



**Highways England Company Limited  
Lower Thames Crossing  
Integration Partner**

**NEC4 Professional Service Contract  
(June 2017 with amendments January 2019)**

**Volume 2A**

**SCOPE**



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## CLIENT'S SCOPE

### S100 Purpose of the service

- S 100.1 The *Client* wishes to engage the *Consultant* to act as integration partner for the purposes of preparing for the delivery of the Project, mobilising the Project Contractors, managing the construction of the Project, integrated systems commissioning and handover to the *Client's* operations directorate.

### S101 Identified and Defined Terms and reference documents

- S101.1 In this Scope terms identified in the Contract Data are in italics and defined terms have capital initials. Other terms used with capital letters are defined in the *conditions of contract* or have the meaning given to them in **Annex 01**. Acronyms are also explained in **Annex 01**. All reference documents referred to in the Scope can be accessed via links or instructions set out in **Annex 02**.

### S105 Client's objectives

- S105.1 The purpose of this section is to communicate the *Client's* vision, values, outcomes and the key objectives of the contract. It also outlines the *Client's* expectations regarding how the *Consultant* supports the delivery of these.

#### About us

- S105.2 The *Client* is a road operator responsible for managing the busiest network in Europe, carrying one-third of all road traffic and two thirds of freight traffic in England.
- S105.3 The roads that make up the *Client's* strategic road network are a key enabler of economic growth and prosperity and are essential to the quality of life of the nation.
- S105.4 The *Client's* role is to deliver a better service for road users and to support a growing economy. It operates, manages and improves the strategic road network in the public interest and maintains the network on a day-to-day basis and provides effective stewardship of the network's long-term operation and integrity.

#### The Client's Vision

- S105.5 The *Client's* vision, as set out in the Road Investment Strategy 2 (RIS2): 2020-2025, (see link in **Annex 02**) is to revolutionise our roads and create a modern strategic road network across England over the next 25 years. We will play our part in supporting economic growth and shaping a modern Britain to make a real difference to people's lives and businesses' prospects.

#### The Client's Imperatives

- S105.6 The *Client's* vision comprises the three imperatives which are

- **Safety** – the safety of our employees, our service partners and our road users (ensuring no one is harmed when travelling or working on the strategic road network),
- **Customer Service** – the customer service and experience that road users have (improving what we do and how what we do is to reduce impact on road users) and
- **Delivery** – the delivery of the Government’s road building and maintenance programme which includes spending over £4 billion a year delivering our road network to our road users, stakeholders and customers (delivering on time and efficiently).

S105.7 The *Client*’s imperatives set out what the *Client* considers key to its business, and the *Consultant* aligns with these imperatives and supports the *Client* in achieving the *Client*’s outcomes.

#### The *Client*’s Values and Expectations

S105.8 The *Client*’s values are

- **Safety** – we care about our customers, delivery partners and workforce and strive to see that no one is harmed when using or working on our network,
- **Integrity** – we are custodians of the network, acting with integrity and pride in the long-term national interest,
- **Ownership** – we have a clear vision for the future of the network and find new ways to deliver by embracing difference and innovation, while challenging conventions,
- **Teamwork** – we have an open and honest dialogue with each other, as well as our customers, stakeholders and delivery partners and
- **Passion** – building on our professionalism and expertise, we are always striving to improve, delivering a network that meets the needs of our customers.

S105.09 The *Client*’s values describe how we deliver our vision and imperatives, how we treat each other, and expect to be treated, how we want to be seen as an organisation and how we do business.

S105.10 The *Consultant* has values that support those of the *Client* and that engender constructive and desired behaviours that enable a collaborative approach to achieving the *Client*’s outcomes.

#### The *Client*’s Outcomes

S105.11 The Strategic Business Plan 2015 - 2020 (see link in **Annex 02**) (and any replacement thereof notified to the *Consultant*) sets out the *Client*’s main activities to improve the capacity and performance of the network and how the *Client* will do it.

S105.12 The contract plays a key role in assisting and enabling the *Client* to achieve its outcomes of



- supporting economic growth,
- a safe and serviceable network,
- a more free flowing network,
- an improved environment and
- more accessible and integrated network.

- S105.13 This will be achieved through
- planning for the future,
  - growing capability,
  - building relationships,
  - efficient and effective delivery and
  - improving customer interface.

#### Contract Core Principles Key Objectives

- S105.14 The key objectives of the *service* are
- to enable the *Client* to succeed by bringing management capability and organisational management expertise to help build and evolve the Integrated Client Team for the Project,
  - to ensure that the Project is successfully delivered by acting as the integrator, managing Project Contract interfaces, identifying risk and opportunity at the interfaces and resolving issues to maintain progress,
  - to build an efficient and effective Integrated Client Team bringing expertise, systems, tools and processes to manage the Delivery Phases of the Project including ensuring that the *Client* delivers on all its obligations and meets the requirements for the Project by providing a quality management system, and compliance and requirements management tools,
  - to seek out and realise opportunities for continuous improvement and efficiency across the Project,
  - to drive the performance of the Project Contractors and the Ancillary Contractors across the Project to secure completion of the Project on time and within the Project Budget,
  - to support the *Client* in the delivery of clear, transparent and predictable forecasting and reporting, both internally and to Government,
  - to leave a legacy for the *Client* of an industry-leading delivery model where the *Client* has the systems, capabilities and experience to lead future major projects and
  - in representing the *Client*, as part of the Integrated Client Team, to promote the *Client's* values and behaviours and lead on its "Home Safe and Well" initiative (see link in **Annex 02**).

## S 106 Reference documents

S106.1 Links to documents referred to within this Scope can be found in **Annex 02**.

## S110 Background

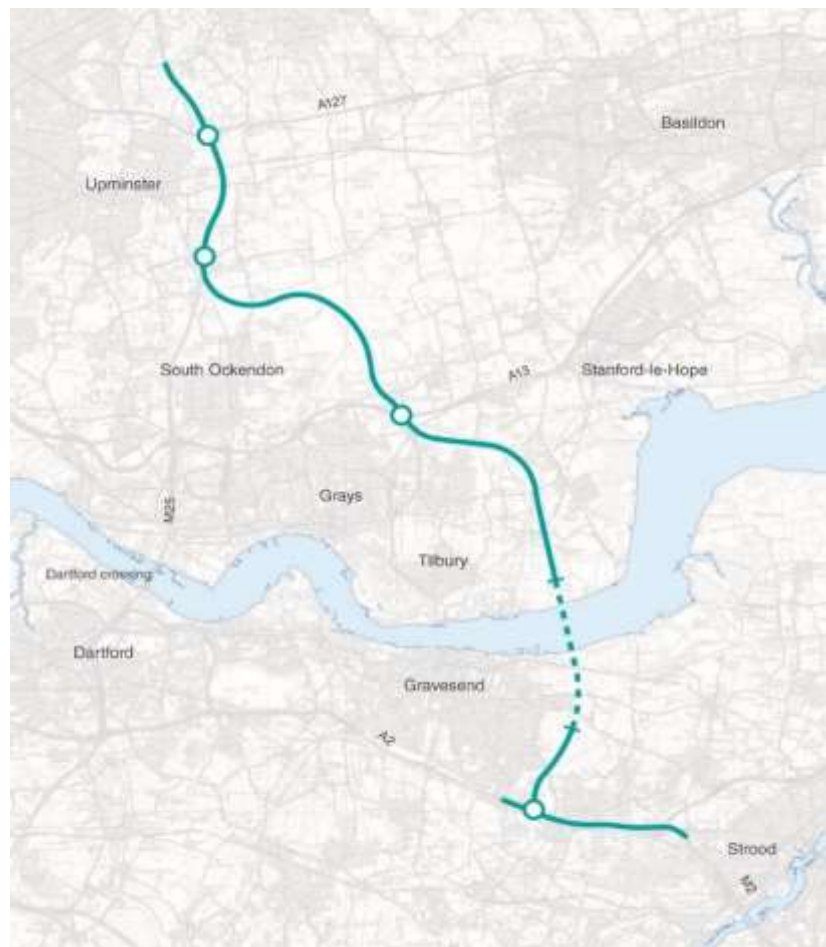
S110.1 The Project comprises a route connecting the A2 and M2 in Kent, east of Gravesend, crossing under the Thames through two bored tunnels, before joining the M25 south of junction 29.

The route is approximately 23km long, 4.25km of which is in the tunnel. On the south side of the Thames, the new route would link the tunnel to the A2 and M2 in Kent. On the north side, it would link to the A13 and junction 29 of the M25. The tunnel crossing is located to the east of the village of Chalk on the south of the Thames and to the west of East Tilbury on the north side.

Junctions are proposed at the following locations

- new junction with the A2 to the east of Gravesend,
- modified junction with the A13/A1089 in Thurrock and
- new junction with north-facing slip roads on the M25 between junctions 29 and 30.

Route alignment is depicted below



Further information about the Project and a fly-through video of the route is found at: <https://highwaysengland.co.uk/lower-thames-crossing-home/>

- S110.2 The Project Contracts comprise three main works packages as follows
- “Roads North”. This section, from the M25 to Tilbury Loop railway, line will be predominantly offline construction and includes
    - link roads,
    - a viaduct over a flood plain known as the Mar Dyke,
    - a complex free flow junction at the A13/A1089
    - a tunnel under the M25 and
    - a free flow junction with the M25.
  - “Tunnels and Approaches”. This section, from Tilbury Loop railway line to Thong Lane, will include
    - design, supply, operation and disposal of two TBMs,
    - design and construction of the tunnels,
    - design and installation of mechanical and electrical equipment required to operate the tunnel and
    - the approach roads from the Tilbury Loop railway line in the north to Thong Lane in the south.
  - “A2/M2 Connections”. The A2/M2 junction connections from Thong Lane will be predominantly online construction and include
    - link roads and
    - re-routing of local roads to support a free flow junction between the A2 and the Project.
- S110.3 Ancillary Contracts for additional works and services on the Project include
- pre-enabling works, including surveys to provide improved site and geotechnical data to inform the design and the planning of utilities works, protected species translocations and heritage protection,
  - user charging (an operational contract not included in the Project Budget) and
  - ITS (technology integration with the Client Systems and bulk technology purchases).

## S200 Description of the service

## S205 Description of the service

- S205.1 The *service* covers the following stages of the Project lifecycle
- **Phase M: the Mobilisation Phase**  
The Mobilisation Phase commences on the *starting date* and ends on the date which is 120 working days after the *starting date*. The *Consultant*

meets the Key Dates for Mobilisation Activities as set out in the Contract Data and completes the Mobilisation Activities within the Mobilisation Phase. It is anticipated that, if the *Service Manager* is satisfied that the *Consultant* will achieve successful completion of the Mobilisation Activities, the *Service Manager* issues Task Orders for Systems and Processes and for Delivery Phase 1 Core Services and Phase Specific Services within 110 working days of the *starting date*.

- **Delivery Phase 1: Preparation for award of Project Contracts and mobilisation of Project Contractors**

Delivery Phase 1 commences upon the Task Starting Date identified in the Task Orders for provision of Systems and Processes and Delivery Phase 1 Core Services and Phase Specific Services, if issued by the *Service Manager*, and concludes 3 months after the award of the last of the Project Contracts to be awarded (currently expected to be the Project Contract in respect of the Roads North work package (as described in section S110.2)).

- **Delivery Phase 2: Optimised Contractor Involvement (“OCI”) Phase**

Delivery Phase 2 commences upon the Task Starting Date identified in the Task Orders for Delivery Phase 2 Core Services and Phase Specific Services, if issued by the *Service Manager*, and concludes on the date on which each of the Project Contractors has provided its design check certificate, the *Client* has completed its “SGAR 5” assurance review in respect of each of the Project Contractors’ designs and the *Client* has issued “Ready for Construction” notices to each of the Project Contractors.

- **Delivery Phase 3: construction segment 1**

Delivery Phase 3 commences upon the Task Starting Date identified in the Task Orders for Delivery Phase 3 Core Services and Phase Specific Services, if issued by the *Service Manager*, and concludes 52 weeks thereafter.

- **Delivery Phase 4: construction segment 2**

Delivery Phase 4 commences upon the Task Starting Date identified in the Task Orders for Delivery Phase 4 Core Services and Phase Specific Services, if issued by the *Service Manager*, and concludes when each of the Project Contractors has completed all works required to be completed by the “Ready for Testing and Commissioning” key date identified in the relevant Project Contract.

- **Delivery Phase 5: operational readiness**

Delivery Phase 5 commences upon the Task Starting Date identified in the Task Orders for Delivery Phase 5 Core Services and Phase Specific Services issued by the *Service Manager* and concludes when the *Client* has completed trial operations (as defined in the Project Contracts) and each of the Project Contractors has completed all works required to be completed by the “Road Open for Traffic” key date identified in the relevant Project Contract.

S205.2 During the Mobilisation Phase, the *Consultant* provides Mobilisation Activities as set out in the contract. Throughout the Delivery Phases the *Consultant* Provides the Service if and as instructed in Task Orders.

- S205.3 The various parts of the *service* (including Mobilisation Activities) are categorised as follows, all as defined below and as further described in the Services and Systems Schedules listed below
- Systems and Processes,
  - Core Services,
  - Phase Specific Services and
  - Optional Services.
- S205.4 Systems and Processes comprise those systems and processes which may be required to be utilised or provided by the *Consultant* as set out in the Systems and Processes Schedules as described below
- SP1: General Systems Requirements,
  - SP2: Items to be Provided by the *Consultant*,
  - SP3: Client Software,
  - SP4: Connectivity,
  - SP5: Local Area Network (LAN),
  - SP6: LAN Switching,
  - SP7: Wide Area Network (WAN),
  - SP8: Communications Rooms,
  - SP9: Wi-Fi Network,
  - SP10: Telephony,
  - SP11: Mobile Telephony,
  - SP12: Printing,
  - SP13: Email and Calendaring,
  - SP14: Not used,
  - SP15: Document Management and Control Systems,
  - SP16: Customer Relationship Management (CRM) System,
  - SP17: Not used,
  - SP18: User and System Account Management,
  - SP19: Systems Service Management (Service Desk),
  - SP20: Not used,
  - SP21: Not used,
  - SP22: Not used,
  - SP23: Not used,
  - SP24: Not used,
  - SP25: Not used and
  - SP26: Digital Office Signage Solution.

- S205.5 Core Services comprise those parts of the *service* which may be required to be provided continuously as set out in the Core Services Schedules described below
- CS1: Health, Safety, Security and Wellbeing,
  - CS2: Communications and Stakeholder Management,
  - CS3: Project Management Office including Integrated Project Controls,
  - CS4: Legacy and Benefits Management,
  - CS5: People and Organisational Management and
  - CS6: Quality Management.
- S205.6 Phase Specific Services comprise those parts of the *service* which may be required to be provided for specific phases of the Project as set out in the Phase Specific Services Schedules described below
- PS1: Design Management and Assurance,
  - PS2: Project Integrator,
  - PS3: Consents Management and Discharge,
  - PS4: Land Management,
  - PS5: Environmental and Sustainability Management,
  - PS6: Early Works Coordination,
  - PS7: Utilities Management and Third Party Agreements Support,
  - PS8: Contract Management,
  - PS9: Construction Delivery,
  - PS10: Risk and Opportunity Management,
  - PS11: Testing and Commissioning and
  - PS12: Handover into Operation and Asset Management.
- S205.7 Optional Services comprise those parts of the *service* which may be required if instructed in a Task Order as set out in the Optional Services Schedules described below
- OS1: Leadership Secondments  
OS1 would require the *Consultant* to provide candidates for interim secondment to the *Client's* senior management roles, for example Contract Director for the Roads North work package (as described in section S110.2).
  - OS2: Occupational Health Facilities  
OS2 would require the *Consultant* to work with Project stakeholders and the *Client* to develop a plan for integrating the Project Contractors' occupational health and well being facilities with community health facilities.
  - OS3: Ebbsfleet Office Fit Out

OS3 would require the *Consultant* to plan and undertake the fit out of the Ebbsfleet Project office shell and core provided by Others.

