

**Date 12<sup>th</sup> October 2021.**

**FORM OF AGREEMENT**

**Incorporating the NEC3 Professional Services Contract April 2013**

**Between**

**UK HEALTH SECURITY AGENCY**

**And**

**Gladstone Consulting Ltd**

**For the provision of fire consultancy services relating to the development of a new Science Hub  
Campus for UK Health Security Agency at** 

**THIS AGREEMENT BY WITNESS is made the 11<sup>th</sup> day of October 2021.**

**PARTIES:**

1. **UK HEAKTH SECURITY AGENCY** (an executive agency of the Department of Health and Social Care) whose headquarters are at [REDACTED] (the "**Employer**", which term shall include successors in title and assigns); and
2. **Gladstone Consulting Ltd** (incorporated and registered in England and Wales under company registration number 06999427), the registered office of which is [REDACTED] (the "**Consultant**").

**BACKGROUND**

- (A) The *Consultant* has agreed to Provide the Services in accordance with this agreement.

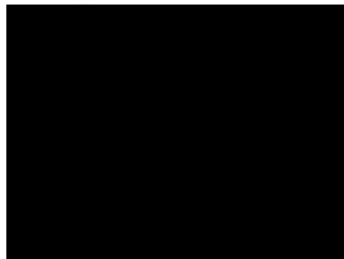
**IT IS AGREED AS FOLLOWS:**

1. The *Employer* will pay the *Consultant* the amount due and carry out his duties in accordance with the *conditions of contract* identified in the Contract Data and the Contract Schedules.
2. The *Consultant* will Provide the Services in accordance with the *conditions of contract* identified in the Contract Data and the Contract Schedules.
3. This Agreement is the entire agreement between the parties in relation to the *services* and supersedes and extinguishes all prior arrangements, understandings, agreements, statements, representations or warranties (whether written or oral) relating thereto.
4. Neither party has been given, nor entered into this agreement in reliance on any arrangements, understandings, agreements, statements, representations or warranties other than those expressly set out in this agreement.
5. Nothing in clauses 3 or 4 shall exclude liability in respect of misrepresentations made fraudulently.
6. The Contract Schedules are:
  1. Template collateral warranty in favour of a beneficiary
  2. Template Deed of Guarantee
  3. Security Policy
  4. *Employer's* Code of Conduct
  5. GDPR

IN WITNESS thereof the Employer and the Consultant have agreed to enter into the Contact,

Signed for and on behalf of  
Gladstone Consulting Ltd

Signature:

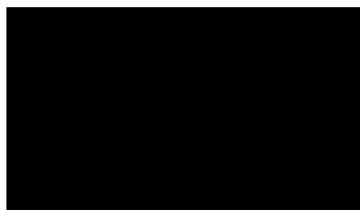


Name: 

Title: 

Signed for and on behalf of  
UK HSA

Signature:



Name: 

Title: 

# Professional Services Contract

## Contract Data

### Part one – Data provided by the *Employer*

- 1 General**
- The *conditions of contract* are the core clauses and the clauses for main Option A, dispute resolution Option W2 and secondary Options X1, X2, X4, X9, X11, X18, Y(UK)2 and Z of the NEC3 Professional Services Contract (April 2013).
  - The *Employer* is as described in the Agreement
  - The *Adjudicator* is the person agreed by the Parties from the list of *Adjudicators* published by the Chartered Institute of Arbitrators or nominated by the *Adjudicator nominating body* in the absence of agreement.
  - The *services* are to deliver an industry standard Operational Fire & Site Emergency Strategy that brings together the existing Fire Strategy Reports, liaises with the business to develop priority, strategic SOP's and collaborates with and supports the Construction Sub Programme in gaining approval of The Strategy from UKHSA Boards and Essex Fire and Rescue Service.
  - The Scope is in the specification.
  - The *language of this contract* is English.
  - *The law of the contract* is the law of England and Wales.
  - The *period for reply* is two weeks.
  - The *period for retention* is 12 years following Completion or earlier termination.
  - The *Adjudicator nominating body* is the *Chartered Institute of Arbitrators*
  - The *tribunal* is arbitration
  - The following matters will be included in the Risk Register  
This will be agreed with the parties following execution of the contract.

- 2 The Parties' main responsibilities**
- The *Employer* provides access to the following persons, places and things
    - access to *access date*
- 3 Time**
- The starting date* is [31<sup>st</sup> August 2021].
  - The *Consultant* submits revised programmes at intervals no longer than one month.
- 4 Quality**
- The quality policy statement and quality plan are provided within 4 weeks of the Contract Date.
  - The *defects date* is 26 weeks after Completion of the whole of the *services*.
- 5 Payment**
- The *assessment interval* is monthly in arrears
  - The *currency of this contract* is the pound sterling (£).
  - The *interest rate* is, 3% per annum above the Bank of England base rate in force from time to time.
- 8 Indemnity, insurance and liability**
- The amounts of insurance and the periods for which the *Consultant* maintains insurance are

event	cover	Period
failure of the <i>Consultant</i> to use the skill and care normally used by professionals providing services similar to the <i>services</i>	██████████ in respect of each claim, without limit to the number of claims	from the <i>starting date</i> until 12 years following completion of the whole of the <i>services</i> or earlier termination
death of or bodily injury to a person (not an employee of the <i>Consultant</i> ) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i>	██████████ in respect of each claim, without limit to the number of claims	from the <i>starting date</i> until all notified Defects have been corrected or earlier termination

death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract	██████████ in respect of each claim, without limit to the number of claims	from the <i>starting date</i> until all notified Defects have been corrected or earlier termination
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## Optional Statements

**If the *Employer* has decided the *completion date* for the whole of the *services***

- The *completion date* for the whole of the *services* is 31 January 2022.

**If no programme is identified in part two of the Contract Data**

- The *Consultant* is to submit a first programme for acceptance within 3 weeks of the Contract Date.

**If the *Employer* has identified work which is to meet a *stated condition* by a *key date* – *Not used***

- The *key dates* and *conditions* to be met are
- *condition to be met*
- *key date*

**If the *Employer* states any *expenses***

- The *expenses* stated by the *Employer* are

Item	Amount
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**If the *tribunal* is arbitration**

- The *arbitration procedure* is the London Court of International Arbitration Rules;
- The number of arbitrators shall be three
- The place where arbitration is to be held is London
- The language to be used in the arbitration proceedings shall be English
- If the parties cannot agree the identity of the arbitrator, then the nominating body shall be: Chartered Institute of Arbitrators

**If Option A is used:**

- The *Consultant* prepares forecasts of the total *expenses* at intervals no longer than 4 weeks.

**Option X1 If Option X1 is used**

- The *index* is the Consumer Price Index (CPI) - as published by the Office for National Statistics

**Option X2 If Option X2 is used**

- *The law of the project* is the law of England and Wales.

**Option X8 If Option X8 is used**

- The *collateral warranty agreements* are in the form in Contract Schedule 2 and shall be made in favour of  
third party

any purchaser(s) of  
the Project and/or the  
completed Project or  
any part or parts  
thereof

any tenants of the  
Project and/or the  
completed Project or  
any part or parts  
thereof

any body (including  
any private sector  
body) which  
substantially performs  
any of the functions

that previously had  
been performed by the  
Employer

- The *subconsultant collateral warranties* are in the form in Contract Schedule 2 and shall be made in favour of the *Employer* and  
third party

any purchaser(s) of  
the Project and/or the  
completed Project or  
any part or parts  
thereof

any tenants of the  
Project and/or the  
completed Project or  
any part or parts  
thereof

any body (including  
any private sector  
body) which  
substantially performs  
any of the functions  
that previously had  
been performed by the  
*Employer*

#### **Option X18 If Option X18 is used**

- The *Consultant's* liability to the *Employer* for indirect or consequential loss is limited to - Not applicable.

The *Consultant's* liability to the *Employer* for Defects that are not found until after the *defects date* is limited to - Not applicable

- The *end of liability* date is 12 years after Completion of the whole of the *services*.




**Option X20 If Option X20 is used (but not if Option X12 is also used)**

- *The incentive schedule* for Key Performance Indicators is in. **Note – these may be in a contract schedule**
- A report of performance against each Key Performance Indicator is provided at intervals of 4 weeks.
- Where X20 is used, the amount due under clause 50 is adjusted to account for the application of the *incentive schedule*.

**Option Z** • The *additional conditions of contract* are clauses Z1 to Z53 set out with this contract

## **Part two – Data provided by the *Consultant***

- 1 Statements given in all contracts**
- The *Consultant* is as described in the Agreement
  - The *key people* are
  - 
  - Job Project manager / Consultant

- Responsibilities Management and liaison
- Experience 20 years H&S, Fire experience
- [REDACTED]
- Job Consultant
- Responsibilities Delivery
- Experience 20 years H&S, Fire experience
- [REDACTED]
- Job Consultant
- Responsibilities Delivery
- Experience 20 years H&S, Fire experience
- [REDACTED]
- Job Consultant
- Responsibilities Delivery
- Experience 20 years H&S, Fire experience
- [REDACTED]
- Job Project co-ordinator
- Responsibilities Management and liaison
- Experience 15 years H&S experience

- The *staff rates* are:

Name/job title	Rate
• [REDACTED]	[REDACTED]
• [REDACTED]	[REDACTED]
• [REDACTED]	[REDACTED]
• [REDACTED]	[REDACTED]
• [REDACTED]	[REDACTED]

- The following matters will be included in the Risk Register  
To be agreed after execution of the contract.

#### Optional statements

**If the programme is to be identified in the Contract Data – Not  
used**

**If the *Consultant* states any *expenses***

- The *expenses* stated by the *Consultant* are

item	amount
Travel per mile	
Hotel and accommodation and subsistence	

Based on UKHSA Mileage and Subsistence Expense Rates

**If the *Consultant* requires additional access**

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

access to access date

To be agreed if required.

**If Option A or C is used**

- The *activity schedule* is supplier's tender submission.
- The tendered total of the Prices is

## ***Additional conditions of contract – clauses Z1 to Z53***

### **Clause Z1 Interpretation and the law**

Z1.1 In this contract, except where the context shows otherwise:

- references to a document include any revision made to it in accordance with this contract;
- references to a statute or statutory instrument include any amendment or re-enactment of it from time to time and any subordinate legislation or code of practice made under it;
- references to a British, European or International standard include any current relevant standard that replaces it;
- references to persons or organisations will be construed so as to include bodies corporate, unincorporated associations, partnerships, and any other legal entity; and
- the words “includes” or “including” are construed without limitation.

Z1.2 Terms for which no interpretation is provided in this contract shall have the meaning ordinarily given to them by the legal profession where appropriate but otherwise shall be interpreted in accordance with their dictionary meaning.

**Acquired Rights Directive** is the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time

**Confidential Information** is any information, however it is conveyed, that relates to the business, personnel, affairs, developments, trade secrets, ideas, concepts, schemes, information, knowledge, techniques, methodology, and without limiting the above anything else in the nature of know-how, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked “confidential”) or which ought reasonably to be considered to be confidential.

**Consultant Personnel** is all persons employed or engaged by the *Consultant* together with the *Consultant’s* servants, agents, suppliers, consultants and Subconsultants (and all persons employed by any Subconsultant together with the Subconsultant’s servants, consultants, agents, suppliers and sub-consultants);

**Employment Regulations** are the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive

**Environmental Information Regulations** is the Environmental Information Regulations 2004 and any guidance and/or codes of

practice issued by the Information Commissioner in relation to such regulations.

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

**Former Consultant** is the *Consultant* supplying services to the *Employer* before the Relevant Transfer Date that are the same as or substantially similar to the service (or any part of the service) and shall include any sub-consultant of such supplier (or any sub-consultant of any such sub-consultant)

**Information** has the meaning given under section 84 of the Freedom of Information Act 2000

**A Prohibited Act** is:

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

**Project** means the development of a new Science Hub Campus for UK Health Security Agency at [REDACTED]

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

**Material** means all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, feasibility studies, planning submissions, notes of meetings, CAD

materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with this contract and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to this contract.

**Relevant Transfer** is a transfer of employment to which the Employment Regulations applies

**Relevant Transfer Date** is, in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place

**Request for Information** is a request for information or an apparent request under the FOIA or the Environmental Information Regulations

**Security Policy** means the *Employer's* security policy attached at Contract Schedule 4 (including, but not limited to, the Security Aspects Letter part thereof) all as may be updated from time to time

**Transferring Employer Employees** are those employees of the *Employer* to whom the Employment Regulations will apply on the Relevant Transfer Date

**Transferring Former Consultant Employees** are, in relation to a Former Consultant, those employees of the Former Consultant to whom the Employment Regulations will apply on the Relevant Transfer Date

**Working Day** is any day other than a Saturday or Sunday or public holiday in England and Wales.

## **Clause Z2 Prevention of fraud and bribery**

(i) Insert new clauses:

Z2.1 The *Consultant* represents and warrants that neither it, nor to the best of its knowledge any of its employees, have at any time prior to the Contract Date:

- committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

Z2.2. Throughout the period in which the *services* are performed the *Consultant* does not:

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

## Requirements

Z2.3 Throughout the period in which the *services* are performed the *Consultant*:

- establishes, maintains and enforces, and requires that its Subconsultants establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
- keeps appropriate records of its compliance with this contract and make such records available to the *Employer* on request;
- provides and maintains and where appropriate enforces an anti-bribery policy (which shall be disclosed to the *Employer* on request) to prevent it and any *Consultant's* employees or any person acting on the *Consultant's* behalf from committing a Prohibited Act.

Z2.4 The *Consultant* immediately notifies the *Employer* in writing if it becomes aware of any breach of clause Z2.1, Z2.2 and / or Z2.3 , or has reason to believe that it has or any of the its employees or Subconsultants have:

- been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this contract or otherwise suspects that any person or party directly or indirectly connected with this contract has committed or attempted to commit a Prohibited Act.

Z2.5 If the *Consultant* makes a notification to the *Employer* pursuant to clause Z2.4, the *Consultant* responds promptly to the *Employer's* enquiries, co-operates with any investigation, and allows the *Employer* to audit any books, records and/or any other relevant documentation in accordance with this contract.

