2(41) A Task is work within the *service* which the *Client* may instruct the *Consultant* to carry out within a stated period of time.

11.2(42) Task Completion is when the *Consultant* has done all the work which the Task Order requires him to do by the Task Completion Date, and corrected Defects which would have prevented the *Client* or Others from using the service and Others from doing their work.

11.2(43) Task Completion Date is the date for completion stated in the Task Order unless later changed in accordance with this contract.

11.2(44) A Task Order is the *Client's* instruction to carry out a Task.

11.2(45) The Task Schedule is in Appendix 4 [Pricing model as tendered] unless later changed in accordance with this contract.

11.2(46) Time Charge is the sum of the products of each of the people rates multiplied by the total staff time appropriate to that rate properly spent on time based items in the Task Schedule.

11.2(47) Task Activity Schedule is the activity schedule specified in the Task Order unless later changed in accordance with these conditions of contract.

Z2 Clause 13 – Communications (additions)

Insert new clause 13.10 – 13.13:

13.10 All communications between the Service Manager and the *Consultant* required by or authorised under this Contract must comply with NEC4 PSC clause 13 but is deemed to be duly given or made:

13.10.1 two working days after being sent by prepaid special delivery post; or

13.10.2 when delivered by hand if a signature acknowledging its receipt has been obtained.

13.11 In each case the notice must:-

13.11.1 refer to this Contract, and

13.11.2 be marked for the attention of the appropriate officer, person or department as notified to the other party in writing.

13.12 Each Party notifies the other in writing within five working days of any change in its address for service.

13.13 Except for any pay less notice served by the *Client* in accordance with clause Y2.3, any notice served on a non-working day or outside of normal working hours is deemed to be served on the following working day.

Z3 Clause 16 – Requirements for Instructions (addition)

16.2 In the case of any ambiguity or inconsistency between two of more of the documents forming this Contract, each prevails over or is subordinate to the other(s) in descending order as follows:

- Option Z – Additional Conditions of Contract (z clauses)
- the conditions of contract other than the z clauses
- the Contract Data provided by the *Client*
- the programme
- the Early Warning Register
- the Scope
- the Contract Data provided by the *Consultant*
- any other contract documents

Z4 Clause 20 Providing the Service

Insert new clause:

20.4 Notwithstanding the requirements of NEC4 PSC clause 20.2, the *Consultant* shall comply with the Law when Providing the Service and the *Consultant's* obligation is to use the reasonable skill, care and diligence to be expected of a properly qualified and competent member of the *Consultant's* profession experienced in carrying out similar services, duties and obligations for services of a similar nature, scope, character, and complexity as the service, herein referred to as the "Contract Standard".

- Z5 Clause 22 Working with the *Client* and Others
 Insert new clauses:
 22.4 If any difference arises between the *Consultant* and Others, the *Consultant* uses all reasonable endeavours to achieve a reconciliation. If the reconciliation is not achieved and is not likely to be achieved before such difference becomes detrimental to the delivery of the services, the *Consultant* refers the matter or difference to the *Client* for instructions at the *Client's* cost (save where the difference is between the *Consultant* and any party with whom the *Consultant* intends to enter into contract with, in which case the costs will be met by the *Consultant*). The *Client* shall give such instructions in a timely matter to enable the *Consultant* to comply with its obligations.
 22.5 Where Others are appointed by the *Client*, the *Consultant* co-operates fully with those Others in order to ensure that production of the *Consultant's* drawings, design information or other relevant documents or information is fully co-ordinated with the work of the Others.
- Z6 Clause 24 - Other responsibilities
 Insert new clauses:
 24.4 The *Consultant* discloses to the *Client* any actual or potential conflict of interest arising from the *Consultant's* provision of the services as soon as practicable after becoming aware of such actual or potential conflict.
 24.5 The *Consultant* immediately notifies the *Client* of any circumstances giving rise to or potentially giving rise to conflicts of interest relating to the *Consultant* (including without limitation its reputation and standing) and/or the *Client* of which it is aware or anticipates may justify the *Client* taking action to protect its interests.
 24.6 Should the Parties be unable to either remove the conflict of interest and/or to reduce its damaging effect to a reasonably acceptable level the *Client* has the right to terminate this Contract whereupon the provisions of NEC4 PSC clause 93.2 apply to the termination.
 24.7 The *Consultant* complies with all applicable environmental laws and regulations in force from time to time in relation to the services and promptly provides evidence of compliance when reasonably requested by the *Client*.
 24.8 The *Consultant* satisfies all reasonable requests by the *Client* for information regarding the environmental impact of the services."
- Z7 Clause 25 Assignment
 Delete and insert:
 25.1 The *Consultant* does not assign transfer or charge any benefit arising under or out of this contract without the prior written consent of the *Client* (at its absolute discretion).
 25.2 The *Client* may without the *Consultant's* consent assign transfer and/or charge the benefit of all or any of the *Consultant's* obligations under this contract and/or any benefit arising under or out of this contract:
 • as security to any funder (and such rights may be re-assigned on redemption)
 • by absolute assignment to any government department; and
 • by absolute assignment on two other occasions.
- Z8 Clause 53 – Final assessment
 Clause 53
 This clause is deleted in its entirety.
- Z9 Clause 61 Notifying Compensation Events
 61.3 In line 6 after "event has happened" insert "or of the date when the *Consultant* ought to have become aware of the event."
 61.4 Delete the third bullet point (line 5) and insert: "arises from any act, error, omission, negligence, breach or default of the *Consultant* or Sub-*Consultants* or any of their employees or agents,".