- OS4: Staff Relocation

OS4 would require the *Consultant* to plan and undertake the relocation of *Client* staff, Technical Partner staff and *Consultant* staff from Beaufort House, Aldgate to the Ebbsfleet Project office.

- OS5: Ebbsfleet Office Facilities Management

OS5 would require the *Consultant* to provide facilities management of the Ebbsfleet Project office including providing any associated CDM duties.

- OS6: Site Vehicles.

OS5 would require the *Consultant* to provide site vehicles for use by the *Client's* staff and *Consultant's* staff prior to mobilisation of the Project Contractors.

OS7 Early Works Management

OS7 would require the *Consultant* to provide project management, site supervision, health safety security and wellbeing management, commercial management, stakeholder management and land access management for the pre-enabling works contract which is let to Balfour Beatty under the Scape framework and comprises various activities including preparation of ecology habits, species relocation, site access construction and compound construction.

OS8

OS8 would require the *Consultant* to provide project management and design coordination for the completion of detailed design by utility companies for contestable and non-contestable utility diversions. The services, if required would be for a period from award of the Contract to the end of Delivery Phase 1.

## Mobilisation Activities

S205.8 The *Consultant* provides the Mobilisation Activities from the *starting date* until the end of the Mobilisation Phase, in accordance with the Mobilisation Plan and as described in the Scope.

S205.9 Mobilisation Activities are

- all Mobilisation Activities identified as such in the Services Schedules
- the supply of the Project Information Systems as set out in the Systems and Processes Schedules, including
  - the operation and maintenance of any IP Software from the date on which such IP Software is accepted by the *Service Manager*,
  - the operation and maintenance of any Client Software from the date on which the same is provided to the *Consultant* and
  - the integration of the IP Software and the Client Software accordingly and
- any other obligation which is required by the Scope to be provided during the Mobilisation Phase.

### Delivery Phase Task Orders

- S205.10 From the end of the Mobilisation Phase, the *Consultant* Provides the Services in accordance with and subject to any Task Orders issued in accordance with the contract, and as described in the Services and Systems Schedules.
- S205.11 If the *Client* requires the *Consultant* to provide the Systems and Processes, it will issue a Task Order for the provision of the Systems and Processes for the whole of the Project at the start of Delivery Phase 1 in accordance with the contract. The Consultant provides the Systems and Processes in accordance with the Task Order, subject to the Systems reviews to be undertaken during each Review Stage as described in section S205.25.
- S205.12 If the *Client* requires the *Consultant* to provide the Core Services it will issue a Task Order for the Core Services at the start of each Delivery Phase in accordance with the contract.
- S205.13 If the *Client* requires any Phase Specific Services for a Delivery Phase, it will issue a Task Order for such Phase Specific Services at the start of the relevant Delivery Phase in accordance with the contract.
- S205.14 If the *Client* requires any Optional Services from time to time, it will issue a Task Order for such Optional Services as and when the same are required.
- S205.15 It is anticipated that the Task Orders for Core Services and Phase Specific Services in Delivery Phase 1 will instruct
- the Core Services required under Schedule CS1 (Health, Safety, Security and Wellbeing), Schedule CS3 (Project Management Office including Integrated Project Controls), Schedule CS5 (People and Organisational Management) and Schedule CS6 (Quality Management) and
  - the Phase Specific Services required under Schedule PS2 (Project Integrator), Schedule PS3 (Consents Management and Discharge), Schedule PS4 (Land Management), Schedule PS5 (Environmental and Sustainability Management), Schedule PS6 (Early Works Coordination), Schedule PS8 (Contract Management), Schedule PS9 (Construction Delivery) and Schedule PS10 (Risk and Opportunity Management)
- to be provided by the *Consultant* from the commencement of Delivery Phase 1 and
- the Core Services required under Schedule CS2 (Communications and Stakeholder Management) and Schedule CS4 (Legacy and Benefits Management) and
  - the Phase Specific Services required under Schedule PS1 (Design Management and Assurance), Schedule PS7 (Utilities Management and Third Party Agreements Support), Schedule PS11 (Testing and Commissioning) and Schedule PS12 (Handover into Operation and Asset Management)



to be provided by the *Consultant* from the date on which the DCO is awarded for the Project.

It is anticipated that the Task Orders for Delivery Phase 1 will cover the following activities

- management of the “Early Contractor Involvement” phase of the Project Contract for the A2/M2 Connections work package (as described in section S110.2),
- preparation for the mobilisation of the Project Contractors,
- provision of support to the *Client* in preparing the Final Business Case,
- final capture and configuration within the Project Information Systems of all Project Consents, Third Party Agreements and other requirements of the DCO,
- mobilisation of the Project Contractors and
- capturing and configuring the relevant information from the Project Contracts within the Project Information Systems.

#### Services and Systems Schedules

S205.16 The Services and Systems Schedules form part of the Scope and contain the detailed requirements for the *service* or the procedures for developing the detailed requirements for the *service* (the “Project Specific Requirements”, as further described below). The deliverables to be provided to the *Client* are as set out in the Services and Systems Schedules, or to be developed in accordance with the provisions of the Services and Systems Schedules, and as set out in Task Orders and captured in the Deliverables Matrix.

S205.17 Subject to section S205.17, the Services and Systems Schedules are mutually explanatory and each is to be read in conjunction with the others and with the rest of the Scope. The *Consultant* Provides the Services having due regard to the provisions of all of the Services and Systems Schedules and the rest of the Scope.

S205.18 The “Project Specific Requirements” comprise

- the provisions of the Services and Systems Schedules,
- the provisions of any document or information to be provided to the *Consultant* in accordance with the Services and Systems Schedules and
- the requirements of any plan, procedure or other document developed by the *Consultant* and accepted by the *Service Manager* in accordance with the Services and Systems Schedules.

If there is any conflict or inconsistency between any Project Specific Requirement and any other provision of the Scope, then the Project Specific Requirement takes precedence.

S205.19 When submitting any plan, procedure or other document to the *Service Manager* for acceptance in accordance with the Services and Systems Schedules, the *Consultant* expressly identifies any conflict or inconsistency between the provisions of such plan, procedure or other document and the

provisions of the Scope, and the reasons why the conflicting or inconsistent provision is required. A reason for not accepting any plan, procedure or document submitted by the *Consultant* for acceptance in accordance with the Services and Systems Schedules (without prejudice to other reasons set out therein) is that the conflict or inconsistency identified is not acceptable to the *Client*.

#### Integrated Client Team

- S205.20 The *Consultant* Provides the Service as part of an Integrated Client Team, which is a single entity in which individuals self-identify as representing the *Client*.
- S205.21 The Integrated Client Team comprises resources from the following
- the *Client*, who provides a small core leadership team whose role and priorities are
    - (i) to deliver the *Client's* own scope (for example, land acquisition),
    - (ii) to deliver the Project efficiently within the Project Budget and meeting the Road Open For Traffic Date,
    - (iii) to carry out the *Client's* role under the Project Contracts,
    - (iv) to integrate the elements of the Project, in order to deliver the scheme into operation and
    - (v) to establish the quality procedures that provide assured delivery of the first three of the above activities,
  - the *Consultant*, who supports the *Client* in successfully executing its role, provides a broad range of project and programme management services, establishes and runs the day to day management processes for the Integrated Client Team, and provides high quality data, analysis and experience-based insight to support the *Client* in making good decisions in good time,
  - the Technical Partner, who is retained under a separate contract to provide access to critical technical expertise, particularly in tunnel design and
  - the Commercial Partner who provides dedicated independent commercial and cost management at programme level and within each works package, under a separate contract.
- S205.22 The *Consultant* supports the *Client* in the successful delivery and commissioning of the Project by providing services both at overall programme level and at individual Project Contract level. The *Consultant* is accountable to the *Client's* overall leadership team for the Project.
- S205.23 The Project Contractors will design, build and commission the assets in accordance with their respective Project Contracts. However, successful opening of the road to traffic requires a number of other aspects for the programme to be successfully delivered, ranging from land acquisition and enabling works though operational readiness to free flow charging. The *Consultant* plays a leading role in managing the delivery on a cross-programme basis.
- S205.24 The Technical Partner has completed the preliminary design, procurement support specifications, Project Contract Scopes, ground investigation and

early enabling works, and is preparing and will submit the DCO application. The Technical Partner will provide witnesses to the planning inspectorate enquiry and other support such as during the DCO examination and during the procurement of the Project Contracts. The ongoing Technical Partner services will primarily focus on providing technical engineering support. A detailed transition plan is provided by the *Client*.

#### Reviews of Systems, Processes and Services

S205.25 Prior to the start of each Review Stage, the *Consultant* undertakes a review of all Systems and Processes and submits proposals to the *Service Manager* in relation to

- any part of the IP Software, hardware, system or process it provides or any hardware, software (including the Client Software), process or system provided by the *Client* pursuant to Schedule SP3 (Client Software) which is no longer required and could be decommissioned,
- any updates to any IP Software, hardware, system or process which the *Consultant* provides or to any hardware, software (including the Client Software), process or system provided by the *Client* pursuant to Schedule SP3 (Client Software) (and associated testing) to reflect the latest technological developments which may improve the usability or integrability of the Project Information Systems on future projects,
- any improvements or efficiencies in the allocation of resource, cost or programme to the benefit of the *Client*
- any reduction of inefficiencies in the allocation of resource, cost or programme which are identified through the operation of a function or process within the Project Information Systems,
- any upgrades to the LAN solution which demonstrate an improvement in network connectivity and
- the Project Information Systems integration plan developed in accordance with Schedule SP3 (Client Software)

in accordance with the provisions of the Systems and Processes Schedules and undertakes reviews of the plans required by the Systems and Processes Schedules in accordance with the provisions set out therein (collectively the "Systems and Processes Reviews").

The purpose of the Systems and Processes Reviews is to achieve the reduction in the lump sum prices required by clause Z51 of the *conditions of contract*. The *Consultant* implements the measures instructed by the *Service Manager* in accordance with the Systems and Processes Schedules.

S205.26 On commencement of the Review Stage at the end of Delivery Phase 2 the *Client* may require the *Consultant* to undertake a Benchmark Review of any or all of the Systems and Processes. Such Benchmark Review is instructed by the *Service Manager* and undertaken in accordance with the provisions of the Benchmarking Appendix. The *Consultant* appoints a Benchmark (as defined in the Benchmarking Appendix) in accordance with the provisions of the Benchmarking Appendix.

S205.27 Prior to the start of each Review Stage, the *Consultant* undertakes a review of the Core Services and Phase Specific Services as required by the Services

Schedules, and submits its recommendations for changes to the Core Services and Phase Specific Services as set out in the Services Schedules. Any recommendations accepted by the *Service Manager* are incorporated into the Task Order(s) for the next Delivery Phase.

S205.28 For the purpose of clause 20.3 of the *conditions of contract*

- in respect of only those obligations in the sections of the Scope listed in the table below, a “Defect” is a non-compliance with the Scope (including any failure to meet a requirement or standard specified in the Scope) whether or not the *Consultant* used the standard of skill and care required under clause 20.2 and
- clause 20.2 of the *conditions of contract* applies to all sections of the Scope not listed in the table below

	Section of Scope to which this section S205.28 applies
SP1	SP1-12 and SP1-13
SP2	SP2-01, SP2-02, SP2-03, SP2-05, SP2-06, SP2-08, SP2-10, SP2-14, SP2-15 and SP2-16
SP3	SP3-03 and SP3-14 (final bullet point)
SP4	SP4-02, SP4-03, SP4-04, SP4-11, SP4-13, SP4-14 and SP4-16
SP5	SP5-05
SP7	SP7-01 and SP7-03
SP8	SP8-02, SP8-03 and SP8-05
SP9	SP9-03, SP9-05 and SP9-07
SP10	SP10-02 and SP10-04
SP11	SP11-01, SP11-05, SP11-07, SP11-08 and SP11-09
SP12	SP12-02 and SP12-03
SP13	SP13-04 and SP13-05
SP15	SP15-05, SP15-07, SP15-09 and SP15-12
SP16	SP16-02 (6 <sup>th</sup> bullet), SP16-06, SP16-08 and SP16-11
SP18	SP18-01 (4 <sup>th</sup> bullet)
SP19	SP19-02 (9 <sup>th</sup> bullet), SP19-04 and SP19-10
SP26	SP26-03, SP26-05, SP26-06 and SP26-08

### S300 Existing information

### S305 Existing Information

S305.1 Existing information relevant to the *service* is set out in **Annex 02** and further described in the Services and Systems Schedules.

The *Client* provides the information set out in the Services and Systems Schedules. The *Consultant* develops the plans, procedures and other documents and information required as set out in the Services and Systems Schedules.

## **S400 Specifications and standards**

### **S405 Specifications and standards**

- S405.1 Except where otherwise directed, the *service* including all materials, workmanship, designs and assessments complies with the *Client's* standards and procedures current at the Contract Date or, for *Consultant* designed elements of the *service*, such elements comply with the standards and procedures current at the time that the relevant *service* outcome is accepted by the *Service Manager* in accordance with the Services and Systems Schedules. The current standards and procedures are identified in section S405.3.
- S405.2 If a standard or procedure subsequently changes, the *Consultant* complies with the revised standard or procedure if instructed by the *Service Manager*.
- S405.3 The standards and procedures with which the *Consultant* complies in Providing the Service are the standards and procedures described in the Scope or to be developed by the *Consultant* in accordance with the Services and Systems Schedules. To the extent that no specifications, standards and procedures are identified or required to be developed by the *Consultant*, the *Consultant* identifies the most appropriate specification, standard or procedure as applicable, exercising the standard of skill, care and diligence required by the contract.

## **S500 Constraints on how the *Consultant* is to Provide the Service**

### **S501 Risk Management**

- S501.1 The *Client's* Risk Management Policy and Strategy (see link in **Annex 02**) recognises that this is crucial to the successful delivery of its objectives. A risk management framework has been implemented to enable the effective and efficient management of risk. The *Consultant* complies with the provisions of this section S501 in Providing the Service but acknowledges that the risk management model to be adopted in relation to the Project as a whole will be developed and implemented in accordance with the provisions of Schedule PS10 (Risk and Opportunity Management) and the *Consultant* complies with the provisions of that Schedule in relation thereto.
- S501.2 The *Client* has adopted the following definition of risk:  
“any uncertain even or set of circumstances that should in occur will (positively or negatively) the project objectives”.
- S501.3 For the *Client*, risk management is a continuous process of identifying, assessing and treating risks in order to reduce threats, maximise opportunities and increase the likelihood of delivering strategic, operational, directorate, programme and project objectives.

- S501.4 The *Client's* risk management approach aims to ensure that:
- risks are systematically identified, understood, prioritised and managed by the correct parties and individuals in a consistent and efficient manner,
  - assurance is provided to the *Consultant*, *Service Manager*, *Client* and other stakeholders that risks are understood and managed and
  - all parties are fully aligned with and demonstrably meet the requirements of the *Client's* risk management framework.
- S501.5 The *Client* has Xactium as its enterprise wide risk management system to record and update all risk data within the *Client's* organisation.
- S501.6 In Providing the Service, the *Consultant* complies with the risk management requirements described in this section S501 and as contained in the Risk Management Policy and Strategy (see link in **Annex 02**) and with the requirements set out in Schedule PS10 (Risk and Opportunity Management) in relation to the development of the risk management model to be adopted for the Project.
- S501.7 The *Consultant* uses the *Client's* Xactium system. Outputs developed through this process may be used in other risk assessments.
- S501.8 The *Consultant* ensures that risks that could impact on the Project objectives are systematically identified, understood, prioritised and managed whilst being continually reviewed and communicated in a collaborative manner with the *Service Manager*.
- S501.9 The *Consultant* supports the *Service Manager* in the operation of Xactium in relation to Project risks and complies with the requirements set out in Schedule SP2 (Items to be Provided by the *Consultant*) and Schedule PS10 (Risk and Opportunity Management) in relation to the use of Xactium across the Project.