Z2.6 Without limitation to clause 22.2 if the *Consultant* breaches Clause Z2.3, the *Employer* may instruct the *Consultant* to remove a person employed by the *Consultant* who has caused the *Consultant's* breach to remove that person and the *Consultant* shall immediately ensure that person has no further connection with the work included in this contract.

### **Clause Z3 Number not used**

### **Clause Z4 Assignment and Novation**

Z4.1 The *Employer* is entitled to assign or otherwise dispose of

its rights under this contract or any part thereof to any body (including any private sector body) which substantially performs any of the functions that previously had been performed by the *Employer*.

Z4.2 The *Consultant* does not, without the written consent of the *Employer*, assign or transfer this contract, or any part of, share of or interest in it. In the absence of the *Employer's* written consent no sum of money becoming due under this contract is payable to any person other than the *Consultant*.

Z4.3 The *Employer* is entitled to, and the *Consultant* gives consent to, the novation of this contract or any part thereof to

any body (including any private sector body) which substantially performs any of the functions that previously had been performed by the *Employer* upon such terms as the *Employer* proposes, provided that where such novation increases the burden on the *Consultant* pursuant to this contract, the novation shall be a compensation event. According a new clause 60.1(13) shall be added that reads "A novation pursuant to clause Z4.3 occurs which increases the burden on the *Consultant* pursuant to this contract".

Z4.5 Any change in the legal status of the *Employer* does not affect the validity of this contract. In such circumstances, this contract binds and inures to the benefit of any successor body to the *Employer*.

Z4.6 If this contract is novated to a body (such a body being referred to in the remainder of this clause as the "transferee") the transferee is only able to assign, novate or otherwise dispose of its rights and obligations under this contract or any part thereof with the written consent of the *Consultant*.

## **Clause Z5 Discrimination**

Z5.1 The *Consultant* does not discriminate directly or indirectly or by way of victimisation or harassment against any person contrary to the Equality Act 2010, any predecessor statute of it or any amendment or re-enactment of it from time to time (the "Discrimination Acts").

Z5.2 In connection with the services the *Consultant* co-operates with and assists the *Employer* to satisfy his duty under the Discrimination Acts to eliminate unlawful discrimination and to promote equality of opportunity between persons of different racial groups and between disabled people and other people.

Z5.3 Where any employee or Subconsultant is required to carry out any activity alongside the *Employer's* employees, the *Consultant* ensures that each such employee or Subconsultant complies with the *Employer's* employment policies and codes of practice relating to discrimination and equal opportunities.

Z5.4 The *Consultant* notifies the *Employer* in writing as soon as he becomes aware of any investigation or proceedings brought against the *Consultant* under the Discrimination Acts in



connection with this contract and

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

Z5.5 The *Consultant* indemnifies the *Employer* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Employer* arising out of or in connection with any investigation or proceedings under the Discrimination Acts resulting from any act or omission of the *Consultant*.

Z5.6 The *Consultant* includes in the conditions of contract for each Subconsultant obligations substantially similar to those set out above.

#### **Clause Z6 Conflict of interest**

Z6.1 The *Consultant* does not take an action which would cause a conflict of interest to arise in connection with this contract. The *Consultant* notifies the *Employer* if there is any uncertainty about whether a conflict of interest may exist or arise.

Z6.2 The *Consultant* immediately notifies the *Employer* of any circumstances giving rise to or potentially giving rise to conflicts of interest relating to the *Consultant* and/or the *Employer* (including without limitation its reputation and standing), of which it is aware or anticipates may justify the *Employer* taking action to protect its interests.

Z6.3 The *Consultant* must take positive steps to mitigate any conflict of interest that may exist or arise under Clause Z6.1 or there are circumstances that may give rise to a conflict of interest under Z6.2.

Z6.4 Should the Parties be unable to either remove the conflict of interest and/or to reduce its damaging effect to a reasonably acceptable level, the *Employer* has the right to terminate this contract whereupon the provisions of PSC clause 92.2 apply to the termination.

#### **Clause Z7 Merger, take-over or change of control**

Z7.1 In clauses Z7, Z39 (Financial Distress), Z40 (Change of Control – new guarantee) and Z41 (Parent Company Guarantee)

- **Change of Control** is an event where a single person (or group of persons acting in concert)
  - acquires Control of the *Consultant* or

- acquires a direct or indirect interest in the relevant share capital of the *Consultant* and as a result holds or controls the largest direct or indirect interest in (and in any event more than 25% of) the relevant share capital of the *Consultant*,
- **Control** has the meaning set out in section 1124 of the Corporation Tax Act 2010,
- **Controller** is the single person (or group of persons acting in concert) that
  - has Control of the *Consultant* or
  - holds or controls the largest direct or indirect interest in the relevant share capital of the *Consultant*,
- **Guarantor** is a person who has given a Parent Company to the *Employer* and
- **Parent Company Guarantee** is a guarantee of the *Consultant's* performance in the form set in Contract Schedule 3.

Z7.2 A Change of Control does not happen without the prior agreement of the *Employer*, and if a Change of Control occurs without the *Employer's* prior consent, then the *Employer* may treat the Change of Control as a substantial failure by the *Consultant* to comply with his obligations.

Z7.3 The *Consultant* notifies the *Employer* immediately if a Change of Control has occurred or is expected to occur.

Z7.4 If the Change of Control will not allow the *Consultant* to perform its obligations under this contract, the *Employer* may treat the Change of Control as a substantial failure by the *Consultant* to comply with his obligations.

Z7.5 The *Consultant* notifies the *Employer* immediately of any material change in

- the direct or indirect legal or beneficial ownership of any shareholding in the *Consultant*. A change is material if it relates directly or indirectly to a change of 3% or more of the issued share capital of the *Consultant*, or
- the composition of the *Consultant*. Without limitation a change is material if it directly or indirectly affects the performance of this contract by the *Consultant*.

Z7.6 The *Consultant* notifies the *Employer* immediately of any change or proposed change in the name or status of the *Consultant*.

Z7.7 If the *Consultant* does not provide a notification required by clause Z7.5 or Z7.6, the *Employer* may treat that failure as a substantial failure by the *Consultant* to comply with his obligations.

**Clause Z8 Appointment of *Adjudicator***

Z8.1 The *Adjudicator's* appointment under the NEC *Adjudicator's* Contract current at the *starting date* includes the following additional conditions of contract

"The *Adjudicator* complies and takes all reasonable steps to ensure that any persons advising or aiding him comply, with the Official Secrets Act 1989. Any information concerning the *contract between the Parties* obtained either by the *Adjudicator* or any person advising or aiding him is confidential, and may not be used or disclosed by the *Adjudicator* or any such person except for the purposes of this Agreement."

**Clause Z9 Number not used**

**Clause Z10 *Employer's* Codes of Conduct**

Z10.1 The *Consultant* complies (and ensures that any person employed by him or acting on his behalf complies) with the *Employer's* code of conduct included in Contract Schedule 5 to this contract. The *Consultant* complies with the code of conduct until Completion and for the *period of retention*.

Z10.2 A failure to comply with this clause is treated as a substantial failure by the *Consultant* to comply with his obligations.

**Clause Z11 Fair payment**

Z11.1 The *Consultant* assesses the amount due to a Subconsultant without taking into account the amount assessed under this contract.

Z11.2 The *Consultant* includes in the contract with each Subconsultant

- a period for payment of the amount due to the Subconsultant not greater than 19 days after the date on which payment becomes due under this contract. The amount due includes, but is not limited to, payment for work which the Subconsultant has completed from the previous assessment date up to the current assessment date in this contract,
- a provision requiring the Subconsultant to include in each subsubcontract the same requirement, except that the period for payment is to be not greater than 23 days after the date on which payment becomes due under this contract and
- a provision requiring the Subconsultant to assess the amount due to a subsubconsultant without taking into

account the amount paid by the *Consultant*.

Z11.3 The *Consultant* notifies non-compliance with the timescales for payment through the Efficiency and Reform Group supplier feedback service. The *Consultant* includes this provision in each subcontract and requires Subconsultants to include the same provision in each subsubcontract.

Z11.4 A failure to comply with this condition is treated as a substantial failure by the *Consultant* to comply with his obligations.

## **Clause Z12 Confidentiality**

Z12.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this contract, each party shall:

- treat the other party's Confidential Information as confidential and safeguard it accordingly; and
- not disclose the other party's Confidential Information to any other person without that other party's prior written consent.

Z12.2 Clause Z12.1 shall not apply to the extent that:

- such disclosure is a requirement of the law of the contract placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause Z16 (Freedom of Information);
- such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure;
- such information was obtained from a third party without obligation of confidentiality;
- such information was already in the public domain at the time of disclosure otherwise than by a breach of this contract; or
- it is independently developed without access to the other party's Confidential Information.

Z12.3 The *Consultant* shall not, and shall procure that the Consultant Personnel do not, use any of the *Employer's* Confidential Information received otherwise than for the purposes of this contract.

Z12.4 The *Consultant* may only disclose the *Employer's* Confidential Information to the Consultant Personnel who are directly involved in the provision of the *services* and who need to know the information, and shall ensure that such Consultant Personnel are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any default, act or omission of any Consultant Personnel causes or contributes (or could cause or contribute) to the *Consultant* breaching its obligations as to confidentiality under or

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

Z12.5 At the written request of the *Employer*, the *Consultant* shall procure that those members of the Consultant Personnel identified in the *Employer's* notice signs a confidentiality undertaking prior to commencing any work in accordance with this contract.

Z12.6 Nothing in this contract shall prevent the *Employer* from disclosing the *Consultant's* Confidential Information:

- to any Crown Body. All Crown Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body;
- to any consultant, contractor or other person engaged by the *Employer*;
- for the purpose of the examination and certification of the *Employer's* accounts; or
- for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Employer* has used its resources.

and for the purposes of the foregoing, disclosure of the *Consultant's* Confidential Information shall be on a confidential basis and subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the *Employer* under this clause Z12.6.

Z12.7 The *Employer* shall use all reasonable endeavours to ensure that any government department, employee, third party or Subconsultant to whom the *Consultant's* Confidential Information is disclosed pursuant to the above clause is made aware of the *Employer's* obligations of confidentiality.

Z12.8 Nothing in this clause shall prevent either party from using any techniques, ideas or know-how gained during the performance of this contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of intellectual property rights.

### **Clause Z13 Security Requirements**

Z13.1 The *Consultant* complies with, and procures the compliance of its personnel, with:

- the Security Policy;
- the Security Management Plan produced pursuant to the Security Provisions; and
- the Security Provisions contained within the Security Policy or the Scope.

Z13.2 The *Consultant* shall ensure that the Security Management Plan produced by the *Consultant* fully complies with the Security Policy.

Z13.3 The *Consultant* shall, on the *Employer's* request from time to time, sign any update to the Security Aspects Letter part of the Security Policy and provide the *Employer* with a signed copy thereof.

### **Clause Z14 Number not used**

### **Clause Z15 Data protection**

The *Employer* and the *Consultant* shall comply with the provisions set out in the contract.

### **Clause Z16 Freedom of Information**

Z16.1. The *Consultant* acknowledges that unless the *Employer* has notified the *Consultant* that the *Employer* is exempt from the provisions of the FOIA, the *Employer* is subject to the requirements of the FOIA and the Environmental Information Regulations. The *Consultant* cooperates with and assists the *Employer* so as to enable the *Employer* to comply with its information disclosure obligations.

Z16.2 The *Consultant*:

- transfers to the *Employer* all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
- provides the *Employer* with a copy of all Information relevant to the Request for Information in its possession, or power in the form that the *Employer* requires within five Working Days (or such other period as the *Employer* may specify) of the *Employer's* request;
- provides all necessary assistance as reasonably requested by the *Employer* to enable the *Employer* to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations; and
- procures that its Subconsultants do likewise.

Z16.3 The *Employer* is responsible for determining in its absolute discretion whether any information is exempt from disclosure in

accordance with the provisions of the FOIA or the Environmental Information Regulations.

Z16.4 The *Consultant* does not respond directly to a Request for Information unless authorised to do so by the *Employer*.

Z16.5 The *Consultant* acknowledges that the *Employer* may be obliged to disclose Information without consulting or obtaining consent from the *Consultant* or despite the *Consultant* having expressed negative views when consulted.

Z16.6 The *Consultant* ensures that all Information is retained for disclosure throughout the period for retention and permits the *Employer* to inspect such records as and when reasonably requested from time to time.

#### **Clause Z17 Records and Audit Access**

Z17.1 In addition to its obligations under clause 13.6 of the *conditions of contract* the *Consultant* keeps documents and information obtained or prepared by the *Consultant* or any Subconsultant in connection with this contract for the *period for retention*.

Z17.2 The *Consultant* permits the *Employer*, comptroller, auditor general and any other auditor appointed by the *Employer* to examine documents held or controlled by the *Consultant* or any Subconsultant.

Z17.3 The *Consultant* provides such oral or written explanations as the *Employer* or comptroller and auditor general considers necessary.

Z17.4 The *Consultant* acknowledges that, for the purpose of examining and certifying the *Employer's* accounts or any examination pursuant to Section 6(1) of the National Audit Act 1983, the comptroller and auditor general or any other auditor appointed by the *Employer* may examine documents held or controlled by the *Consultant* or any Subconsultant and may require the *Consultant* to provide such oral or written explanations as he considers necessary. The *Consultant* promptly complies with any such requirements at his own cost. This clause does not constitute a requirement or agreement for the purposes of section 6(3)(d) of the National Audit Act 1983 for the examination, certification or inspection of the accounts of the *Consultant* and the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the *Consultant* is not a function exercisable under this contract.

#### **Clause Z18 Reporting: Small and Medium Enterprises**

Z18.1 In this clause "SME" is

- a Subconsultant or
- a subconsultant to a Subconsultant

that also:

- is autonomous,
- is a United Kingdom or European Union enterprise not owned or controlled by a non-United Kingdom or non-European Union parent company,
- for a medium sized enterprise (medium class) employs fewer than 250 staff, has turnover no greater than 50 million Euros and does not have a balance sheet greater than 43 million Euros,
- for a small sized enterprise (small class) employs fewer than 50 staff, has turnover no greater than 10 million Euros and does not have a balance sheet greater than 10 million Euros and
- for a micro sized enterprise (micro class) employs fewer than 10 staff, has turnover no greater than 2 million Euros and does not have a balance sheet greater than 2 million Euros.