Z10	<p>Clause 63 - Assessing compensation events</p> <p>63.5 Delete the third paragraph and insert:</p> <p style="padding-left: 40px;">"The assessment takes into account:</p> <ul style="list-style-type: none"> • any delay caused by the compensation event already in the Accepted Programme; and • events which have happened between the date of the Accepted Programme and the dividing date." <p>63.10 Delete</p>
Z11	<p>Clause 70 – Rights to Material</p> <p>Insert New Clauses</p> <p>70.4 Copyright</p> <p>The <i>Client</i> may at any reasonable time examine schedules, calculations, surveys, reports, specifications, drawings and/or any other documents and information which are in the possession of the <i>Consultant</i> and which concern this Contract, but no such examination relieves the <i>Consultant</i> of any responsibility for the services to be provided under this Contract.</p> <p>70.5 The Intellectual Property Rights in the Documents remain vested in the <i>Consultant</i>. The <i>Consultant</i> grants an irrevocable, perpetual, royalty-free, non-exclusive license or procures the grant of such a license to the <i>Client</i> to use the Intellectual Property Rights and to reproduce the Documents for any purpose relating to the works to which the services relate including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of those works. The <i>Consultant</i> shall not be liable for the consequences of any use by the <i>Client</i> of the Documents or the Intellectual Property Rights for any purpose other than that for which they were originally prepared by or on behalf of the <i>Consultant</i>. Such license enables the <i>Client</i> to use the Intellectual Property Rights for any extension of the works to which the services relate but shall not include a license to reproduce the Intellectual Property Rights in the documents in any extension of the works to which the services relate.</p> <p>70.6 The <i>Consultant</i> warrants that the use of the Documents for the purposes of this Contract will not infringe the rights of any third party.</p> <p>70.7 The <i>Consultant</i> supplies copies of the Documents to the <i>Client</i> and to the <i>Client's</i> other <i>Consultants</i> for no additional fee to the extent necessary to enable them to discharge their respective functions in relation to this Contract or related works.</p> <p>70.8 After the termination or conclusion of the <i>Consultant's</i> employment hereunder, the <i>Consultant</i> supplies the <i>Client</i> with copies and/or computer discs of such of the Documents as the <i>Client</i> may from time to time request and the <i>Client</i> pays the <i>Consultant's</i> reasonable costs for producing such copies or discs.</p>
Z12	<p>Clause 71 – Confidentiality</p> <p>Insert New Clauses</p> <p>71.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in the Contract, each party shall do each of the following:</p> <ul style="list-style-type: none"> 71.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and 71.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent. <p>71.2 Clause 71.1 shall not apply to the extent that any one or more of the following applies to the relevant information or disclosures:</p> <ul style="list-style-type: none"> 71.2.1 such disclosure is a requirement of law placed upon the party making the disclosure, including any requirements for disclosure under the Freedom of Information Act 2000, Code of Practice on Access to Government Information or the Environment Information Regulations 2004 pursuant to clause 28 (Freedom of Information); 71.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner; 71.2.3 such information was obtained from a third party without obligation of confidentiality;

71.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; and

71.2.5 it is independently developed without access to the other party's Confidential Information.

71.3 The *Consultant* may only disclose the *Client's* Confidential Information to the *Consultant* personnel who are directly involved in the provision of the services and who need to know the information and shall make sure that such *Consultant* personnel are aware of and shall comply with these obligations as to confidentiality.

71.4 The *Consultant* shall not, and shall procure that the *Consultant* personnel do not, use any of the *Client's* Confidential Information received other than for the purposes of this Contract.

71.5 At the written request of the *Client* and if reasonable in the circumstances to make that request, the *Consultant* shall procure that, at the *Client's* sole discretion, the *Consultant* or those members of the *Consultant's* key people identified in the Contract Data Part Two involved in the provision of the services sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.

71.6 Nothing in this Contract shall prevent the *Client* from disclosing the *Consultant's* Confidential Information in any one or more of the following circumstances:

71.6.1 to any Crown body or any other contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015 other than the *Client*. All crown bodies or such contracting authority receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown bodies or other such contracting authority 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 other contracting authority;

71.6.2 to any other person engaged by the *Client* on the basis that the information is confidential and is not to be disclosed to a third party;

71.6.3 for the purpose of the examination and certification of the *Client's* accounts; and/or

71.6.4 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."