## **S502 Business Continuity**

- S502.1 The *Consultant* prepares a BCP and submits the draft plan to the *Service Manager* all in accordance with the provisions set out in Schedule SP4 (Connectivity).
- S502.2 The *Consultant* undertakes BCP test events to test the BCP and submits feedback reports to the *Service Manager* as set out in Schedule SP4 (Connectivity).
- S502.3 The *Consultant* implements any proposed amendments in the accepted feedback report instructed by the *Service Manager* as set out in Schedule SP4 (Connectivity).
- S502.4 The *Consultant* undertakes the completion of a Highways England business continuity self-assessment assurance document as set out in Schedule SP4 (Connectivity).

### S503 Insurance requirements

- S503.1 The *Consultant* discharges all its obligations under the Insurance Act 2015 (see link in **Annex 02**) when renewing and maintaining any insurance required by the contract including
- complying with the duty of fair presentation to insurers and
  - taking actions needed to protect the *Client's* separate interest where the *Client* is required to be named as an insured party.
- S503.2 The *Consultant* ensures that the policies of insurance it takes out and maintains under the contract comply with the provisions of **Annex 03**.

### S504 Security & identification of people

- S504.1 The *Consultant* carries out a security check on its Staff before they are involved in Providing the Service. The checks are carried out in accordance with the *Client's* procedures in **Annex 04**.

### S505 Project team - Others

- S505.1 The *Consultant* establishes and runs the day to day management processes for the Integrated Client Team. The *Consultant* manages the Technical Partner and the Commercial Partner, as set out in the Services Schedules, in providing their respective parts of the ICT Services. The *Consultant* performs duties delegated to it as the "Employers Agent" under the Technical Partner Contract and as the "Service Manager" under the Commercial Partner Contract as necessary to allow the *Consultant* to manage the delivery of such ICT Services.

### S506 People Strategy

- S506.1 The *Consultant* complies with the *Client's* People Strategy outlined in **Annex 06** and with the requirements of Schedule CS5 (People and Organisational Management).

#### Equality, Diversity & Inclusion

- S506.2 The *Consultant* complies with **Annex 06**.

#### Employment & Skills

- S506.3 The *Consultant* complies with **Annex 06**.

#### Skills and Apprenticeship

- S506.4 The *Consultant* complies with **Annex 06**.

## S507 Discrimination, Bullying & Harassment

- S507.1 The *Consultant* does not discriminate directly or indirectly or by any way of victimisation or harassment against any person contrary to the Discrimination Acts.
- S507.2 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, harassment and victimisation,
  - advance equality of opportunity between different groups and
  - foster good relations different groups.
- S507.3 Where any *Consultant's* employee or subcontractor, and its employees (at any stage of remoteness from the *Client*), is required to carry out any activity on the *Client's* premises or alongside the *Client's* employees on any other premises, the *Consultant* ensures that each such employee or subcontractor, and its employees (at any stage of remoteness from the *Client*), complies with the requirements of the Discrimination Acts and with the *Client's* employment policies and codes of practice - Dignity at Work Guidance and Equal Opportunities Policy (see link in **Annex 02**).
- S507.4 The *Consultant* notifies the *Service Manager* as soon as it becomes aware of any investigation or proceedings brought against the *Consultant* under the Discrimination Acts in connection with the contract and
- provides any information requested by the investigating body, court or tribunal in the timescale allotted,
  - promptly allows access to any relevant documents and information and
  - co-operates fully and promptly with the investigatory body, court or tribunal.
- S507.5 The *Consultant* complies with all applicable human rights and employment laws in the jurisdictions in which they work and have robust means of ensuring that the subcontractors (at any stage of remoteness from the *Client*) also comply.
- S507.6 The *Consultant* implements due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.



- S507.7 The *Consultant* carries out an annual audit to monitor its compliance with the Modern Slavery Act 2015 (see link in **Annex 02**) which covers all its obligations under all its existing *Client* contracts. The *Consultant* prepares and delivers to the *Service Manager* no later than 1<sup>st</sup> August each year an annual
- slavery and human trafficking report,
  - transparency statement and
  - a risk register with mitigating actions
- which complies with the Modern Slavery Act 2015 and sets out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.
- S507.8 The *Consultant* notifies the *Client* as soon as it becomes aware of any actual or suspected slavery or human trafficking in any of its supply chains or any part of its business.
- S507.9 The *Consultant* uses reasonable endeavours not to purchase any raw materials, resources or products from any country that has been sourced from producers or manufacturers using forced labour and child labour in its operations or practice.
- S507.10 The *Consultant* complies (and ensures that any subcontractor complies) with the *Client's* policies relating to bullying and harassment. If the *Service Manager* considers that the presence or conduct of any of employees (at any stage of remoteness from the *Client*) at any location relevant to the performance of the *service* is undesirable or in breach of the *Client's* policies, the *Service Manager* instructs the *Consultant* to implement corrective action.
- S507.11 The *Consultant* ensures that any subcontract (at any stage of remoteness from the *Client*) relevant to the performance of the *service*, contains provisions to the same effect as this section. The *Consultant*, may propose to the *Service Manager* for acceptance, that a specific subcontract (at any stage of remoteness from the *Client*) relevant to the performance of the *service*, does not comply with the requirements of this section S507. The *Consultant* provides a detailed reason for not including some or all of the requirements of this section S507 in the specific contract. The *Consultant* provides further detail when requested by the *Service Manager* to assist their consideration. If accepted by the *Service Manager*, the *Consultant* is relieved from including some or all of the requirements of this section S507 in the specific contract.
- S507.12 A failure to comply with this section is treated as a substantial failure by the *Consultant* to comply with its obligations.

## S508 Conflict of Interest

- S508.1 The *Consultant* does not take an action which would cause a conflict of interest to arise in connection to the contract. The *Consultant* notifies the *Service Manager* if there is any uncertainty about whether a conflict of interest may exist or arise.
- S508.2 The *Consultant* notifies its employees and subcontractors (at any stage of remoteness from the *Client*) and procures that any subcontractor (at any stage of remoteness from the *Client*), notifies its employees who are engaged in Providing the Service that they do not take any action which would cause an actual or potential conflict of interest to arise in connection with the service.
- S508.3 The *Consultant* ensures that any employee and procures that any subcontractor (at any stage of remoteness from the *Client*) ensures that any of its employees, who are Providing the Service, complete a "Declaration of Interest" and "Conflict of Interest Information" in the form set out in **Annex 02**.
- S508.4 The *Consultant*
- procures that any subcontractor (at any stage of remoteness from the *Client*) immediately notifies the *Consultant* and the *Service Manager* if there is any uncertainty about whether a conflict of interest may exist or arise and
  - immediately notifies the *Service Manager* if there is any uncertainty about whether a conflict of interest may exist or arise.
- S508.5 Following a notification from the *Consultant*, the *Service Manager*, may
- require the *Consultant* to stop Providing the Service until any conflict of interest is resolved or
  - require the *Consultant* to submit to the *Service Manager* for acceptance a proposal to remedy the actual or potential conflict of interest.
- S508.6 A reason for not accepting the submission is that it does not resolve any conflict of interest. The *Consultant* amends the proposal in response to any comments from the *Service Manager* and resubmits it for acceptance by the *Service Manager*. The *Consultant* complies with the proposal once it has been accepted.

- S508.7 A conflict of interest
- is likely to arise if the *Consultant* or an Associated Company takes over, merges with or is taken over by
    - a Project Contractor,
    - the Technical Partner or
    - the Commercial Partner and
  - will be deemed to have arisen if the *Consultant* is appointed as a subcontractor to or forms a Consortium with any of
    - a Project Contractor,
    - the Technical Partner or
    - the Commercial Partner
- in connection with the Project.

## S509 Codes of Conduct

- S509.1 The *Consultant* complies with (and ensures that any person employed by it or acting on its behalf complies) with the *Client's* Anti-Fraud, Bribery and Corruption Policy, Fair Payment Charter and "Raising Concerns at Work" policy, collectively the "Codes" (see link in **Annex 02**).
- S509.2 The *Consultant* complies with the Codes throughout with the contract and with
- paragraph 1.3 and 1.4 of the *Client's* Anti-Fraud, Bribery and Corruption Policy and
  - paragraph 1 of the *Client's* Fair Payment Charter
- for a period not less than 12 years after Completion.
- S509.3 A failure to comply with this section is treated as a substantial failure by the *Consultant* to comply with its obligations.

## S510 Communication system

- S510.1 Unless and until other communications systems for the Integrated Client Team or the whole Project are developed by the *Consultant* and accepted by the *Service Manager* in accordance with the Services and Systems Schedules, the *Consultant* complies with the *Client's* requirements regarding the use of communications systems.
- S510.2 Unless and until either the *Service Manager* notifies the *Consultant* otherwise, or alternative communications systems for the Integrated Client Team or the Project as a whole are developed or proposed by the *Consultant* and accepted by the *Service Manager* in accordance with the Services and Systems Schedules, the *Client's* communications systems are:
- Xactium,

- CRM,
- CEMAR,
- Business Collaborator,
- Primavera,
- PowerBI,
- Oracle,
- MS Dynamics 365,
- Oracle Fusion,
- AIRSWeb and
- Aries Prism.

#### **S511 Communications**

S511.1 The *Consultant* complies with the Communications requirements in **Annex 12** and any additional, modified or enhanced requirements notified to the *Consultant*, or developed by the *Consultant* and accepted by the *Service Manager*, in accordance with Schedule CS2 (Communications and Stakeholder Management), Schedule PS3 (Consents Management and Discharge) and Schedule PS4 (Land Management).

#### **S512 Data Protection**

S512.1 The *Consultant* complies with the data protection requirements in **Annex 08**.

#### **S513 Offshoring of data**

S513.1 In this section Risk Assessment is a full risk assessment and security review carried out by the *Client* in accordance with the HMG Security Policy Framework (SPF) (see link in **Annex 02**) and the *Client's* Information Security Data Security Standard (see link in **Annex 02**).

S513.2 The *Consultant* does not store any of the *Client's* data that is classified as OFFICIAL (including OFFICIAL SENSITIVE) or higher in accordance with the HMG Government Security Classifications (see **Annex 02**)

- offshore or
- in any way that it could be accessed from an offshore location

until the *Service Manager* has confirmed to the *Consultant* that either

- the *Service Manager* has gained approval for such storage in accordance with the Information Security Data Security Standard or
- such approval is not required.

- S513.3 The *Consultant* ensures that no offshore premises are used in Providing the Service until
- such premises have passed a Risk Assessment or
  - the *Service Manager* confirms to the *Consultant* that no Risk Assessment is required.
- S513.4 The *Consultant* complies with a request from the *Client* to provide any information required to allow the *Client* to
- gain approval for storing data or allowing access to data from an offshore location in accordance with S513.2 or
  - conduct a Risk Assessment for any premises in accordance with S513.3.
- S513.5 The *Consultant* ensures that any subcontract (at any stage of remoteness from the *Client*) contains provisions to the same effect as this clause.
- S513.6 A failure to comply with this section is treated as a substantial failure by the *Consultant* to comply with its obligations.

#### **S514 Information Systems and Security**

- S514.1 The *Consultant* meets the requirements of **Annex 09** in relation to Information Systems and Security duties save to the extent that such requirements are modified, enhanced or added to by the provisions of
- Schedule SP2 (Items to be Provided by the *Consultant*),
  - Schedule SP3 (Client Software) or
  - Schedule SP19 (Systems Service Management (Service Desk)),
- and unless and until other requirements applicable to the *Consultant*, the Integrated Client Team or the Project are developed by the *Consultant* and accepted by the *Service Manager* in accordance with
- Schedule SP2 (Items to be Provided by the *Consultant*),
  - Schedule SP3 (Client Software) or
  - Schedule SP19 (Systems Service Management (Service Desk)).

#### **S515 Management procedures**

- S515.1 The *Consultant* includes a section on customer service in its monthly report to the *Service Manager*.
- S515.2 The *Consultant* complies with any reporting requirements, meeting requirements and other management procedures set out in, or developed by the *Consultant* and approved by the *Service Manager* in accordance with Schedule CS3 (Project Management Office including Integrated Project Controls).

#### **S516 Energy Efficiency Directive**

- S516.1 The *Consultant*

- supports achievement of the *Client's* "Sustainable Development Strategy's" carbon management ambition (see link in **Annex 02**) and
- where relevant complies with the requirements of Procurement Policy Note 7/14 entitled "Implementing Article 6 of the Energy Efficiency Directive" ("PPN 7/14") and any related supplementary Procurement Policy Notes (see link in **Annex 02**)

when Providing the Service.

S516.2 In complying with the requirements of PPN 7/14, the *Consultant*

- ensures that any new products purchased by it or by a subcontractor (at any stage of remoteness from the *Client*) for use partly or wholly in Providing the Service comply with the standard for products in the directive "2012/27/EU" (see link in **Annex 02**),
- provides evidence to the *Service Manager* to demonstrate how any new products purchased by it or by a subcontractor (at any stage of remoteness from the *Client*) for use partly or wholly in Providing the Service comply with the requirements of PPN 7/14,
- demonstrates efficiency in resource use and maximisation of re-use and recycling of materials to support the *Client's* circular economy ambition as stated in the *Client's* "Sustainable Development Strategy" (see link in **Annex 02**),
- ensures that any new products purchased by a subcontractor (at any stage of remoteness from the *Client*) for use partly or wholly in the performance of its obligations under its subcontract complies with the standard for products in the directive,
- ensures that subcontractors (at any stage of remoteness from the *Client*) provide evidence to the *Consultant* to demonstrate how any new products purchased by the subcontractor for use partly or wholly in the performance of its obligations under a subcontract complies with the requirements of PPN 7/14 and
- includes requirements to the same effect in any subcontract (at any stage of remoteness from the *Client*).

#### Air quality strategy

S516.3 The *Client's* Air Quality Strategy (see link in **Annex 02**) sets out how it ensures that all activity on the strategic road network is delivered in a way that not only minimises harm, but ultimately improves the environment including air quality. This helps support Government to improve air quality in the UK and deliver nitrogen dioxide compliance at the roadside in the shortest time possible. The *Client* explores 'opportunities to promote the use of low emission vehicles by suppliers to reduce harmful pollutants.

S516.4 The *Consultant*

- ensures that any new vehicles purchased by it for use partly or wholly in Providing the Service comply with the minimum mandatory standards (detailed for central Government

departments) detailed in “Government Buying Standards Transport 2017” (see link in **Annex 02**) and

- when requested, works in collaboration with the *Client* to prepare reports to identify how the best practice standards detailed in the “Government Buying Standards Transport 2017” can be achieved. Report findings help inform setting standards for future highways contracts and any subsequent action by the *Consultant* helps reduce emissions of harmful pollutants when Providing the Service.

#### **S517 Environmental and sustainability requirements**

S517.1 In Providing the Service, the *Consultant* supports the improvement of environmental and sustainable outcomes to protect, manage and enhance the quality of the surrounding environment, with a focus on people and the built, natural and historic environment.