Z18.2 For each SME employed in connection with the *services*, the *Consultant* reports to the *Employer* on a monthly basis from the *starting date* until Completion and at the *defects date*

- the name of the SME,
- the class of SME (medium, small or micro),
- the value and percentage of the contract undertaken by the SME,
- the amounts paid to the SME and
- the aggregated value paid to the SME since the *starting date*.

Z18.3 The *Consultant* acknowledges that the *Employer* may

- publish the information supplied under clause Z18.2, along with the *Consultant's* name and this contract name and
- pass the information supplied under this clause Z18 to any government department who may then publish it along with the names of the SMEs, the *Consultant's* name and this contract name.

Z18.4 The *Consultant* ensures that the conditions of contract for each Subconsultant who is an SME include

- a term allowing the *Employer* to publish the information supplied under Z18.2 and
- obligations substantially similar to those set out in this clause Z18.

Z18.5 The *Consultant* further ensures that the conditions of contract for each Subconsultant include a requirement that the conditions of contract for any subsubconsultant engaged by the Subconsultant who is an SME include obligations substantially similar to those set out in clause Z18.4.



## **Clause Z19 The *Employer's* liability**

Z19.1 The *Employer's* total liability to the *Consultant* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to the amount stated in the Contract Data, and applies in contract, tort or delict or otherwise to the extent allowed under the *law of the contract*.

Z19.2 The excluded matters are the amounts payable to the *Consultant* as stated in this contract for

- the total of the Prices if Option A applies,
- the Price for Services Provided to Date adjusted by the *Consultant's* share if Option C applies.
- the Price for Services Provided to Date if Option E applies.
- the amount of any expenses properly spent by the *Consultant* in Providing the Services.
- Any tax which the law requires the *Employer* to pay to the *Consultant*.

## **Clause Z20 Tax Non-Compliance**

### **Z20.1**

(1) Tax Non-Compliance is where a tax return submitted by the *Consultant* to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:

- a Relevant Tax Authority successfully challenging the *Consultant* under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rule or legislation with similar effect or
- the failure of an avoidance scheme in which the *Consultant* was involved which was (or should have been) notified to a Relevant Tax Authority under the DOTAS or a similar regime or
- gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax-related offences which is not spent at the Contract Date or to a civil penalty for fraud or evasion.

(2) DOTAS are the Disclosure of Tax Avoidance Schemes rules contained in Part 7 of the Finance Act 2004 and in secondary legislation made pursuant to it, as extended to National Insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012 (SI 2012/1868).

(3) General Anti-Abuse Rule is

- the legislation in Part 5 of the Finance Act 2013 and
- any future legislation introduced to counteract tax advantages arising from abusive arrangements to avoid

National Insurance contributions.

(4) Halifax Abuse Principle is the principle explained in the CJEU case C-255/02 Halifax and others.

(5) Relevant Tax Authority is HM Revenue & Customs or, if the *Consultant* is established in another jurisdiction, the tax authority in that jurisdiction.

Z20.2 The *Consultant* warrants that it has notified the *Employer* of any Tax Non-Compliance or any litigation in which it is involved relating to any Tax Non-Compliance prior to the Contract Date.

Z25.3 The *Consultant* notifies the *Employer* within one week of any Tax Non-Compliance occurring after the Contract Date and provides details of

- the steps the *Consultant* is taking to address the Tax Non-Compliance and to prevent a recurrence,
- any mitigating factors that it considers relevant and
- any other information requested by the *Employer*.

Z20.4 The *Consultant* is treated as having substantially failed to comply with his obligations if

- the warranty given by the *Consultant* under clause Z20.2 is untrue,
- the *Consultant* fails to notify the *Employer* of a Tax Non-Compliance or
- the *Employer* decides that any mitigating factors notified by the *Consultant* are unacceptable.

**Clause Z21    Number not used**

**Clause Z22    Number not used**

**Clause Z23    Changes to *staff rates* and Subconsultants**

Z23.1 When the *Consultant* proposes a revision to an existing *staff rate* or a new *staff rate*, the proposal is accompanied by a certificate from the *Consultant's* Chief Financial Officer or Director of Finance (or an equivalent officer authorised to bind the *Consultant* and agreed by the *Employer* before the proposal is issued) confirming that the proposal

- is accurate and not misleading,
- has been prepared in conformity with generally accepted accounting principles within the United Kingdom,
- is a true and fair reflection of the information included within the *Consultant's* books, management and statutory accounts and other documents and records and
- complies with this contract.

Z23.2 If a Subconsultant wishes to propose revisions to an existing *staff rate* or a new *staff rate* and the *Consultant* considers that, in order to comply with any law, the Subconsultant should

submit its proposal directly to the *Employer*, the *Consultant* submits a request to that effect to the *Employer* for acceptance. A reason for not accepting the *Consultant's* request is that the law does not require the Subconsultant to submit its proposal directly to the *Employer*. If the *Employer* accepts the *Consultant's* request, the *Consultant* directs the Subconsultant to submit its proposal directly to the *Employer*.

Z23.3 Where, in order to verify an invoice submitted by the *Consultant*, the *Employer* requires a Subconsultant to provide

- records of any Time Charge and expenses incurred by it or
- a certificate that its invoice and records of any Time Charge and expenses incurred by it are accurate and not misleading

and the *Consultant* considers that, in order to comply with any law, the Subconsultant should submit its records and certificate directly to the *Employer*, the *Consultant* submits a request to that effect to the *Employer* for acceptance. A reason for not accepting the *Consultant's* request is that the law does not require the Subconsultant to submit its records and certificate directly to the *Employer*. If the *Employer* accepts the *Consultant's* request, the *Consultant* directs the Subconsultant to submit its records and certificate directly to the *Employer*.

Z23.4 The *Consultant* includes in the conditions of contract for each Subconsultant

- provisions substantially similar to those set out in clause Z23.1,
- a right for the *Employer* to audit any records and certificates provided by the Subconsultant under this clause Z23,
- an obligation on the Subconsultant to discuss directly with the *Employer* any concerns that the *Employer* may have as to the accuracy of any records and certificates provided by the Subconsultant,
- a right for the *Consultant* to recover from the Subconsultant (or to deduct from any amount that would otherwise be due to the Subconsultant) the amount of any overpayment identified by the *Employer* as a result of its audits and discussions with the Subconsultant and
- an acknowledgment from the Subconsultant that the *Employer* may enforce these provisions directly against the Subconsultant under the Contracts (Rights of Third Parties) Act 1999.

#### **Clause Z24 Insurance cover**

Z24.1 All insurances required to be effected and maintained under this contract by the *Consultant* are placed with reputable insurers, to whom the *Employer* has no reasonable objection and upon customary and usual terms prevailing for the time being in the insurance market. The said terms and conditions do not include any term or condition to the effect that any insured must discharge

any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010 or the Third Parties (Rights Against Insurers) Act (Northern Ireland) Order 1930 as amended by the Insolvency (Northern Ireland) Order 1989.

Z24.2 Nothing in this clause relieves the *Consultant* from any of its obligations and liabilities under this contract.

## **Clause Z25 Professional indemnity insurance**

Z25.1 The *Consultant* obtains and maintains the professional indemnity insurance required by Clause 81.1 of the *conditions of contract* upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business on the basis and in an amount not less than that stated in the Contract Data, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions do not include any term or condition to the effect that the *Consultant* must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010 or the Third Parties (Rights Against Insurers) Act (Northern Ireland) 1930 as amended by the Insolvency (Northern Ireland) Order 1989.

Z25.2 The *Consultant* does not without the prior written approval of the *Employer* settle or compromise with the insurers any claim which the *Consultant* may have against the insurers and which relates to a claim by the *Employer* against the *Consultant*, nor by any act or omission lose or prejudice the *Consultant's* right to make or proceed with such a claim against the insurers.

Z25.3 The *Consultant* immediately informs the *Employer* if the professional indemnity insurance ceases to be available at rates and on terms that the *Consultant* considers to be commercially reasonable. Any increased or additional premium required by insurers by reason of the *Consultant's* own claims record or other acts, omissions, matters or things particular to the *Consultant* is deemed to be within commercially reasonable rates.

Z25.4 The *Consultant* co-operates fully with any measures reasonably required by the *Employer* including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the *Employer* undertakes in writing to reimburse the *Consultant* in respect of the net cost of such insurance to the *Consultant* above commercially reasonable rates or, if the *Employer* effects such insurance at rates at or above commercially reasonable rates, reimbursing the *Employer* in respect of what the net cost of such insurance to the *Employer* would have been at commercially reasonable rates.

Z25.5 The above obligation in respect of professional indemnity insurance continues notwithstanding termination of the *Consultant's* employment under this contract for any reason whatsoever, including (without limitation) breach by the *Employer*.

**Clause Z26      Number not used**

**Clause Z27    Termination – PCRs, Regulation 73**

Z27.1 The occurrence of the following events are deemed to be a substantial failure of the *Consultant* to comply with his obligations:

- one or more of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applied to the *Consultant* at the Contract Date.

Z27.2 The *Employer* may terminate the *Consultant's* obligation to Provide the Services by notifying the *Consultant* if

- this contract has been subject to substantial modification which would have required a new procurement procedure pursuant to regulation 72 of the Public Contracts Regulations 2015 or
- the Court of Justice of the European Union declares, in a procedure under Article 258 of the Treaty on the Functioning of the European Union, that a serious infringement of the obligations under the European Union Treaties and the Public Contracts Directive has occurred.

If the modification or infringement was due to a default by the *Consultant*, this is treated as a termination because of a substantial failure of the *Consultant* to comply with his obligations.

**Clause Z28    Value Added Tax (VAT) Recovery**

Z28.1 Where under this contract any amount is calculated by reference to any sum which has been or may be incurred by any person, the amount shall include any VAT in respect of that amount only to the extent that such VAT is not recoverable as input tax by that person (or a member of the same VAT group) whether by set off or repayment.

**Clause Z29    Tax Arrangements of Public Appointees**

Z29.1 For the purposes of this clause

- **Associated Company** is any company, corporation, partnership, joint venture or other entity which directly or indirectly controls, is controlled by or is under common control with the *Consultant*. The word “control” in this context means the ability or entitlement to exercise, directly or indirectly, at least 50 per cent of the voting rights attributable to the shares or other interest in the controlled company, corporation, partnership, joint venture, or other

entity.

- **Staff** are individuals (other than direct employees of the *Consultant*, an Associated Company or any Subconsultant) made available by the *Consultant* to the *Employer* for the purpose of Providing the Services.

Z29.2 Where any Staff are liable to be taxed in the United Kingdom in respect of consideration received under this contract, the *Consultant* complies, and procures that the Staff comply, with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration.

Z29.3 Where any Staff are liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, the *Consultant* complies, and procures that the Staff comply, with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration.

Z29.4 The *Employer* may, at any time during the term of this contract, request the *Consultant* to provide information to demonstrate either how any member of Staff is complying with clauses Z29.2 and Z29.3 or why those clauses do not apply to it.

Z29.5 If the *Consultant* fails to provide information in response to a request under clause Z29.4

- within the *period for reply* or
- which adequately demonstrates either how any member of Staff is complying with clauses Z29.2 and Z29.3 or why those clauses do not apply to it

the *Employer* may

- treat such failure as a substantial failure by the *Consultant* to comply with his obligations or
- instruct the *Consultant* to replace the relevant member of Staff

Z29.6 If the *Employer* receives or identifies information through any means which demonstrates that a member of Staff is not complying with clauses Z29.2 and Z29.3, the *Employer* may treat such non-compliance as a substantial failure by the *Consultant* to comply with his obligations.

Z29.7 The *Consultant* acknowledges that the *Employer* may

- supply any information which it receives under clauses Z29.4 or Z29.6 or
- advise the non-supply of information

to the Commissioners of Her Majesty's Revenue & Customs or Revenue Scotland for the purpose of the collection and

management of revenue for which they are responsible.

**Clause Z30 Number not used**

**Clause Z31 Subconsulting**

Z31.1 Before:

- appointing a proposed Subconsultant or
- allowing a Subconsultant to appoint a proposed subsubconsultant

the *Consultant* submits to the *Employer* for acceptance reasonable evidence that the proposed Subconsultant or proposed subsubconsultant (as appropriate) has the technical competence to perform the role it is proposed to perform and

- a European Single Procurement Document (as described in regulation 59 of the Public Contracts Regulations 2015) in respect of the proposed Subconsultant or subsubconsultant or
- other means of proof that none of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applies to the proposed Subconsultant or subsubconsultant.

Z31.2 The *Consultant* does not appoint the proposed Subconsultant (or allow the Subconsultant to appoint the proposed subsubconsultant) until the *Employer* has accepted the submission. Reasons for not accepting the submission are that it shows that there are grounds for excluding the proposed Subconsultant or subsubconsultant under regulation 57 of the Public Contracts Regulations 2015 and that the proposed Subconsultant or proposed subsubconsultant (as appropriate) does not have the technical competence to perform the role it is proposed to perform.

Z31.3 If requested by the *Employer*, the *Consultant* provides further information to support, update or clarify a submission under clause Z31.1.

Z31.4 If, following the acceptance of a submission under clause Z31.2, it is found that one of the grounds for excluding the Subconsultant or subsubconsultant under regulation 57 of the Public Contracts Regulations 2015 applies, the *Employer* may instruct the *Consultant* to

- replace the Subconsultant or
- require the Subconsultant to replace the subsubconsultant.

**Clause Z32 Energy Efficiency Directive**

Z32.1 To the extent contained in the Scope, the *Consultant* includes in the *conditions of contract* for each Subconsultant and subsubconsultant obligations substantially similar to those set out in the Scope for

- compliance with the Procurement Policy Note 7/14 entitled “Implementing Article 6 of the Energy Efficiency Directive” and
- demonstrating to the *Employer* how in Providing the Services how the Subconsultant and subsubconsultant complies with the requirements of Procurement Policy Note 7/14 entitled “Implementing Article 6 of the Energy Efficiency Directive”.