Z13 Clause 83 – Insurance Cover

Insert new clauses;

83.4 All insurances required to be effected or maintained by the insuring party under NEC4 PSC clause 83 are placed with reputable insurers, to whom the other party has no reasonable objection, lawfully carrying on such insurance business in the United Kingdom, and upon customary and usual terms prevailing for the time being in the insurance market. The said terms and conditions do not include any term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010.

83.5 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 NEC4 PSC clause 83 or obtains a different policy of insurance or fails to provide a copy of certificates 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.

83.6 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.

83.7 In the Insurance Table provided in NEC4 PSC clause 83.2, the first paragraph under the heading of "Insurance against" is deemed to be amended to read:

"Liability of the *Consultant* for claims made against him arising out of his failure to use the skill, care and diligence required by the Contract Standard".

Z14	<p>Clause 88 – Professional Indemnity Insurance</p> <p>Insert new clauses</p> <p>88.1 The <i>Consultant</i> maintains professional indemnity insurance:</p> <ul style="list-style-type: none"> • upon customary and usual terms and conditions prevailing for the time being in the insurance market • with reputable insurers lawfully carrying on such insurance business in the United Kingdom • with a limit of indemnity of not less than £5 million for any one occurrence or series of occurrences arising out of any one event • for a period beginning not later than the Contract Date and ending 6 (six) years after Completion of the whole of the works <p>provided that such insurance is available generally in the market at commercially reasonable rates.</p> <p>88.2 Such terms and conditions do not include any term or condition to the effect that the <i>Consultant</i> must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010, or any amendment or re-enactment thereof.</p> <p>88.3 For the purposes of this clause 88, "commercially reasonable rates" means such level of premium rates at which other <i>Consultants</i> of a similar size and financial standing as the <i>Consultant</i> at each renewal date generally continue to take out such insurance. For the avoidance of doubt, any increased or additional premium required by insurers by reason of the <i>Consultant's</i> own claims record or other act, error, omission, negligence, breach, default, matters or things particular to the <i>Consultant</i> are deemed to be within commercially reasonable rates.</p> <p>88.4 The <i>Consultant</i> immediately informs the <i>Client</i> if such insurance ceases to be available at commercially reasonable rates so that the <i>Consultant</i> and the <i>Client</i> can discuss means of best protecting the respective positions of the <i>Client</i> and the <i>Consultant</i> in respect of the services.</p> <p>88.5 The <i>Consultant's</i> obligations in respect of professional indemnity insurance continue after termination of this contract (for any reason).</p>
Z15	<p>Clause 90 – Termination</p> <p>Amend Clause 90.2 as follows</p> <p>In the Termination Table:</p> <p>Insert ", R10A" after "R18" in the "Reason" column for the <i>Client</i></p> <p>Insert ", A3a" after "A1" in the first line in the "Amount Due" column for the <i>Client</i></p>
Z16	<p>Clause 91 – Reasons for termination</p> <p>91.1</p> <p>Insert the following new bullet point:</p> <p>91.1A</p> <p>"applied to court for, or obtains, a moratorium under Part a1 of the Insolvency Act 1986 (R10A)."</p>
Z17	<p>Clause 93 – Payment on termination</p> <p>Insert new clause following A3:</p> <p>A3a</p> <p>A deduction by or payment to the <i>Client</i> of the additional cost to the <i>Client</i> of Providing the Service other than by the contract and the amount of any other cost, loss, damage or liability incurred or to be incurred by the <i>Client</i> resulting from the termination, and/or from the reason for termination and/or from any other act, error, omission, negligence, breach or default of the <i>Consultant</i>.</p>
Z18	<p>W2</p> <p>W2.3(11)</p> <p>Delete the final sentence.</p>

Additional conditions of contract

Z19 CDM Regulations

The *Consultant* performs all the functions and duties of a Designer [and Principal Designer]¹ as defined in the CDM Regulations, to the extent that the CDM Regulations apply to the *Consultant's* duties under this Contract

Z20 Retrospective effect of contract

20.1 Upon the Parties entering into this contract, nothing contained in any other agreement that has been entered into by the Parties in relation to the service ("Other Agreements") overrides or modifies this contract, and this contract and its terms are deemed to govern any works and/or services provided by or on behalf of the *Consultant* to the *Client* in relation to the service, whether carried out before or after the date of this contract (including under any such Other Agreements) and all such works and/or services are deemed to be part of the service and are deemed to have been performed under the terms of this contract.

20.2 All payments made by the *Client* to the *Consultant* pursuant to the Other Agreements are deemed to have been made as part of the Price for Service Provided to Date and the *Client* has no further liabilities (including any liability to make any payments) under the Other Agreements.

