

Crown Commercial Service

**CONSTRUCTION PROFESSIONAL SERVICES FRAMEWORK SCHEDULE 5
CALL OFF AGREEMENT (INCORPORATING THE NEC3 PROFESSIONAL SERVICES CONTRACT APRIL
2013) AND CONTRACT DATA**

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Date 26th April 2022

FORM OF AGREEMENT

Incorporating the NEC3 Professional Services Contract April 2013

Between

**The Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland
(the Authority)**

And

WSP UK Limited (the Consultant)

For the provision of

Quantity Surveyor Professional Services for USVF

THIS AGREEMENT is made the 26th day of April 2022.

PARTIES:

1. **THE SECRETARY OF STATE FOR DEFENCE OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND** acting as part of the Crown (the "**Employer**"); and
2. **WSP UK LIMITED** which is a company incorporated in and in accordance with the laws of England and Wales (Company No. 01383511) whose registered office address is at WSP House, 70 Chancery Lane, London, WC2A 1AF (the "**Consultant**").

BACKGROUND

- (A) The Minister for the Cabinet Office (the "**Cabinet Office**") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, without separate legal personality (the "**Authority**"), established a framework for construction professional services for the benefit of public sector bodies.
- (B) The *Consultant* was appointed to the framework and executed the framework agreement (with reference number RM6165) which is dated 01/10/2022 (the "**Framework Agreement**"). In the Framework Agreement, the Consultant is identified as the "Supplier".
- (C) On the 8th March 2022 the *Employer*, acting as part of the Crown, and in the Framework Agreement is identified as a "Contracting Authority" invited the *Consultant* along with other framework suppliers to tender for the *Employer's* construction professional services requirements in accordance with the Call Off Procedure (as defined in the Framework Agreement).
- (D) On the 25th March 2022 the *Consultant* submitted a tender response and was subsequently selected by the *Employer* to provide the *services*.
- (E) The *Consultant* has agreed to Provide the Services in accordance with this agreement and the Framework 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 contract incorporates the conditions of contract in the form of the NEC3 Professional Services Contract April 2013 and incorporating the following Options:
W2
and
Option X1, X2 and X9
And Y(UK)2
which together with the *additional conditions of contract* specified in Option Z, and the amendments specified in Option Z, form this contract together with the

documents referred to in it. References in the NEC3 Professional Services Contract April 2013 Edition to "the contract" are references to this contract.

4. This contract and the Framework 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.
5. 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.
6. Nothing in clauses 4 or 5 shall exclude liability in respect of misrepresentations made fraudulently.

Executed under hand

Signed by **Redacted under FOIA Section 40, Personal Information** for and on behalf of the Employer

Redacted under FOIA Section 40, Personal Information

DIO Commercial Officer

Signed by **Redacted under FOIA Section 40, Personal Information** for and on behalf of WSP UK Limited

Signature: **Redacted under FOIA Section 40, Personal Information**

Director

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 E, dispute resolution Option W2 and secondary Options X1, X2, X9, Y(UK)2 and Z of the NEC3 Professional Services Contract (April 2013).
 - The *Employer* is Defence Infrastructure Organisation, Bazalgette Pavilion, First Floor, Zone D, RAF Wyton, Huntingdon, Cambs, PE28 2EA
 - 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 One Year Provision of Quantity Surveyor support to the USVF programme -the principal requirement of the contract is to provide a cost assurance and cost management service and to provide a VfM statement. Further requirements include supporting the change process, assessing the robustness of Rough Order of Costs (RoC's) when DIO has identified a challenge, to assess monthly payment applications and to support the development of risk registers for AWS (Additional Works Services) with EFM teams.
 - The Scope is in Appendix A - Project Specification of this contract document.
 - The *language* of this contract is English.
 - The *law of the contract* is the law of England and Wales, and the Courts of the country selected above, shall have exclusive jurisdiction with regard to any dispute in connection with this Agreement and the Parties irrevocably agree to submit to the jurisdiction of those courts. Where legislation is expressly mentioned in this Call Off Contract the legislation of the country selected here, shall have the effect of substituting the equivalent country's legislation.
 - The *period for reply* is three weeks.

- The *period for retention* is 6 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 [N/A].

2 The Parties' main responsibilities

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

<u>Access to</u>	<u>Access date</u>
<ul style="list-style-type: none"> • RAF Alconbury, Cambs, Huntingdon PE28 4DB 	[Contract Initiation]
<ul style="list-style-type: none"> • RAF Lakenheath, Brandon, Suffolk, IP28 8NF 	[Contract Initiation]
<ul style="list-style-type: none"> • RAF Mildenhall, Mildenhall Bury St Edmunds Suffolk IP28 8NF 	[Contract Initiation]
<ul style="list-style-type: none"> • RAF Fairford, Gloucestershire GL7 6BA 	[Contract Initiation]
<ul style="list-style-type: none"> • RAF Menwith Hill, Harrogate Yorkshire HG3 2RF 	[Contract Initiation]
<ul style="list-style-type: none"> • RAF Molesworth, Huntingdon, Cambs, PER18 0QB 	[Contract Initiation]

- RAF Welford, [Contract Initiation]
Newbury
Bucks
RG20 7EX
- Blenheim Crescent, [Contract Initiation]
Ruislip,
Middlesex,
HA4 7HB
- RAF Feltwell [Contract Initiation]
Feltwell,
Norfolk,
IP26 4HL
- RAF Barford St John [Contract Initiation]
Bloxham,
Oxfordshire,
OX15 0PR

- 3 Time**
- *The starting date* is 1st July 2022.
 - The *Consultant* submits revised programmes at intervals no longer than one month.

- 4 Quality**
- The quality policy statement and quality plan are provided within 6 weeks of the Contract Date.
 - The *defects date* is 4 weeks after Completion of the whole of the *services*.

- 5 Payment**
- The *assessment interval* is one calendar month
 - The *currency of this contract* is the pound sterling (£).

The *interest rate* is, 8% 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	A limit of indemnity of not less than £5,000,000 in	from the <i>starting date</i> until 6 years

skill and care normally used by professionals providing services similar to the *services*

respect of each claim, without limit to the number of claims except for claims arising out of pollution or contamination, where the minimum amount of cover applies in the aggregate in any one period of insurance and except for claims arising out of asbestos fire safety/cladding claims where a lower level may apply in the aggregate

following completion of the whole of the *services* or earlier termination

death of or bodily injury to a person (not an employee of the *Consultant*) or loss of or damage to property resulting from an action or failure to take action by the *Consultant*

A limit of indemnity of not less than £5,000,000 in respect of any one occurrence without limit to the number of occurrences in any annual period of insurance, but £5,000,000 any one occurrence and in the aggregate in any annual period of insurance in respect of liability arising out of products and pollution or contamination liability (to the extent insured by the relevant policy).

from the *starting date* until all notified Defects have been corrected or earlier termination

death of or bodily injury to employees of the *Consultant* arising out of and in the course of their employment in connection with this contract

A limit of indemnity of not less than £10,000,000 in respect of any one occurrence without limit to the number of occurrences in any annual period of insurance,

from the *starting date* until all notified Defects have been corrected or earlier termination

9 Additional Statements

- The *completion date* for the whole of the *services* is 30th June 2023 (unless the one-year option is enacted in accordance with Z clause 102, in which case the completion date will be 30th June 2024).
- The period for payment is 30 days after the delivery and receipt of a valid and undisputed invoice.