**Clause Z33 Compliance with statutory requirements**

The *Consultant* Provides the Services in compliance with all relevant:

- acts of parliament and any instruments, rules, orders, regulations, notices, directions, bye-laws, permissions and plans for the time being made under or deriving validity from them;
- European Directives or Regulations legally enforceable in England and Wales;
- rules, regulations, building regulations, orders, bye-laws or codes of practice or similar of any local or other competent authority or of any statutory undertaker; and
- permissions, consents, approvals, licences, certificates and permits as may be necessary lawfully to commence, carry out, complete and maintain the *services*.

**Clause Z34 Negotiation and mediation**

Z34.1 Without prejudice to either Party’s right to refer a dispute to the *Adjudicator* in accordance with clause W1 or W2 (as appropriate), any dispute or difference between the Parties arising out of or relating to this contract is referred by either Party initially to representatives of the *Employer* and *Consultant* for negotiation and resolution.

Z34.2 If any dispute is not resolved within ten working days after it has been referred to the Parties’ representatives (or such longer period as the Parties may agree), it is referred to an authorised senior officer of the *Employer* and an authorised senior officer of the *Consultant* for negotiation and resolution.

Z34.3 If any dispute cannot be resolved within ten working days after it has been referred to the authorised senior officers of the *Employer* and *Consultant* (or such longer period as the Parties may agree) either Party may decline to continue to participate in the negotiation but both should give serious consideration to referring the dispute to mediation.

**Clause Z35 Number not used**

**Clause Z36 Number not used**



**Clause Z37    Number not used**

**Clause Z38    Intellectual Property Rights**

Z38.1    In this clause Z38:

- “**Intellectual Property Rights**” means any and all patents, trademarks, service marks, copyright, moral rights, rights in a design, know-how, Confidential Information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto; and
- “**Material**” means all Material prepared by or on behalf of the *Consultant*.

Z38.2    The Intellectual Property Rights in all Material and the work executed from them remains the property of the *Consultant*. The *Consultant* hereby grants to the *Employer* an irrevocable, royalty free, non-exclusive licence to use and reproduce the Material for any and all purposes connected with the *services*. Such licence entitles the *Employer* to grant sub-licences to third parties in the same terms as this licence.

Z38.3    The *Consultant* shall not be liable to any licensee for any use of the Material or the Intellectual Property Rights in the Material for purposes other than those for which the same were originally prepared by or on behalf of the *Consultant*.

Z38.4    In the event that the *Consultant* does not own the copyright or any Intellectual Property Rights in any Material the *Consultant* uses all reasonable endeavours to procure the right to grant such rights to the *Employer* to use any such copyright or Intellectual Property Rights from any third party owner of the copyright or Intellectual Property Rights. In the event that the *Consultant* is unable to procure the right to grant to the *Employer* in accordance with the foregoing the *Consultant* procures that the third party grants a direct licence to the *Employer* on industry acceptable terms.

Z38.5    The *Consultant* waives any moral right to be identified as author of the Material in accordance with section 77, Copyright Designs and Patents Acts 1988 and any right not to have the Material subjected to derogatory treatment in accordance with section 8 of that Act as against the *Employer* or any licensee or assignee of the *Employer*.

Z38.6    In the event that any act unauthorised by the *Employer*

infringes a moral right of the *Consultant* in relation to the Material the *Consultant* undertakes, if the *Employer* so requests and at the *Employer's* expense, to institute proceedings for infringement of the moral rights.

- Z38.7 The *Consultant* warrants to the *Employer* that he has not granted and shall not (unless authorised by the *Employer*) grant any rights to any third party to use or otherwise exploit the Material.
- Z38.8 The *Consultant* supplies copies of the Material to the *Employer* and to the *Employer's* other contractors and consultants for no additional fee to the extent necessary to enable them to discharge their respective functions in relation to this contract or related works.
- Z38.9 After the termination or conclusion of the *Consultant's* employment, the *Consultant* supplies the *Employer* with copies and/or computer discs of such of the Material as the *Employer* may from time to time request and the *Employer* pays the *Consultant's* reasonable costs for producing such copies or discs.
- Z38.10 In Providing the Service the *Consultant* does not infringe any Intellectual Property Rights of any third party. The *Consultant* indemnifies the *Employer* against claims, proceedings, compensation and costs arising from an infringement or alleged infringement of the Intellectual Property Rights of any third party.

#### **Clause Z39 Financial Distress**

- Z39.1 In this clause Z39 Credit Rating is the *credit rating* or any revised long term *credit rating* issued by a rating agency accepted by the *Employer* in respect of the *Consultant* or any *Guarantor*.
- Z39.2 The *Consultant* notifies the *Employer* within one week if any of the following events occurs in relation to the *Consultant* or a *Guarantor*
- its Credit Rating falls below the relevant *credit rating*,
  - a further fall in its Credit Rating below the relevant credit rating,
  - it issues a profits warning to a stock exchange or makes any other public announcement about a material deterioration in its financial position or prospects,
  - it is subject to a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety,

- it commits a material breach of its covenants to its lenders or
- its financial position or prospects deteriorate to such an extent that it would not meet the *credit rating*.

Z39.3 If any of the events listed in clause Z39.2 occurs, the *Employer* may require the *Consultant* to give to the *Employer* a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Consultant* and accepted by the *Employer* who (in either case) has a Credit Rating at least equal to the *credit rating* for the person to whom the event listed in clause Z39.2 has occurred.

Z39.4 The *Employer* may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Consultant* who does not comply with clause Z39.3 if the *Consultant* gives to the *Employer* an assurance that the Controller or the alternative guarantor will so comply within 18 months of the *Employer's* acceptance. If so, the Parties agree a process for reviewing the financial standing of the Controller or the alternative guarantor during that period in order to demonstrate to the *Employer* that it will so comply by the end of that period.

Z39.5 If

- the *Consultant* fails to notify the *Employer* that an event listed in clause Z39.2 has occurred,
- neither the Controller nor any alternative guarantor proposed by the *Consultant* complies with clause Z39.3,
- the *Consultant* does not give to the *Employer* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Employer* within four weeks of a request from the *Employer* to do so or
- the *Consultant* fails to demonstrate to the *Employer* that the Controller or the alternative guarantor accepted by the *Employer* will comply with clause Z39.3 within 18 months of the *Employer's* acceptance

the *Employer* may treat such failure as a substantial failure by the *Consultant* to comply with his obligations.

#### **Clause Z40     Change of Control – new guarantee**

Z40.1 If a Change of Control occurs, the *Consultant* provides

to the *Employer*

- certified copies of the audited consolidated accounts of the Controller for the last three financial years,
- a certified copy of the board minute of the Controller confirming that it will give to the *Employer* a Parent Company Guarantee if so required by the *Employer* and any other information required by the *Employer* in order to determine whether the Controller has a credit rating at least equal to the *credit rating* for the original Guarantor (if there is one) or the *Consultant* (if there is not).

Z40.2 If the Controller does not comply with the tests in clause Z40.1 or (if applicable) does not provide the legal opinion required in clause Z40.6, the *Consultant* may propose an alternative guarantor to the *Employer* for acceptance. The *Consultant* provides to the *Employer* the details set out in clause Z40.1 and (if applicable) the legal opinion required in clause Z40.6 in relation to the proposed alternative guarantor. A reason for not accepting the proposed alternative guarantor is that he does not comply with the tests in clause Z40.1 or (if applicable) does not provide the legal opinion required in clause Z40.6.

Z40.3 If so required by the *Employer*, the *Consultant* within four weeks gives to the *Employer* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Employer*.

Z40.4 The *Employer* may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Consultant* who does not comply with the tests in clause Z40.1 if the *Consultant* gives to the *Employer* an assurance that the Controller or the alternative guarantor will so comply within 18 months of the *Employer's* acceptance. If so, the Parties agree a process for reviewing the financial standing of the Controller or the alternative guarantor during that period in order to demonstrate to the *Employer* that it will so comply by the end of that period.

Z40.5 If

- neither the Controller nor any alternative guarantor proposed by the *Consultant* complies with the tests in clause Z40.1 or provides the legal opinion required by clause Z40.6,
- the *Consultant* does not give to the *Employer* a Parent Company Guarantee from the Controller or

an alternative guarantor accepted by the *Employer* within four weeks of a request from the *Employer* to do so or

- the *Consultant* fails to demonstrate to the *Employer* that the Controller or the alternative guarantor accepted by the *Employer* will comply with the tests in clause Z40.1 within 18 months of the *Employer's* acceptance

the *Employer* may treat such failure as a substantial failure by the *Consultant* to comply with his obligations.

Z40.6 If the Controller, or any alternative guarantor proposed by the *Consultant*, is not a company incorporated in and subject to the laws of England and Wales, the *Consultant* provides a legal opinion from a lawyer or law firm which is

- qualified and registered to practise in the jurisdiction in which the Controller or guarantor is incorporated and
- accepted by the *Employer*.

The legal opinion is addressed to the *Employer* on a full reliance basis and the liability of the lawyer or law firm giving the opinion is not subject to any financial limitation unless otherwise agreed by the *Employer*.

The legal opinion confirms that the method of execution of the Parent Company Guarantee is valid and binding under applicable local law and in particular covers the matters listed in the Scope.

#### **Clause Z41 Parent Company Guarantee**

Z41.1 If required by the *Employer*, the *Consultant* gives to the *Employer* a Parent Company Guarantee. If the Parent Company Guarantee was not given by the Contract Date, it is given to the *Employer* within four weeks of the Contract Date or the *Employer's* request, whichever is later. Parent Company Guarantees are given by the Controller.

In all cases it is for the *Employer* to decide (in its discretion) whether it will accept a Parent Company Guarantee from a company other than the Controller.

Z41.2 A failure to comply with this condition is treated as a substantial failure by the *Consultant* to comply with his obligations.

## Clause Z42 Offshoring of data

Z42.1 In this clause

**Risk Assessment** is a full risk assessment and security review carried out by the *Employer* in accordance with the document stated in the Contract Data

Z42.2 The *Consultant* does not store any of the *Employer's* data that is classified as Official or higher in accordance with "Government Security Classifications" dated April 2014 (or any later revision or replacement)

- offshore or
  - in any way that it could be accessed from an offshore location
- until the *Employer* has confirmed to the *Consultant* that either
- the *Employer* has gained approval for such storage in accordance with "*Offshoring information assets classified at OFFICIAL*" dated November 2015 (or any later revision or replacement) or
  - such approval is not required.

Z42.3 The *Consultant* ensures that no premises are used to Provide the Services until

- such premises have passed a risk assessment or
- the *Employer* confirms to the *Consultant* that no risk assessment is required.

Z42.4 The *Consultant* complies with a request from the *Employer* to provide any information required to allow the *Employer* to

- gain approval for storing data or allowing access to data from an offshore location in accordance with Z42.2 or
- conduct a risk assessment for any premises for the purpose of Z42.3.

Z42.5 The *Consultant* ensures that any subcontract (at any stage of remoteness from the *Employer*) contains provisions to the same effect as this clause.

Z42.6 A failure to comply with this condition is treated as a substantial failure by the *Consultant* to comply with his obligations.

## Clause Z43 Payment forecast

Z43.1 Prior to the submission of the *Consultant's* first invoice, the *Consultant* submits to the *Employer* a payment forecast

based on the *Consultant's* estimate of the interim payments (including fees and expenses) which the *Consultant* anticipates will fall due at each assessment until Completion of the whole of the services.

Z43.2 Each subsequent invoice from the *Consultant* is accompanied by an updated payment forecast, amended to show the effects of any changes in the Scope and Accepted Programme.

**Clause Z44**

**Responsibility for documents**

Z44.1 The *Employer* may at any reasonable time examine schedules, calculations, surveys, reports, specifications, drawings and/or any other documents and information which are in the possession of the *Consultant* and which concern this contract, but no such examination relieves the *Consultant* of any responsibility to Provide the Services.

**Clause Z45**

**Number not used**

**Clause Z46**

**Number not used**

**Clause Z47**

**Employer's Property**

Z47.1 If the *Consultant* is permitted to use equipment or other such property belonging to the *Employer* (the "Employer's Property") the following provisions apply.

- All Employer's Property remains the property of the *Employer*.
- Any failure of the Employer's Property shall not be a compensation event unless the *Consultant* demonstrates that the failure was caused by the *Employer's* undue delay in its repair or replacement.

**Clause Z48**

**Building Information Modelling**

Z48.1 The *Employer* may, from time to time, issue to the *Consultant* a BIM Protocol (or a replacement thereof) and forthwith upon any such issuance, the *Employer* and the *Consultant* shall:

- comply with their respective obligations set out in such BIM Protocol;
- have the benefit of any rights granted to them in such BIM Protocol; and
- have the benefit of any limitations or exclusions of their liability contained in such BIM Protocol.

Z48.2 Notwithstanding anything to the contrary, the issuance of any such BIM Protocol (or a replacement thereof) shall not be treated as a compensation event.

**Clause Z49 Number not used**

<p><b>Clause Z50</b></p>	<p>Notwithstanding clause 21.2, the <i>Consultant's</i> obligation is to have used and to use all the skill, care and diligence to be expected of a properly qualified and competent consultant who is experienced in providing services similar to the <i>services</i> in relation to projects of a similar size, scope, nature, complexity and value as the Project.</p> <p>The <i>Consultant</i> warrants that any and all services provided by or on behalf of the <i>Consultant</i> in respect of the Project other than the <i>services</i> prior to this contract were provided using the skill and care to be expected of a properly qualified and competent consultant who is experienced in providing services similar to such services in relation to projects of a similar size, scope, nature, complexity and value as the Project.</p>
<p><b>Clause Z51</b></p>	<p>In the event of any termination of this contract (whether for a reason stated in this contract or otherwise), notwithstanding any other provision of the contract, the <i>Employer</i> shall not be liable for and the <i>Consultant</i> shall not be entitled to any sum in respect of loss of anticipated profit, loss of contract or any other losses and/or expenses arising by reason of or in connection with such termination.</p> <p>The text of Clause X11.2 is deleted and replaced with the following:</p> <p>"If the <i>Employer</i> terminates for a reason not stated in this contract an additional amount is due on termination which is the <i>Consultant's</i> reasonable costs of demobilization."</p>



<b>Clause Z52</b>	<p>The <i>Consultant</i> Provides the Services:</p> <ul style="list-style-type: none"> <li>• in accordance with all statutes, statutory instruments, regulations, rules and orders made under any statute or directive having the force of law and all regulations or byelaws of any local authority or statutory undertaker which has any jurisdiction with regard to the Project or with whose systems the Project are, or are to be, connected; and</li> <li>• with diligence and timeously in accordance with the progress of the Project.</li> </ul>
<b>Clause Z53</b>	<p>Notwithstanding anything to the contrary, no amount includes an amount for price adjustment pursuant to clause X1 before the second anniversary of the Contract Date.</p>

## **THE SCOPE**

### **Tender Specification – Fire & Site Emergency Procedures Strategy Document**

#### **Purpose**

The purpose of this document is to state the duties and deliverables of the consultancy responsible for writing a coherent, site wide and industry standard Fire and Site Emergency Procedures Strategy for the new Science Hub Campus at Harlow, Essex.