Z21 Rights of Third Parties

Unless the right of enforcement is expressly provided for it is not intended that a third party should have the right to enforce a provision of this contract pursuant to the Contracts (Rights of Third Parties) Act 1999. This clause Z21 shall not affect or prevent any assignees who take the benefit of this contract pursuant to clause 25 or successors in title to the *Client* from enforcing the provisions of this contract.

Z22 General Data Protection Regulation (GDPR) Requirements

The Parties shall comply with the General Data Protection Regulation (GDPR) Requirements as set out in Appendix 2 and in accordance with Appendix 3 (Schedule of Processing, Personal Data and Data Subjects).

Z23 Discrimination

23.1 The *Consultant* does not discriminate directly or indirectly or by way of victimisation or harassment against any person contrary to the Race Relations Act 1976, the Sex Discrimination Act 1975, the Disability Discrimination Acts 1995 and 2005 or the Equality Act 2010 (the "Discrimination Acts").

23.2 Where possible in Providing the Service, the *Consultant* co-operates with and assists the *Client* to satisfy its duty under the Discrimination Acts to eliminate unlawful discrimination and to promote equality of opportunity between persons of different racial groups and between disabled people and other people.

23.3 Where an employee or Subcontractor employed by the *Consultant* is required to carry out any activity alongside the *Client's* employees in any premises, the *Consultant* ensures that each such employee or Subcontractor complies with the *Client's* employment policies and codes of practice relating to discrimination and equal opportunities.

23.4 The *Consultant* notifies the Service Manager in writing as soon as he becomes aware of any investigation or proceedings brought against the *Consultant* under the Discrimination Acts in connection with this contract and

- a) provides any information requested by the investigating body, court or tribunal in the timescale allotted;
- b) attends (and permits a representative from the *Client* to attend) any associated meetings;
- c) promptly allows access to any relevant documents and information; and
- d) co-operates fully and promptly with the investigatory body, court or tribunal.

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

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

Z24 Disclosure of Information

24.1 A Disclosure Request is a request for information relating to this contract pursuant to the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or otherwise.

24.2 The *Consultant* acknowledges that the *Client* may receive Disclosure Requests and that the *Client* may be obliged (subject to the application of any relevant exemption and, where applicable, the public interest test) to disclose information (including commercially sensitive information) pursuant to a Disclosure Request. Where practicable, the *Client* consults with the *Consultant* before doing so in accordance with the relevant Code of Practice. The *Consultant* uses reasonable endeavours to respond to any such consultation promptly and within any deadline set by the Service Manager and acknowledges that it is for the *Client* to determine whether or not such information should be disclosed.

24.3 When requested to do so by the Service Manager, the *Consultant* promptly provides information in its possession relating to this contract and assists and co-operates with the Service Manager to enable the *Client* to respond to a Disclosure Request within the time limit set out in the relevant legislation.

24.4 The *Consultant* promptly passes any Disclosure Request which it receives to the Service Manager. The *Consultant* does not respond directly to a Disclosure Request unless instructed to do so by the Service Manager.

Z25 Quality Management and Audit

25.1 The *Consultant* operates a quality management system for Providing the Service which:

- a) complies with the relevant parts of ISO 9001:2008 and ISO 9001:2008/Cor 1:2009;
- b) incorporates an environmental management system consistent with ISO 14001:2004;
- c) includes processes for delivering continual improvement following the guidance in ISO 9004:2009;
- d) has third party certification from a UKAS approved accreditation body (or its equivalent) or is operating in preparation for accreditation within 12 months of the starting date;
- e) complies with good industry practice; and
- f) otherwise fully complies, and is consistent with the requirements set out in the Scope.

25.2 The *Consultant* provides to the Service Manager, within one week of the starting date, a quality policy statement and a quality plan for acceptance. The quality policy statement and quality plan comply with the requirements stated in the Scope and are sufficiently detailed to demonstrate how the *Consultant* will Provide the Service in accordance with this contract.

25.3 The *Consultant* keeps a controlled copy of the quality plan available for inspection by the Service Manager at all times.

25.4 The *Consultant* complies with an instruction from the Service Manager to:

- a) change the quality plan so that it complies with the requirements of this contract; or
- b) correct a failure of the *Consultant* to comply with the quality plan.

25.5 The Service Manager and other persons authorised by him may carry out periodic audits of the *Consultant's* quality management system as specified in the Scope. The *Consultant* allows access to the Site and other premises used by the *Consultant* to Provide the Service and provides all facilities and assistance necessary to enable such audits to be carried out. Access to premises and facilities, as is reasonably required, will be allowed subject to the Service manager giving reasonable notice to the *Consultant* and subject to supervision by the *Consultant*.

Z26 Fair Payment

26.1 The *Consultant* assesses the amount due to a Subcontractor without taking into account the amount certified by the Service Manager.

26.2 The *Consultant* includes in the contract with each Subcontractor:

- a) a period for payment of the amount due to the Subcontractor not greater than 19 days after the due date 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;
- b) a provision requiring the Subcontractor to include in each subsubcontract the same requirement, except that the period for payment is to be not greater than 23 days after the due date in this contract; and
- c) a provision requiring the Subcontractor to assess the amount due to a subsubcontractor without taking into account the amount paid by the *Consultant*.