S517.2 The *Consultant* complies with

- the *Client's* environmental strategy,
- the *Client's* “Sustainable Development Strategy”,
- GG103 “Introduction and general requirements for sustainable development and design”,
- LA120 “Environmental management plans” and
- LA117 “Landscape design”

when Providing the Service (see links in **Annex 02**).

S517.3 The *Consultant* complies with “The road to good design” incorporating the ten principles of good design, grouped as connecting people, connecting places and connecting processes when Providing the Service (see link in **Annex 02**).

S517.4 In Providing the Service the *Consultant* recognises the importance and value of biodiversity and mitigates the impact on wildlife and looks for the opportunities provided by management and construction work to provide biodiversity enhancements.

S517.5 The *Consultant* ensures that the *Client's* responsibilities and opportunities within the “Government Buying Standards” are delivered when Providing the Service (see link in **Annex 02**).

#### **S518 Behavioural attributes**

S518.1 The *Consultant* complies with the Supply Chain Alignment requirements in **Annex 07** and has due regard to the same in its compliance with the requirements of Schedule CS5 (People and Organisational Management) relating to behaviours and values.

#### **S519 Project Control Framework**

S519.1 The *Client* operates a Project Control Framework (PCF) (see link in **Annex 02**) as part of its project management process. The PCF comprises a number of products relating to the life cycle of a project. These PCF products are produced, reviewed, updated or refined at various PCF stages of the project

life cycle. The detail of how the Project Control Framework will be applied to the Project will be developed by the Parties in accordance with Schedule CS3 (Project Management Office including Integrated Project Controls).

- S519.2 PCF deliverables are developed in accordance with the current version of The Project Control Framework Best Practice Planning and Consultation Process (see link in **Annex 02**). The *Consultant* ensures the product is proportional and meets the content and quality criteria specified in The Project Control Framework Best Practice Planning and Consultation Process guidance document prior to issue for review. The *Consultant* engages with the appropriate product owner/specialists in line with the PCF Best Practice guidance.
- S519.3 The *Consultant* liaises with the *Service Manager* to ensure that appropriate staff receive mandatory PCF training.
- S519.4 All Project Control Framework deliverables are shown on a Project Control Framework tracker which is managed by the *Consultant* and submitted to the *Service Manager* at intervals to be agreed with the *Service Manager*. The tracker as a minimum, details: start date, finish date, and percentage complete against each Project Control Framework Stage.
- S519.5 The *Consultant* provides supporting information and resources, as required, to assist the *Client* with the relevant PCF stage gate assessment reviews (SGAR), independent assurance reviews (IARs) and Investment Decision Committee (IDC) processes for the contract.
- The stage management plan product clearly identifies which PCF products are relevant to the *service*, what level of detail and complexity the products need to go in to, who needs to be involved in their development and review and when they need to be produced.

## **S520 Interfaces with third parties**

- S520.1 The *Consultant* complies with the requirements for dealing with third parties set out in
- Schedule CS2 (Communications and Stakeholder Management),
  - Schedule PS3 (Consents Management and Discharge),
  - Schedule PS4 (Land Management),
  - Schedule PS7 (Utilities Management and Third Party Agreements Support) and
  - Schedule PS12 (Handover into Operation and Asset Management).

## **S525 Co-ordination and co-operation**

- S525.1 The *Consultant* co-operates with other suppliers in obtaining and providing information needed.
- S525.2 The *Consultant* cooperates with the organisations identified in



- Schedule CS2 (Communications and Stakeholder Management),
- Schedule PS3 (Consents Management and Discharge),
- Schedule PS4 (Land Management),
- Schedule PS7 (Utilities Management and Third Party Agreements Support) and
- Schedule PS12 (Handover into Operation and Asset Management).

S525.3 The *Consultant* shares information and communicates openly with the *Client*, continuously shares lessons learnt and achievements, and enables embedded learning.

S525.4 The *Consultant* complies with the provisions of this section S525 in Providing the Service but acknowledges that the co-ordination and co-operation requirements for the Project as a whole will be developed and implemented in accordance with the provisions of Schedule CS6 (Quality Management) and the *Consultant* complies with the provisions of that Schedule in relation thereto.

S525.5 Not used.

S525.6 Not used.

S525.7 The *Consultant* programmes any PCF product review requests at least 6 weeks in advance of the review and ensures that all programmed dates are met.

S525.8 The *Consultant* co-locates teams where appropriate and encourages information sharing, communication, concurrent working and a proactive delivery culture.

S525.9 The *Consultant* does not enter into commitments when dealing with third parties that might impose any obligations on the *Client* except with the consent of the *Client*.

## **S526 Consideration of Others**

S526.1 The *Consultant* complies with the customer service requirements as set out in **Annex 05**.

## **S530 Submission procedures**

S530.1 During the Mobilisation Phase, the Parties agree a matrix setting out the sequence and timing of deliverables required for the Project, the identity of the party who is to provide the same, and the Delivery Phase to which the same relates (the "Deliverables Matrix"). The *Consultant* assures and ensures that the deliverables are provided in accordance with the Deliverables Matrix.

## **S535 Quality management system**

S535.1 The *Consultant* complies with and operates management systems as follows

- a health and safety management system complying with the requirements in the Health and Safety section of the Scope,

- a quality management system complying with ISO 9001, ISO 9004, and CEN/TS 16880, (see links in **Annex 02**),
- an environmental management system complying with ISO 14001 (see link in **Annex 02**) and
- a collaboration framework complying with ISO 44000 (that encompasses the behaviours, organisational culture and management processes that provide a common platform to support effective collaborative business relationships) (see link in **Annex 02**)

and develops and subsequently implements management systems for the Project in accordance with the provisions of

- Schedule CS1 (Health, Safety, Security and Wellbeing),
- Schedule CS6 (Quality Management),
- Schedule PS5 (Environmental and Sustainability Management) and
- Schedule SP2 (Items to be Provided by the *Consultant*).

S535.2 The *Consultant* implements a risk management system and processes that follow the guidelines contained in ISO 31000 (see link in **Annex 02**) in relation to risk management. The *Consultant* complies with the provisions of this section S535.2 in Providing the Service but acknowledges that the risk management model to be adopted in relation to the Project as a whole will be developed and implemented in accordance with the provisions of Schedule PS10 (Risk and Opportunity Management) and the *Consultant* complies with the provisions of that Schedule in relation thereto.

S535.3 The *Consultant* obtains certification from a body accredited by UKAS (or another body accepted by the *Service Manager*) of

- the health and safety management system,
- the quality management system and
- the environmental management system

to the standards set out above within 45 working days of the *starting date* and submits to the *Service Manager* a copy of each certificate within one week after it is obtained. If the *Consultant* already holds such certification at the Contract Date, the *Consultant* submits to the *Service Manager* a copy of each certificate within one week after the Contract Date.

S535.4 The *Consultant's* quality management system includes the *Consultant's* quality policy as required by the contract and ISO 9000 (see link in **Annex 02**), which clearly articulates the *Consultant's* commitment to:

- providing a quality assured *service* which delivers the requirements in the contract,
- supporting the development, implementation and maintenance of the *Consultant's* quality management system,
- continually improving and
- maximum customer satisfaction.

- S535.5 The *Consultant* complies with the provisions of this section S535 in Providing the Service but acknowledges that the quality management model to be adopted in relation to the Project as a whole will be developed and implemented in accordance with the provisions of Schedule CS6 (Quality Management) and the *Consultant* complies with the provisions of that Schedule in relation thereto.

### **S536 Quality Plan**

- S536.1 The *Consultant* prepares the Quality Plan within 45 working days of the *starting date*. The Quality Plan for the *service* is incorporated into the overall quality plan for the Project to be developed by the *Consultant* in accordance with the provisions of Schedule CS6 (Quality Management).
- S536.2 The Quality Plan incorporates the Tender Commitments Statement is sufficiently detailed to demonstrate how the *Consultant* achieves each of the commitments in the Tender Commitments Statement and meets the *Client's* objectives for the contract.
- S536.3 The *Service Manager* notifies the *Consultant* if the Quality Plan does not comply with the requirements of the contract. Following such notification, the *Consultant* reviews the Quality Plan and reports to the *Service Manager* setting out its proposed changes. If the *Service Manager* accepts the proposals, the Quality Plan is changed. If the proposed changes are not accepted, the *Service Manager* informs the *Consultant* of the aspects of the Quality Plan that are not acceptable, and the *Consultant* updates the Quality Plan for acceptance within one week.
- S536.4 The *Consultant* keeps a controlled copy of the Quality Plan available for inspection at all times by the *Client*, the *Service Manager*, and their representatives.

### **S540 Quality policy statement and quality plan**

- S540.1 The *Consultant* complies with the provisions of Schedule CS6 (Quality Management) and develops the Project Quality Management System as envisaged by Schedule CS6 to apply the principles set out in sections s541 and s542 across the whole of the Project.

### **S541 Audit, nonconformities (including “defects”) and quality management points**

The *Consultant's* Project Quality Management System developed under Schedule CS6 (Quality Management) provides for the following in relation to the *service* and reflects the following principles for quality management across the whole of the Project.

- S541.1 The *Consultant* carries out a programme of internal audits in accordance with the requirements of ISO 9001 (see link in **Annex 02**).
- S541.2 The *Service Manager* may carry out audits of the *Consultant's* quality management system from time to time.
- S541.3 The *Consultant* allows access at any time within working hours to any place where it or any subcontractor (at any stage of remoteness from the *Consultant*), carries out any work that relates to the contract for the *Service Manager* to carry out audits, to inspect work and materials and generally to investigate whether the *Consultant* is Providing the Service in accordance with the contract.
- S541.4 The *Consultant* provides all facilities and assistance necessary to allow such audits and inspections to be carried out.
- S541.5 Additional audits may be carried out when the number of Quality Management Points in effect exceeds 25
- S541.6 The *Service Manager* decides the location, frequency and extent of additional audits having regard to the root causes for the accrual of Quality Management Points in effect.
- S541.7 Following the notification of a Defect or identification of other Nonconformity the *Consultant* submits within three working days, a brief report covering as a minimum
- the unique reference for the Nonconformity,
  - a brief description stating which requirement is not being fulfilled and in what way,
  - the effect both current and potential and
- the likely cause i.e. what aspect of the Quality Plan or service delivery is not functioning properly.
- S541.8 Following the notification of a Defect or identification of other Nonconformity the *Consultant* submits within 2 weeks to the *Service Manager* for acceptance, a corrective action plan covering as a minimum
- the unique reference of the Nonconformity,
  - description – this could be as per the Nonconformity report or expanded,
  - details of the corrective action proposed,
  - categorisation of the Nonconformity into high, medium or low risk,
  - for high and medium risk, an analysis of the root cause(s) of the Nonconformity commensurate with risk i.e. what is the evidence-based underlying truth about what is causing the Nonconformity to occur,
  - what aspect of the Quality Plan needs to be addressed i.e. which of the *Consultant's* processes is not performing as required,

- what the corrective action will address, for example- is it a process design that needs changing or is it an execution issue (i.e. that requires additional training, tools etc.),
- for high and medium risk, a detailed action plan, commensurate with risk, with planned correction date and milestones – the plan should contain named individuals for the actions and for high risk the plan should nominate the relevant executive process owner from the *Consultant* to take overall accountability for the plan. A brief action plan is required for low risk,
- method of reporting progress to the *Service Manager*,
- the method to be used to signify successful correction of the Nonconformity to allow that to be recorded on the register. Any envisaged circumstance that will allow the *Service Manager* to confirm the correction and
- adjustments to be made to the Quality Plan or service delivery in order to prevent recurrence of the Nonconformity.

S541.9 The *Consultant* keeps an up to date register of Nonconformities covering as a minimum

- the unique reference,
- date of identification,
- identification method for example through performance management, by testing or by audit etc.,
- date of corrective action report,
- date Nonconformity corrected (i.e. confirmed as such by the *Service Manager*) and
- traffic light type notation
  - red – indicates Nonconformity identified but no corrective action report prepared – also where corrective action not complete by planned date,
  - amber – correction action report prepared and action in progress and within planned parameters and
  - green – corrective action complete and accepted by the *Service Manager*.

The *Consultant* enters the Nonconformity on to the register within three working days from its identification.

S541.10 The *Consultant* does not begin any corrective or preventative action(s) to address the Nonconformity until the *Service Manager* has accepted its proposals.

- S541.11 Within one week of the *Consultant* submitting the proposed corrective and preventative action plan for acceptance, the *Service Manager* either accepts the proposal or notifies the *Consultant* of its reason for not accepting it.
- A reason for not accepting the proposed action plan is that
- it does not adequately specify actions required to ensure that Nonconformities do not recur,
  - it does not comply with the contract,
  - the time for completing the corrective and preventative action is unreasonable or
  - it hinders the *Client* or Others.
- S541.12 If the *Service Manager* does not accept the proposed action plan, the *Consultant* submits a revised proposal to the *Service Manager* for acceptance within one week. The *Service Manager* responds to the revised proposal as stated in S541.11.
- S541.13 The *Consultant* corrects Nonconformities and takes action to eliminate the causes of actual or potential Nonconformities within a time which minimises the adverse effect on the *Client* or Others and in any event before carrying out any operation the same or similar as that in respect of which the Nonconformity occurred.
- S541.14 The *Consultant* notifies the *Service Manager* when the proposed actions have been taken and provides, with its notification, verification that the defective part of the *service* has been corrected.
- S541.15 If the *Consultant* fails to comply with its quality management system, the *Consultant* accrues Quality Management Points from the date when the failure is identified in accordance with the quality table in **Annex 11**. The number of Quality Management Points is reduced in accordance with the quality table.
- S541.16 If the *Consultant* fails properly to accrue Quality Management Points, the *Service Manager* instructs the *Consultant* to accrue the applicable number of Quality Management Points calculated in accordance with the quality table. The Quality Management Points accrue on the date of the *Service Manager's* instruction.
- S541.17 The *Consultant* maintains a register of the number of Quality Management Points in effect, showing when Quality Management Points accrue and are removed.
- S541.18 A failure to comply with this section is treated as a substantial failure by the *Consultant* to comply with its obligations.

## **S542 Quality Management Points & Table**

The *Consultant's* Project Quality Management System developed under Schedule CS6 (Quality Management) provides for the following in relation to the *service* and reflects the following principles for quality management across the whole of the Project.

- S542.1 Quality Management Points accrue from the
- date of identification,
  - date of the audit if raised in an audit or
  - *Service Manager's* instruction.
- S542.2 If the number of Quality Management Points in effect under the contract is more than 25, the *Consultant* and the *Service Manager* meet within one week to consider ways of reducing the number of Quality Management Points in effect to 25 or less and to avoid accruing further Quality Management Points.
- S542.3 The *Consultant* submits a report to the *Service Manager* within one week of the meeting setting out the actions agreed at the meeting and any other actions which the *Consultant* proposes to take immediately to reduce the number of Quality Management Points in effect to 25 or less and to avoid accruing further Quality Management Points.
- S542.4 If the *Service Manager* does not accept the *Consultant's* proposals or the *Consultant* does not take the agreed actions, the *Consultant* submits a revised report to the *Service Manager* setting out the actions which the *Consultant* has taken and what further or alternative actions they propose to take to reduce the number of Quality Management Points in effect to 25 or less.
- S542.5 Until the number of Quality Management Points in effect is reduced to 25 or less, the *Consultant* takes the actions detailed in its reports and submits weekly update reports to the *Service Manager* setting out the actions taken, the results of those actions and the actions which are still to be taken by the *Consultant*.
- S542.6 A failure to:
- take actions to reduce the number of Quality Management Points in effect to 25 or less or
  - comply with a corrective action plan that has been accepted by the *Service Manager*
- is treated as a substantial failure by the *Consultant* to comply with its obligations.