UK Health Security Agency are embarking on a major programme to co-locate 3 separate and independently operating UKHSA sites. Laboratories from Porton and Colindale and general office and shared service functions from the London Headquarters. The new Science Hub Campus will offer a world leading environment from within multiple buildings across a 40-acre site in Harlow, Essex. A site of this size will allow UK Health Security Agency to bring together a critical mass of scientists and knowledge that will strengthen research potential and the ability to improve and protect public health.

This is an extensive programme being completed across several years in separate, interim and planned phases. There are 4 main areas of the Campus – an energy centre, which is nearing the end stage of RIBA 4, a logistics building, which has completed RIBA 4 and is due to enter RIBA 5 in July 2021, an high containment laboratory complex, which is going through RIBA 4 and a major refurbishment to an existing building into additional lab, office and social space, which is going through RIBA 4. The ongoing construction phases are subject to RIBA stages and each stage requires very specific inclusions to achieve that RIBA stage and the successful move to the next. To support UKHSA in these RIBA stages and the development of Standard Operating Procedures (SOP's) there is a requirement to have a coherent, integrated and site wide Fire & Emergency Procedures Strategy that is aligned to the current design taking into consideration the relevant British Standards, Building Regulations and specific parts of the Health & Safety Act.

A Concept Fire Strategy white paper has been written, from this a Fire Strategy Report has been developed for each major construction work set. With this in mind UKHSA are looking to engage a professional services consultancy to write an industry standard Operational Fire & Site Emergency Strategy that brings together the existing Fire Strategy Reports, liaises with the business to develop priority, strategic SOP's and collaborates with and supports the Construction Sub Programme in gaining approval of The Strategy from UKHSA Boards and Essex Fire and Rescue Service.

#### **General Duties**

1. Conduct structured meetings with agreed stakeholders and subject matter experts (SME's) to understand the current status of the Fire & Site Emergency Procedures Strategy for the Science Hub Campus at Harlow
2. Organise and conduct relevant workshops with agreed stakeholders and SME's to gather data and content required to write a coherent, site wide and industry standard Fire & Evacuation Strategy
3. Utilise current Fire Strategy Reports, other existing data, external stakeholder feedback, the original Concept Fire Strategy, British Standards, appropriate elements from Building Regulations and conventional and expected inclusions from county and metropolitan Fire & Rescue services to compile a draft version of the Fire and Site Emergency Procedures Strategy for endorsement by the Site Operations and Facilities Management Board (SOFM) at the end of July, 2021

4. The endorsed document will then be presented by existing UKHSA Construction Sub Programme consultants and the successful Consultancy to senior members of Essex Fire & Rescue for their consideration
5. The Consultancy will be the approved point of contact for Essex Fire & Rescue. This will mean organising site visits via UKHSA, resolving clarifications and dealing with any issues arising that may affect design or expected use of buildings. These matters will be escalated to the approved UKHSA contact Project Manager
6. The Consultancy will organise and lead structured bi-weekly meeting with Essex Fire & Rescue to update them of status, collate and resolve any operational issues or clarifications
7. The Consultancy will update the Fire & Site Emergency Procedures Strategy document in real time and email copies of the document, once updated, to the approved UKHSA Project Manager
8. The Consultancy, via the UKHSA approved Project manager, will escalate immediately any risks, issues or concerns with any design aspects based on operational process requirements once understood
9. The Consultancy will confirm by the end of October 2021, with Essex Fire & Rescue that they have approved the document in its final draft form. This meeting will take the form of a re-presentation of the final draft to the same senior representatives of Essex Fire & Rescue and minuted to capture approval
10. The approved document will be submitted into the SOFM Board for final sign off. The Consultancy will deal with any matters arising from this and re-write as required
11. The Consultancy will collaborate with the Construction Sub Programme in ensuring the document is in the correct format for incorporation into the RIBA 5 document suite

#### Deliverables

- The primary deliverable is the operational element of business wide Fire & Site Emergency Procedures Strategy approved by Essex Fire & Rescue by the end of October 2021
- Staged deliverables are:
  - Initial meetings with stakeholders and SME's held within the first month of appointment
  - Workshops with stakeholders and SME's to gather data
  - Biweekly meeting with approved UKHSA Project Manager to update on status and progression
  - Presentation of coherent, site wide and industry standard Fire & Site Emergency Procedures Strategy in draft form to the SOFM Board for endorsement
  - Presentation of endorsed draft Fire & Site Emergency Procedures Strategy to senior representatives of Essex Fire & Rescue
  - Conduct biweekly meetings with Essex Fire & Rescue
  - Produce minutes of all meetings
  - Conduct weekly calls with the approved UKHSA Project Manager to update on status and progression
  - Secure sign off of the Fire & Site Emergency Procedures Strategy from Essex Fire & Rescue
  - Re-present the approved document to the approved UKHSA Project Manager
  - Engagement and alignment with the construction work sets Fire consultants to collate and consolidate building specific fire strategies into the wider Site and operational strategy.

- These elements will be agreed in 4 weekly blocks during the mobilisation stage of the engagement. Staged payments will release based on the standard of completion of these phases

#### Acceptance Criteria

- High quality industry standard Strategy document to be submitted to SOFM Board ensuring that the draft document will contain all of the elements that a county or metropolitan Fire & Rescue Service would expect to be included
- The Strategy document, once endorsed by the SOFM Board, will be predominantly accepted by Essex Fire & Rescue with the only real changes being those brought about through clarifications and site visits; not British Standards, Building Regulations and parts of the Health and Safety Act
- Fully approved Fire and Site Emergency Procedures Strategy Document by the end of October 2021

### **ACTIVITY SCHEDULE**

## **ANNEX 1: LIST OF NOTIFIED SUBCONSULTANTS**

*list of Notified Sub-Consultants to be inserted here as required.*

**CONTRACT SCHEDULE 2 – TEMPLATE COLLATERAL WARRANTY IN FAVOUR OF A BENEFICIARY**

Form of Consultant/Subconsultant Collateral Warranty in favour of a Beneficiary

Dated \_\_\_\_\_ 20[ ]

(1) [Consultant]

(2) [Beneficiary]

**[Consultant's][Subconsultant's] Collateral Warranty**

**relating to the**  
*[insert details of Project]*

Date:

Parties

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Consultant**).
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Beneficiary**).

Introduction<sup>1</sup>

- A [Insert Employer's details] (the "Employer") has engaged the Consultant to perform the Services in relation to the Project.
- B The Beneficiary, as [NATURE OF BENEFICIARY'S INTEREST], has an interest in the Project.
- C The Employer requires the Consultant to enter into a collateral warranty in favour of the Beneficiary.
- D The Consultant has agreed to enter into this agreement with the Beneficiary, for the benefit of the Beneficiary.
- E The Beneficiary has paid £10 to the Consultant as consideration under this agreement the receipt and sufficiency of which the Consultant acknowledges.

Agreed terms

1 INTERPRETATION

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions:

<b>Material</b>	all drawings, models, plans, photographs, brochures, reports, feasibility studies, planning submissions, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Project and all updates, amendments, additions and revisions to them and any works, or inventions incorporated or referred to in them for any purpose relating to the Project.
<b>Permitted Uses</b>	without limitation the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, extension, building information modelling and repair of the Property and the Project.
<b>Professional Appointment</b>	a professional appointment in writing dated [DATE] between the Employer <sup>1</sup> and the Consultant.
<b>Project</b>	[DESCRIPTION OF PROJECT].

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<sup>1</sup> Adapt as appropriate to reflect a collateral warranty being provided by a Subconsultant rather than a Consultant.

<b>Property</b>	[DESCRIPTION OF PROPERTY].
<b>Required Standard</b>	all the reasonable skill, care and diligence to be expected of a qualified and experienced member of the Consultant's profession undertaking the Services in relation to projects of a similar size, scope, complexity and character to the Project.
<b>Services</b>	the services referred to in the Professional Appointment, performed by or on behalf of the Consultant under the Professional Appointment.
1.2	Clause headings shall not affect the interpretation of this agreement.
1.3	A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.
1.4	A reference to a company includes any company, corporation or other body corporate, wherever and however incorporated or established.
1.5	Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
1.6	Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
1.7	A reference to any party shall include that party's personal representatives, successors and permitted assigns.
1.8	A reference to legislation is a reference to all legislation having effect in the United Kingdom from time to time, including: <ul style="list-style-type: none"><li>1.8.1 directives, decisions and regulations of the Council or Commission of the European Union;</li><li>1.8.2 acts of Parliament;</li><li>1.8.3 orders, regulations, consents, licences, notices and bye-laws made or granted;<ul style="list-style-type: none"><li>(a) under any act of Parliament; or</li><li>(b) under any directive, decision or regulation of the Council or Commission of the European Union; or</li><li>(c) By a local authority or by a court of competent jurisdiction; and</li></ul></li><li>1.8.4 any mandatory codes of practice issued by a statutory body.</li></ul>
1.9	A reference to legislation is a reference to that legislation as amended, modified, consolidated, re-enacted or replaced from time to time and to all subordinate legislation made under it from time to time.
1.10	Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
1.11	A reference to writing or written does not include fax or email.



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- 1.12 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of this agreement) at any time.
- 1.13 References to clauses are to the clauses of this agreement.
- 1.14 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2 COMPLY WITH PROFESSIONAL APPOINTMENT**

- 2.1 The Consultant warrants to the Beneficiary that
  - 2.1.1 it has and shall continue to comply with the Professional Appointment:
  - 2.1.2 it has exercised and shall continue to exercise the Required Standard:
    - (a) when performing the Services;
    - (b) to comply with (and ensure the completed Project complies with) any legislation;
    - (c) to perform the Services and prepare all Material for those elements of the Project for which the Consultant is responsible in sufficient time to facilitate the efficient progress of the Project;
    - (d) to ensure that the Project complies with all planning agreements, permissions and conditions; and
- 2.2 In proceedings for breach of this clause 2, the Consultant may:
  - 2.2.1 rely on any limit of liability or other term of the Professional Appointment; and
  - 2.2.2 raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint client, with the Employer, under the Professional Appointment (for this purpose not taking into account any set-off or counterclaim against the actual client under the Professional Appointment).
- 2.3 The Consultant's duties or liabilities under this agreement shall not be negated or diminished by:
  - 2.3.1 any approval or inspection of:
    - (a) the Property; or
    - (b) the Project; or
    - (c) any designs or specifications for the Property or the Project; or
  - 2.3.2 any testing of any work, goods, materials, plant or equipment; or
  - 2.3.3 any omission to approve, inspect or test,by or on behalf of the Beneficiary or the Employer.
- 2.4 This agreement shall not negate or diminish any other duty or liability otherwise owed to the Beneficiary by the Consultant.

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### 3 PROFESSIONAL INDEMNITY INSURANCE

- 3.1 The Consultant shall maintain professional indemnity insurance for an amount of at least £*[insert level of professional indemnity insurance required to be maintained under the Professional Appointment]* for a period beginning on the date of this agreement and ending 12 years after the date of practical completion of the Project, provided that such insurance is available at commercially reasonable rates. The Consultant shall maintain that professional indemnity insurance:
- 3.1.1 with reputable insurers lawfully carrying on insurance business in the European Union; and
  - 3.1.2 on customary and usual terms and conditions prevailing for the time being in the insurance market.
- 3.2 Any increased or additional premium required by insurers because of the Consultant's claims record or other acts, omissions, matters or things particular to the Consultant shall be deemed to be within commercially reasonable rates.
- 3.3 The Consultant shall immediately inform the Beneficiary if the Consultant's required professional indemnity insurance ceases to be available at commercially reasonable rates, so that the Consultant and the Beneficiary can discuss how best to protect the respective positions of the Beneficiary and the Consultant regarding the Project and the Property, without that insurance.
- 3.4 Whenever the Beneficiary reasonably requests, the Consultant shall send the Beneficiary evidence that the Consultant's professional indemnity insurance is in force, including, if required by the Beneficiary, an original letter from the Consultant's insurers or brokers confirming the Consultant's then current professional indemnity insurance and that the premiums for that insurance have been paid in full at the date of that letter.

### 4 COPYRIGHT

- 4.1 The Consultant grants to the Beneficiary, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by, or on behalf of, the Consultant for any purpose relating to the Project and the Property, including any of the Permitted Uses.
- 4.2 This licence allows the Beneficiary to use the Material in connection with any extension of the Project, but not to reproduce the designs contained in the Material in any such extension.
- 4.3 This licence carries the right to grant sub-licences and is transferable to third parties without the consent of the Consultant.
- 4.4 The Consultant shall not be liable for use of the Material for any purpose other than that for which it was prepared and/or provided
- 4.5 The Beneficiary may request a copy (or copies) of some or all of the Material from the Consultant. On the Beneficiary's payment of the Consultant's reasonable charges for providing the copy (or copies), the Consultant shall provide the copy (or copies) to the Beneficiary.

### 5 LIABILITY PERIOD

The Beneficiary may not commence any legal action against the Consultant under this agreement after 12 years from the date of practical completion of all of the Project.

## 6 ASSIGNMENT

6.1 The Beneficiary may assign the benefit of this agreement:

6.1.1 on two occasions to any person with an interest in the Project; and

6.1.2 without counting as an assignment under clause 6.1.1:

(a) by way of security to a funder (including any reassignment on redemption of security); or

(b) to and from subsidiary or other associated companies within the same group of companies as the Beneficiary so long as that assignee company remains within the same group of companies as the Beneficiary.