26.3 The *Consultant* notifies non-compliance with the timescales for payment through the Efficiency and Reform Group Supplier Feedback Service. The *Consultant* includes this provision in each subcontract, and requires Subcontractors to include the same provision in each subsubcontract.

Z27 Admittance to Client's Premises

27.1 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*.

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

27.3 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.

27.4 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.

27.5 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*.

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

Z28 Prevention of Fraud and Bribery

28.1 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.

28.2 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.

28.3 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.

28.4 The *Consultant* immediately notifies the *Client* in writing if it becomes aware of any breach of clause 28.1, 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.

28.5 If the *Consultant* makes a notification to the *Client* pursuant to clause 28.4, 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.

28.6 If the *Consultant* breaches Clause 28.3, 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.

Z29 **Legislation and Official Secrets**

29.1 The *Consultant* complies with Law in the carrying out of the *service*.

29.2 The Official Secrets Acts 1911 to 1989, section 182 of the Finance Act 1989 and, where appropriate, the provisions of section 11 of the Atomic Energy Act 1946 apply to this contract.

29.3 The *Consultant* notifies its employees and its Subcontractors of their duties under these Acts.

Z30	<p>Publicity and Branding</p> <p>30.1 The <i>Consultant</i> does not</p> <ul style="list-style-type: none"> • make any press announcements or publicise this contract in any way • use the <i>Client's</i> name or brand in any promotion or marketing or announcement of the contract <p>without approval of the <i>Client</i>.</p> <p>30.2. The <i>Client</i> is entitled to publicise the contract in accordance with any legal obligation upon the <i>Client</i>, including any examination of the contract by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.</p>
Z31	<p>Security Requirements</p> <p>The <i>Consultant</i> complies with, and procures the compliance of the <i>Consultant's</i> people, with the Security Policy and the Security Management Plan produced by the <i>Consultant</i> and the <i>Consultant</i> shall ensure that the Security Management Plan fully complies with the Security Policy and Contract Schedule [Appendix 1 – Schedule 1].</p>
Z32	<p>Tax Compliance</p> <p>32.1 The <i>Consultant</i> represents and warrants that at the Contract Date, it has notified the <i>Client</i> 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.</p> <p>32.2 If, at any point prior to the <i>defects date</i>, an Occasion of Tax Non-Compliance occurs, the <i>Consultant</i> shall</p> <ul style="list-style-type: none"> • notify the <i>Client</i> in writing of such fact within 5 days of its occurrence and • promptly provide to the <i>Client</i> <ul style="list-style-type: none"> • details of the steps which the <i>Consultant</i> 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 <p>the <i>Client</i> may reasonably require.</p>
Z33	<p>Small and Medium Sized Enterprises (SMEs)</p> <p>The <i>Consultant</i> 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.</p> <p>The <i>Consultant</i> reports to the <i>Client</i> 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.</p> <p>Where available, the <i>Consultant</i> tenders its Subcontracts using the same online electronic portal as was provided by the <i>Client</i> for the purposes of tendering this contract.</p> <p>The <i>Consultant</i> ensures that the terms and conditions used to engage Subcontractors are no less favourable than those of this contract. A reason for the <i>Service Manager</i> not accepting subcontract documents proposed by the <i>Consultant</i> is that they are unduly disadvantageous to the Subcontractor.</p>
Z34	<p>Apprenticeships</p> <p>The <i>Consultant</i> takes all reasonable steps to employ apprentices, and reports to the <i>Client</i> the numbers of apprentices employed and the wider skills training provided, during the delivery of the <i>service</i>.</p> <p>The <i>Consultant</i> 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.</p> <p>The <i>Consultant</i> makes available to its people and Subcontractors working on the contract, information about the Government's Apprenticeship programme and wider skills opportunities.</p>

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

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:
 - (a) work experience placements for 14 to 16 year olds,
 - (b) work experience /work trial placements for other ages,
 - (c) student sandwich/gap year placements,
 - (d) graduate placements,
 - (e) vocational training,
 - (f) basic skills training and
 - (g) on site training provision/ facilities.

Z35 **Change of Control**

35.1 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.

35.2 The *Client* may terminate the *Consultant's* obligation to Provide the Service (which shall take effect as termination under reason R11 (see clause 91.2)) 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.

Z36 **Financial Standing**

The *Client* may terminate the *Consultant's* obligation to Provide the Service (which shall take effect as termination under reason R11 (see clause 91.2)) 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.

Z37 **Financial Distress**

The *Consultant* complies with the provisions of Appendix 1 Schedule 2 (Financial Distress) in relation to the assessment of the financial standing of the *Consultant* and the consequences of a change to that financial standing.

Z38

Records, audit access and open book data

38.1 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*.