### **S543 Continual Improvement**

- S543.1 The *Consultant* operates processes for delivering innovation and continual improvement / lean following the requirements set out in **Annex 11**.

### **S544 Performance Measurement**

- S544.1 The *Service Manager* uses the current version of the Collaborative Performance Framework (CPF) (see link in **Annex 02**) in order to actively measure the *Consultant's* performance against the following CPF categories
- 1.1c Health and Safety Management,
  - 2.1h Effectiveness of engagement with customers and stakeholders,
  - 2.2a Understanding Key Messages,
  - 4.2a Percentage of value spend and average supplier payment timescales,
  - 4.3a Equality, diversity and inclusivity (EDI),
  - 4.4b Behavioural Maturity Action,
  - 6.1a Performance against Project specific efficiency targets and effect on whole life performance,
  - 6.2a Predictability Factor and
  - 6.3a Quality Management, Service Levels and Key Deliverables,
- and follows the processes set out in the CPF in relation to the use of performance scores to drive improved performance.
- S544.2 The *Consultant* records performance against each of the indicators in the CPF and assists the *Client* in the development of the framework by proposing and developing ways in which improvements can be made to the CPF.
- S544.3 The scores recorded by the *Consultant* against each CPF indicator are submitted to the *Service Manager* in accordance with Schedule CS6 (Quality Management) and copied to the relevant CPF email address. The instructions for identifying the relevant CPF email address and the relevant working day in the month for submission is set out in the CPF instructions on the Suppliers' Portal (see link in **Annex 02**).
- S544.4 The first CPF covers months 1-3 from the *starting date*, and are thereafter submitted quarterly.

#### Performance Review

- S544.5 The *Consultant's* undertakes a performance review addressing all aspects of performance on a quarterly basis, or as instructed by the *Service Manager*, in accordance with the CPF.
- S544.6 If the *Consultant's* performance, as measured in accordance with the CPF, is below the Performance Level, it is treated as a substantial failure by the *Consultant* to comply with its obligations. Otherwise the *Consultant's* CPF score is used as set out in Schedule CS6 (Quality Management).
- S544.7 The *Client* leads additional annual reviews to assess all aspects of *Consultant's* performance and trends in performance indicators.

#### S545 Health and safety requirements



S545.1 The *Consultant* complies with the *Client's* general Health and Safety Requirements outlined in **Annex 15** but acknowledges that the health and safety requirements for the Project as a whole will be developed and implemented in accordance with the provisions of Schedule CS1 (Health, Safety, Security and Wellbeing) and the *Consultant* complies with the provisions of that Schedule in relation thereto.

#### **S550 Legal requirements**

S550.1 Not used.

## S555 Disclosure Requests

- S555.1 The *Consultant* acknowledges that the *Client* may receive a Disclosure Request and the *Client* may be obliged (subject to the application of any relevant exemption and where applicable the Public Interest Test) to disclose information (including commercial sensitive information) pursuant to a Disclosure Request. Where practicable the *Consultant*, consults with the *Client* before doing so in accordance with the relevant code of practice. The *Consultant* responds to any consultation promptly and with any deadlines set by the *Client* to and to the satisfaction of the *Client*. The *Consultant* acknowledges that it is for the *Client* to determine whether such information should be disclosed.
- S555.2 When requested to do so by the *Service Manager* the *Consultant* promptly provides information in its possession relating to the contract and assists and co-operates with the *Client* to enable the *Client* to respond to a Disclosure Request within the time limit set out in the relevant legislation (see link in **Annex 02**).
- S555.3 The *Consultant* promptly passes any Disclosure Request receives to the *Service Manager*. The *Consultant* does not respond directly to a Disclosure Request unless instructed to do by the *Service Manager*.
- S555.4 The *Consultant* acknowledges that the *Client* is obliged to publish information relating to the contract in accordance with Procurement Policy Note 01/17 entitled Update to Transparency Principles dated 6 February 2017 (see link in **Annex 02**) except to the extent that any information in it is exempt from disclosure pursuant to the Freedom of Information Act 2000 (see link in **Annex 02**). The *Service Manager* consults with the *Consultant* before deciding whether the information is exempt, but the *Consultant* acknowledges that the *Client* has the final decision.
- S555.5 The *Consultant*
- co-operates with and assists the *Service Manager* to enable the *Client* to comply with its obligations under to publish information in accordance with PPN 01/17 (see link in **Annex 02**),
  - agrees with the *Service Manager* a schedule for the release to the public of information relating to the *Client* in accordance with the terms of the PPN 01/17,
  - provides information to assist the *Client* in responding to queries from the public PPN 01/17 as required by the *Service Manager* and
  - supplies the *Service Manager* with financial data relating to the contract in the form and in the times specified in the PPN.

- S555.6 The *Consultant* acknowledges that the *Client* is obliged to publish the provisions of the contract in accordance with the Crown Commercial Service's Guidance Note entitled Publication of Central Government Tenders and Contracts dated November 2017 (see link in **Annex 02**), except to the extent in it is exempt from disclosure pursuant to the Freedom of Information Act 2000 (see link in **Annex 02**). The *Service Manager* consults with the *Consultant* before deciding whether the information is exempt, but the *Consultant* acknowledges that the *Client* has the final decision. The *Consultant* co-operates and with assists the *Service Manager* and the *Client* to publish the contract in accordance with the *Client's* obligation.

#### **S556 Official Secrets Act**

- S556.1 The Official Secrets Act 1989 applies to the contract from the *starting date* until Completion.
- S556.2 The *Consultant* notifies its employees and subcontractor (at any stage of remoteness from the *Client*) of its duties under the Official Secrets Act 1989 (see link in **Annex 02**).
- S556.3 A failure to comply with this section is treated as a substantial failure by the *Consultant* to comply with its obligations.

#### **S557 Confidentiality**

- S557.1 The *Consultant* keeps (and ensures that anyone employed by it or acting on its behalf keeps) confidential and does not disclose to any person
- the terms of the contract and
  - any confidential or proprietary information (including Personal Data) provided to or acquired by the *Consultant* in the course of Providing the Service
- except that the *Consultant* may disclose information to
- to its legal or other professional advisers,
  - to its employees and subcontractors or to any member of the Integrated Client Team, the Project Contractors or the Ancillary Contractors, but only to such extent as may be necessary to enable the *Consultant* to Provide the Service,
  - where required to do so by law or by any professional or regulatory obligation or by order of any court or Government agency, provided that prior to disclosure the *Consultant* consults the *Service Manager* and takes full account of the *Client's* views about whether (and if so to what extent) the information should be disclosed,
  - which it receives from a third party who lawfully acquired it and who is under no obligation restricting its disclosure,
  - which is in the public domain at the time of disclosure other than due to the fault of the *Consultant* or
  - with the consent of the *Service Manager*.

- S557.2 The *Consultant* does not (and ensures that anyone employed by it or acting on its behalf does not) use any confidential or proprietary information provided to or acquired by it for any purpose other than to Provide the Service.

#### **S560 Form of retained documents**

- S560.1 The *Consultant* provides the documents required for the *Client* to take over the service at the time required by and in accordance with the *Client's* current procedures together with any additional documents required by the provisions of
- Schedule SP2 (Items to be Provided by the Consultant),
  - Schedule SP15 (Document Management and Control Systems),
  - Schedule PS9 (Construction Delivery) or
  - Schedule PS12 (Handover into Operation and Asset Management),
- or by any Task Order.
- S560.2 The *Consultant* manages developments in technology site data for the service through regular coordinated and collaborative forums, such as site data advisory groups.
- S560.3 The *Consultant* delivers to the *Service Manager* on Completion the final 'deliverable' version of any data in electronic format that allows continued access by the *Client* and is capable of transfer to the *Clients* digital environment systems. All information is catalogued and indexed. Paper original records are scanned to one of the following electronic formats
- scanned electronic image (.pdf),
  - graphic electronic image in compressed (.jpg) format or
  - other formats compatible with the *Client's* Information Systems, reference documents or guidance manuals as agreed with the *Service Manager*.
- S560.4 The *Consultant* either procures that the documents/activities identified below are completed by the Project Contractors or Ancillary Contractors (as applicable) or completes the documents/activities itself, if so required by the *Client's* PCF processes
- a completed Health and Safety File as required under CDM (see link in **Annex 02**),
  - as built models and drawings – as defined within CDM, all drawings are submitted prior to Completion,

- all requirements in relation to handover documentation for Technology Maintenance, Instruction, Operational and Maintenance Requirements for Technology Systems and Equipment, spares, routine maintenance schedule, etc. all as defined in the Design Manual for Roads and Bridges (DMRB) Volume 9, TD 71/16 – MCH 1349 (see link in **Annex 02**),
- the activities listed in IAN182/14A – Major Schemes: Enabling Handover into Operations and Maintenance (see link in **Annex 02**),
- the activities listed in the Asset Data Management Manual (ADMM) (see link in **Annex 02**),
- databases – all the Client Systems which require updating are populated and updated prior to Completion, and may include any or all of the following systems (to be confirmed by the *Service Manager* prior to the end of Delivery Phase 2) and any other systems which are notified to the *Consultant* by the *Service Manager* prior to Completion
  - IAM IS – Integrated asset management information system,
  - HAPMS – Highways Pavement Management System,
  - HADDMS – Highways Drainage Data Management System,
  - HAGMS – Highways Geotechnical Data Management System,
  - EnvIS – Environmental Information System,
  - NOMS – Network Occupancy Management System and
  - SMIS – Structures Management Information System.
- the closure of Nonconformity, outstanding audit actions and resolution of any Quality Management Points (QMPs) to be ascertained by audit,
- snagging list or outstanding issues – a comprehensive snagging list is produced and provided to the *Service Manager*. This list will have been signed by the *Consultant* (or relevant Project Contractor or Ancillary Contractor as applicable), the *Client's* asset manager and maintenance contractor to confirm acceptance of the outstanding issues. The *Service Manager* confirms the individuals who are approved signatures to achieve Completion and
- the removal of traffic management or any other works/measures which could cause traffic flows to be impeded or restricted

and other documents/activities required by the *Client's* PCF products.

## **S561 Format of records**

- S561.1      The *Consultant* ensures that records are created and maintained in an acceptable format such as

- scanned electronic image (Acrobat .pdf),
- editable electronic document (Microsoft Word),
- editable electronic spreadsheet (Microsoft Excel),
- editable vectorised drawing format (.dwg AutoCAD format or equivalent),
- graphic electronic image in compressed (.jpg) format or
- other formats compatible with the *Client's* Information Systems, reference documents or guidance manuals as agreed with the *Service Manager*.

S561.2 The *Consultant* undertakes translation of existing records into an accepted format when instructed by the *Client*.

S561.3 The *Consultant* may from time to time agree with the *Client* alternative acceptable formats in which the *Consultant* maintains records, taking into account any advances and other developments in Information Systems. The *Consultant* implements any changes as agreed with the *Service Manager*.

#### **S562 Records and audit access**

S562.1 The *Consultant* permits the *Client* and the Comptroller and Auditor General to examine documents held or controlled by the *Consultant* or any subcontractor (at any stage of remoteness from the *Client*).

S561.2 The *Consultant* provides such oral or written explanations as the *Client* or the Comptroller and Auditor General considers necessary.

S562.3 This section S562 does not constitute a requirement or agreement for the purposes of section 6(3)(d) of the National Audit Act 1983 (see link in **Annex 02**) for the examination, certification or inspection of the accounts of the *Consultant*.

#### **S563 Deed of Novation**

S563.1 Should a deed of novation be required pursuant to clause Z4 in the *conditions of contract*, the form of novation agreement is issued by the *Client* for agreement as set out in **Annex 13** and **14**.

#### **S600 Information and other things provided by the *Client* and Others**

##### **S605 Provision by the *Client***

S605.1 The *Client* provides the information and other things which the Services and Systems Schedules say the *Client* is to provide. To the extent not already set out in the Services and Systems Schedules, the *Consultant* notifies the *Client* during the Mobilisation Phase of any requirement for information or other things to be provided by the *Client*. The *Client* provides such information or other things as it is able to provide within the timescales agreed by the Parties, provided that the requirement is notified to the *Client* by the *Consultant* before the end of the Mobilisation Phase.

## **S610 Provision by Others**

- S610.1 To the extent not already set out in the Services and Systems Schedules, the *Consultant* notifies the *Client* during the Mobilisation Phase of any requirement for information or other things to be provided by Others. The *Client* procures the provision of such information or other things from Others as it is able to procure within the timescales agreed by the Parties (other than information and things to be provided by the Project Contractors or Ancillary Contractors as set out in the Project Contract Scopes or Ancillary Contract Scopes (as applicable)), provided that the requirement is notified to the *Client* by the *Consultant* before the end of the Mobilisation Phase.

## **S615 Approvals from Others**

Not used

## **S700 Timing, programme and Completion**

### **S705 Programme requirements**

- S705.1 The *Consultant* complies with the programme requirements set out in or to be developed in accordance with Schedule PS2 (Project Integrator) and Schedule PS9 (Construction Delivery) and provides all deliverables in accordance with the Deliverables Matrix as defined in section S530.1.

### **S710 Format of the programme**

- S710.1 The *Consultant* ensures that the Integrated Project Programme meets the requirements of Schedule PS2 (Project Integrator) and Schedule PS9 (Construction Delivery).

### **S715 Sequence & timing**

- S715.1 The *Consultant* provides the Mobilisation Activities in accordance with the Mobilisation Plan and Provides the Services for each of the Delivery Phases in accordance with the accepted Integrated Project Programme and the relevant Task Order.

### **S720 Information & other things provided by the *Client* and Others**

- S720.1 Not used

### **S725 Revised programme**

- S725.1 The *Consultant* reviews the Integrated Project Programme 8 weeks prior to the completion of each Delivery Phase and makes recommendations for changes to the Integrated Project Programme to deliver a lean and agile *service* with the capabilities and capacity needed for the subsequent Delivery Phases and to achieve any efficiencies which it has identified. The *Consultant* provides a revised updated Integrated Project Programme to the *Service Manager* for acceptance in accordance with the requirements of clause 32 of the *conditions of contract* and as required by any Task Brief.

### S730 Completion definition

- S730.1 Requirements for the work to be done by
- the end of the Mobilisation Phase are set out in the Services and Systems Schedules and the Mobilisation Plan, and
  - any Task Completion Date are set out in the relevant Task Order.

### S735 Sectional Completion definition

- S735.1 Not used

### S800 Other requirements of the *conditions of contract*

#### S805 *Consultant's application for payment*

- S805.1 The *Consultant* provides a work breakdown structure (WBS) breakdown of the invoice in the format required by the *Service Manager* (see link in **Annex 02**).
- S805.2 Not used
- S805.3 The *Consultant* notifies the *Service Manager* of the name and address of the *project bank*, the account name and number, the bank sort code and any other details required to make direct payments into that account.
- S 820.4 Not used

#### S806 Earned Value Reporting

- S806.1 The *Consultant* will report Earned Value Management (EVM) performance (see link at **Annex 02**) against the (WBS) in accordance with the Project requirements to be developed by the *Consultant* as set out in Schedule CS3 (Project Management Office including Integrated Project Controls).
- S806.2 The *Consultant* provides EVM performance against the WBS specified by the *Client* through the provision of the 'Commercial Reporting and Monitoring System' (CRaMS) return (see link at **Annex 02**).
- S806.3 The *Consultant* provides a verified monthly electronic CRaMS return, using the current version or any replacement, to the *Service Manager* and the *Clients* performance intelligence team on the last working day of each reporting period, as specified by the *Client*.
- S806.4 The *Consultant* arranges for its subcontractors (at any stage of remoteness from the *Client*) to make financial submissions in the same format.