6.2 The Beneficiary shall notify the Consultant of any assignment. If the Beneficiary fails to do this, the assignment shall still be valid.

6.3 The Consultant shall not contend that any person to whom the benefit of this agreement is assigned under clause 6.1 may not recover any sum under this agreement because that person is an assignee and not a named party to this agreement.

## 7 THIRD PARTY RIGHTS

A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

## 8 GOVERNING LAW

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

## 9 JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

## 10 [STEP-IN RIGHTS

10.1 A "Step-In Notice" means a written notice to the Consultant from the Beneficiary or its nominee:

10.1.1 requiring the Consultant to continue the performance of its obligations under the Professional Appointment in relation to the Project;

10.1.2 undertaking unconditionally to the Consultant to discharge all payments which are due to the Consultant under the terms of the Professional Appointment.

An "Entitlement" means any right to:

10.1.3 terminate its engagement under the Professional Appointment and/or discontinue the performance of any of its obligations in relation to the Project; and/or

10.1.4 treat the Professional Appointment as repudiated.

- 10.2** If and when the Beneficiary requires it, the Beneficiary or its nominee may give a Step-In Notice. The Consultant shall be entitled to rely on such a notice as conclusive evidence for the purposes of this contract that the Beneficiary is entitled to require it.
- 10.3** The Consultant undertakes with the Beneficiary that it shall not exercise any Entitlement before the lapse of 21 days from receipt by the Beneficiary of a notice in writing of the Consultant's intention to do so.
- 10.4** Without prejudice to clause 10.2, the Beneficiary or its nominee may give a Step-In Notice on or before 21 days after receipt by the Beneficiary of the notice referred to in clause 10.3.
- 10.5** Upon the Beneficiary or its nominee giving a Step-In Notice:
  - 10.5.1** the Professional Appointment shall continue in full force and effect as if no Entitlement had arisen and in all respects as if the Professional Appointment had been made between the Consultant and the giver of the Step-In Notice; and
  - 10.5.2** the Consultant, the Employer and the giver of the Step-In Notice shall enter into an agreement for the novation of the Professional Appointment, such agreement to be in terms reasonably required by the Beneficiary.
- 10.6** Compliance by the Consultant with the provisions of this clause 10 shall not be treated as a waiver of any breach, act or omission giving rise to any Entitlement nor otherwise prevent the Consultant from exercising its rights after the expiration of the period referred to at clause 10.3 unless the right to exercise any Entitlement shall have ceased under the provisions of this clause 10.]

This agreement has been entered into on the date stated at the beginning of it.

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## **CONTRACT SCHEDULE 3 – TEMPLATE DEED OF GUARANTEE – NOT USED**

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## CONTRACT SCHEDULE 4 – SECURITY POLICY

Science Hub Programme  
UK Health Security Agency

[www.gov.uk/ukhsa](http://www.gov.uk/ukhsa)

21<sup>st</sup> November 2019

Dear Sirs,

### RE: SECURITY ASPECTS LETTER

#### References:

- A. Government Security Classifications.
- B. Management of Classified Information Strategy.
- C. PAS1192-5:2015 Specification for security minded building information modelling, digital built environments and smart asset management.
- D. Built Asset Security Information Requirements (BASIR).
- E. Anti-Terrorism Crime and Security Act 2001.
- F. Official Secrets Acts 1911 and 1989.

#### Introduction

1. The purpose of this letter is to ensure that all information that is formally classified under UK government policies or in any other way deemed sensitive is adequately protected by contractors working for and on behalf of UK Health Security Agency (UKHSA) – the Authority.
  -
2. It is fundamental principle that access to Classified Information should only be granted on a “need to know” basis.
  -
3. The Security Aspects Letter (SAL) is a summary drawn from multiple governance documents (available within iHuB) and is intended to provide a basic level of instruction for the minimum controls that are to be applied to the handling, storage and disposal of Classified Information that is in the custody of any contractors or partners working for and/or on behalf of UKHSA. The requirements of this SAL are also to be cascaded in a suitably edited form to meet the needs of any sub-contractors with access to UKHSA information or the UKHSA Harlow site. Full guidance on cascading the SAL is at Annex D.
  -
4. All contractors are responsible for the security of any Classified Information in their possession or control. Should any contractor or sub-contractor feel that there are conflicting requirements between this SAL and their contractual Terms and Conditions, it is to contact the Authority and resolve issues to the satisfaction of UKHSA before taking receipt of any Classified Information.

#### Format

5. The material in the SAL is broken down into three key types:
  - Requirements

- Information
- Guidance

Each type material in the SAL is clearly labelled as such and set out in the relevant Annex.

#### **Information - Classified Material**

6. Reference A describes the Government Security Classification system that has been in place in the UK since April 2014. In essence, all information related to routine Public Sector business, operations and services is treated as classified. There are 3 classifications:

- - OFFICIAL (including a sub-set OFFICIAL-SENSITIVE)
  - SECRET
  - TOP SECRET

7. The classification system is described in more detail in Annex A with guidance on how it's use is applied to the Science Hub Programme at Annex B. Annex C summarises the specific measures to be adopted to protect the Classified Information associated with the Programme to relocate UKHSA facilities to Harlow and the individual projects within it.

#### **Information - Sensitive Material**

8. Material may also be classified as OFFICIAL-SENSITIVE because its loss or compromise has the potential to be harmful to individuals, projects or the reputation of the organisation. Such information may include (but is not limited to):

- - The personal information relating to UKHSA employees, contractors or partners.
  - Personnel policies and strategies (especially draft concepts and proposals).
  - Embargoed time sensitive information.
  - Contractual information between contractors and their sub-contractors associated with UKHSA related projects.
  - Other commercially sensitive information (such as pricing and budgetary data).

#### **Information - Baseline Security Measures**

9. The baseline security measures associated with the protection of classified information are set out in precis at Annex C and in more detail in Reference B. When working within BIM the processes set out in References C and D are to be followed.

#### **Requirement - Security Legislation**

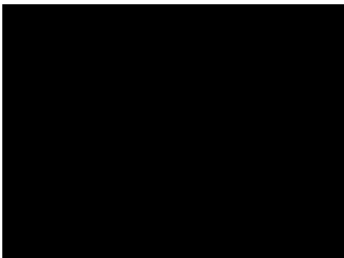
10. Those working with classified information are required, in law, to adequately safeguard it; failure to do so can result in prosecution under References E or F.

### **Guidance - Classification of Programme and Project Information**

11. The majority of the information associated with the Programme to relocate UKHSA to Harlow, and its associated Projects, is expected to be classified OFFICIAL with a lesser amount of information justifying a classification of OFFICIAL-SENSITIVE.
  -
12. The default classification for information regarding the Science Hub Programme is OFFICIAL; however, certain combinations of sensitive information will require the reinforcement of the “need to know” principle and are to be marked OFFICIAL-SENSITIVE (see Annex A). In addition, there are other combinations of data which if they appear in the same document will attract a classification of SECRET, these combinations are not to be used in any circumstances.
  -
13. Note that the security requirements for any electronic systems used to store material at the level of OFFICIAL-SENSITIVE are set out in Annex C.

### **Requirement – Cascading the Requirements of the SAL**

14. You are required to cascade relevant security requirements from this SAL to your supply chain; however, the requirements are to be tailored to be proportionate to the role of the supplier/sub-contractor and the level of information that they will hold. Additional requirements and guidance are at Annex D.



Science Hub Programme



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**Annexes:**

- A. Information: HM Government Classification System
- B. Requirements & Guidance: Using The Government Classification System
- C. Requirements: Baseline Security Measures to Protect Classified Material
- D. Requirements & Guidance: Cascading the SAL

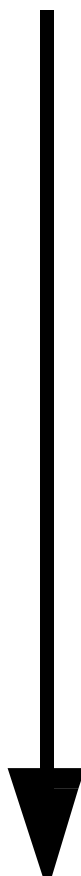
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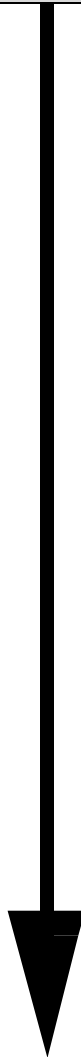
**Information: HM Government Classification System**

A1. A series of markings is applied to information associated with government work; this is a requirement of the Cabinet Office (Reference A) and is enforced at the Departmental level across the government estate; therefore, for UKHSA the interpretation of the reference is the responsibility of the Department of Health.

•

A2. The marking system is use is as follows:

Information Type	Applicable markings	Impact
<p>ALL routine Public Sector business, operations and services should be treated as OFFICIAL - many departments and agencies will operate exclusively at this level.</p> <p>This includes a wide range of information, of differing value and sensitivity, which needs to be defended against the threat profile described in paragraph 15 of Reference A, and to comply with legal, regulatory and international obligations. This includes:</p> <ul style="list-style-type: none"> <li>• The day to day business of government, service delivery and public finances.</li> <li>• Routine international relations and diplomatic activities.</li> <li>• Public safety, criminal justice and enforcement activities.</li> <li>• Many aspects of defence, security and resilience.</li> <li>• Commercial interests, including information provided in confidence and intellectual property.</li> <li>• Personal information that is required to be protected under the Data Protection Act (1998) or other legislation (e.g. health records).</li> </ul>	OFFICIAL	<p>Low</p> 
<p>A limited subset of OFFICIAL information which could have more damaging consequences (for individuals, an organisation or government generally) if it were lost, stolen or published in the media. This subset of information should still be managed within the "OFFICIAL" classification tier, but attracts additional measures (generally procedural or personnel) to reinforce the "need to know". In such cases where there is a clear and justifiable requirement to reinforce the "need to know".</p>	OFFICIAL-SENSITIVE	<p>Medium</p>

Information Type	Applicable markings	Impact
<p>Very sensitive HMG (or partner's) information that requires protection against the highly capable threat profile, <b>AND</b> where the effect of accidental or deliberate compromise would be likely to result in any of the following:</p> <ul style="list-style-type: none"> <li>• Directly threaten an individual's life, liberty or safety (from highly capable threat actors).</li> <li>• Cause serious damage to the operational effectiveness or security of UK or allied forces such that in the delivery of the Military tasks: <ul style="list-style-type: none"> <li>i. Current or future capability would be rendered unusable;</li> <li>ii. Lives would be lost; or,</li> <li>iii. Damage would be caused to installations rendering them unusable.</li> </ul> </li> <li>• Cause serious damage to the operational effectiveness of highly valuable security or intelligence operations.</li> <li>• Cause serious damage to relations with friendly governments or damage international relations resulting in formal protest or sanction.</li> <li>• Cause serious damage to the safety, security or prosperity of the UK or friendly nations by affecting their commercial, economic and financial interests.</li> <li>• Cause serious damage to the security and resilience of Critical National Infrastructure (CNI) assets<sup>2</sup>.</li> <li>• Cause major impairment to the ability to investigate or prosecute serious organised crime.</li> <li>• Cause long term damage to the UK economy.</li> </ul>	SECRET	 <p>High</p>

A3. If UKHSA considers a higher level of Classification is required, it will provide appropriate advice.

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A4. With regard to contracts; failure to meet minimum security requirements for OFFICIAL-SENSITIVE and above may result in:

- Instructions to take certain actions to secure Classified Information.
- Retrieval of Classified Information from the contractor's premises.
- Removal of persons from the Contract.
- Suspension of all or part of the Contract.
- Possible prosecution under the Official Secrets Act

<sup>2</sup> Note: To be considered when treating the whole or a significant portion of the proposed site.

B1. Involvement with the programme/project will result in you handling, storing and/or processing OFFICIAL/OFFICIAL-SENSITIVE hard copy and electronic Classified Information.

- B2. To help in correctly classifying and protecting information, please see below for a guide on what types and permutations of information attract a classification of OFFICIAL-SENSITIVE:

[illegible]

B3. The use of the descriptors PERSONAL, COMMERCIAL and EXECUTIVE (as illustrated in the table below), in conjunction with the classification OFFICIAL-SENSITIVE, also serves to further limit the legitimate circulation of sensitive material. Material bearing a descriptor should have its circulation limited to nominated groups of individuals.

Serial	Definition	Descriptor
1	Information relating to individuals, including their private personal details, salary information, appraisal information and welfare issues etc.	PERSONAL

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Serial	Definition	Descriptor
2	Commercially sensitive information such as pricing which if it were to become widely known could undermine commercial competitiveness <sup>3</sup> .	COMMERCIAL
3	Policy and high level strategic information the disclosure of which could adversely affect staff morale, the reputation of UKHSA or the delivery of the Programme.	EXECUTIVE

B4. Some information may only be sensitive for a limited period time; for example, bid information that may only be sensitive until after a period of challenge has elapsed following contract award or details of a pay award. In such circumstances where time sensitive information has been made widely available (released) it may be declassified to a level felt appropriate by the originator.

**Requirement: Highly Classified Material**

B5. The following data combinations have been agreed by senior members of UKHSA as attracting the classification of SECRET and are not to be used in the same document or model under any circumstances:

[illegible]

## Guidance - Aggregation of Information

B6. Certain compilations of protectively marked information may require the application of a higher classification than its component parts because the

<sup>3</sup> This descriptor relates to commercial relations between UKHSA and its suppliers. The protection of information relating to the commercial relationship between UKHSA's suppliers and their own Supply-Chains is a matter for the parties concerned and should not use this classification and descriptor.

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compromise of the combined information could cause a greater damage. This is normally referred to as 'aggregation' and is particularly relevant to collections of electronic information (such as the CDE used by the BIM) but can equally be applied to collections of hard copies.

- B7. What the aggregation principle means in the context of UKHSA the Science Hub Programme and projects is that where information of a lower classification is collected together it is possible that the loss or compromise of the whole collection could have an impact equivalent to a higher classification. For example: a collection of OFFICIAL-SENSITIVE documents could contain all of

same document) would attract a classification of SECRET (as shown in the table above); therefore, the collected data should be physically and procedurally protected to the higher standard.