38.2 The *Consultant*

- keeps the records and accounts referred to in clause 38.1 in accordance with Law
- affords any Auditor access to the records and accounts referred to in clause 38.1 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, but subject to allowing such access only in respect of one such Audit per year from the Contract Date unless the Parties are engaged in a dispute, 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.

38.3 The Parties bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 37, 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.

38.4 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.

Z39

Cyber Essentials

The *Client* and the *Consultant* shall comply with the provisions of Appendix 1 schedule 3.

TASK ORDER AMENDMENTS

Z40 Providing the Service

Insert new clause 20.6

The *Consultant* prepares forecasts of the total Time Charge and *expenses* for the whole of the *service* and submits them to the *Client*. Forecasts are prepared at monthly intervals from the *starting date* until Completion of the whole of the service. An explanation of the changes made since the previous forecast is submitted with each forecast

Z41 The programme

Insert new clause 31.5:

The *Consultant* provides information which shows how each item included in a Task relates to the operations on each programme which they submit for acceptance.

Z42 Assessing Tasks

Insert new clause 50.10:

50.10 A Task Order includes

- a detailed description of the work in the Task,
- a priced list of items of work in the Task in which items taken from the Task Schedule are identified,
- the starting and completion dates for the Task, and
- the total of the Prices for the Task.

The *Client* consults the *Consultant* about the contents of a Task Order before he issues it.

50.10.2 The Prices for items in the Task price list which are not taken from the Task Schedule are assessed in the same way as compensation events.

50.10.3 The *Consultant* does not start any work included in the Task until he has received the Task Order, and does the work so that Task Completion is on or before the Task Completion Date. No Task Order is issued after the Completion Date.

Z43 Compensation events

Insert new compensation events.

(17) The *Client* issues an instruction changing a Task Order. If the effect of a compensation event which is an instruction changing a Task Order is to reduce the total Time Charge, the Prices are reduced.

(18) The *Consultant* receives the Task Order after the starting date stated in the Task Order.

(19) A Task Completion Date is later than the Completion Date

Z44 Quotations for compensation events

Insert new clause 62.7:

The cost of preparing quotations for compensation events is not included in the assessment of compensation events.

Z45 Assessing compensation events

Insert new clauses 63.14, 63.15 & 63.16:

63.14 A delay to the Task Completion Date is assessed as the length of time that due to the compensation event, planned Task Completion is delayed.

63.15 Assessments for changed Prices for compensation events are in the form of changes to the Task Schedule.

63.16 If the effect of a compensation event is to reduce the total Time Charge and the event is

- a change to the Task or
- a correction of an assumption stated by the *Client* for assessing an earlier compensation event, the Prices are reduced.

Z46 Implementing compensation events

Insert new clause 66.4:

The *Client* includes the changes to

- the Prices and the Task Completion Date and
- the final total of the Prices for the Task and the programme for the Task

from the quotation which he has accepted or from his own assessment in the notification implementing a compensation event.

Z47 Prices adjustments for inflation

One year after the Contract Date, the rates and prices in the Task Schedule shall be increased by the lower of 2 per cent (2%) or the change in the Consumer Price Index (CPI) since the Contract Date, and in each subsequent year such rates and prices shall increase by the lower of 2 per cent (2%) or the change in the CPI since the previous anniversary of the Contract Date.

In circumstances where, at the time any such adjustment is calculated, the CPI has increased significantly more than 2 per cent, the *Client* will consider, but is not obliged to approve, any application by the *Consultant* for a greater increase in such rates and prices, provided such application is appropriately evidenced, and whether to grant any such additional increase shall be at the sole discretion of the *Client*.

Any agreed increase above 2% will be shared between the *Client* and *Consultant* on a 50/50 pain/gain share. Any such arrangement shall be considered temporary.

Schedule 1

1. CONTRACT SCHEDULE 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:

- (a) any unauthorised access to or use of the service the *Client* Premises, the Sites, 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
- (b) 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 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 issued 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* System;

"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 Regulations;

"Security Management Plan": the *Consultant's* security plan prepared pursuant to paragraph 1.5.3 of schedule J (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 1 Schedule 1 (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 1-4) 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:
 - (i) 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.
 - 1.4.1.1 The *Consultant* shall develop and maintain a Security Management Plan in accordance with this Schedule to apply during the carrying out of the *service*.

- 1.4.1.2 The *Consultant* shall comply with its obligations set out in the Security Management Plan.
- 1.4.1.3 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 1 of this Part 2 of this Contract Schedule J.
- 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 1 of this Part 2 of this Contract Schedule J. 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:
- (a) emerging changes in Good Industry Practice;
 - (b) 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:
- (a) suggested improvements to the effectiveness of the ISMS;
 - (b) updates to the risk assessments;
 - (c) proposed modifications to the procedures and controls that effect information security to respond to events that may impact on the ISMS; and
 - (d) 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 non-compliance 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:
- (a) remedy such breach or protect the integrity of the ISMS against any such potential or attempted breach or threat; and
 - (b) 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.