- The *arbitration procedure* is the London Court of International Arbitration Rules;
- The number of arbitrators shall be one
- 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
- The *index* is the Consumer Price Index (CPI) – as published by the Office for National Statistics
- *The law of the project* is the law of England and Wales.

- Option Z** • The *additional conditions of contract* are as selected below and as detailed in the appended Standard Boilerplate Amendments:

**Contract Data
relating to Z clauses**

Option Z2 Identified and defined terms

[applies]

Insert new clause 11.3 additional defined terms.

11.3 (1) Auditor is:

- the *Employer's* internal and external auditors;
- the *Employer's* statutory or regulatory auditors;
- the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
- HM Treasury or the Cabinet Office;
- any party formally appointed by the *Employer* to carry out audit or similar review functions; and
- successors or assigns of any of the above;

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

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

11.3 (4) Confidential Information is the Employer's Confidential Information and/or the Consultant's Confidential Information.

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

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

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

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

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

11.3 (10) Data Protection Legislation is (i) the GDPR, (ii) the Data Protection Act 2018 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, which, pending a decision from the competent authorities of the EU on the adequacy of the UK data protection regime will include the requirements set out or referenced in Part Three, Title VII, Article 71(1) of the Withdrawal Agreement signed by the UK and the EU in December 2019;

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

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

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

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

11 (14) Employer's Premises are premises owned, occupied or leased by the *Employer* and the site of any works to which the *services* relate.

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

11.3 (16) FOIA is the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together

with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.

11.3 (17) General Anti-Abuse Rule is

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

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

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

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

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

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

- where any tax return of the *Consultant* submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of,
- A Relevant Tax Authority successfully challenging the *Consultant* under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle or
- The failure of an avoidance scheme which the *Consultant* was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DASVOIT, DOTAS, VADR or any equivalent or similar regime and

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

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

11.3 (23) Prohibited Act is

- to directly or indirectly offer, promise or give any person working for or engaged by the *Employer* or other Contracting Body or any other public body a financial or other advantage to
 - induce that person to perform improperly a relevant function or activity or
 - reward that person for improper performance of a relevant function or activity,
- to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this contract,
- committing any offence

- under the Bribery Act 2010 (or any legislation repealed or revoked by such Act),
- under legislation or common law concerning fraudulent acts or
- defrauding, attempting to defraud or conspiring to defraud the *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.

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

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

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

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

Option Z4 Admittance to Employer's Premises

[applies]

Insert new clause 18A:

18A.1 The *Consultant* submits to the *Employer* details of people who are to be employed by it and its Subconsultants in connection with the *services*. The details include a list of names and addresses, the capabilities in which they are employed, and other information required by the *Employer*.

18A.2 The *Employer* may instruct the *Consultant* to take measures to prevent unauthorised persons being admitted to the Employer's Premises.

18A.3 All of the *Consultant's* and Subconsultant's people are to carry an *Employer's* pass and comply with all conduct requirements from the *Employer* whilst they are on the parts of the Employer's Premises identified in the Scope.

18A.4 The *Consultant* submits to the *Employer* for acceptance a list of the names of the people for whom passes are required. On acceptance, the *Employer* issues the passes to the *Consultant*. Each pass is returned to the *Employer* when the person no longer requires access to that part of the Employer's Premises or after the *Employer* has given notice that the person is not to be admitted to the Employer's Premises.

18A.5 The *Consultant* does not take photographs of the Employer's Premises or of work carried out in connection with the *services* unless it has obtained the acceptance of the *Employer*.

18A.6 The *Consultant* takes the measures needed to prevent its and its Subconsultants' people taking, publishing or otherwise circulating such photographs.

Option Z5 Prevention of fraud and bribery

[applies]

Insert new clauses:

17.2.1 The *Consultant* represents and warrants that neither it, nor to the best of its knowledge any of its people, have at any time prior to the Contract Date

- committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act 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.

17.2.2 During the carrying out of the *services* 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-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

17.2.3 During the carrying out of the *services* 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 and
- 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.

17.2.4 The *Consultant* immediately notifies the *Employer* in writing if it becomes aware of any breach of clause 17.2.1, or has reason to believe that it has or any of 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 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.

17.2.5 If the *Consultant* makes a notification to the *Employer* pursuant to clause 17.2.4, 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.

17.2.6 If the *Consultant* breaches Clause 17.2.3, the *Employer* may by notice require the *Consultant* to remove from carrying out the *services* any *Consultant* employee whose acts or omissions have caused the *Consultant's* breach.

Option Z6 Equality and diversity

[applies]

Insert new clauses:

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

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

27.2 The *Consultant* takes all necessary steps, and informs the *Employer* of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

Option Z7 Legislation and Official Secrets

[applies]

Insert new clauses:

20.4 The *Consultant* complies with Law in the carrying out of the *services*.

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

20.6 The *Consultant* notifies its people and its Subconsultants of their duties under these Acts.

Option Z8 Conflict of interest

[applies]

Insert new clauses:

28.1. The *Consultant* takes appropriate steps to ensure that neither the *Consultant* nor any of its personnel are placed in a position where (in the reasonable opinion of the *Employer*) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the *Consultant* or its personnel and the duties owed to the *Employer* under this contract.

28.2. The *Consultant* promptly notifies and provides full particulars to the *Employer* if such conflict referred to in clause 28.1 arises or may reasonably be foreseen as arising.

28.3. The *Employer* may terminate the *Consultant's* obligation to Provide the Services immediately under reason R11 and/or to take such other steps the *Employer* deems necessary where, in the reasonable opinion of the *Employer*, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the *Consultant* and the duties owed to the *Employer* under this contract.

Option Z9 Publicity and Branding

[applies]

Insert new clauses:

29.1 The *Consultant* does not

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

without approval of the *Employer*.

29.2. The *Employer* is entitled to publicise the contract in accordance with any legal obligation upon the *Employer*, including any examination of the contract by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

Option Z10 Freedom of information

[applies]

Insert new clauses:

- 26.1 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 Code of Practice on Government Information, 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.

26.2 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 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.
- 26.3 The *Employer* is responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.
 - 26.4 The *Consultant* does not respond directly to a Request for Information unless authorised to do so by the *Employer*.
 - 26.5 The *Consultant* acknowledges that the *Employer* may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000, be obliged to disclose information without consulting or obtaining consent from the *Consultant* or despite the *Consultant* having expressed negative views when consulted.

- 26.6 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.

Option Z13 Confidentiality and Information Sharing

[applies]

Insert a new clause

- 26.7 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this contract, each Party shall
 - treat the other Party's Confidential Information as confidential and safeguard it accordingly,
 - not disclose the other Party's Confidential Information to any other person without prior written consent,
 - immediately notify the other Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information,
 - notify the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may be a criminal offence under the Bribery Act 2010,

26.8 The clause above shall not apply to the extent that

- such disclosure is a requirement of the Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause Z10 (Freedom of Information),
- such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner,
- such information was obtained from a third party without obligation of confidentiality,
- such information was already in the public domain at the time

of disclosure otherwise than by a breach of this contract or

- it is independently developed without access to the other Party's Confidential Information.
- 26.9 The *Consultant* may only disclose the Employer Confidential Information to the people who are directly involved in the carrying out of the *services* and who need to know the information and shall ensure that such people are aware of and shall comply with these obligations as to confidentiality.