- 
- B8. The aggregation of data at rest on end user devices, or the aggregated presentation of data to end user devices, shall be avoided as far the programme or project requirements allow; this approach minimises the impact of any compromise of the device or of inappropriate action by the user (accidental or malicious). The mitigation may include technical controls to physically limit the data or services being accessed, as well as transactional monitoring approaches to detect and respond to anomalous data or service access.

#### **Requirement – Protection of Aggregated Data**

- B9. A risk assessment should be undertaken (in conjunction with UKHSA) to determine the specific technical controls needed to protect any aggregated data set – this assessment will include an understanding of how aggregation affects threat. Technical controls to protect an aggregated data set shall be robust and risk owners may decide that they require a higher level of assurance or additional technical capability (such as fault tolerance). The risk assessment for the given aggregated service or data set shall determine the specific technical controls within an appropriate architecture.

#### **Requirement - Key Vocabulary**

- B10. Noting the key combinations identified above, by avoiding the use of, or discussion about, certain key topics and the use of specific words and phrases it will be possible to minimise the classification of any material that is produced by Design Teams and the various levels of construction contractors. Therefore, the following are not to appear in any documents generated by all those within the Science Hub Programme including all contractors regardless of status unless specifically agreed in advance by the UKHSA Security Officer:

- CNI or Critical National Infrastructure
- NI Level 3
- Vulnerabilities

Key Principles:

- Key vocabulary is not to be used.
- All material is to be targeted at OFFICIAL unless totally unavoidable.
- SECRET material is not to be created.

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**Requirements: Baseline Security Measures to Protect Classified Material**

- C1. The following table illustrates the Baseline measures required for the protection of classified material associated with the programme to relocate elements of UKHSA to Harlow and the individual projects that make it up.
- 
- C2. Sensitive Material (as defined in the covering letter at Paragraph 8 – Sensitive Information) shall be protected in accordance with the principles set out below for material classified OFFICIAL-SENSITIVE.
- 
- C3. Any electronic systems (including third party project management sites) used to store material at the level of OFFICIAL-SENSITIVE **are to be** certified to Cyber Essentials (or Cyber Essentials Plus); or, the company (and the IT systems to be used for this programme) is certified to ISO27001; or, the IT system is accredited by an appropriate, competent UK, US, Canadian, Australian or New Zealand government authority **before** they are used for the creation, receipt, storage, manipulation or other use of such material.
- 
- C4. Contractors, sub-contractors, suppliers etc. that will only be required to process OFFICIAL material do not need to meet the certification requirements set out above.
- 
- C5. Note that all information will be Classified at a minimum level of OFFICIAL whether marked as such or not. When OFFICIAL material is to be distributed below the Tier 1 contractor level there is no requirement to overtly mark it as such. Therefore, OFFICIAL material issued out to the supply chains of the respective Tier 1 contractors should not be marked with the classification; however, if the material is uploaded into iHuB the metadata should always show the correct classification.
- 
- C6. All OFFICIAL information provided as part of any Local Authority planning application or stakeholder consultation should not be marked with the classification.
-



Actions	Application of General Measures	
	OFFICIAL	OFFICIAL-SENSITIVE
Creation	Anyone – the originator (author) decides the classification	Anyone – the originator (author) decides the classification
Marking	<ul style="list-style-type: none"> <li>Marked – <b>unless for release into the public domain or for distribution below Tier 1 contractor level</b>, prominently in bold capital letters in red and centred in the Header &amp; Footer of every page</li> <li>E-mails: In the Title</li> <li>Drawings: In the title block</li> <li>Notebooks, File Jackets etc. – Top and bottom of front and back covers.</li> <li>Include a unique reference for identification.</li> </ul>	<ul style="list-style-type: none"> <li>Marked – prominently in bold capital letters in red and centred in the Header &amp; Footer of every page</li> <li>E-mails: In the title</li> <li>Drawings: In the title block</li> <li>Notebooks, File Jackets etc. – Top and bottom of front and back covers.</li> <li>Include a unique reference for identification.</li> </ul>
Processing on IT Systems	Corporate systems only, no personal computer systems.	Only systems that are either: <ul style="list-style-type: none"> <li>Certified to Cyber Essentials or Cyber Essentials Plus.</li> <li>Certified to ISO27001.</li> <li>Accredited by a UK, US, Canadian, Australian or New Zealand government department.</li> </ul>
Enforcing the “need to know” principle.	Access to be limited to project team members and key administration staff only.	Project data to be segregated. Access limited to those with a defined need to know. Consider using: <ul style="list-style-type: none"> <li>Password protection of directories, folders and individual files.</li> <li>Encryption of data on shared networks.</li> <li>Encryption of end user devices (PC, Laptops, tablets, telephones etc.)</li> <li>Use of privacy screens to limit overlooking of IT screens.</li> <li>Individual lockable containers for hard copy material, data back-ups etc.</li> <li>Not left unattended when being worked upon.</li> </ul>

Actions	Application of General Measures	
	OFFICIAL	OFFICIAL-SENSITIVE
Electronic Transmission – within UK (excluding Northern Ireland)	No specific restrictions	<p>Avoid if possible by using:</p> <ul style="list-style-type: none"> <li>Links to a secure project management platform or CDE such as iHuB (see processing on IT Systems above).</li> </ul> <p>However, if necessary:</p> <ul style="list-style-type: none"> <li>Encrypted e-mails using approved software (Egress Switch)<sup>4</sup></li> </ul> <p>Prior approval of the Authority is required for:</p> <ul style="list-style-type: none"> <li>Password protection within MS or Adobe products (128 bit encryption).</li> </ul>
Electronic Transmission – outside the UK and including Northern Ireland	<p>Not as a matter of routine; however, if necessary consider:</p> <ul style="list-style-type: none"> <li>Encrypted e-mails.</li> <li>Using links to a secure project management platform or CDE such as iHuB (see processing on IT Systems above).</li> </ul>	<p>Not allowed routinely; however, the following may be considered:</p> <ul style="list-style-type: none"> <li>Egress Switch software</li> <li>Encryption to FIPS140-2 or AES256</li> <li>128 bit encryption may be allowed with prior approval of the Authority.</li> </ul>
Home working & Portable Devices	Yes (see Processing on IT Systems above)	<p>No unless previously authorised. Authorisation will require:</p> <ul style="list-style-type: none"> <li>Use of encrypted corporate IT equipment.</li> <li>No use of personal IT equipment.</li> <li>Telephones and tablets to be protected with end point encryption.</li> </ul>

<sup>4</sup> E-mail many only be sent to a system that meets the requirements for "Processing on IT Systems".

Actions	Application of General Measures	
	OFFICIAL	OFFICIAL-SENSITIVE
Removal of Hard Copy from Company Premises	<ul style="list-style-type: none"> <li>No restriction for home working.</li> <li>Carried within a closed bag, case or satchel that is in good repair.</li> <li>Not to be retained at home without prior approval.</li> <li>Not to be left unattended (even briefly) on public transport or other places to which the public have free access such as cafes during the transit.</li> </ul>	<ul style="list-style-type: none"> <li>Only to be taken home in exceptional circumstances with prior authorization.</li> <li>When required off site for meetings, etc. to be sent ahead by mail wherever possible.</li> <li>Carried within a closed bag, case or satchel that is in good repair.</li> <li>Movement of collections of documents to be recorded in a register kept for the purpose.</li> <li>Not to be worked upon or left unattended (even briefly) on public transport or other places to which the public have free access such as cafes during the transit.</li> </ul>
Storage	No specific requirements but leaving on public view is not recommended – reputational risk best mitigated by keeping in a lockable cupboard or desk pedestal etc. when not in use.	<ul style="list-style-type: none"> <li>Clear desk policy.</li> <li>Under lock and key when not in use.</li> <li>Not left unattended when being worked upon.</li> </ul>
Hard Copy Despatch within UK (excluding Northern Ireland)	<ul style="list-style-type: none"> <li>Single envelope,</li> <li>No classification,</li> <li>Royal Mail or Defence Courier Service (DCS) or contracted courier service.</li> <li>Return address on the envelope.</li> </ul>	Double envelope: <ul style="list-style-type: none"> <li>Inner – address plus classification top and bottom, front and back.</li> <li>Outer – address to named individual, return address NO classification.</li> <li>Royal Mail or DCS.</li> </ul>
Hard Copy Despatch outside of the UK and including Northern Ireland	<ul style="list-style-type: none"> <li>Not as a matter of routine.</li> <li>Otherwise as above.</li> <li>Classification not to be marked on the material being despatched.</li> </ul>	Only in exceptional circumstances, the method will be advised by the Authority when the situation arises.
Receipt	No specific requirements	No specific requirements

Actions	Application of General Measures	
	OFFICIAL	OFFICIAL-SENSITIVE
Destruction	<ul style="list-style-type: none"> <li>No specific requirements, but shredding advised</li> <li>Reputational risk mitigated by tearing up before placing in shredding bins/bags or by shredding personally.</li> <li>No recording action required.</li> </ul>	<ul style="list-style-type: none"> <li>To be destroyed by shredding (cross-cut shredder to be used : either, personally by a checked person OR via accredited destruction service provider.</li> <li>Discs and other removable computer media: <ul style="list-style-type: none"> <li>Shredded or broken into a least 4 pieced.</li> <li>Destroyed by melting.</li> <li>Destroyed my immersion in a corrosive substance such as an acid bath that can remove the data medium from the base metal.</li> </ul> </li> <li>No recording action needed for individual documents.</li> </ul>
Accounting	No specific requirements.	No specific requirements.
Copying	No restrictions – but only to be shared on a need to know basis	<ul style="list-style-type: none"> <li>No restriction, but only essential copies to be made, for use on a need to know basis</li> <li>Photocopier RAM to be cleared by copying blank pages after use.</li> </ul>
Controlling Hard copies	No specific security requirements – note ‘Storage’ above. Project related document control processes may apply additionally.	No specific security requirements – note ‘Storage’ above. Project related document control processes may apply additionally.
Archiving	<ul style="list-style-type: none"> <li>Documents reviewed and the classification confirmed or amended accordingly.</li> <li>Contractor to only retain those documents required to support ISO certification and/or to support IP/PL/PI requirements.</li> <li>All other documents to be returned to the Authority or destroyed (a written confirmation that destruction has taken place will be required by UKHSA); this includes all electronic copies, including backup and archive material.</li> <li>Retained documents are to be destroyed or returned as soon as possible when no longer needed.</li> </ul>	

C7. This list may not be comprehensive and it is not possible to predict every set of circumstances that may arise; however, in the event that a situation develops that is not covered above, you are to seek guidance from the Authority in the first instance. If Authority guidance is unavailable, the basic principles set out above should are to be followed until specific guidance is given.

## Requirements - Specific Personnel Access Requirements

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C8. There is no formal national security vetting (NSV) clearance requirement for access to OFFICIAL material; similarly, occasional access to OFFICIAL-SENSITIVE material also does not require a formal NSV clearance. Companies are, however, responsible for carrying out a check of Identity (ID), Nationality and right to work in the UK in accordance with the BPSS requirement (see below). Evidence of any checking process is to be retained and may be checked during assurance checks by UKHSA.

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C9. Because of the risks associated with aggregation, a Baseline Personnel Security Standard (BPSS) check (as mandated by the Cabinet Office for government employees and those working with government) will be required as a minimum if regular and constant access to OFFICIAL-SENSITIVE material is required. Similarly, unescorted access to any UKHSA premises (excluding UKHSA Harlow – see below) requires a BPSS check to have been carried out. BPSS checks will generally be carried out by UKHSA unless there has been a prior agreement by the UKHSA Security Officer whereby checks carried out by companies within the MOD List X scheme are accepted by Authority. Anyone carrying out document checks is to be familiar with document verification checking techniques especially where official documents such as passports and driving licences are concerned.

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C10. Access to UKHSA Harlow during the main construction and fit out phases does not require BPSS. At a time to be agreed by the Authority and the respective Tier 1 contractors, the site will transition from being a construction site owned by UKHSA to a Site owned and operated by UKHSA on which construction activity is taking place; when this transition occurs the access requirements will change.

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C11. The formal vetting requirements for regular access to higher classifications are:

- SECRET – SC
- TOP-SECRET - DV
- The processing of new clearances, and the administration of existing clearances, will be through the Authority unless a company holds 'List X' status and can provide acceptable documentary evidence to the Authority's security officer that the required clearance is already in place. Companies within the List X scheme may be required to formally "share" an individual's clearance and the company will be expected to fully co-operate in the application of the associated processes.

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C12. Where any individual will have access to large volumes of aggregated data that could have a collective value of SECRET, NSV at the SC level<sup>5</sup> will be

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<sup>5</sup> Includes equivalent clearances issued by the governments of the USA, Canada, Australia and New Zealand.

required. Those who will require UK NSV will be required to be UK residents and achieve certain basic requirements before applications can be considered. For example, applicants for a vetting clearance at SC level must have been resident continuously in the UK for five years at the time of application. Exceptions are short holidays, or working overseas as a direct employee of a UK Government Department or Arms-Length Body. Those who hold international clearances (see footnote) will need to be able to obtain and renew those clearances without the sponsorship of UKHSA or the UK Government.

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- **Guidance – Determining the Appropriate Level of Clearance**

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C13. When assessing the level of aggregated data individuals have access to it is assessed use the

**Requirement - Highly Classified Material**

C14. The requirements for the protection of SECRET and TOP-SECRET will be advised by the Authority if the possession and/or storage of such material becomes necessary.

- Annex D
- To SAL
- Dated 21 Nov 19

### **Requirements & Guidance – Cascading the SAL**

D1. The aim of this Annex is to assist the Tier 1 contractors and Design Teams in the commissioning of work by consultants and contractors that will not require access to iHuB and who will only receive information at the OFFICIAL level.

#### **Key Points to Note:**

1. **Requirement:** A SAL is to be cascaded to any contractor or consultant handling UKHSA information.
2. **Requirement:** The SAL should be a tailored document reflecting the nature of the work being carried out and the classification of the material being handled; it should not be blindly cascaded in full.
3. **Information:** Although all information is classified, there is no requirement to mark all OFFICIAL documents showing the classification.
4. **Requirement:** All OFFICIAL material distributed from the Tier 1 contractors into their supply chains should not be “marked” with the classification.
5. **Requirement:** Any contractor or consultant needing to hold OFFICIAL-SENSITIVE material is required to receive and comply with the full SAL.