1. Definitions

1.1. In this Schedule 2 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 2.

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

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

2. Credit rating and duty to notify

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

2.2. The *Consultant* promptly notifies (or procures that its auditors promptly notify) the *Client* 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).

2.3. If there is any downgrade credit rating issued by any Rating Agency for the *Consultant*, the *Consultant* ensures that the *Consultant's* auditors thereafter provide the *Client* 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

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

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

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

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

2.4. The *Consultant*:

- 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.

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

3. Consequences of a financial distress event

3.1. In the event of:

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

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

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

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

3.1.5. a 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;

3.1.6. any of the following:

- commencement of any litigation against the *Consultant* with respect to financial indebtedness or obligations under this contract;
- non-payment by the *Consultant* of any financial indebtedness; any financial indebtedness of the *Consultant* becoming due as a result of an event of default
- the cancellation or suspension of any financial indebtedness in respect of the *Consultant* in each case which the *Client* 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.

3.2. *The Consultant:*

3.2.1 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

3.2.2. 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.

3.3. 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.

3.4. 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.

3.5. 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).

3.6. Where the *Consultant* reasonably believes that the relevant Financial Distress Event (or the circumstance or matter which has caused or otherwise led to it) no longer exists, the *Consultant* notifies the *Client* and 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.

4. Termination rights

4.1. 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.

5. Primacy of credit ratings

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

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

ANNEX 1: CREDIT RATINGS & CREDIT RATING THRESHOLDS

Consultant Credit current rating (long term) – Dunn & Bradstreet risk of business failure score must be below 4 (significant)

CYBER ESSENTIALS

CYBER ESSENTIALS SCHEME

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>;

"Cyber Essentials Basic Certificate": the certificate awarded on the basis of self-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 Data": sensitive and personal information and other relevant information as referred to in the Cyber Essentials Scheme; and

"Cyber Essentials Plus Certificate": the certification awarded on the basis of external 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.

PART TWO – DATA PROVIDED BY THE *CONSULTANT*

Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

1 General

The *Consultant* is

Name

Address for communications

Address for electronic communications

The *fee percentage* is

N/A – as per framework rates

The *key person/s* are

name

service

The following matters will be included in the Early Warning Register

Proposed changes of specified key person/s.

2 The *Consultant's* main responsibilities

If the *Consultant* is to provide Scope

The Scope provided by the *Consultant* is in

N/A

The *Consultant* shall be able to carry out the services in the attached Scope as and when requested. Individual detailed scopes of works will be agreed prior to start with the *Client* and then appointed on individual Task Orders as per the instruction in Recitals of this NEC4.

5 Payment

If the *Consultant* states

Payments will be in line with the "Pricing Schedule_OFAS Land Agent Services-Option A" as per Appendix 4)

Resolving and avoiding disputes

The *Senior Representatives* of the *Consultant* are

Name (1)

Address for communications

Address for electronic communications

Name (2)

Address for communications

Address for electronic communications

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

As per Task Order

Data for the Short Schedule of Cost Component

The *people rates* are

category of person

unit

rate

Appendix 2: General Data Protection Regulation (GDPR) Requirements

Additional Definitions

Agreement : this contract;

Consultant Personnel : means all directors, officers, employees, agents, *Consultants* and Contractors of the *Consultant* and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement;

Data Protection Legislation : (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Controller , Processor , Data Subject , Personal Data , Personal Data Breach , Data Protection Officer take the meaning given in the GDPR.

Data Loss Event : any event that results, or may result, in unauthorised access to Personal Data held by the *Consultant* under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

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.

DPA 2018 : Data Protection Act 2018

GDPR : the General Data Protection Regulation (Regulation (EU) 2016/679)

LED : Law Enforcement Directive (Directive (EU) 2016/680)

Protective Measures : appropriate technical and organisational measures 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 the such measures adopted by it.

Sub-processor: any third Party appointed to process Personal Data on behalf of the *Consultant* related to this Agreement.

Data Protection Requirements

- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the *Client* is the Controller and the *Consultant* is the Processor. The *Consultant* processes data only as authorised in Appendix 3 (Schedule of Processing, Personal Data and Data Subjects) by the *Client* and may not be determined by the *Consultant*.
- 1.2 The *Consultant* notifies the Service Manager immediately if it considers that any of requirement of the documents forming part of this contract infringe the Data Protection Legislation.
- 1.3 The *Consultant* provides all reasonable assistance to the *Client* in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the *Client*, include:
 - (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 1.4 In relation to any Personal Data processed in connection with its obligations under the documents forming part of this contract the *Consultant*:
 - (a) processes that Personal Data only in accordance with Appendix 3 (Schedule of Processing, Personal Data and Data Subjects), unless otherwise required by Law. If it is so required the *Consultant* shall promptly notify the *Client* before processing the Personal Data unless prohibited by Law;
 - (b) ensures that it has in place Protective Measures, which have been reviewed and approved by the Employer as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - (c) ensures that:
 - (i) the *Consultant* Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule X);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any *Consultant* Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the *Consultant*'s duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the *Consultant* or any Sub-processor;