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

- 26.10 The *Consultant* may only disclose the Employer Confidential Information to *Consultant's* people who need to know the information, and shall ensure that such people are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any default, act or omission of any *Consultant's* people causes or contributes (or could cause or contribute) to the *Consultant* breaching its obligations as to confidentiality under or in connection with this contract, the *Consultant* shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any *Consultant's* people, the *Consultant* shall provide such evidence to the *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's* people, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with *Consultant's* people in connection with obligations as to confidentiality.
- 26.11 At the written request of the *Employer*, the *Consultant* shall procure that those members of the *Consultant's* people identified in the *Employer's* request signs a confidentiality undertaking prior to commencing any work in accordance with this contract.
- 26.12 Nothing in this contract shall prevent the *Employer* from disclosing the *Consultant's* Confidential Information
 - to any Crown Body or any other Contracting Bodies. All Crown

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

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

and for the purposes of the foregoing, disclosure of the Consultant's Confidential Information shall be on a confidential basis and subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the *Employer* under this clause 26.12.

- 26.13 The *Employer* shall use all reasonable endeavours to ensure that any government department, Contracting Body, people, 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.

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

26.15 The *Employer* may disclose the Consultant's Confidential Information

- to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement,
- to the extent that the *Employer* (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions.

Option Z14 Security Requirements

[does not apply]

Option Z16 Tax Compliance

[applies]

Insert new clauses:

- 26.16 The *Consultant* represents and warrants that at the Contract Date, it has notified the *Employer* in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance.
- 26.17 If, at any point prior to the *defects date*, an Occasion of Tax Non-Compliance occurs, the *Consultant* shall
 - notify the *Employer* in writing of such fact within 5 days of its occurrence and
 - promptly provide to the *Employer*
 - details of the steps which the *Consultant* is taking to address the Occasions of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant and
 - such other information in relation to the Occasion of Tax Non-Compliance as the *Employer* may reasonably require.

Option Z20 The Contracts (Rights of Third Parties) Act 1999

[does not apply]

Option Z22 Fair payment

[applies]

Insert a new clause:

56.1 The *Consultant* assesses the amount due to a Subconsultant without taking into account the amount certified by the *Employer*.

56.2 The *Consultant* includes in the contract with each Subconsultant

- a period for payment of the amount due to the Subconsultant not greater than 5 days after the final date for payment in this contract. The amount due includes, but is not limited to, payment for work which the 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 (including this requirement to flow down, except that the period for payment is to be not greater than 9 days after the final date for payment in this contract and
- a provision requiring the Subconsultant to assess the amount due to a subsubconsultant without taking into account the amount paid by the *Consultant*.

Option Z26 Building Information Modelling

[does not apply]

Option Z42 The Housing Grants, Construction and Regeneration Act 1996

[applies]

Add an additional clause:

Y2.5:

Y2.5 If Option Y(UK)2 is said to apply then notwithstanding that this contract relates to the carrying out of construction operations other

than in England or Wales or Scotland, the Act is deemed to apply to this contract.

Option Z44 Intellectual Property Rights

[applies]

Delete clause 70 and insert the following clause

In this clause 70 only:

“Document” means all designs, drawings, specifications, software, electronic data,

photographs, plans, surveys, reports, and all other documents and/or information prepared by or on behalf of the *Consultant* in relation to this contract.

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

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

70.3 In the event that the *Consultant* does not own the copyright or any Intellectual Property Rights in any Document the *Consultant* uses all reasonable endeavours to procure the right to grant such rights to the *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.

70.4 The *Consultant* waives any moral right to be identified as author of the Documents in accordance with section 77, Copyright

Designs and Patents Acts 1988 and any right not to have the Documents subjected to derogatory treatment in accordance with section 8 of that Act as against the *Employer* or any licensee or assignee of the *Employer*.

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

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

- 70.7 The *Consultant* supplies copies of the Documents to the *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 services.
- 70.8 After the termination or conclusion of the *Consultant's* employment hereunder, the *Consultant* supplies the *Employer* with copies and/or computer discs of such of the Documents as the *Employer* may from time to time request and the *Employer* pays the *Consultant's* reasonable costs for producing such copies or discs.
- 70.9 In carrying out the *services* 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.
- 70.10 The Parties do not disclose information obtained in connection with the *services* except where necessary to carry out their duties under this contract.

Option Z45 HMRC Requirements

[does not apply]

Option Z46 MoD DEFCON Requirements

[applies]

Insert a new clause 18B

This clause is to incorporate MoD special terms and conditions in the form of DEFCONs and DEFORMs as detailed at <https://www.gov.uk/guidance/knowledge-in-defence-kid>

The following DEFCONs apply:

- DEFCON 532A – Protection of Personal Data (where Personal Data is not being processed on behalf of the Authority)
- DEFCON 539 – Transparency
- DEFCON 658 - Cyber

Option Z47 Small and Medium Sized Enterprises (SMEs)

[does not apply]

Option Z48 Apprenticeships

[does not apply]

Option Z49 Change of Control

[applies]

Insert new clauses:

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

90.5 The *Employer* may terminate the *Consultant's* obligation to Provide the Services (which shall take effect as termination under the second bullet point of clause 90.3) within six months from

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

Option Z50 Financial Standing

[applies]

90.6 The *Employer* may terminate the *Consultant's* obligation to Provide the Service (which shall take effect as termination the second bullet point of clause 90.3) where in the reasonable opinion of the *Employer* there is a material detrimental change in the financial standing and/or the credit rating of the *Consultant* which:

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

Option Z51 Financial Distress

[Does not apply]

Option Z52 Records, audit access and open book data

[applies]

Insert new clauses:

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

26A.2 The *Consultant*

- keeps the records and accounts referred to in clause 26A.1 in accordance with Law
- affords any Auditor access to the records and accounts referred to in clause 26A.1 at the *Consultant's* premises and/or provides records and accounts (including copies of the *Consultant's* published accounts) or copies of the same, as may be required by any Auditor from time to time during the *Consultant* Providing the Service and the liability period under the contract in order that the Auditor may carry out an inspection to assess compliance by the *Consultant* and/or its Subconsultants of any of the *Consultant's* obligations under this contract including in order to:
 - verify the accuracy of any amounts payable by the *Employer* under this contract (and proposed or actual variations to them in accordance with this contract)
 - verify the costs of the *Consultant* (including the costs of all Subconsultants and any third-party suppliers) in connection with Providing the Services
 - identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or

threatened breach of security and in these circumstances the *Employer* has no obligation to inform the *Consultant* of the purpose or objective of its investigations

- obtain such information as is necessary to fulfil the *Employer's* obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General
- enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Employer* has used its resources
- subject to the *Consultant's* rights in respect of Consultant's Confidential Information, the *Consultant* provides the Auditor on demand with all reasonable co-operation and assistance in respect of
 - all reasonable information requested by the *Employer* within the scope of the audit
 - reasonable access to sites controlled by the *Consultant* and to any *Consultant's* equipment used to Provide the Services
 - access to the *Consultant's* personnel.

26A.3 The Parties bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 26A, unless the audit reveals a default by the *Consultant* in which case the *Consultant* reimburses the *Employer* for the *Employer's* reasonable costs incurred in relation to the audit.

26A.4 This clause does not constitute a requirement or agreement for the purposes of section 6(3)(d) of the National Audit Act 1983 for the examination, certification or inspection of the accounts of the *Consultant* and the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the *Consultant* is not a function exercisable under this contract.

Option Z53 Staff Transfer

[applies]

The Parties agree that:

- where the commencement of the provision of the *service* or any part thereof results in one or more Relevant Transfers, Contract Schedule 3 shall apply as follows:
- where the Relevant Transfer involves the transfer of Transferring Former Consultant Employees, Part B of the Contract Schedule 3 shall apply;

- Part D of Contract Schedule 3 shall apply on the expiry or termination of the *service* or any part of thereof.

Option Z100 Data Protection

[Does not apply]

Option Z101 Cyber Essentials

[applies]

Insert new clause Z101 as follows:

The *Employer* and the *Consultant* shall comply with the provisions of Schedule 2

Other *Additional conditions of contract*

Z102 – Option Year (see Schedule 1)

Z103 – Access to US Bases (see Schedule 1)

Part two – Data provided by the *Consultant*

- The *Consultant* is
 - Name WSP UK Ltd
 - Address WSP House, 70 Chancery Lane, London, WC2A 1AF
- The *key people* are
 - Name: **Redacted under FOIA Section 40, Personal Information**
 - Job: Client Relationship Manager
 - Responsibilities: Management, Performance Improvement
 - Experience: 40 years experience. Qualified to ACIOB ARICS FCinstCES AClarb
- The *staff rates* are: As per Appendix 3 – Pricing Workbook, rates per Establishment.

Name/job title	Rate
[]	[]
[]	[]
[]	[]
- The following matters will be included in the Risk Register
N/A

If the *Consultant* is to decide the *completion date* for the whole of the *services*

The *completion date* for the whole of the *services* is N/A

If the programme is to be identified in the Contract Data

- The programme identified in the Contract Data is N/A

If the *Consultant* requires additional access

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

access to	<i>access date</i>
N/A	N/A

SCHEDULE 1 - ADDITIONAL PROJECT-SPECIFIC 'Z' CLAUSES

This schedule outlines the additional Project-specific conditions that have been included within this contract.

Z102 – Option Year

Insert new clause Z102 as follows:

The *Consultant* hereby grants to the *Employer* an irrevocable option to extend the term of this contract for a period of one-year, maintaining all terms and conditions outlined in this contract.

This additional one-year term will take effect, provided that the *Employer* exercises this option by written notice by no later than at least sixty (60) days in advance of the contract expiration.

The pricing of staff rates under the option year will be fixed, calculated using the initial staff rates used adjusted in line with the Consumer Price Index (CPI) - as published by the Office for National Statistics. This will be the pricing used by both parties if the *Employer* takes up the option year.

The *Employer* shall not be obliged to exercise the option year

Z103 – Access to US Bases

Insert new clause Z103 as follows:

Before unescorted entry to an USAF Base will be allowed to a Consultant's employee each must be in possession of US Forces in Europe Installation Pass alongside holding a UK Security Clearance. A US Forces in Europe Installation Pass can be obtained by completing a Base Pass Request form provided by The Employer. Applications should be completed as early as possible during the mobilisation period.

Unescorted access will be to all areas on the base with the exception of those areas considered being sensitive or restricted. Access to 'Restricted' Areas will be by USAF escort from the designated entry point.

Passes will remain the property of the *Employer* or End User and shall be surrendered on demand or on completion of the services.

Anyone who cannot produce a proper pass when required to do so by any appropriate agent of the *Employer* or End User, or who contravenes any conditions based on which a pass was issued, may be refused admission to the Establishment or be required to leave it if already there.

The *Consultant* shall promptly return any pass if at any time the *Employer*, SM or End User so requires or if the person for whom it was issued ceases to be involved in the performance of the services, except for temporary cessations. The *Consultant* shall promptly return all passes on completion or termination of the Contract.

Any passes issued for entry to an Establishment must be removed from site on leaving the premises and must not under any circumstances be displayed outside the site.

The *Consultant* shall make due allowance for the time needed to obtain such approvals bearing in mind that approvals obtained from one Establishment are not necessarily valid for another.

The *Consultant's* representatives shall comply with such rules, regulations and requirements as may be in force whilst at a site.

Notwithstanding the provisions above if, in the opinion of the *Employer*, any representative of the *Consultant* shall misconduct their self, or it shall not be in the public interest for any person to be employed or engaged by the *Consultant*, the *Consultant* shall remove such person without delay on being required to do so by the *Employer* and shall cause the works to be performed by such other person as may be necessary. The *Employer* will not be liable for any costs incurred in complying with such an instruction. Any decision of the *Employer* under this condition shall be final and conclusive.

SCHEDULE 2 CYBER ESSENTIALS

CYBER ESSENTIALS SCHEME

1. DEFINITIONS

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

"Cyber Essentials Scheme"	the Cyber Essentials Scheme developed by the Government which provides a clear statement of the basic controls all organisations should implement to mitigate the risk from common internet-based threats (as may be amended from time to time). Details of the Cyber Essentials Scheme can be found here: https://www.ncsc.gov.uk/cyberessentials/overview ;
"Cyber Essentials Basic Certificate"	the certificate awarded on the basis of self-assessment, verified by an independent certification body, under the Cyber Essentials Scheme and is the basic level of assurance;
"Cyber Essentials Certificate"	Cyber Essentials Basic Certificate, the Cyber Essentials Plus Certificate or the Cyber Essential Scheme certificate equivalent to be provided by the <i>Consultant</i> as set out in the Framework Data Sheet;
"Cyber Essential Scheme Data"	sensitive and personal information and other relevant information as referred to in the Cyber Essentials Scheme; and
"Cyber Essentials Plus Certificate"	the certification awarded on the basis of external testing by an independent certification body of the <i>Consultant's</i> cyber security approach under the

Cyber Essentials Scheme and is a more advanced level of assurance.

2. CYBER ESSENTIALS OBLIGATIONS

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

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

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

2.3.1 a valid and current Cyber Essentials Certificate before the *Consultant* Processes any such Cyber Essentials Scheme Data; and

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

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

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

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

SCHEDULE 3 STAFF TRANSFER

1. Definitions

1.1. In this Schedule 3, the following definitions shall apply:

“Consultant’s Final Personnel List”	means a list provided by the <i>Consultant</i> of all staff who will transfer under the Employment Regulations on the Relevant Transfer Date;
“Consultant’s Provisional Personnel List”	means a list prepared and updated by the <i>Consultant</i> of all staff who are engaged in or wholly or mainly assigned to the provision of the <i>service</i> or any relevant part of the <i>service</i> which it is envisaged as at the date of such list will no longer be provided by the <i>Consultant</i>
“Employee Liabilities”	means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following: <ul style="list-style-type: none">a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;b) unfair, wrongful or constructive dismissal compensation;c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;d) compensation for less favourable treatment of part-time workers or fixed term employees;e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the <i>Employer</i> or the Replacement Consultant to a Transferring

	<p>Consultant Employee which would have been payable by the <i>Consultant</i> or the Sub-Consultant if such payment should have been made prior to the Service Transfer Date;</p> <p>f) claims whether in tort, contract or statute or otherwise;</p> <p>g) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;</p>
"New Fair Deal"	the revised Fair Deal position set out in the HM Treasury guidance: "Fair Deal for staff pensions: staff transfer from central government" issued in October 2013;
"Notified Sub-Consultant"	means a Sub-Consultant identified in Annex 1 of this Contract Schedule 3 to whom Transferring Employer's Employees and/or Transferring Former Consultant Employees will transfer on a Relevant Transfer Date;
"Principles of Good Employment Practice"	means the guidance published by the Cabinet Office and found at www.gov.uk/government/publications/principles-of-good-employment-practice ;
"Replacement Consultant"	means any third party provider of Replacement Services appointed by or at the direction of the <i>Employer</i> from time to time or where the <i>Employer</i> is providing Replacement Services for its own account, shall also include the <i>Employer</i>
"Replacement Services"	means any services which are substantially similar to any of the <i>service</i> and which the <i>Employer</i> receives in substitution for any of the <i>service</i> following the end of the <i>service period</i> or earlier termination, whether those services are provided by the <i>Employer</i> internally and/or by any third party;
"Replacement Sub-Consultant"	means a Subconsultant of the Replacement Consultant to whom Transferring Consultant Employees will transfer on a Service Transfer Date (or any sub-Consultant of any such sub-Consultant);
"Service Transfer"	any transfer of the <i>service</i> (or any part of the <i>service</i>), for whatever reason, from the

Consultant or any Subconsultant to a Replacement Consultant or a Replacement Sub-Consultant

“Service Transfer Date”

means the date of a Service Transfer;

"Staffing Information"

means, in relation to all persons identified on the Consultant's Provisional Personnel List or Consultant's Final Personnel List, as the case may be, such information as the *Employer* may reasonably request (subject to all applicable provisions of the Data Protection Legislation), but including in an anonymised format:

- a) their ages, dates of commencement of employment or engagement and gender;
- b) details of whether they are employed, self employed Consultants or consultants, agency workers or otherwise;
- c) details of contracted working hours;
- d) the identity of the employer or relevant contracting party;
- e) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- f) their wages, salaries and profit sharing arrangements as applicable;
- g) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- h) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- i) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- j) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of

	employment (or relevant standard contracts if applied generally in respect of such employees); and
	k) any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;
“Transferring Consultant Employees”	means those employees of the <i>Consultant</i> and/or the Sub-Consultants to whom the Employment Regulations will apply on the Service Transfer Date
"Transferring Employer Employees"	means those employees of the <i>Employer</i> to whom the Employment Regulations will apply on the Relevant Transfer Date;

Interpretation

Where a provision in this Annex imposes an obligation on the *Consultant* to provide an indemnity, undertaking or warranty, the *Consultant* shall procure that each of its Sub-Consultants shall comply with such obligation and provide such indemnity, undertaking or warranty to the *Employer*, Former Consultant, Replacement Consultant or Replacement Sub-Consultant, as the case may be.

PART B

TRANSFERRING FORMER CONSULTANT EMPLOYEES AT COMMENCEMENT OF THE PROVISION OF SERVICES

1. Relevant Transfers

1.1. The parties agree that:

- 1.1.1. the commencement of the provision of the *service* or of any relevant part of the *service* will be a Relevant Transfer in relation to the Transferring Former Consultant Employees; and
- 1.1.2. as a result of the operation of the Employment Regulations, the contracts of employment between each Former Consultant and the Transferring Former Consultant Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the *Consultant* and/or Notified Sub-Consultant and each such Transferring Former Consultant Employee.

- 1.2. The *Employer* shall procure that each Former Consultant shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Consultant Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the *Consultant* shall make, and the *Employer* shall procure that each Former Consultant makes, any necessary apportionments in respect of any periodic payments.

2. Former Consultant Indemnities

- 2.1. Subject to paragraph 1.2 of Part B of this Schedule 3, the *Employer* shall procure that each Former Consultant shall indemnify the *Consultant* and any Notified Sub-Consultant against any Employee Liabilities in respect of any Transferring Former Consultant Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

- 2.1.1. any act or omission by the Former Consultant arising before the Relevant Transfer Date;
- 2.1.2. the breach or non-observance by the Former Consultant arising before the Relevant Transfer Date of:
 - a) any collective agreement applicable to the Transferring Former Consultant Employees; and/or
 - b) any custom or practice in respect of any Transferring Former Consultant Employees which the Former Consultant is contractually bound to honour.

-
- 2.1.3. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- a) in relation to any Transferring Former Consultant Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - b) in relation to any employee who is not a Transferring Former Consultant Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Consultant to the *Consultant* and/or any Notified Sub-Consultant as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
- 2.1.4. a failure of the Former Consultant to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Consultant Employees in respect of the period to (but excluding) the Relevant Transfer Date;
- 2.1.5. any claim made by or in respect of any person employed or formerly employed by the Former Consultant other than a Transferring Former Consultant Employee for whom it is alleged the *Consultant* and/or any Notified Sub-Consultant as appropriate may be liable by virtue of this contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
- 2.1.6. any claim made by or in respect of a Transferring Former Consultant Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Consultant Employee relating to any act or omission of the Former Consultant in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the *Consultant* or any Sub-Consultant to comply with regulation 13(4) of the Employment Regulations.
- 2.2. The indemnities in paragraph 2.1 of Part B of this Schedule 3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the *Consultant* or any Sub-Consultant whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
- 2.2.1. arising out of the resignation of any Transferring Former Consultant Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the *Consultant* or any Sub-Consultant to occur in the period from (and including) the Relevant Transfer Date); or
 - 2.2.2. arising from the failure by the *Consultant* and/or any Sub-Consultant to comply with its obligations under the Employment Regulations).
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2.3. If any person who is not identified by the *Employer* as a Transferring Former Consultant Employee claims, or it is determined in relation to any person who is not identified by the *Employer* as a Transferring Former Consultant Employee, that his/her contract of employment has been transferred from a Former Consultant to the *Consultant* and/or any Notified Sub-Consultant pursuant to the Employment Regulations or the Acquired Rights Directive then:

2.3.1. the *Consultant* shall, or shall procure that the Notified Sub-Consultant shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the *Employer* and, where required by the *Employer*, to the Former Consultant; and

2.3.2. the Former Consultant may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the *Consultant* and/or the Notified Sub-Consultant or take such other reasonable steps as the Former Consultant considers appropriate to deal with the matter provided always that such steps are in compliance with the *law of the contract*.

2.4. If an offer referred to in paragraph 2.3.2 of Part B of this Schedule 3 is accepted, or if the situation has otherwise been resolved by the Former Consultant and/or the *Employer*, the *Consultant* shall, or shall procure that the Notified Sub-Consultant shall, immediately release the person from his/her employment or alleged employment.

2.5. If by the end of the 15 Working Day period specified in paragraph 2.3.2 of Part B of this Schedule 3:

2.5.1. no such offer of employment has been made;

2.5.2. such offer has been made but not accepted; or

2.5.3. the situation has not otherwise been resolved;

the *Consultant* and/or any Notified Sub-Consultant may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2.6. Subject to the *Consultant* and/or any Notified Sub-Consultant acting in accordance with the provisions of paragraphs 2.3 to 2.5 of Part B of this Schedule 3 and in accordance with all applicable proper employment procedures set out in the *law of the contract*, the *Employer* shall procure that the Former Consultant indemnifies the *Consultant* and/or any Notified Sub-Consultant (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 2.5 of Part B of this Schedule 3 provided that the *Consultant* takes, or shall procure that the Notified Sub-Consultant takes, all reasonable steps to minimise any such Employee Liabilities.

2.7. The indemnity in paragraph 2.6 of Part B of this Schedule 3

2.7.1. shall not apply to:

a) any claim for

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- a) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - b) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees;

in any case in relation to any alleged act or omission of the *Consultant* and/or any Sub-Consultant; or

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

2.7.2. shall apply only where the notification referred to in paragraph 2.3.2 of Part B of this Schedule 3 is made by the *Consultant* and/or any Notified Sub-Consultant (as appropriate) to the *Employer* and, if applicable, the Former Consultant, within six (6) months of the Contract Date.

2.8. If any such person as is described in paragraph 2.3 of Part B of this Schedule 3 is neither re-employed by the Former Consultant nor dismissed by the *Consultant* and/or any Notified Sub-Consultant within the time scales set out in paragraph 2.5 of Part B of this Schedule 3, such person shall be treated as having transferred to the *Consultant* or Notified Sub-Consultant and the *Consultant* shall, or shall procure that the Notified Sub-Consultant shall, comply with such obligations as may be imposed upon it under the *law of the contract*.

3. Consultant Indemnities and Obligations

3.1. Subject to paragraph 3.2 of Part B of this Schedule 3, the *Consultant* shall indemnify the *Employer* and/or the Former Consultant against any Employee Liabilities in respect of any Transferring Former Consultant Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

- 3.1.1. any act or omission by the *Consultant* or any Sub-Consultant whether occurring before, on or after the Relevant Transfer Date;
- 3.1.2. the breach or non-observance by the *Consultant* or any Sub-Consultant on or after the Relevant Transfer Date of:
 - a) any collective agreement applicable to the Transferring Former Consultant Employee; and/or
 - b) any custom or practice in respect of any Transferring Former Consultant Employees which the *Consultant* or any Sub-Consultant is contractually bound to honour;
- 3.1.3. any claim by any trade union or other body or person representing any Transferring Former Consultant Employees arising from or connected with any failure by the

Consultant or a Sub-Consultant to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

- 3.1.4. any proposal by the *Consultant* or a Sub-Consultant prior to the Relevant Transfer Date to change the terms and conditions of employment or working conditions of any Transferring Former Consultant Employees on or after their transfer to the *Consultant* or a Sub-Consultant (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Consultant Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 3.1.5. any statement communicated to or action undertaken by the *Consultant* or a Sub-Consultant to, or in respect of, any Transferring Former Consultant Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the *Employer* and/or the Former Consultant in writing;
- 3.1.6. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - a) in relation to any Transferring Former Consultant Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - b) in relation to any employee who is not a Transferring Former Consultant Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Consultant to the *Consultant* or a Sub-Consultant, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 3.1.7. a failure of the *Consultant* or any Sub-Consultant to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Consultant Employees in respect of the period from (and including) the Relevant Transfer Date; and
- 3.1.8. any claim made by or in respect of a Transferring Former Consultant Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Consultant Employee relating to any act or omission of the *Consultant* or any Sub-Consultant in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Consultant's failure to comply with its obligations under regulation 13 of the Employment Regulations.

3.2. The indemnities in paragraph 3.1 of Part B of this Schedule 3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Consultant

whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Consultant's failure to comply with its obligations under the Employment Regulations.

- 3.3. The *Consultant* shall comply, and shall procure that each Sub-Consultant shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Consultant shall perform and discharge, all its obligations in respect of all the Transferring Former Consultant Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the *Consultant* and the Former Consultant.

4. Information

- 4.1. The *Consultant* shall, and shall procure that each Sub-Consultant shall, promptly provide to the *Employer* and/or at the *Employer's* direction, the Former Consultant, in writing such information as is necessary to enable the *Employer* and/or the Former Consultant to carry out their respective duties under regulation 13 of the Employment Regulations. The *Employer* shall procure that the Former Consultant shall promptly provide to the *Consultant* and each Notified Sub-Consultant in writing such information as is necessary to enable the *Consultant* and each Notified Sub-Consultant to carry out their respective duties under regulation 13 of the Employment Regulations.

5. Principles of Good Employment Practice

- 5.1. The *Consultant* shall, and shall procure that each Sub-Consultant shall, comply with any requirement notified to it by the *Employer* relating to pensions in respect of any Transferring Former Consultant Employee as set down in:
- 5.2. the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
- 5.3. HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
- 5.4. HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
- 5.5. the New Fair Deal.

6. Procurement Obligations

- 6.1. Notwithstanding any other provisions of this Part B of this Schedule 3, where in this Part B the *Employer* accepts an obligation to procure that a Former Consultant does or does not do something, such obligation shall be limited so that it extends only to the extent that the *Employer's* contract with the Former Consultant contains a contractual right in that regard which

the *Employer* may enforce, or otherwise so that it requires only that the *Employer* must use reasonable endeavours to procure that the Former Consultant does or does not act accordingly.

7. Pensions

7.1. The *Consultant* shall, and shall procure that each Sub-Consultant shall, comply with the pensions provisions in the following Annex.

ANNEX TO PART B: PENSIONS

1. Participation

1.1. The *Consultant* undertakes to enter into the Admission Agreement.

1.2. The *Consultant* and the *Employer*:

1.2.1. undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the *Consultant* to participate in the Schemes in respect of the Fair Deal Employees;

1.2.2. agree that the *Employer* is entitled to make arrangements with the body responsible for the Schemes for the *Employer* to be notified if the *Consultant* breaches the Admission Agreement;

1.2.3. notwithstanding Paragraph 1.2.2 of this Annex, the *Consultant* shall notify the *Employer* in the event that it breaches the Admission Agreement; and

1.2.4. agree that the *Employer* may terminate this Call Off Contract for default in the event that the *Consultant* breaches the Admission Agreement.

1.3. The *Consultant* shall bear its own costs and all costs that the *Employer* reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the *Consultant* participating in the Schemes.

2. Future Service Benefits

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2.1. If the *Consultant* is rejoining the Schemes for the first time, the *Consultant* shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.

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2.2. If staff have already been readmitted to the Schemes, the *Consultant* shall procure that the Fair Deal Employees shall be either admitted into or offered continued membership of the relevant section of the Schemes that they currently contribute to or were eligible to join immediately prior to the Relevant Transfer Date and the *Consultant* shall procure that the Fair Deal Employees shall continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.

2.3. The *Consultant* undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the *Employer*, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the *Employer* in accordance with relevant

guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.

2.4. The parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

3. Funding

3.1. The *Consultant* undertakes to pay to the Schemes such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.

3.2. The *Consultant* shall indemnify and keep indemnified the *Employer* on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and non-payment or the late payment of any sum payable by the *Consultant* to or in respect of the Schemes.

4. Provision of Information

4.1. The *Consultant* and the *Employer* respectively undertake to each other:

4.1.1. to provide all information which the other party may reasonably request concerning matters:

- a) referred to in this Annex; and
- b) set out in the Admission Agreement

and shall supply such information as expeditiously as possible; and

4.1.2. not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other party (not to be unreasonably withheld or delayed).

5. Indemnities

5.1. The *Consultant* undertakes to the *Employer* to indemnify and keep indemnified the *Employer* on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

6. Employer Obligation

6.1. The *Consultant* shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

7. Subsequent Transfers

7.1. The *Consultant* shall:

- 7.1.1. not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer; and
- 7.1.2. provide all such co-operation and assistance as the Replacement Consultant and/or the *Employer* may reasonably require to enable the Replacement Consultant to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and.
- 7.1.3. for the period either:
 - a) after notice (for whatever reason) is given, in accordance with the other provisions of this contract, to terminate the contract or any part of the *service*; or
 - b) after the date which is two (2) years prior to the date of expiry of this contract,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Contract or the *Employer*, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the *Employer* (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

PART D

EMPLOYMENT EXIT PROVISIONS

1. Pre-service Transfer Obligations

1.1. The *Consultant* agrees that within twenty (20) Working Days of the earliest of:

- 1.1.1. receipt of a notification from the *Employer* of a Service Transfer or intended Service Transfer;
- 1.1.2. receipt of the giving of notice of early termination or any partial termination of this contract;
- 1.1.3. the date which is twelve (12) months before the end of the *service period*; and
- 1.1.4. receipt of a written request of the *Employer* at any time (provided that the *Employer* shall only be entitled to make one such request in any six (6) month period),

it shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, the *Consultant's* Provisional Personnel List, together with the Staffing Information in relation to the *Consultant's* Provisional Personnel List and it shall provide an updated *Consultant's* Provisional Personnel List at such intervals as are reasonably requested by the *Employer*.

1.2. At least twenty (20) Working Days prior to the Service Transfer Date, the *Consultant* shall provide to the *Employer* or at the direction of the *Employer* to any Replacement *Consultant* and/or any Replacement Sub-*Consultant*:

- 1.2.1. the *Consultant's* Final Personnel List, which shall identify which of the Staff are Transferring *Consultant* Employees; and
- 1.2.2. the Staffing Information in relation to the *Consultant's* Final Personnel List (insofar as such information has not previously been provided).

1.3. The *Employer* shall be permitted to use and disclose information provided by the *Consultant* under paragraphs 1.1 and 1.2 of Part D of this Schedule 3 for the purpose of informing any prospective Replacement *Consultant* and/or Replacement Sub-*Consultant*.

1.4. The *Consultant* warrants, for the benefit of the *Employer*, any Replacement *Consultant*, and any Replacement Sub-*Consultant* that all information provided pursuant to paragraphs 1.1 and 1.2 of Part D of this Schedule 3 shall be true and accurate in all material respects.

1.5. From the date of the earliest event referred to in paragraphs 1.1.1 to 1.1.3 of Part D of this Schedule 3 the *Consultant* agrees, that it shall not, and agrees to procure that each Sub-*Consultant* shall not, assign any person to the provision of the Services who is not listed on the *Consultant's* Provisional Personnel List and shall not without the approval of the *Employer* (not to be unreasonably withheld or delayed):

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- 1.5.1. replace or re-deploy any Staff listed on the Consultant's Provisional Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
 - 1.5.2. make, promise, propose or permit any material changes to the terms and conditions of employment of the Staff (including any payments connected with the termination of employment);
 - 1.5.3. increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Staff save for fulfilling assignments and projects previously scheduled and agreed;
 - 1.5.4. introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Consultant's Provisional Personnel List;
 - 1.5.5. increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
 - 1.5.6. terminate or give notice to terminate the employment or contracts of any persons on the Consultant's Provisional Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-Consultant shall promptly notify, the *Employer* or, at the direction of the *Employer*, any Replacement Consultant and any Replacement Sub-Consultant of any notice to terminate employment given by the *Consultant* or relevant Sub-Consultant or received from any persons listed on the Consultant's Provisional Personnel List regardless of when such notice takes effect.

- 1.6. During the *service period*, the *Consultant* shall provide to the *Employer* any information the *Employer* may reasonably require relating to any individual employed, assigned or engaged in providing the Services (subject to any limitations imposed by the Data Protection Legislation) including without limitation the Staffing Information and, upon reasonable request by the *Employer* and subject only to any limitation imposed by the Data Protection Legislation, the *Consultant* shall provide, and shall procure that each Sub-Consultant shall provide, the *Employer* or, at the direction of the *Employer* to a Replacement Consultant and/or any Replacement Sub-Consultant with access (on reasonable notice and during normal working hours) to such employment records as the *Employer* reasonably requests and shall allow the *Employer* or at the *Employer's* direction, the Replacement Consultant and/or any Replacement Sub-Consultant to have copies of any such documents.
 - 1.7. The *Consultant* shall provide, and shall procure that each Sub-Consultant shall provide, all reasonable cooperation and assistance to the *Employer*, any Replacement Consultant and/or any Replacement Sub-Consultant to ensure the smooth transfer of the Transferring Consultant Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Consultant Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the *Consultant* shall provide, and shall procure that each Sub-Consultant shall provide, the
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Employer or, at the direction of the *Employer*, to any Replacement Consultant and/or any Replacement Sub-Consultant (as appropriate), in respect of each person on the Consultant's Final Personnel List who is a Transferring Consultant Employee:

- 1.7.1. the most recent month's copy pay slip data;
- 1.7.2. details of cumulative pay for tax and pension purposes;
- 1.7.3. details of cumulative tax paid;
- 1.7.4. tax code;
- 1.7.5. details of any voluntary deductions from pay; and
- 1.7.6. bank/building society account details for payroll purposes.

2. Employment Regulations Exit Provisions

- 2.1. The *Employer* and the *Consultant* acknowledge that subsequent to the *starting date*, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or partial termination of this contract or otherwise) resulting in the Services being undertaken by a Replacement Consultant and/or a Replacement Sub-Consultant. Such change in the identity of the *Consultant* of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The *Employer* and the *Consultant* further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the *Consultant* and the Transferring Consultant Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Consultant and/or a Replacement Sub-Consultant (as the case may be) and each such Transferring Consultant Employee.
- 2.2. The *Consultant* shall, and shall procure that each Sub-Consultant shall, comply with all its obligations in respect of the Transferring Consultant Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Consultant shall perform and discharge, all its obligations in respect of all the Transferring Consultant Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the *Consultant* and/or the Sub-Consultant (as appropriate); and (ii) the Replacement Consultant and/or Replacement Sub-Consultant.
- 2.3. Subject to paragraph 2.4 of Part D of this Schedule 3, the *Consultant* shall indemnify the *Employer* and/or the Replacement Consultant and/or any Replacement Sub-Consultant against any Employee Liabilities in respect of any Transferring Consultant Employee (or, where

applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

- 2.3.1. any act or omission of the *Consultant* or any Sub-Consultant whether occurring before, on or after the Service Transfer Date;
- 2.3.2. the breach or non-observance by the *Consultant* or any Sub-Consultant occurring on or before the Service Transfer Date of:
 - a) any collective agreement applicable to the Transferring Consultant Employees; and/or
 - b) any other custom or practice with a trade union or staff association in respect of any Transferring Consultant Employees which the *Consultant* or any Sub-Consultant is contractually bound to honour;
- 2.3.3. any claim by any trade union or other body or person representing any Transferring Consultant Employees arising from or connected with any failure by the *Consultant* or a Sub-Consultant to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- 2.3.4. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - a) in relation to any Transferring Consultant Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
 - b) in relation to any employee who is not a Transferring Consultant Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the *Consultant* to the *Employer* and/or Replacement Consultant and/or any Replacement Sub-Consultant, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- 2.3.5. a failure of the *Consultant* or any Sub-Consultant to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Consultant Employees in respect of the period up to (and including) the Service Transfer Date);
- 2.3.6. any claim made by or in respect of any person employed or formerly employed by the *Consultant* or any Sub-Consultant other than a Transferring Consultant Employee for whom it is alleged the *Employer* and/or the Replacement Consultant and/or any Replacement Sub-Consultant may be liable by virtue of this contract and/or the Employment Regulations and/or the Acquired Rights Directive; and

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- 2.3.7. any claim made by or in respect of a Transferring Consultant Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Consultant Employee relating to any act or omission of the *Consultant* or any Sub-Consultant in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the *Employer* and/or Replacement Consultant to comply with regulation 13(4) of the Employment Regulations.
- 2.4. The indemnities in paragraph 2.3 of Part D of this Schedule 3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Consultant and/or any Replacement Sub-Consultant whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
- 2.4.1. arising out of the resignation of any Transferring Consultant Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Consultant and/or any Replacement Sub-Consultant to occur in the period on or after the Service Transfer Date); or
- 2.4.2. arising from the Replacement Consultant's failure, and/or Replacement Sub-Consultant's failure, to comply with its obligations under the Employment Regulations.
- 2.5. If any person who is not a Transferring Consultant Employee claims, or it is determined in relation to any person who is not a Transferring Consultant Employee, that his/her contract of employment has been transferred from the *Consultant* or any Sub-Consultant to the Replacement Consultant and/or Replacement Sub-Consultant pursuant to the Employment Regulations or the Acquired Rights Directive, then:
- 2.5.1. the *Employer* shall procure that the Replacement Consultant shall, or any Replacement Sub-Consultant shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the *Consultant*; and
- 2.5.2. the *Consultant* may offer (or may procure that a Sub-Consultant may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Consultant and/or any and/or Replacement Sub-Consultant or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with the *law of the contract*.
- 2.6. If such offer is accepted, or if the situation has otherwise been resolved by the *Consultant* or a Sub-Consultant, the *Employer* shall procure that the Replacement Consultant shall, or procure that the Replacement Sub-Consultant shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 2.7. If after the fifteen (15) Working Day period specified in paragraph 2.5.2 of Part D of this Schedule 3 has elapsed:
- 2.7.1. no such offer of employment has been made;
- 2.7.2. such offer has been made but not accepted; or
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2.7.3. the situation has not otherwise been resolved;

the *Employer* shall advise the Replacement Consultant and/or Replacement Sub-Consultant, as appropriate that it may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2.8. Subject to the Replacement Consultant and/or Replacement Sub-Consultant acting in accordance with the provisions of paragraphs 2.5 to 2.7 of Part D of this Schedule 3 and in accordance with all applicable proper employment procedures set out in the *law of the contract*, the *Consultant* shall indemnify the Replacement Consultant and/or Replacement Sub-Consultant against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 1.7 of Part D of this Schedule 3 provided that the Replacement Consultant takes, or shall procure that the Replacement Sub-Consultant takes, all reasonable steps to minimise any such Employee Liabilities.

2.9. The indemnity in paragraph 2.8 of Part D of this Schedule 3

2.9.1. shall not apply to:

a) any claim for

a) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

b) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Replacement Consultant and/or Replacement Sub-Consultant; or

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

2.9.2. shall apply only where the notification referred to in paragraph 2.5.1 of Part D of this Schedule 3 is made by the Replacement Consultant and/or Replacement Sub-Consultant to the *Consultant* within six (6) months of the Service Transfer Date.

2.10. If any such person as is described in paragraph 2.5 of Part D of this Schedule 3 is neither re-employed by the *Consultant* or any Sub-Consultant nor dismissed by the Replacement Consultant and/or Replacement Sub-Consultant within the time scales set out in paragraphs 2.5 to 2.7 of Part D of this Schedule 3, such person shall be treated as a Transferring Consultant Employee and the Replacement Consultant and/or Replacement Sub-Consultant shall comply with such obligations as may be imposed upon it under the *law of the contract*.

2.11. The *Consultant* shall comply, and shall procure that each Sub-Consultant shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and

shall procure that each Sub-Consultant shall perform and discharge, all its obligations in respect of the Transferring Consultant Employees up to (but not including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

2.11.1. the *Consultant* and/or any Sub-Consultant; and

2.11.2. the Replacement Consultant and/or the Replacement Sub-Consultant.

2.12. The *Consultant* shall, and shall procure that each Sub-Consultant shall, promptly provide to the *Employer* and any Replacement Consultant and/or Replacement Sub-Consultant, in writing such information as is necessary to enable the *Employer*, the Replacement Consultant and/or Replacement Sub-Consultant to carry out their respective duties under regulation 13 of the Employment Regulations. The *Employer* shall procure that the Replacement Consultant and/or Replacement Sub-Consultant shall promptly provide to the *Consultant* and each Sub-Consultant in writing such information as is necessary to enable the *Consultant* and each Sub-Consultant to carry out their respective duties under regulation 13 of the Employment Regulations.

2.13. Subject to paragraph 2.14 of Part D of this Schedule 3, the *Employer* shall procure that the Replacement Consultant indemnifies the *Consultant* on its own behalf and on behalf of any Replacement Sub-Consultant and its sub-Consultants against any Employee Liabilities in respect of each Transferring Consultant Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Consultant Employee) arising from or as a result of:

2.13.1. any act or omission of the Replacement Consultant and/or Replacement Sub-Consultant;

2.13.2. the breach or non-observance by the Replacement Consultant and/or Replacement Sub-Consultant on or after the Service Transfer Date of:

a) any collective agreement applicable to the Transferring Consultant Employees; and/or

b) any custom or practice in respect of any Transferring Consultant Employees which the Replacement Consultant and/or Replacement Sub-Consultant is contractually bound to honour;

2.13.3. any claim by any trade union or other body or person representing any Transferring Consultant Employees arising from or connected with any failure by the Replacement Consultant and/or Replacement Sub-Consultant to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

2.13.4. any proposal by the Replacement Consultant and/or Replacement Sub-Consultant to change the terms and conditions of employment or working conditions of any

Transferring Consultant Employees on or after their transfer to the Replacement Consultant or Replacement Sub-Consultant (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Consultant Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

- 2.13.5. any statement communicated to or action undertaken by the Replacement Consultant or Replacement Sub-Consultant to, or in respect of, any Transferring Consultant Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the *Consultant* in writing;
- 2.13.6. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- a) in relation to any Transferring Consultant Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
 - b) in relation to any employee who is not a Transferring Consultant Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the *Consultant* or Sub-Consultant, to the Replacement Consultant or Replacement Sub-Consultant to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- 2.13.7. a failure of the Replacement Consultant or Replacement Sub-Consultant to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Consultant Employees in respect of the period from (and including) the Service Transfer Date; and
- 2.13.8. any claim made by or in respect of a Transferring Consultant Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Consultant Employee relating to any act or omission of the Replacement Consultant or Replacement Sub-Consultant in relation to obligations under regulation 13 of the Employment Regulations.
- 2.14. The indemnities in paragraph 2.3 of Part D of this Schedule 3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the *Consultant* and/or any Sub-Consultant (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the *Consultant* and/or any Sub-Consultant (as applicable) to comply with its obligations under the Employment Regulations.

SCHEDULE 3 - ANNEX 1: LIST OF NOTIFIED SUBCONSULTANTS

N/A