#### **Guidance - Short Form SAL**

D2. The primary reasons for not issuing a “full SAL” in all cases are:

- That it could exclude perfectly competent suppliers, contractors and consultants because they are unable to comply with the data and/or personnel security requirements that, in reality, need not apply given the tasks they will be required to perform.
- That contractors and consultants which are compliant (but need not be) may increase their bid prices to cover unexpected contingencies arising out of complying with conditions within the SAL that are not relevant to the roles they are being contracted to perform.

D3. To overcome the unnecessary complications identified above, it is permissible to simplify the security requirements and issue a SAL that better reflects the limited data and personnel security requirements associated with the contractors’ and/or consultants’ roles.

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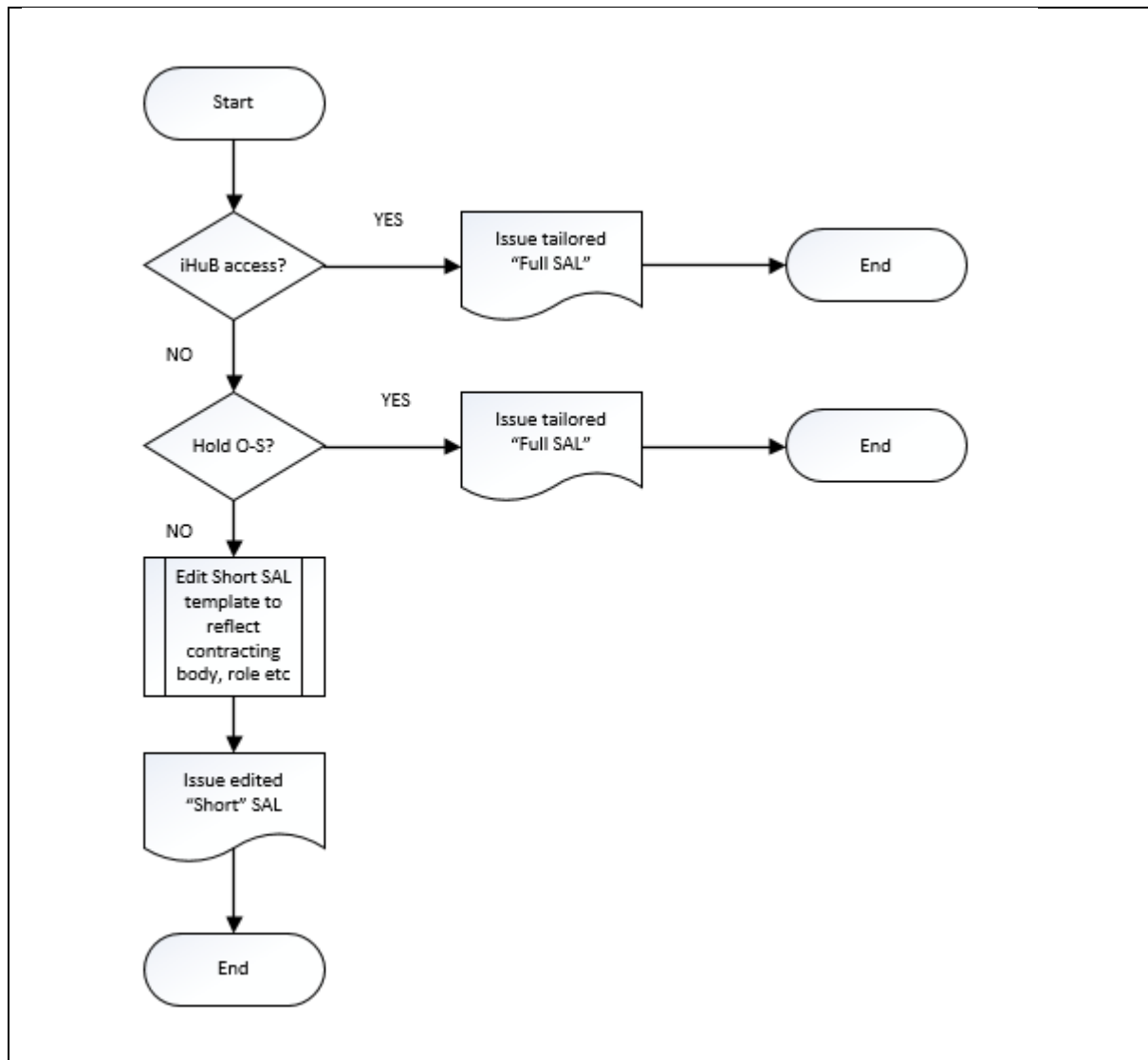
D4. Attached is the body of an exemplar “short form” SAL in use within the Science Hub programme and agreed with the UKHSA Head of Security, this document may be used (with addition of your own letter head and signature block) as the basis for the document cascaded to sub-contractors and consultants. Note that the document still needs to be tailored to reflect the nature of the work to be carried out and any additional criteria that you may wish to put in place to govern access to those parts of the Harlow site that are under your control. The short form document omits the information that is irrelevant to most

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contractors and sub-contractors that will be carrying out manual tasks and/or those with a limited design responsibility.

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D5. The following flow chart illustrates the simple process for deciding the correct level of SAL to issue:



#### Requirement - Use Of "Unmarked" Official Material

D6. When dealing with contractors for which the "short form" SAL is deemed suitable, all material should be issued without showing the classification anywhere. Note that documents that have been marked previously with the classification will need to be edited and the classifications removed.

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D7. If there are any queries please consult the Programme Security Manager.

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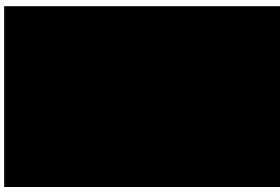
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## Letter Head of Issuing Company

*Gladstone Consulting Ltd*



Dear Sirs,

### **SECURITY ASPECTS LETTER**

Reference:

A. Official Secrets Acts 1911 and 1989.

#### **Introduction**

The purpose of this letter is to advise Gladstone Consulting Ltd (and any sub-contractors that you employ) of your security responsibilities whilst working on the Science Hub Programme; these responsibilities apply regardless of whether or not you require access to overtly marked classified information. It is important that all information that is adequately protected by all contractors working for and on behalf of UK Health Security Agency (UKHSA) – the Authority. It is a fundamental principle that all information is classified whether or not it is marked and access should only be granted on a “need to know” basis.

This Security Aspects Letter (SAL) is a summary drawn from multiple governance documents and is intended to provide a basic level of instruction for the minimum controls that are to be applied to the handling, storage and disposal of classified information that is in your custody, or that of any sub-contractors that you may employ while working for and/or on behalf of UKHSA. The requirements of this SAL are also to be passed down to any sub-contractors with access to UKHSA information.

All contractors are responsible for the security of any classified information in their possession or control. Should any contractor or sub-contractor feel that there are conflicting requirements between this SAL and their contractual Terms and Conditions, it is to contact the Authority and resolve issues to the satisfaction of UKHSA before taking receipt of any classified information.

#### **Classified Information**

The nature of your contract to UK Health Security Agency should not result in you needing to access “marked” classified information or IT systems containing it. Although the material that you will be given will not be marked with a classification it remains important and is to be protected (see below for how). If you receive any information that appears to bear a classification marking you are to report the matter to the Authority<sup>6</sup> immediately and secure the material in the manner described below until specific advice is received. You will recognize marked classified information as it will be clearly marked with one of the following<sup>7</sup> (usually in the header and footer of a document):

- OFFICIAL

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<sup>6</sup> To contact the Authority e-mail the Programme Security Manager at: [sciencehub.programmesecurity@phe.gov.uk](mailto:sciencehub.programmesecurity@phe.gov.uk)

<sup>7</sup> For further information see:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/715778/May-2018\\_Government-Security-Classifications-2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/715778/May-2018_Government-Security-Classifications-2.pdf)

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- OFFICIAL-SENSITIVE

### **Protecting All Information**

All material issued by or on behalf of UKHSA is to be protected whether it is overtly marked as classified or not. Such material may not be:

- Passed on to other parties without the consent of the Authority.
- Used in promotional or advertising material.
- Displayed on notice or display boards where it can be seen by those who are not working on the project.

All such material shall be:

- Kept under lock and key when not in use.
- Destroyed by shredding (or tearing into small pieces) or returned to the issuer when no longer required.
- Controlled if kept on IT systems such that access is limited to those working on the project only.

### **Personnel Security Measures**

Access to the part of the site at UKHSA Harlow where you will be required to work is controlled by UKHSA. The nature of this contract and general access to the site at UKHSA Harlow does not, at this stage of the development, require any form of National Security Vetting (NSV) or Government standards of background checking. However, access is dependent upon your staff meeting certain key basic criteria. The responsibility for checking these criteria rest with you as the employer. The criteria you are required to establish are:

- The identity of all your workers<sup>8</sup>.
- Their eligibility to work in the UK.
- Any other criteria imposed by the controlling contractor if working outside of the area controlled by UKHSA.

Failure to present evidence, when requested by the Authority, that you have carried out adequate checks to establish the criteria set out above may result in your removal from Site.

### **Site Specific Requirements**

No additional requirements.

### **Security Legislation**

Although not working directly with information that is overtly marked as classified, you and your staff are required, in law, to adequately safeguard all project material whilst it is in your possession; failure to do so could result in prosecution under the legislation covered by Reference A and/or other appropriate or relevant statutes.

## ***Signature of an appropriate project leader***

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<sup>8</sup> Information on identity checks can be found at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/720963/good\\_practice\\_guide\\_45\\_identity\\_proofing\\_version\\_3\\_february\\_2017.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/720963/good_practice_guide_45_identity_proofing_version_3_february_2017.pdf)

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**CONTRACT SCHEDULE 5 – EMPLOYER’S CODE OF CONDUCT**

**[INSERT PARTNERS CHARTER AND SUPPLIER CODE OF CONDUCT]**

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## CONTRACT SCHEDULE 6 – GDPR

The following definitions shall apply to this Schedule.

**Agreement** : this contract;

**Processor Personnel** : means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement

### GDPR CLAUSE DEFINITIONS:

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

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

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

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

Data Subject Request : a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

DPA 2018 : Data Protection Act 2018

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

Joint Controllers: where two or more Controllers jointly determine the purposes and means of processing

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

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Protective Measures : appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

Sub-processor : any third party appointed to process Personal Data on behalf of that Processor related to this Agreement

## **1. DATA PROTECTION**

### **1.1**

The Parties acknowledge that for the purposes of the Data Protection Legislation, the *Employer* is the Controller and the *Consultant* is the Processor unless otherwise specified in Schedule A. The only processing that the Processor is authorised to do is listed in Schedule A by the Controller and may not be determined by the Processor.

### **1.2**

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

### **1.3**

The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

- (a)  
a systematic description of the envisaged processing operations and the purpose of the processing;
- (b)  
an assessment of the necessity and proportionality of the processing operations in relation to the *works*;
- (c)  
an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d)  
the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

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1.4

The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

(a)

process that Personal Data only in accordance with Schedule A, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;

(b)

ensure that it has in place Protective Measures, are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:

(i)

nature of the data to be protected;

(ii)

harm that might result from a Data Loss Event;

(iii)

state of technological development; and

(iv)

cost of implementing any measures;

(c)

ensure that :

(i)

the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule A);

(ii)

it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:

(A)

are aware of and comply with the Processor's duties under this clause;

(B)

are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;

(C)

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

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

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

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

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

(iii)  
the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and

(iv)  
the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;

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

1.5  
Subject to clause 1.6, the Processor shall notify the Controller immediately if it:

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

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

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

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

(e)  
receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

(f)  
becomes aware of a Data Loss Event.

#### 1.6

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

#### 1.7

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

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

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

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

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

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

#### 1.8

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

(a)  
the Controller determines that the processing is not occasional;



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

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

1.9

The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.

1.10

Each Party shall designate its own data protection officer if required by the Data Protection Legislation .

1.11

Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:

(a)  
notify the Controller in writing of the intended Sub-processor and processing;

(b)  
obtain the written consent of the Controller;

(c)  
enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 1.11 such that they apply to the Sub-processor; and

(d)  
provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

1.12

The Processor shall remain fully liable for all acts or omissions of any of its Sub- processors.

1.13

The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

1.14

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The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

1.15

Where the Parties include two or more Joint Controllers as identified in Schedule A in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Schedule Y in replacement of Clauses 1.1-1.14 for the Personal Data under Joint Control.

### **Schedule A - Processing, Personal Data and Data Subjects**

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

1. The contact details of the Controller's Data Protection Officer are: UK Health Security Agency – [REDACTED]
2. The contact details of the Processor's Data Protection Officer are:  
[REDACTED]
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the <i>Employer</i> is the Controller and the <i>Consultant</i> is the Processor in accordance with Clause 1.1.
Subject matter of the processing	<b><i>The processing is needed in order to ensure that the Processor can effectively comply with information governance, security policies, employment policies and taxation policies, to provide the service(s) to UKHSA.</i></b>
Duration of the processing	<b><i>The duration of processing of the subject matter will be undertaken for the duration of the provision of services until the contract expiry date.</i></b>

Nature and purposes of the processing	<p>The nature of the processing means collection of personal data both electronically and hard copy to support security clearance requirements, as required by the Supplier to meet UKHSA requirements.</p> <p>Records will be maintained and stored in accordance with UKHSA Information Governance standards and those of the National Security Vetting organisations. Information will be stored and disposed of within the time limitations afforded by Security vetting and held securely in accordance with UKHSA Information Governance standards. Security vetting may include an assessment of Employment and taxation, in accordance with national vetting standards.</p>
Type of Personal Data being Processed	<b><i>The type of personal data that may be processed may include, but not limited to: name, address, date of birth, NI number, telephone number, pay, images, biometric data, references.</i></b>
Categories of Data Subject	<b><i>Service Providers Staff (including volunteers, agents, and temporary workers), customers, clients, suppliers</i></b>
<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under union or member state law to preserve that type of data</p>	<b><i>Data will be maintained in accordance with national vetting security standards and retained accordingly. Destruction will be accordance with Programme policy for both digital and physical data records.</i></b>