(C) 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 *Client* or as otherwise permitted by this Agreement; and

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

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

(i) the *Client* or the *Consultant* has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the *Client*;

(ii) the Data Subject has enforceable rights and effective legal remedies;

(iii) the *Consultant* 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 reasonable endeavours to assist the *Client* in meeting its obligations); and (iv) the *Consultant* complies with any reasonable instructions notified to it in advance by the *Client* with respect to the processing of the Personal Data;

(e) at the written direction of the *Client*, delete or return Personal Data (and any copies of it) to the *Client* on termination of the Agreement unless the *Consultant* is required by Law to retain the Personal Data.

1.5 Subject to clause 1.6, the *Consultant* shall notify the Service Manager immediately if it:

(a) receives a Data Subject Access Request (or purported Data Subject Access Request);

(b) receives a request to rectify, block or erase any Personal Data;

(c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

(d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;

(e) 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 Data Loss Event.

1.6 The *Consultant's* obligation to notify under clause 1.5 shall include the provision of further information to the *Client* in phases, as details become available.

1.7 Taking into account the nature of the processing, the *Consultant* shall provide the *Client* with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the *Client*) including by promptly providing:

(a) the *Client* with full details and copies of the complaint, communication or request;

(b) such assistance as is reasonably requested by the *Client* to enable the *Client* to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

(c) the *Client*, at its request, with any Personal Data it holds in relation to a Data Subject;

(d) assistance as requested by the *Client* following any Data Loss Event;

(e) assistance as requested by the *Client* with respect to any request from the Information Commissioner's Office, or any consultation by the *Client* with the Information Commissioner's Office.

1.6 The *Consultant's* obligation to notify under clause 1.5 shall include the provision of further information to the *Client* in phases, as details become available.

1.7 Taking into account the nature of the processing, the *Consultant* shall provide the *Client* with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the *Client*) including by promptly providing:

(a) the *Client* with full details and copies of the complaint, communication or request;

(b) such assistance as is reasonably requested by the *Client* to enable the *Client* to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

(c) the *Client*, at its request, with any Personal Data it holds in relation to a Data Subject;

(d) assistance as requested by the *Client* following any Data Loss Event;

(e) assistance as requested by the *Client* with respect to any request from the Information Commissioner's Office, or any consultation by the *Client* with the Information Commissioner's Office.

1.8 The *Consultant* shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the *Consultant* employs fewer than 250 staff, unless:

(a) the *Client* determines that the processing is not occasional;

(b) the *Client* determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and

(c) the *Client* determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

1.9 The *Consultant* shall allow for audits of its Data Processing activity by the *Client* or the *Client's* designated auditor.

- 1.10 The *Consultant* shall designate a data protection officer if required by the Data Protection Legislation.
- 1.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the *Consultant* must:
- (a) notify the *Client* in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the *Client*;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause [X] such that they apply to the Sub-processor; and
 - (d) provide the *Client* with such information regarding the Sub-processor as the *Client* may reasonably require.
- 1.12 The *Consultant* shall remain fully liable for all acts or omissions of any Sub-processor.
- 1.13 The *Client* may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 1.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The *Client* may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

Appendix 3: Schedule of Processing, Personal Data and Data Subjects

1. The *Consultant* shall comply with any further written instructions with respect to processing by the *Client*.
2. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	The <i>Consultant</i> processes data only as required to provide the Services in accordance with the conditions of contract, including Contract Data Part 1 and Part 2.
Duration of the processing	The <i>Consultant</i> processes the data as required to provide the Services or any additional works or services required under the terms of this contract until the later of Completion, the Defects Date, or the end of a warranty period to which the processing of the personal data relates. Where personal data is required for more than one purpose under the terms of the contract, it is retained until the later of the Completion, Defects Date or end of a warranty period.
Nature and purposes of the processing	The nature and purpose of the processing is limited to the <i>Consultants</i> retention or replacement of professionally competent Key People, Subcontractors or sub- <i>Consultants</i> where this contract requires the <i>Client</i> to provide an acceptance of a Key People, Subcontractor or sub- <i>Consultant</i> .
Type of personal data	The types of personal data processed under this contract is limited to name, role description, qualifications (academic achievements and professional accreditations) and experience.
Categories of personal data	The <i>Consultant</i> is not permitted to retain any special categories of personal data as defined under the GDPR.
Plan for the return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	The <i>Consultant</i> processes the data until the date detailed above (duration of the processing) where after the <i>Consultant</i> immediately destroys the personal data.

Appendix 4 – THE TASK SCHEDULE

Please refer to Pricing Schedule_OFAS Land Agent Services-Option A v1