#### S807 Cost verification

- S807.1 The *Consultant* allows the *Client* (or a forensic cost verification consultant engaged by the *Client*) to review data relating to the assessment of Defined Cost (including Personal Data) for the purpose of verifying the Defined Cost incurred.



S807.2 The *Client* ensures that data viewed for verification is adequately protected against the risk of accidental, unauthorised or unlawful processing, destruction, loss, damage, alteration or disclosure.

S807.3 The *Consultant* obtains agreement from the data subject for the review of Personal Data for verification.

#### **S810 *Client* use of the material**

S810.1 The *Client* may use the material provided by the *Consultant* under the contract for any purpose.

#### **S815 *Consultant* use of the material**

S815.1 The *Consultant* uses the material provided under the contract for the sole purpose of Providing the Service and for no other purpose.

#### **S820 Records of expenses**

Not used

#### **S825 Subcontracting**

Restrictions or requirements for subcontracting

S825.1 Except where a competitively awarded pre-existing contract for such works, supplies or services exists, or where the subcontractor was named and agreed in writing as part of the tendering process leading to the award of the main contract, the *Consultant* obtains a minimum of three (3) competitive written quotations for the appointment of any subcontractor or supplier for works/services with a subcontract value in excess of £10,000.

S825.2 The *Consultant* includes a provision in all subcontracts stating that retention is not deducted from any amount due to the subcontractor and procures that its subcontractors (at any stage of remoteness from the *Client*) do the same.

S825.3 The *Consultant* ensures that all subcontractors (at any stage of remoteness from the *Client*) are Named Suppliers.

S825.4 The *Consultant* may propose to the *Service Manager* that a subcontractor (at any stage of remoteness from the *Client*) is not a Named Supplier. A reason for not accepting the *Consultant's* proposal is that it is practicable for the subcontractor (at any stage of remoteness from the *Client*) to be a Named Supplier.

- S825.6 The *Consultant* may propose to the *Service Manager* that a subcontract used to appoint a subcontractor (at any stage of remoteness from the *Client*) is not an NEC form of contract. The *Consultant* does not appoint a subcontractor (at any stage of remoteness from the *Client*), using a contract other than NEC unless the *Service Manager* has accepted the *Consultant's* proposal. A reason for not accepting the *Consultant's* proposal is that it is practicable for the subcontract to be an NEC form.
- S825.7 The *Consultant* submits the proposed Contract Data for each subcontract of a subcontractor (at any stage of remoteness from the *Client*) to the *Service Manager* for acceptance, and for the purposes of clause 24.4 this paragraph is the *Service Manager's* instruction to the *Consultant* to make the submission. A reason for not accepting the Contract Data is
- it does not comply with the obligations of the contract,
  - it does not align with the risk transfer of the contract or
  - in the opinion of the *Service Manager* it has too high a risk transfer to the proposed subcontractor.
- S825.8 The *Consultant* ensures that any subcontract of a subcontractor (at any stage of remoteness from the *Client*) is capable of being novated to a replacement contractor.
- S825.9 The *Consultant* may propose to the *Service Manager* that a subcontract of a subcontractor (at any stage of remoteness from the *Client*) is not capable of being novated to a replacement contractor. The *Consultant* does not award a subcontract that is not capable of being novated to a replacement contractor unless the *Service Manager* has accepted the *Consultant's* proposal. A reason for not accepting the *Consultant's* proposal is that it is practicable for the subcontract to be novated to a replacement contractor.
- S825.10 When requested by the *Service Manager*, the *Consultant* executes or procures that the relevant subcontractor (at any stage of remoteness from the *Client*) executes an agreement in such form as the *Client* may reasonably require to novate the benefit and burden of a subcontract to a replacement contractor.

## **S826 Contracts Finder**

- S826.1 Contracts Finder is the Government website for information about contracts worth over £25,000 with the Government and its agencies.
- S826.2 Not used.
- S826.3 Where the forecast amount to be paid to the *Consultant* is £5,000,000 or more per annum at the Contract Date, the *Consultant*
- subject to paragraphs S826.5, S826.6 and S826.7, advertises on Contracts Finder all subcontract opportunities arising from or in connection with Providing the Service above a minimum threshold of £100,000,

- within 90 days of awarding a subcontract to a subcontractor, (at any stage of remoteness from the *Client*), updates the notice on Contracts Finder with details of the successful subcontractor,
- monitors the number, type and value of the subcontract opportunities placed on Contracts Finder advertised and awarded in its supply chain and provides reports on this information to the *Service Manager* in the format and frequency as reasonably specified by the *Service Manager* and
- promotes Contracts Finder to its suppliers and encourages those organisations to register on Contracts Finder.

The calculation of £5,000,000 or more per annum in this section is in accordance with footnote 1 to PPN 01/18 (see link at **Annex 02**) based on an advertised subcontract value, averaged over the life of the advertised subcontract.

- S826.4 Each advert referred to in paragraph S826.3 provides a full and detailed description of the subcontract opportunity with each of the mandatory fields being completed on Contracts Finder by the *Consultant*.
- S826.5 The obligation at paragraph S826.3 only applies in respect of subcontract opportunities arising after the Contract Date.
- S826.6 The *Consultant*, may propose to the *Service Manager* for acceptance, that a specific subcontract opportunity is not advertised on Contracts Finder. The *Consultant* provides a detailed reason for not advertising the specific subcontract opportunity. The *Consultant* provides further detail when requested by the *Service Manager* to assist the *Service Manager's* consideration. If accepted by the *Service Manager*, the *Consultant* is relieved from advertising that subcontract opportunity on Contracts Finder.

## **S827 Fair payment**

- S827.1 The *Consultant* includes in the subcontract with each subcontractor (at any stage of remoteness from the *Client*)
- a period for payment of the amount due to the subcontractor (at any stage of remoteness from the *Client*) not greater than 19 days after the date on which payment becomes due under the contract. The amount due includes payment for work which the subcontractor (at any stage of remoteness from the *Client*) has completed from the previous assessment date up to the current assessment date in the contract,
  - a provision requiring the subcontractor (at any stage of remoteness from the *Client*) to include in each subsubcontract the same requirement, except that the period for payment is to be not greater than 23 days after the date on which payment becomes due under the contract,

- a provision requiring the subcontractor (at any stage of remoteness from the *Client*) to assess the amount due to a subsubcontractor without taking into account the amount paid by the *Consultant* and
- a provision requiring each further stage subcontract to contain provisions to the same effect as these requirements, with the intention that all subcontractors (at any stage of remoteness from the *Client*) are to be paid within 30 days after the date on which payment becomes due under the contract.

S827.3

The *Consultant* notifies non-compliance with the timescales for payment

- to the *Client*,
- to the *Service Manager* and
- through the Cabinet Office Supplier Feedback Service.

The *Consultant* includes this provision in each subcontract and requires subcontractors (at any stage of remoteness from the *Client*) to include the same provision in each subsubcontract with the intention that all subcontractors (at any stage of remoteness from the *Client*) include the same provision.

### **S828 Advertising Subcontracts in accordance with the Public Contract Regulations 2015**

S828.1

The *Consultant* ensures that any subcontracts for the elements of the *service* advised by the *Service Manager* in accordance with paragraph S828.2 are

- procured in full compliance with the Public Contract Regulations 2015, or its replacement, (the “Public Contract Regulations”) (see link in **Annex 02**) and
- are capable of being novated to the *Client* or an Other.

S828.2

When requested by the *Service Manager*, the *Consultant* procures that the relevant subcontractor executes an agreement in the form the *Client* may reasonably require to novate the benefit and burden of a subcontract to the *Client* or a replacement contractor.

S828.3

The *Consultant* may use the *Client's* e-tendering system to procure any subcontract required by this section. The *Service Manager* arranges for advice and support on the use of the *Client's* e-tendering system.

S828.4 The *Consultant* provides to the *Service Manager* draft procurement documents (as defined in the Public Contract Regulations) for acceptance. A reason for the *Service Manager* not accepting the draft procurement documents is that they

- do not comply with the Public Contract Regulations, any case law or any EU Regulations,
- do not comply with or meet the requirements of the contract,
- in the opinion of the *Service Manager*, would place an unacceptable burden upon the *Client* (should the subcontract be novated to the *Client*) or
- do not enable the *Consultant* to Provide the Service.

S828.5 The *Consultant* does not publish any procurement documents until the *Service Manager* has accepted them.

## S829 Records and reporting for SMEs

S829.1 For Small, Medium or Micro Enterprises (SME) employed on the contract, as defined in table below:

Company category	Staff headcount	Turnover	or	Balance sheet total
Medium size	<250	< £50 m		< £43 m
Small	<50	< £10 m		< £ 10 m
Micro	<10	< £2 m		< £ 2m



the *Consultant* reports to the *Client* each quarter from the *starting date* until Completion Date

- the name of the SME,
- the class of SME (Small, Medium or Micro),

- the value of the contract undertaken by the SME,
- the monthly amounts paid to the SME in the quarter and
- the aggregated value paid to the SME since the *starting date*.

- S829.2 The *Consultant* acknowledges that the *Client* may
- publish the information supplied under the section, along with the *Consultant's* name and the name of the contract and
  - pass the information supplied under this section to any Government Department who may then publish it along with the names of the SMEs, the *Consultant's* name or the contract.
- S829.3 The *Consultant* ensures that the *conditions of contract* for each subcontractor who is an SME include
- a term allowing the *Client* to publish the information supplied under this section and
  - obligations similar to those set out in this section.
- S829.4 The *Consultant* further ensures that the *conditions of contract* for each subcontractor include a requirement that the *conditions of contract* for any further sub-subcontractor engaged by the subcontractor who is an SME include obligations similar to those set out in this section.
- S829.5 The *Consultant* complies with the requirements of Schedule SP17 (Management Information and Reporting).

### S830 Training

- S830.1 The *Client* provides training for relevant systems listed in **Annex 09** in accordance with the requirements set out in Schedule SP2 (Items to be Provided by the *Consultant*).
- S830.2 The *Consultant* proposes a list of appropriate staff to be trained for each requirement for acceptance by the *Service Manager*. The *Consultant* liaises with the *Service Manager* to programme the training to optimise efficiencies.

### S850 Meetings

- S850.1 Following the *starting date*, the *Consultant* convenes and attends monthly meetings with the *Service Manager*, and prepares and submits reports to the *Service Manager* in accordance with the Project Management Office and Integrated Project Controls plan to be developed by the *Consultant* under Schedule CS3 (Project Management Office including Integrated Project Controls).

### S900 Acceptance or procurement procedure

### S905 Procurement procedures

Not used

## S910 Submission & acceptance procedures

Not used

## S1000 Accounts and records

### S1005 Additional records

S1005.1 Requirements for any additional records to be kept by the *Consultant* in addition to those listed in the contract, and the required format of such records, are set out in the relevant Task Order.

## S1100 Ultimate holding company guarantee

### S1101 Parent Company Guarantee

S1101.1 The form of Parent Company Guarantee is set out in **Annex 16**.

### S1102 Legal Opinion

S1102.1 If the *Consultant* is required to provide a Parent Company Guarantee, it is provided in the form set out in **Annex 16**. If the entity that is to provide the Parent Company Guarantee is a non-UK registered company required by the contract, the *Consultant* provides a legal opinion in support of a Parent Company Guarantee.

S1102.2 Any legal opinion provided by the *Consultant* in support of a Parent Company Guarantee from a non-UK registered company includes (among others) the following matters

- is addressed to the *Client* on a full reliance basis,
- the liability of the lawyers giving the opinion must not be subject to any exclusion or limitation of liability,
- confirmation that
  - the Controller is a corporation duly incorporated in the relevant jurisdiction, validly existing and in good standing under the laws of the jurisdiction in which it is incorporated,
  - the Controller has full power to execute, deliver, enter into and perform its obligations under the Parent Company Guarantee,
  - all necessary corporate, shareholder and other action required to authorise the execution and delivery by the Controller of the Parent Company Guarantee and the performance by it of its obligations under it have been duly taken,
  - execution by the proposed signatories in accordance with the method of execution proposed will constitute valid execution by the Controller,
  - the execution and delivery by the Controller of the Parent Company Guarantee and the performance of its obligations under it will not conflict with or violate
    - the constitutional documents of the Controller,

- any provision of the laws of the jurisdiction in which it is incorporated,
- any order of any judicial or other authority in the jurisdiction in which it is incorporated or
- any mortgage, contract or other undertaking which is binding on the bidder or its assets and
- (assuming that it is binding under English law) the Parent Company Guarantee constitutes legal, valid and binding obligations of the Controller enforceable in accordance with its terms,
- notification of any other formalities to be complied with under local law which may be necessary to enforce the Parent Company Guarantee in the Controller's place of incorporation, including (for example) notarisation, legalisation or registration of the Parent Company Guarantee,
- notification of whether withholding is required to be made by the Controller in relation to any monies payable to the *Client* under the Parent Company Guarantee,
- confirmation of whether the *Client* will be deemed to be resident or domiciled in the foreign jurisdiction by reason of its entry into the Parent Company Guarantee and
- confirmation that the Controller and its assets are not entitled to immunity from suit, pre-judgment attachment or restraint or enforcement of a judgment on grounds of sovereignty or otherwise in the courts of England in respect of proceedings against it in relation to the Parent Company Guarantee.

## S1200 Undertaking to Others (Option X8)

### S1205 Undertakings to Others

Not used

## S1300 Transfer of rights

### S1305 *Consultant's* rights over material prepared for the design of the service

S1305.1 The *Consultant* acquires no rights over material prepared for the design of the service.

### S1310 Other rights to be obtained by the *Consultant*

S1310.1 All Intellectual Property Rights ("IPRs") in

- Client Background IPR and
- Client Software

are and remain the property of the *Client* or the Crown, and the *Consultant* does not acquire any right, title or interest therein or thereto.

S1310.2 The *Consultant* hereby assigns to the *Client*, with full title guarantee, title to and all rights and interest in the Specially Written Software (except for any



- Consultant Background IPR contained therein) or procures that the first owner of the Specially Written Software assigns them to the *Client* on the same basis.
- S1310.3 All Intellectual Property Rights in
- Consultant Background IPR and
  - Consultant Software
- are and remain the property of the *Consultant*, and neither the *Client* nor the Crown acquire any right, title or interest therein or thereto.
- S1310.4 The *Consultant* waives or procures a waiver of any moral rights in any copyright works assigned to the *Client* pursuant to the contract.
- S1310.5 The *Consultant* hereby grants to use (to include the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)) the
- Consultant Software,
  - Consultant Background IPR and
  - Third Party Software
- for any purpose relating to the *service* and its maintenance, operation, modification and for any purpose relating to the exercise of the *Client's* (or any other Central Government Body's) business or function.
- S1310.6 The *Consultant* delivers to the *Service Manager* the Specially Written Software in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials as necessary to meet its obligations under the contract and upon request by the *Client* at any time, and provides updates of the Source Code and of the Software Supporting Materials promptly following each new release of the Specially Written Software, in each case on media that is acceptable to the *Service Manager*. The *Consultant* acknowledges and agrees that the ownership of the media referred to in this paragraph vests in the *Client* upon their receipt by the *Service Manager*.
- S1310.7 In respect of any sub-licence of the rights granted to the *Client* under paragraph S1310.6, if requested by the *Consultant* the sub-licensee executes a confidentiality undertaking in favour of the *Consultant* or third party owner of the relevant rights in such reasonable form as the *Consultant* requires and the *Service Manager* accepts.
- S1310.8 The *Consultant* informs the *Service Manager* of all Specially Written Software that constitutes a modification or enhancement to Consultant Software or Third Party Software.
- S1310.9 The *Client* grants to the *Consultant*, or procures the direct grant to the *Consultant* of, a royalty-free, non-exclusive, non-transferable, revocable licence to use all Client Software and Client Background IPR reasonably required by the *Consultant* in order to Provide the Service. Any such licence is granted for the duration of the contract only and solely to enable the *Consultant* to comply with its obligations under the contract.

- S1310.10 If an IPRs Claim is made, or the *Consultant* anticipates that an IPRs Claim might be made, the *Consultant*, at its own expense and sole option, either
- procures for the *Client* or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim or
  - replaces or modifies the relevant item with non-infringing substitutes provided that
    - the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item,
    - the replaced or modified item does not have an adverse effect on any other *services*, or the Client System or the Consultant System,
    - there is no additional cost to the *Client* or relevant Indemnified Person (as the case may be) and
    - the terms and conditions of the contract apply to the replaced or modified *services*.
- S1310.11 If the *Consultant*
- procures a licence or
  - modifies or replaces an item
- in accordance with paragraph S1310 but this has not avoided or resolved the IPRs Claim, then
- the *Client* may treat this IPRs Claim as the *Consultant* having substantially hindered the *Client* or Others and
  - without prejudice to the indemnity set out in paragraph clause Z13.6, the *Consultant* is liable for all reasonable and unavoidable costs of the substitute items and *services* including the additional costs of procuring, implementing and maintaining the substitute items.
- S1310.12 The *Consultant* keeps the Software Schedule up to date to reflect the IP Software used to Provide the Service. The *Consultant* provides the *Service Manager* a copy of the updated Software Schedule within 5 days of any change to the Software.

### **S1315 Escrow**

- S1315.1 The *Consultant* deposits, and procures that each owner of the Deposited Software deposits, not less than fourteen (14) days following the relevant Commissioning Date or at such other times as the *Service Manager* may require, the Source Code of such part of the IP Software that consists of Deposited Software in escrow.
- S1315.2 The escrow will be with a specialist software escrow company accepted by the *Service Manager*. The escrow account will be on the basis of a single beneficiary escrow agreement modified as necessary, and where applicable, to be consistent with the provisions S1315.4.
- S1315.3 The *Consultant* ensures that (and procures that each owner of the Deposited Software ensures that) the deposited version of the Source Code is the current

version of the Deposited Software and that the deposited version is kept up-to-date as the Deposited Software is modified or upgraded. The *Consultant* pays, or procures that each owner of Deposited Software pays, the initial set up and storage fees, and any annual, deposit & verification fees under the escrow agreement and the *Client* pays any release fees.

S1315.4 Where Deposited Software includes Specially Written Software, without prejudice to the provisions of paragraph S1315.3, the *Consultant* ensures there are no restrictions on the release to the *Client* of Specially Written Software from escrow, which is released whenever required by the *Client* and without payment of any release fee, unless the *Service Manager* has agreed otherwise.

S1315.5 Where the *Consultant* is unable to procure compliance with the provisions of paragraph S1315.2 in respect of any Third Party Software that is Deposited Software, it provides the *Service Manager* with written evidence of its inability to comply with these provisions and agrees with the *Service Manager* a suitable alternative to escrow that affords the *Client* the nearest equivalent protection. The *Consultant* is excused from its obligations under paragraph S1315.2 only to the extent that the *Consultant* and the *Service Manager* have agreed on a suitable alternative.

S1315.6 In circumstances where the *Client* obtains the release of the Source Code from escrow, the *Consultant* hereby grants (and procures that any owner of Deposited Software grants) to the *Client* a perpetual, worldwide, assignable, royalty-free, irrevocable and non-exclusive licence to use and support (which includes the right to load, execute, interpret, store, transmit, display, copy (for the purposes of loading, execution, interpretation, storage, transmission or display), modify, adapt, enhance, reverse compile, decode and translate) the Source Code version of the Deposited Software to the extent necessary for the receipt of the service, its maintenance, operation and modification of the service and for any purpose relating to the exercise of the *Client's* (or any other Central Government Body's) business or function. The licence granted under this section S1310.6 survives the termination or expiry of the contract and cannot be terminated by the *Consultant* or its assignees or any third party.

#### **S1400 Information modelling (Option X10)**

#### **S1405 Information Modelling Requirements**

S1405.1 The *Consultant's* obligations in relation to the assurance of the Information Model for the Project are set out in Schedule PS1 (Design Management and Assurance) and in Task Orders.

S1405.2 The *Consultant* Provides the Service and assures and ensures that the Project Contractors provide the Project Contract Works in compliance with the Government's Strategy for Building Information Modelling (BIM) as set out in the Cabinet Office Government Construction Strategy papers dated May 2011 and 2016 (See link at **Annex 02**).

### S1500 Performance bond (Option X13)

Not used

### S1600 Project Bank Account (Option Y(UK)1)

- S1600.1 NEC Option Y(UK) 1 is mandated for all contracts. The *Consultant* complies with section S825.3.
- S1600.2 The *Consultant* ensures that any deeds associated with the Project Bank Account (PBA) are issued with sufficient time to allow the *Client* to apply original signatures to prevent any payment issues.
- S1600.3 The *Consultant* ensures that
- there is one original copy of deed for each party to the deed issued to the *Service Manager* for the attachment of the *Client's* original signatures and
  - each original copy of the deed has original signatures from the authorised signatories.

### S1605 Adding a Supplier

- S1605.1 The *Consultant* ensures that all its supply chain sign a Joining Deed to be paid via the PBA. For any subcontractor or supplier that declines to join the PBA (having been offered the opportunity) written evidence needs to be provided to the *Service Manager* detailing the reasons why it does not want to sign up. The *Client* may at any time, contact that subcontractor or supplier directly to improve their knowledge and understanding of the benefits of PBAs.

### S1606 Project Bank Account (PBA) Tracker

- S1606.1 The Tracker is the tracker used for measuring and monitoring performance of the PBA. The *Consultant* completes and submits to the *Service Manager* on a monthly basis
- a fully populated PBA Tracker (with the 'Supplier Cumulative Totals' tab up to date - including the assignment of Small Medium Enterprises(SME) categories against each subcontractor and each subsubcontractor) and
  - detailed any statements and payment runs (required to reconcile payment dates and amounts to the application breakdown in the PBA Tracker (for PBA supply chain and non-PBA supply chain). Any data relating to other clients should be redacted from your main account statement before submission) in .pdf format.
- S1606.2 All variances from the previous month are explained and further information is submitted in response to any queries raised.
- The SME percentage is calculated from the full application value.
- Time in the PBA Tracker (and any associated performance indicator) is measured in calendar days.

- S1606.3     The *Service Manager* monitors the time it takes the *Consultant* to pay its supply chain (including subcontractors and subsubcontractors) through the PBA, following deposit of funds into the PBA.
- The related performance score is calculated when the majority of the funds have been deposited into the PBA by the *Client* that covers amount due to supply chain joined to the PBA.
- S1606.4     If any data/evidence is missing or still required (if not covered in the tracker) spot checks are undertaken directly by the *Client* with the supply chain (at various intervals) to verify that they are paid in a timely manner.
- The *Client* may carry out audits to assess the full extent of how supply chain payments are made.
- S1606.5     Where the *Consultant* transfers monies from other accounts into the PBA this is stated on the bank statement.



**Highways England Company Limited**

**Lower Thames Crossing  
Integration Partner Contract  
Benchmarking Appendix**

## 1. Defined terms

### 1.1 In this Benchmarking Appendix, the following expressions have the following meanings

Average Price	<p>is</p> <ul style="list-style-type: none"><li>▪ in relation to the Comparable Services provided by the Comparison Group, the mean average price for those Comparable Services as adjusted to produce Equivalent Services Data, where "mean average price" is calculated by aggregating the prices derived from Equivalent Services Data for each of the Comparable Services and dividing the same by the number instances of Comparable Services or</li><li>▪ the price determined by the Benchmarker through applying the Equivalent Service Data to the proxy or proxies.</li></ul>
Benchmark Report	is the report delivered by the Benchmarker, which complies with paragraph 5 of this Benchmarking Appendix.
Benchmark Review	is the review pursuant to this Benchmarking Appendix.
Benchmarked Services	are any or all of those parts of the <i>service</i> set out in the Systems and Processes Schedule which are the subject of a Benchmark Review.
Benchmarker	is the person appointed as the Benchmarker pursuant to this Benchmarking Appendix.
Benchmarking Analysis	<p>is an analysis of the range of prices currently offered by competitors in the market place established through relevant benchmarking which is carried out</p> <ul style="list-style-type: none"><li>▪ by the <i>Consultant</i> when directed by the <i>Service Manager</i> and reviewed by an independent expert appointed and paid for by the <i>Consultant</i> and</li><li>▪ on a regular basis as reasonably required by the <i>Service Manager</i> (having regard to the frequency with which market prices change for that type of commercial service).</li></ul>

Comparable Services	are services that are identical or materially similar to the Benchmarked Services (including in terms of scope, specification, volume and quality of performance) provided that if no identical or materially similar services exist in the market, the Benchmarker proposes an approach for developing a comparable service benchmark.
Comparison Group	is a sample group of organisations providing Comparable Services identified by the Benchmarker in accordance with this Benchmarking Appendix which consists of organisations which are either of similar size to the <i>Consultant</i> or which are similarly structured in terms of their business and their service offering so as to be (in the Benchmarker's professional opinion) fair comparators with the <i>Consultant</i> or which, in the professional opinion of the Benchmarker, are best practice organisations and that are carrying on at least a significant part of their business within the United Kingdom.
Equivalent Services Data	is data derived from an analysis of the Comparable Services provided by the Comparison Group (or a proxy or proxies proposed by the Benchmarker) as adjusted in accordance with this Benchmarking Appendix.
Good Value	means that <ul style="list-style-type: none"> <li>▪ the Prices attributable to a Benchmarked Service are, having taken into account the service levels and other Performance Requirements for the relevant Benchmarked Service, less than or equal to the Average Price and</li> <li>▪ any service levels and other Performance Requirements attributable to Benchmarked Services are, having taken into account the Prices, equal to or greater than the median service levels and performance requirements for Comparable Services as adjusted using Equivalent Services Data.</li> </ul>

## 2. Benchmark Reviews



- 2.1 The *Service Manager* may, by written notice to the *Consultant*, require a Benchmark Review of any or all of the Systems and Processes on commencement of the Review Stage at the end of Delivery Phase 2.
- 2.2 The purpose of a Benchmark Review is to establish whether a part of the *service* is, or the Systems and Processes as a whole are, Good Value.
- 2.3 The *Service Manager* identifies which of the Systems and Processes are to be the Benchmarked Services for a Benchmark Review, along with such additional considerations as the *Service Manager* considers to be relevant to the Benchmark Review, in the written request given under paragraph 2.1 of this Benchmarking Appendix. The *Client* retains sole discretion over which Systems and Processes are to be the Benchmarked Services.
- 2.4 The *Client* may also undertake benchmarking and market testing of any part of the *service* outside of this Benchmarking Appendix to assure value for money at any time. This may also include customer satisfaction surveys.
- 2.5 The written request given by the *Service Manager* under paragraph 2.1 of this Benchmarking Appendix is to be issued at least six (6) months prior to the end of Delivery Phase 2 so that the Benchmarking Report can be made available within the Review Stage.

### **3. Appointment of Benchmarkers**

- 3.1 Within 10 working days of any written request from the *Service Manager* under paragraph 2.1 of this Benchmarking Appendix, the *Consultant* prepares
- a draft specification which provides prospective Benchmarkers with sufficient information to enable them to prepare a quotation for the work to be undertaken and
  - the *Consultant's* proposed approach for procuring the services of a Benchmarkers.
- 3.2 The *Consultant* submits the draft specification and proposed procurement approach to the *Service Manager* for acceptance. The *Service Manager* replies within the *period for reply* and either
- accepts the draft specification and proposed procurement approach
  - proposes modified drafting that more accurately reflects the *Client's* requirements for the Benchmark Review as notified to the *Consultant* under paragraph 2.3 of this Benchmarking Appendix or
  - provides comments explaining why it does not accept the draft specification or proposed approach to procurement (as applicable).
- 3.3 A reason for not accepting the draft specification is that
- it does not provide prospective Benchmarkers with sufficient information to enable them to prepare a quotation for the work to be undertaken

- it does not accurately reflect the *Client's* requirements for the Benchmark Review as notified to the *Consultant* under paragraph 2.3 of this Benchmarking Appendix or
  - it does not comply with the contract.
- 3.4 A reason for not accepting the proposed procurement approach is that
- it does allow the Benchmarker to be procured within the required timescales
  - it does not reflect the *Client's* requirements for the Benchmark Review as notified to the *Consultant* under paragraph 2.3 of this Benchmarking Appendix or
  - it does not comply with the contract.
- 3.5 Within 5 working days of receipt of the proposed modifications or comments on the procurement process pursuant to paragraph 3.2 of this Benchmarking Appendix, the *Consultant*
- adopts any modifications proposed under paragraph 3.2 of this Benchmarking Appendix and re-issues the specification to the *Service Manager* or
  - revises the proposed procurement approach, taking into account the comments of the *Service Manager* and re-issues the approach to the *Service Manager*.
- 3.6 Within 30 working days of the *Service Manager's* acceptance of the specification and the procurement approach, the *Consultant*, following the consented procurement approach (and with due regard to all of the provisions of the contract relating to subcontracting), appoints a Benchmarker to carry out the Benchmark Review from the list of organisations set out in Annex A to this Benchmarking Appendix or such other organisations as may be agreed between the Parties.
- 3.7 The *Consultant* requires the Benchmarker to enter into an appropriate confidentiality undertaking with the *Consultant* and the *Client* in, or substantially in, the form set out in Annex B to this Benchmarking Appendix (unless the *Service Manager* agrees otherwise). The *Consultant* is not required to disclose any Confidential Information to the Benchmarker (and the *Client* does not disclose any Confidential Information of the *Consultant* to the Benchmarker) unless and until the Benchmarker has entered into such confidentiality undertaking.
- 3.8 The costs and expenses of the Benchmarker and the Benchmark Review are shared equally between the Parties provided that each Party bears its own internal costs of the Benchmark Review. The Benchmarker is not compensated on a contingency fee or incentive basis.
- 3.9 If the *Consultant* does not appoint the Benchmarker within the required 30 working days, then the *Client* may appoint a Benchmarker itself. If the *Client* appoints the Benchmarker, then the *Consultant* acknowledges and agrees that half the Benchmarker's cost is recovered from the *Consultant*.

#### 4. Benchmarking Process

4.1 The *Consultant* procures that, within 10 working days after the date of the appointment of the Benchmarker, or such longer period as the Benchmarker reasonably requests and the *Client* agrees, the Benchmarker produces and sends to each Party for acceptance a draft plan for the Benchmark Review. The plan includes

- a proposed timetable for the Benchmark Review
- a description of the information that the Benchmarker requires each Party to provide
- a description of the benchmarking methodology to be used, including the structure of the Benchmark Report
- a description that demonstrates objectively and transparently that the benchmarking methodology to be used is capable of fulfilling the benchmarking objectives
- an estimate of the resources required from each Party to underpin the delivery of the plan
- a description of how the Benchmarker will scope and identify the Comparison Group
- details of any entities which the Benchmarker proposes to include within the Comparison Group and
- if in the Benchmarker's professional opinion there are no Comparable Services or the number of entities carrying out Comparable Services is insufficient to create a Comparison Group, a detailed approach for meeting the relevant benchmarking objectives under paragraph 2.2 of this Benchmarking Appendix using a proxy or proxies for the Comparison Services or Comparison Group as applicable.

4.2 The Parties acknowledge that

- the selection and use of a proxy or proxies for the Comparison Group and Comparable Services
  - the manner in which such a proxy or proxies are created and
  - the sources and number of sources used to create the proxy or proxies
- are a matter for the Benchmarker's professional judgment.

4.3 Each Party gives notice in writing to the Benchmarker and to the other Party within 10 working days after receiving the draft plan, either accepting the draft plan or suggesting reasonable amendments to the draft plan. A reason for not accepting the plan is that

- it does not include all of the information set out in paragraph 4.2 of this Benchmarking Appendix
- it does not accurately reflect the *Client's* requirements for the Benchmark Review as notified to the *Consultant* under paragraph 2.3 of this Benchmarking Appendix or

- it does not comply with the contract.
- 4.4 If a Party suggests amendments to the draft plan, the *Consultant* procures that the Benchmarker, if it believes the amendments are reasonable, produces an amended draft plan. Paragraphs 4.1, 4.2 and 4.3 and this paragraph 4.4 of this Benchmarking Appendix apply to any amended draft plan.
- 4.5 If a Party fails to give the notice required by paragraph 4.3 of this Benchmarking Appendix then, subject to such Party having received a reminder by the Benchmarker 5 working days after the Benchmarker sent the draft plan and without limiting its , such Party is deemed to have accepted the draft plan. Without limiting its rights under clause W2, if either Party fails to accept the draft plan within 30 working days of the draft plan first being sent to them pursuant to paragraph 4.1 of this Benchmarking Appendix, then the Benchmarker prescribes the plan and it is deemed to be accepted by both Parties.
- 4.6 Once the plan is accepted by both Parties, the Benchmarker carries out the Benchmark Review in accordance with the plan. Each Party procures that all the information described in the plan, together with any additional information reasonably required by the Benchmarker is provided to the Benchmarker without undue delay. If the *Consultant* fails to provide any information requested from it by the Benchmarker and described in the plan then such failure is treated as a substantial failure by the *Consultant* to comply with its obligations.
- 4.7 Each Party co-operates fully with the Benchmarker, including by providing access to records, technical documentation, premises, equipment, systems and staff at times reasonably requested by the Benchmarker, provided that the Benchmarker is instructed to minimise any disruption to the *service*.
- 4.8 Either Party may provide additional material to the Benchmarker to assist the Benchmarker in conducting the Benchmark Review.
- 4.9 Once it has received the information it requires, the Benchmarker, acting in accordance with the accepted plan,
- finalises a sample of entities constituting the Comparison Group and collects data relating to Comparable Services
  - derives the Equivalent Services Data, by applying the adjustment factors listed in paragraph 4.10 of this Benchmarking Appendix and from an analysis of the Comparable Services
  - calculates the Average Price and median service levels, using the Equivalent Services Data
  - compares the Prices attributable to the Benchmarked Services (having due regard to the service levels and other Performance Requirements for the relevant Benchmarked Service and the context under which the *service* is being provided) with the Average Price using the Equivalent Services Data
  - compares the service levels and other Performance Requirements of the Benchmarked Services (having regard to the Prices and the context under

which the Services are being provided) with the median service levels using the Equivalent Services Data and

- determines whether or not each Benchmarked Service is or the Benchmarked Services as a whole (as applicable) are, Good Value.

4.10 The Benchmarker has regard to the following matters when performing a comparative assessment of the Benchmarked Services and the Comparable Services in order to derive Equivalent Services Data

- the contractual and business environment under which the Benchmarked Services are being provided (including the scope, scale, complexity, geographical spread of the Benchmarked Services, and the operating environment in which the Benchmarked Services are delivered)
- any front-end investment and development costs of the *Consultant*
- the *Consultant's* risk profile including the financial, performance or liability risks associated with the provision of the *service* as a whole;
- any requirements regarding the residual life of the Project Information Systems
- the extent of the *Consultant's* management and contract governance responsibilities and
- any other factors reasonably identified by the *Consultant*, which, if not taken into consideration, could unfairly cause the *Consultant's* pricing to appear non-competitive (such as erroneous costing, non-sustainable behaviour including excessive energy consumption or over-aggressive pricing by the Comparison Group or assumed in any proxy or proxies for the Comparison Group).

4.11 In formulating Equivalent Service Data and the proxy or proxies referred to in paragraph 4.1 of this Benchmarking Appendix, the Benchmarker may construct a financial model. In the production of such a financial model the *Consultant* provides the Benchmarker with access to all the information available under clause 52 and clause Z53 of the *conditions of contract*. Any such model produced by the Benchmarker has due regard to the margins, risk allowances and other such factors assumed in the Prices.

## 5. **Benchmark Report**

5.1 The Benchmarker prepares a Benchmark Report and delivers it simultaneously to both Parties, at the time specified in the plan approved under paragraph 4.3 or deemed accepted under paragraph 4.5 of this Benchmarking Appendix, setting out its findings which

- includes a finding as to whether or not each Benchmarked Service is and whether (if applicable) the Benchmarked Services as a whole are, Good Value
- includes other findings (if any) regarding the quality and competitiveness or otherwise of the Benchmarked Services and
- if any Benchmarked Service is not Good Value, or the Benchmarked Services as a whole are not Good Value, specifies the changes that would

be required to the Prices, service levels or other Performance Requirements that would be required to make that Benchmarked Service or (if applicable) the Benchmarked Services as a whole Good Value.

- 5.2 The Benchmarker acts as an expert and not as an arbitrator.
- 5.3 For the avoidance of doubt, Benchmark Reviews do not result in any increase to the Prices or any decrease in the service levels or Performance Requirements of any Benchmarked Services.
- 5.4 If the Benchmark Report states that any Benchmarked Service is not Good Value, or that the Benchmarked Services as a whole are not Good Value then, subject to the (subject to paragraph 5.6 of this Benchmarking Appendix) the *Consultant* implements the changes set out in the Benchmark Report as soon as reasonably practicable within a timescale agreed with the *Service Manager* but in any event within no more than one (1) month.
- 5.5 Subject to the *Consultant's* right to dispute or reject the Benchmark Report under paragraph 5.6 of this Benchmarking Appendix, if the Benchmark Report determines that any or all of the Benchmarked Services are not Good Value, and proposes revised Prices, these revised Prices come into effect and become the Prices in accordance with such timescales agreed between the Parties under paragraph 5.4 of this Benchmarking Appendix.
- 5.6 The *Consultant* is entitled to reject the Benchmark Report if the *Consultant* reasonably considers that the Benchmarker has not followed the procedure for the related Benchmark Review as agreed in paragraph 4.6 of this Benchmarking Appendix in any material respect.
- 5.7 In the event of a dispute or rejection of the Benchmark Report under paragraph 5.6 of this Benchmarking Appendix, the matter is referred to the to the *Senior Representatives* or to the *Adjudicator*. In the event of a dispute between the Parties the *Client* continues to pay the Price for Service Provided to Date to the *Consultant* in accordance with the terms of the contract (without adjustment under this Benchmarking Appendix) pending the resolution of the dispute.
- 5.8 If it is agreed by the *Senior Representatives* or determined by the *Adjudicator* that all or any part of the Benchmark Report recommendations regarding any reduction in the Prices are to be implemented by the *Consultant*, then the difference between the Price for Service Provided to Date paid by the *Client* up to and including the date of the agreement or determination and the date upon which the recommended reduction in Prices should have originally taken effect is held on trust by the *Consultant* for the *Client* and either included in the next assessment of amounts due under the contract or, if no further assessment is due to be made, is payable as a debt within 10 working days of the date of agreement or determination.

**ANNEX A**  
**ACCEPTED BENCHMARKERS**

1. The following have been agreed by the *Client* and the *Consultant* as organisations which have the capability to undertake a Benchmark Review as detailed in the Benchmarking Appendix:
  - 1.1. Information Services Group ISG (NASDAQ:III) of Corporate Headquarters, Two Stamford Plaza, 281 Tresser Boulevard, Stamford, CT 06901, USA; and
  - 1.2. Gartner, Inc. of Corporate Headquarters, 56 Top Gallant Road, Stamford, CT 06904 USA.

## ANNEX B – FORM OF CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on *[date]*

### BETWEEN:

1. *[insert name]* of *[insert address]* (the "**Consultant**");
2. *[insert name]* of *[insert address]* (the "**Client**"); and
3. *[insert name]* of *[insert address]* (the "**Benchmarker**"),

each a "**Party**" and together the "**Parties**").

### WHEREAS:

- (A) The *Client* and the *Consultant* are party to a contract dated *[insert date]* (the "**Contract**") for the provision by the *Consultant* to the *Client* of services as integration partner for the Lower Thames Crossing Project.
- (B) The Benchmarker is to receive Confidential Information from the *Consultant* and the *Client* for the purpose of carrying out a benchmarking review for the *Client* of one or more of such services pursuant to the terms of the Contract (the "**Permitted Purpose**").

### IT IS AGREED as follows:

#### 1. Definitions and interpretation

##### 1.1 In this Agreement, unless the context otherwise requires

1.1.1. "**Agreement**" means this confidentiality agreement as amended or varied from time to time.

1.1.2. "**Confidential Information**" means

- (a) Information, including all personal data within the meaning of the Data Protection Act 1998, and however it is conveyed, provided by the *Consultant* to the Benchmarker pursuant to this Agreement that relates to
  - (i) the *Consultant*
  - (ii) the operations, business, affairs, developments intellectual property rights, trade secrets, knowhow and personnel of the *Consultant*
  - (iii) the *Client* or
  - (iv) the operations, business, affairs, developments intellectual property rights, trade secrets, knowhow and personnel of the *Client*



- (b) other Information provided by the *Consultant* or the *Client* pursuant to this Agreement to the Benchmarker that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Benchmarker's attention or into the Benchmarker's possession in connection with the Permitted Purpose
- (c) discussions, negotiations, and correspondence between the *Consultant* or any of its directors, officers, employees, consultants or professional advisers or the *Client* or any of its directors, officers, employees, consultants or professional advisers and the Benchmarker or any of its directors, officers, employees, consultants and professional advisers in connection with the Permitted Purpose and all matters arising therefrom and
- (d) Information derived from any of the above, but not including any Information which
  - (i) is in the possession of the Benchmarker without obligation of confidentiality prior to its disclosure by the *Consultant* or the *Client*
  - (ii) the Benchmarker obtained on a non-confidential basis from a third party who is not, to the Benchmarker's knowledge or belief, bound by a confidentiality agreement with the *Consultant* or the *Client* or otherwise prohibited from disclosing the information to the Benchmarker
  - (iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality or
  - (iv) was independently developed without access to the Confidential Information.

1.1.3. **"Effective Date"** means the date of execution of this Agreement.

1.1.4. **"Information"** means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form).

1.1.5. **"Permitted Purpose"** has the meaning given to that expression in Recital B to this Agreement.

1.2 A reference to any gender includes a reference to other genders.

1.3 The singular includes the plural and vice versa.

1.4 The words "include" and cognate expressions are construed as if they were immediately followed by the words "without limitation".

- 1.5 References to any statutory provision include a reference to that provision as modified, replaced, amended or re-enacted from time to time (before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it.
- 1.6 Headings are included for ease of reference only and do not affect the interpretation or construction of this Agreement.
- 1.7 References to Clauses are to clauses of this Agreement.

## **2. Confidentiality Obligations**

- 2.1 In consideration of either or both the *Consultant* or the *Client* providing Confidential Information to the Benchmarker, the Benchmarker shall
  - 2.1.1. treat all Confidential Information as secret and confidential
  - 2.1.2. have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature)
  - 2.1.3. not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the *Consultant* or the *Client* or, if relevant, other owner or except as expressly set out in this Agreement
  - 2.1.4. not transfer any of the Confidential Information outside the United Kingdom
  - 2.1.5. not use or exploit any of the Confidential Information for any purpose whatsoever other than the Permitted Purpose
  - 2.1.6. immediately notify the *Consultant* and the *Client* (as applicable) in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information and
  - 2.1.7. once the Permitted Purpose has been fulfilled
    - 2.1.7.1. destroy or return to the *Consultant* or the *Client* (as applicable) all documents and other tangible materials that contain any of the Confidential Information

- 2.1.7.2. ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Benchmarker) from any computer, word processor, voicemail system or any other device and
- 2.1.7.3. make no further use of any Confidential Information.

### **3. Permitted Disclosures**

- 3.1 The Benchmarker may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who
  - 3.1.1. reasonably need to receive the Confidential Information in connection with the Permitted Purpose
  - 3.1.2. have been informed by the Benchmarker of the confidential nature of the Confidential Information and
  - 3.1.3. have agreed to terms of confidentiality similar to those in this Agreement.
- 3.2 The Benchmarker shall be entitled to disclose Confidential Information
  - 3.2.1. of the *Consultant* to the *Client* for the Permitted Purpose;
  - 3.2.2. of the *Client* to the *Consultant* for the Permitted Purpose; and
  - 3.2.3. to any person appointed in relation to a dispute under or in connection with this Agreement.
- 3.3 The Benchmarker shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Benchmarker.
- 3.4 Before making a disclosure pursuant to Clause 3.3, the Benchmarker shall, if the circumstances permit
  - 3.4.1. notify either or both the *Consultant* or *Client* (as applicable) in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information) and

- 3.4.2. ask the court or other public body to treat the Confidential Information as confidential.

#### 4. **General**

- 4.1 The Benchmarker acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the *Consultant* or the *Client* shall remain with and be vested in the person in whom it vested at the time it was disclosed.
- 4.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations
  - 4.2.1. to grant the Benchmarker any licence or rights other than as may be expressly stated in this Agreement
  - 4.2.2. to require the *Consultant* or the *Client* to disclose, continue disclosing or update any Confidential Information or
  - 4.2.3. as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of this Agreement.
- 4.3 This Agreement is without prejudice to any other obligation of confidence between the *Consultant* and the *Client* pursuant to the terms of the Contract.
- 4.4 The provisions of clause 56 (Freedom of Information) of the Contract shall apply to this Agreement as if set in full, with the necessary changes and the Benchmarker acknowledges and agrees to be bound by such clauses.
- 4.5 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 4.6 Without prejudice to any other rights or remedies that either or both the *Consultant* or the *Client* may have, the Benchmarker acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Benchmarker of any of the provisions of this Agreement. Accordingly, the Benchmarker acknowledges that either or both the *Consultant* or the *Client* shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.

- 4.7 The maximum liability of the Benchmarker to the *Consultant* and the *Client* for any breach of this Agreement shall be limited to ten million pounds (£10,000,000).
- 4.8 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.
- 4.9 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.
- 4.10 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

## 5. Notices

- 5.1 Any notice to be given under this Agreement (each a “**Notice**”) shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 5.2.

5.2 Any Notice:

- 5.2.1. if to be given to the *Consultant* shall be sent to

*[Address]*

Attention: *[Contact name and/or position, e.g. “The Finance Director”]*

- 5.2.2. if to be given to the *Client* shall be sent to

Highways England Company Limited

Bridge House

1 Walnut Tree Close

Guildford

Surrey

England GU1 4LZ

Attention: [•]

- 5.2.3. if to be given to the Benchmarker shall be sent to

*[Name of Organisation]*

*[Address]*

Attention: [●]

## 6. Governing law

6.1 This Agreement shall be governed by, and construed in accordance with, English law and any matter claim or dispute arising out of or in connection with this Agreement whether contractual or non-contractual, shall be governed by and determined in accordance with English law.

6.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with this Agreement.

**IN WITNESS** of the above this Agreement has been signed by the duly authorised representatives of the Parties on the Effective Date.

For and on behalf of *[name of Consultant]*

Signature: \_\_\_\_\_ Date:

Name: \_\_\_\_\_ Position:

For and on behalf of Highways England Company Limited

Signature: \_\_\_\_\_ Date:

Name: \_\_\_\_\_ Position:

For and on behalf of *[name of Benchmark]*

Signature: \_\_\_\_\_ Date:

Name: \_\_\_\_\_ Position: