



**DATED** \_\_\_\_\_ **2025**

**THE SECRETARY OF STATE FOR JUSTICE (OF THE MINISTRY OF JUSTICE)**

**and**

**TURNER & TOWNSEND PROJECT MANAGEMENT LIMITED**

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**NEC3 PROFESSIONAL SERVICES CONTRACT  
(APRIL 2013 EDITION): OPTION G**

**FOR THE PROVISION OF**

**FUTURE PRISON SUPPLY SERVICE PROVIDERS**

**COST MANAGEMENT SERVICES**

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THIS AGREEMENT is made the \_\_\_\_\_ day of \_\_\_\_\_ 2025

**PARTIES:**

1. **THE SECRETARY OF STATE FOR JUSTICE (OF THE MINISTRY OF JUSTICE)** 102 Petty France, Westminster, London, SW1H 9AJ (the "**Employer**", with such term including its successors in title and assigns); and
2. **TURNER & TOWNSEND PROJECT MANAGEMENT LIMITED** which is a company incorporated in and in accordance with the laws of England (company number 02165592) whose registered office address is at Low Hall, Calverley Lane, Horsforth, Leeds, LS18 4GH, United Kingdom (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 project management and full design team services for the benefit of public sector bodies across a number of different Lots.
- (B) The *Consultant* was appointed to Lot 1 of the framework and executed the framework agreement (with reference number RM6165) which is dated 1 October 2021 (the "**Framework Agreement**"). In the Framework Agreement, the Consultant is identified as the "Supplier".
- (C) On 12 August 2024 the *Employer* invited the *Consultant* along with other framework suppliers to tender for the *Employer's* project management and full design team services requirements in accordance with the Call Off Procedure (as defined in the Framework Agreement).
- (D) On 25 October 2024 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 contract and the Framework Agreement.
- (F) The *Consultant* acknowledges that another supplier has been selected by the Employer pursuant to Lot 1 of the Framework Agreement to provide design services (the "**Client Designer**") and that the Consultant shall work with the Client Designer as set out in this contract.
- (G) The Consultant acknowledges that another supplier has been selected by the Employer pursuant to Lot 1 of the Framework Agreement to provide programme delivery services ("the **Programme Delivery Partner**") and that the Consultant shall work with the Programme Delivery Partner as set out in this contract.

**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 Call Off Contract is the entire agreement between the Parties in relation to the *services* and supersedes and extinguishes all prior arrangements, understandings, agreements, statements, representations or warranties (whether written or oral) relating thereto.
4. Neither party has been given, nor entered into this contract in reliance on any arrangements, understandings, agreements, statements, representations or warranties other than those expressly set out in this contract.
5. Nothing in clauses 3 or 4 shall exclude liability in respect of misrepresentations made fraudulently.
6. This contract is comprised of the following documents:
  - 6.1 this Form of Agreement;
  - 6.2 the NEC3 Professional Services Contract (April 2013) edition Option G (the "**NEC3 PSC**");
  - 6.3 the *conditions of contract* of the NEC3 PSC;
  - 6.4 the NEC3 PSC dispute resolution "Option W2" (used in the United Kingdom when the Housing Grants, Construction and Regeneration Act 1996 applies);
  - 6.5 Schedule 1: Contract Data;
  - 6.6 the secondary options of the NEC3 PSC as referred to in Contract Data: Part One (including Option Z: Additional conditions of contract set out at Schedule 2);
  - 6.7 Schedule 3: Scope;
  - 6.8 Schedule 4: Prices;
  - 6.9 Schedule 5: Template collateral warranty in favour of a beneficiary;
  - 6.10 Schedule 6: Template Deed of Guarantee;
  - 6.11 Schedule 7: Security Aspects Letter;
  - 6.12 not used;
  - 6.13 Schedule 9: Template Task Order;
  - 6.14 Schedule 10: Data Protection Schedule;
  - 6.15 Schedule 11: BIM Protocol; and
  - 6.16 any and all other documents referred to in the Contract Data, a Task Order and/or



the other documents comprising this contract which are annexed to this contract and/or have been signed for identification purposes by or on behalf of the Parties.

7. If there is any conflict, ambiguity, discrepancy or inconsistency in or between the documents which are part of this contract, the priority of the documents is in accordance with the following sequence (unless the *Employer* expressly determines or agrees otherwise):
  - 7.1 the Form of Agreement;
  - 7.2 the *conditions of contract* (as modified by the *additional conditions of contract*);
  - 7.3 Contract Data: Part One (including any annexures to or documents referred to in the same);
  - 7.4 Contract Data: Part Two (including any annexures to or documents referred to in the same);
  - 7.5 the Scope (except for any Scope contained in a Task Order) and each of the documents therein provided by the *Employer* as at the Contract Date and such further information as may be issued to the *Consultant* by the *Employer* pursuant to and in accordance with this contract from time to time;
  - 7.6 the relevant Task Order and any documents included or referred to therein as provided by or on behalf of the Employer (but excluded any Scope not included and/or referred to in that Task Order); and
  - 7.7 the other documents forming part of this contract.
8. If there is any conflict, ambiguity, discrepancy or inconsistency in or between:
  - 8.1 the *conditions of contract* and the *additional conditions of contract*, the *additional conditions of contract* take priority over the *conditions of contract* (unless the *Employer* expressly determines or agrees otherwise);
  - 8.2 the content of Contract Data: Part One (including any annexures to or documents referred to in the same) and the content of Contract Data: Part Two, Contract Data: Part One takes priority over the Contract Data: Part Two (unless the *Employer* expressly determines or agrees otherwise).
9. This contract shall be governed by and construed in accordance with the law of England and Wales and the Parties hereby irrevocably submit to the non-exclusive jurisdiction of the English courts, provided that other jurisdictions may apply solely for the purpose of giving effect to this paragraph 9 and for the enforcement of any judgment, order or award given under English jurisdiction.



**IN WITNESS WHEREOF THIS FORM OF AGREEMENT HAS BEEN SIGNED BY THE PARTIES  
ON THE DATE FIRST WRITTEN ABOVE**

**SIGNED AS A DEED by THE SECRETARY OF STATE FOR JUSTICE (OF THE MINISTRY OF  
JUSTICE) acting by affixing hereto its corporate seal and authenticated by:**

**Authorised Signatory (signature):**

\_\_\_\_\_

**Authenticated Signatory (printed  
name):**

\_\_\_\_\_



**SIGNED AS A DEED** by **TURNER &  
TOWNSEND PROJECT MANAGEMENT  
LIMITED** acting by directors:

Director (signature):

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Director (printed name):

[REDACTED]

Director (signature):

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Director (printed name):

[REDACTED]

Address:

[REDACTED]



Professional Services Contract

SCHEDULE 1

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 G, dispute resolution Option W2 and secondary Options X1, X2, X8, X18, X20, Y(UK)2, and Z of the NEC3 Professional Services Contract (April 2013).
  - The *Employer* is  
**Name:** The Secretary of State for Justice of the Ministry of Justice  
**Address:** 102 Petty France, Westminster, London, SW1H 9AJ
  - The BIM Coordinator is to be identified (if relevant) for each Task Order.
  - The *Adjudicator* is the person agreed by the Parties from the list of *Adjudicators* published by the *Adjudicator nominating body* or nominated by the *Adjudicator nominating body* in the absence of agreement.
  - The *services* are as set out and more particularly described in the Scope and/or a Task Order as part of a Task.
  - The Scope is set out at Schedule 3.
  - The Project Consultants are any consultant identified as such by the *Employer* to the *Consultant* in writing from time to time in connection with any Project Site.
  - The Client Designer is Pick Everard, a partnership constituted under the Partnership Act 1890, whose registered office is at Halford House, Charles Street, Leicester, LE1 1HA
  - The Programme Delivery Partner is AtkinsRéalis PPS Limited (company number 02236832) whose registered office is situated at Woodcote Grove, Ashley Road, Epsom, Surrey, KT18 5BW
  - A Contractor is any party identified as such by the *Employer* to the *Consultant* in writing from time to time in connection with any Project Site (collectively being the "Contractors").
  - The Data Protection Schedule is set out at Schedule 10.
  - The *language of this contract* is English.
  - *The law of the contract* is the law of England and Wales and the Parties hereby irrevocably submit to the non-exclusive jurisdiction of the English courts, provided



that other jurisdictions may apply for the enforcement of any judgment, order or award given under English jurisdiction

- The *period for reply* is two (2) weeks.
- The *period for retention* is twelve (12) years following Completion or earlier termination.
- The *Adjudicator nominating body* is the Technology and Construction Solicitors Association (TeCSA).
- The *tribunal* is litigation in the courts of England and Wales.

**2 The Parties' main responsibilities**

- The *Employer* provides access to the following persons, places and things
  - access to *access date*
 in each case as identified in a Task Order.

**3 Time**

- The Contract Period Expiration Date is the date falling four (4) years (together with the duration of any Task Orders entered into within the four year period and any relevant defects periods) after the Contract Date with the option for the Employer to extend the duration by twelve (12) months, a further twelve (12) months and a further twelve (12) months at its discretion (giving a total potential extension of a further three (3) years).
- The *Consultant* submits revised programmes at intervals no longer than one month.

**4 Quality**

- The quality policy statement and quality plan are provided within two (2) weeks of the Contract Date.
- The *defects date* is fifty two (52) weeks after
  - o the later of the following dates to occur
    - o the last date on which the Consultant performed any services under a Task Order and
    - o the date on which the final Construction Package is certified as having achieved "Completion" (or such equivalent term denoting practical completion of that Construction Package) pursuant to and as defined in the relevant Building Contract entered into by the *Employer* in connection with any Project Site (if entered into) and
  - o (if occurring earlier) the date on which the engagement of the Consultant under this contract is terminated.

**5 Payment**

- The *assessment interval* is monthly.
  - o For the purposes of Option Y2.2, the **final date for payment** is fourteen (14) days after the date on which payment is stated as becoming due under this contract.
- The template form of Valid Invoice is set out at Schedule 13 (including a reference to the Purchase Order Number), provided that the *Employer* may (acting reasonably and with reasonable notice) vary the form of invoice from time to time by written notice





to the *Consultant*, with any such amendments applying as from the next *assessment date* after such notification and a Valid Invoice must have the relevant VAT invoice attached to it.

- The *currency of this contract* is the pound sterling (£).
- The *interest rate* is [REDACTED] 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 / Type of coverage	Cover	Period
Failure of the <i>Consultant</i> to exercise the standard of skill and care specified by this contract	Not less than [REDACTED] in respect of any one claim and in the annual aggregate	from the <i>starting date</i> until 12 years following completion of the whole of the <i>services</i> or earlier termination
death of or bodily injury to a person (not an employee of the <i>Consultant</i> ) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i>	Not less than [REDACTED] in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period, but [REDACTED] any one occurrence and in the aggregate per annum in respect of products and pollution liability (to the extent insured by the relevant policy).	from the <i>starting date</i> until all notified Defects have been corrected or earlier termination
death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract	Not less than [REDACTED] in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period.	from the <i>starting date</i> until all notified Defects have been corrected or earlier termination

- 82.1
- The *Consultant's* total liability to the *Employer* for all matters arising under or in connection with this contract (including any Task Order) other than the Excluded Matters is limited to [REDACTED] for each and every claim.

#### Optional Statements

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



- The *Consultant* is to submit a first programme for acceptance within 2 weeks of a request from the *Employer*.
- The Consultant does not state (nor is entitled to the payment of) any expenses in connection with the *services*.

**Option X2**

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

**Option X8**

- The *collateral warranty agreements* are in the form(s) contained in Schedule 5 and shall be made in favour of (i) any Contracting Authority (ii) any funder providing funding in relation to a Project Site or (iii) any other party that the *Employer* notifies to the *Consultant* (acting reasonably).
- The *subconsultant collateral warranties* shall be from the following Subconsultants: any Subconsultant notified to the Consultant as part of a Task Order or otherwise.
- The *subconsultant collateral warranties* are in the form(s) contained in Schedule 5 and shall be made in favour of the *Employer* and (i) any Contracting Authority (ii) any funder providing funding in relation to a Project Site or (iii) any other party that the *Employer* notifies to the *Consultant* (acting reasonably).

**Option X18**

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

**Option X20**

- The Key Performance Indicator Schedule is at Schedule 12.
- A report of performance against each Key Performance Indicator is provided monthly.

**Option Z**

- The *additional conditions of contract* are contained in Schedule 2.

**Contract Data relating to Z clauses**

**Clause Z19**    **Not used**

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

The *credit ratings* at the Contract Date and the rating agencies issuing them are

party	rating agency	<i>credit rating</i>
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<i>Consultant</i>	Dunn & Bradstreet (D&B)	91 (see the attached report dated 20 March 2025)
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**Clause Z42 Off Shoring of Data**

**The Risk Assessment** is a full risk assessment and security review carried out by the *Employer* in accordance with HMG Security Policy Framework (SPF) including HMG IA Standard No. 1 - Technical Risk Assessment, October 2009, Issue No: 3.51 MoJ ICT Information Assurance (IA) Policy and Guidance for offshoring and MOJ Offshore Security Policy v0.6, or any later revision or replacement.

**Clause Z45 Not used**

**Clause Z48 Building Information Modelling**

A BIM Protocol applies and is appended at Schedule 11 to this contract.

**Clause Z49 Task Orders**

- The Template Task Order is set out at Part 1 of Schedule 9.
- The Task Schedule is set out at Part 2 of Schedule 9.
- If no programme is identified in Contract Data: Part Two, the Consultant is to submit a first (1st) programme for acceptance within two (2) weeks of the date of the first (1st) Task Order issued under this contract.
- The Consultant prepares forecasts of the total Time Charge and/or lump sum prices in respect of each Task at monthly intervals from the date of the first (1st) Task Order issued under this contract.



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

**1 Statements given in  
all contracts**

- The *Consultant* is

**Name:** Turner & Townsend Project Management Limited

**Address:** Low Hall, Calverley Lane, Horsforth, Leeds, LS18 4GH

- The *key people* are those people identified below (and such other *key persons* as may be identified in a Task Order):

- [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

- The *staff rates* are:  
See Schedule 4 (Prices)

**Optional statements**

*Include where expenses  
are being stated by the  
Consultant*

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

- The *expenses* stated by the *Consultant* are:  
There are no additional expenses.

*[Include if the Consultant  
requires additional  
access]*

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

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



**SCHEDULE 2**  
**ADDITIONAL CONDITIONS OF CONTRACT**

**Clause** The following amendments shall be made to the *conditions of contract*.  
**Z1A**

11.2(2) Delete and insert "Not used".

11.2(3) Delete and insert "Not used".

11.2(5) At the end of clause 11.2(5) delete the full stop and insert "or is otherwise not in accordance with a Task Order and/or this contract".

11.2(6) Replace both instances of "the Contract Data" with "a Task Order".

11.2(9) Delete and insert:

"To Provide the Services means regularly and diligently to do the work necessary to complete the *services* in accordance with this contract (including each Task Order) and applicable law and all incidental work, *services* and actions which this contract requires."

11.2(11) In the fourth bullet point insert "in a Task Order or" before "in an instruction".

11.2(17) Delete and insert:

"The Price for Services Provided to Date is, for each Task, the total of

- the Time Charge for each Task Milestone which has been completed where that Task is stated in its Task Order as being subject to time charge, and
- the lump sum price for each Task Milestone which has been completed where it is stated in its Task Order as being subject to a lump sum price (unless otherwise agreed in advance and in writing by the Employer)."

11.2(20) Delete and substitute as follows:

"Prices means

- the Time Charge for Tasks that are identified in a Task Order as being subject to time charge as specified in that Task Order, and
- the lump sum price for a Task where that Task is stated in its Task Order as being subject to a lump sum price as specified in that Task Order."

11.2(26) Insert new clause 11.2(26):

"CDM Regulations means the Construction (Design and Management) Regulations 2015."

11.2(27) Insert new clause 11.2(27):

"CEMAR means the *Employer's* online contract-management software, as more particularly

described in the Scope or any alternative as may be notified to the *Consultant* from time to time."

11.2(28) Insert new clause 11.2(28):

"Construction Package means a package of construction works (and ancillary services, as necessary) to be undertaken (and, as the context permits, designed) by a Contractor under a Building Contract in connection with a Project Site."

11.2(29) Insert new clause 11.2(29):

"Contract Period is the period commencing on the Contract Date and expiring on the Contract Period Expiration Date, unless this contract is terminated earlier pursuant to and in accordance with its terms."

11.2(30) Insert new clause 11.2(30):

"Contract Period Expiration Date is the date identified as such in Contract Data: Part One."

11.2(31) Insert new clause 11.2(31):

"Deleterious Materials means any material which, in the context of its use or specification in any part(s) of a Project Site (whether alone, in combination with other materials, or in a particular situation)

- pose a hazard to the health and safety of any person who may come into contact with it,
- would or is likely to have the effect of reducing the normal life expectancy of any other material or structure in which the material is incorporated or to which it is affixed,
- pose a threat to the structural stability, performance or the physical integrity of any part, structure, element or component that is (or may be) the subject of construction works as part of the Project Site, and/or
- has been prohibited for use in the publication "Good Practice in the Selection of Construction Materials" (published by the British Council for Offices) current at the time of use or specification."

11.2(32) Insert new clause 11.2(32):

"Employer's Statement has the meaning given to that term in clause 51.7 of this contract."

11.2(33) Insert new clause 11.2(33):

"Force Majeure Event is any of the following events (and any circumstance arising as a direct consequence of any of the following events, other than any circumstances which are excluded in the description of such event) which is not or does not result in the occurrence of an *Employer's* risk

- war, hostilities (whether war is declared or not), invasion, act of foreign enemies,
- rebellion, revolution, insurrection, military or usurped power, or civil war,
- acts of terrorism and action of the United Kingdom government in response to the threat of an act of terrorism,



- riot, civil commotion, disorder, sabotage, or acts of vandalism and neither involving solely nor originating with the personnel or other employees of the *Consultant* or Subconsultants or lower tier subcontractors or the employees or subcontractors of any group company associated with the *Consultant*,
- munitions of war or explosive materials, ionizing radiation or contamination by radioactivity, except where attributable to the *Consultant's* use of such munitions or explosives,
- pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds,
- any epidemic, pandemic or pestilence (as classified or advised by the World Health Organization or the United Kingdom government other than COVID-19),
- strike, lockout or trade dispute occurring nationwide and neither involving solely nor originating with the personnel or other employees of the *Consultant* or Subconsultants or lower tier subsubcontractors or the employees or subcontractors of any group company associated with the *Consultant* and
- flooding or landslip caused by weather conditions which renders a material part of a Project Site as unsuitable for the *Consultant* to Provide the Services in a safe manner or renders impassable access to the Project Site and no suitable alternative access is available."

11.2(34) Insert new clause 11.2(34):

"Laws means any applicable Act of Parliament or subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, any other applicable law, common law proclamation, bye-law, directive, decision, regulation, rule, notice or court ruling binding on the Parties directly or through precedent, international convention or Treaty ratified by the United Kingdom, all applicable laws, regulations, directives, orders, decisions or other rules having the force of law in the jurisdiction (including in relation to international waters) where the Consultant's obligations under this contract are carried out and any United Kingdom government policy legally binding on the Parties either particularly or as part of a class and in each case as the same may be amended, repealed or replaced from time to time."

11.2(35) Insert new clause 11.2(35):

"Principal Contractor has the meaning given to the term "principal contractor" in the CDM Regulations or Part 2A of the Building Regulations (as the case may be)".

11.2(36) Insert new clause 11.2(36):

"Principal Designer has the meaning given to the term "principal designer" in the CDM Regulations or Part 2A of the Building Regulations (as the case may be)"

11.2(37) Insert new clause 11.2(37):

"Project means the development of any Project Site within the MOJ's estate."

11.2(38) Insert new clause 11.2(38):



"Project Site means a site identified by the *Employer* to the *Consultant* in writing from time to time, including as part of a Task Order, as falling within the remit of this contract (if not already identified in the Scope as at the Contract Date)."

11.2(39) Insert new clause 11.2(39):

"Task Milestone Payment Cap means the sum identified as such in a Task Order in respect of a specific Task Milestone (as may otherwise be adjusted pursuant to clause 50.7)."

11.2(40) Insert new clause 11.2(40):

"Task Milestone is each milestone relevant to a Task as identified in a Task Order."

11.2(41) Insert new clause 11.2(41):

"Task Start Date is the date identified as such in a Task Order."

11.2(42) Insert new clause 11.2(42):

"Template Task Order is the template order form in respect of Tasks to be instructed by the *Employer* under this contract in the form set out in Schedule 9."

11.2(43) Insert new clause 11.2(43):

"Valid Invoice means a VAT-compliant invoice in the form referred to in Contract Data: Part One, provided that the *Employer* may (acting reasonably and with reasonable notice) vary the form of invoice from time to time by written notice to the *Consultant*, with any such amendments applying as from the next assessment date after the *Employer's* notification."

11.2(44) Insert new clause 11.2(44):

"VAT means value added tax as referred to in the Value Added Tax Act 1994 or any tax of a similar nature that may be substituted for or levied in addition to it."

11.2(45) "Working Day means any day other than a Saturday or Sunday or public holiday in England and Wales."

11.2(46) Insert new clause 11.2(4):

"Indexation Schedule means Schedule 14."

11.2(47) Insert new clause 11.2(47):

"Building Regulations means the Building Regulations 2010 (as amended by the Building Regulations etc. (Amendment) (England) Regulations 2023, SI 2023/911)."

11.2(48) Insert new clause 11.2(48):

"Competence means where the *Consultant* is an individual, the skills, knowledge, experience and behaviors necessary, and where the *Consultant* is not an individual, the organizational capacity."

12.4 Delete and insert:





"The contract constitutes the entire agreement between the Parties as to the *services* to be provided in accordance with the contract and supersedes and takes the place of all documents which may be in existence at the date hereof and all arrangements, statements, negotiations, discussions, representations, understandings, agreements and warranties which may have been made by or on behalf of either of the Parties hereto."

12.5 Insert new clause 12.5:

"Without prejudice to any liability the *Employer* may have in respect of fraudulent misrepresentation, the *Consultant* hereby acknowledges and confirms to the *Employer* that in entering into this contract it has placed no reliance upon any statement, representation or warranty made or given by the *Employer* during the course of the tender process and/or negotiations which is not reflected in the body of this contract or any documents referred to herein."

13.1 Delete and insert:

"Unless otherwise notified by the *Employer* from time to time and in writing, all notices, requests, submissions, decisions, consents, approvals, comments, valuations, agreements, opinions, instructions and other communications between the Parties under or in connection with this contract must be in writing in the *language of this contract*, and issued by a sender to a recipient by CEMAR.

The *Consultant* ensures that

- each and every document and/or communication prepared and/or issued by or on behalf of it pursuant to this contract is clearly marked with any document security-related designation specified in the Scope and any communications protocol and/or document security protocol that the *Employer* notifies the *Consultant* of in writing from time to time, and
- it will (and ensure that any third parties engaged by it in connection with the Project will) comply with any communications protocol and/or document security protocol of the *Employer* that the *Employer* may issue to the *Consultant* and/or any document security-related requirements specified in the Scope (and that the *Employer* may update and/or replace at its sole discretion) from time to time, at its own cost and without any adjustment to any Task Completion Date.

Any communication required under this contract from the *Consultant* to Others in connection with the Project is copied simultaneously to the *Employer* unless otherwise instructed by the *Employer*."

13.2 Delete the wording of clause 13.2 and insert:

"A communication issued via CEMAR shall have effect when it is communicated by the sender to the recipient, provided that any communication sent after 17:00 shall be treated as having been received at 09:00 on the first (1st) Working Day after its transmission."

13.6 Insert "and/or relevant Task Order" after "in the Scope" in the final sentence.

15.1 In the second bullet point insert "Task" before "Completion".



15.1A Insert new clause 15.1A:

"Without prejudice to clause 15.1 the Consultant shall give an early warning by notifying the Employer as soon as reasonably practicable of any matter which could:

- constitute a Defect,
- constitute a compensation event which has not been previously notified,
- result in a breach of this contract, or
- cause a breach of any applicable law or statutory requirement,"

15.5 Insert new clause 15.5 as follows:

"If the *Consultant* gives an early warning in relation to any matter, the notification of that early warning includes sufficient detail to enable the *Employer* to understand:

- the nature of the matter notified,
- the reason why the matter exists,
- the potential impacts of the matter, including potential impacts in relation to the total of the Prices, delay to Completion or meeting a Key Date and performance of the *services*,
- any steps being taken by the *Consultant* or third parties to mitigate the impact of the matter, and
- any steps which could be taken by the *Employer* or Others to mitigate the impact of the matter.

The *Consultant* provides supporting documentation to substantiate and explain the details in the early warning notice."

15.6 Insert new clause 15.6 as follows:

"The Risk Register does not change the allocation of risk as set out in this contract."

18.1 Replace the wording of clause 18 in its entirety with the following wording:

"18 **Force Majeure Events**

18.1 If a Force Majeure Event comes to the attention of a Party, it notifies the other Party. Following such notice the *Employer* may

- give the *Consultant* an instruction as to how the *Consultant* is to respond to the relevant Force Majeure Event, and/or
- instruct the *Consultant* to submit proposals as to how the *Consultant* should respond to the relevant Force Majeure Event and postpone the giving of any further instruction until after it has received the *Consultant's* proposals.



18.2 The *Consultant*, using the standard of care described in clause 21.2 of this contract, uses all reasonable diligence to

- mitigate the cause(s) and result(s) (including any cost expenditure) of the relevant Force Majeure Event,
- remedy the situation, and
- resume its obligations under this contract,

including complying with any instructions from the *Employer* as to how to do so and in particular the *Consultant* complies with any instruction relating to the minimisation of costs expenditure."

20.2 In clause 20.2:

- insert "Task" before "Completion"; and
- insert "in respect of the relevant Task" after "is given only."

21.1 Insert ", each Task Order, this contract and applicable law" after "the Scope".

21.2 Delete and insert:

"The *Consultant*, in Providing the Services, exercises all of the reasonable skill, care and diligence to be expected of an appropriately qualified, skilled, competent and experienced professional consultant (or, where the *services* involve the review, preparation, validation and/or revision of any designs in connection with the Project, architect) that is experienced in providing services similar in nature, extent and complexity to the *services* in relation to projects of a similar size, scope, value, character and complexity as the Project."

21.4 In line 4 delete "Completion" and substitute "completion".

21.5 Insert a new clause 21.5 as follows:

"Without prejudice to the generality of this clause 21, the *Consultant* shall exercising the Standard of Care:

- perform the *services* having regard to the health and safety of persons involved in the Project and shall comply with
- any codes of practice, guidance notes and recommendations published by the Health and Safety Executive,
- any safety policies produced by the *Employer* and any Contractors, and
- the "Joint Code of Practice on the Protection from Fire of Construction Sites and Buildings Undergoing Renovation" (as amended from time to time) as published by the Construction Confederation and the Fire Protection Association,
- promptly notify the *Employer* of any health and safety hazards which may arise in connection with the performance of its duties and obligations under this contract (and the *Employer* promptly notifies the *Consultant* of any health and safety hazards which may exist or arise in connection with the Project from time to time and which may affect the *Consultant* in the performance of its duties and obligations under this

contract),

- notify the *Employer* immediately in the event of any incident occurring in connection with the performance of its duties and obligations under this contract at any Project Site from time to time (as notified by the *Employer* to the *Consultant*) where that incident causes any personal injury or damage to property which could give rise to personal injury,
- ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the *Employer* on request to the extent required in connection with the *services* being provided by the *Consultant*,
- warrant to the *Employer* that it has complied and will comply with the requirements of the CDM Regulations insofar as they relate to the *services* to be performed by the *Consultant* under this contract, including
- in respect of each actual and potential Construction Package, the *Consultant* liaises with and cooperates with the Principal Designer and the Principal Contractor appointed by the *Employer* in connection with that Construction Package (and as notified by the *Employer* to the *Consultant* in writing) as and when required by the relevant Principal Designer and the Principal Contractor in the performance by it of all functions and duties allocated to it by the CDM Regulations."

21.6 Insert a new clause 21.6 as follows:

"The *Consultant* undertakes to the *Employer* that it has performed and that it shall continue to Provide the Services so that the *services* and any Project to which the *services* relate will comply with all planning agreements, permissions and conditions relating to the *services* and/or such Project."

21.6A Insert a new clause 21.6A as follows:

"The *Consultant* warrants and undertakes to the *Employer* that it has performed and that it shall continue to Provide the Services exercising the Standard of Care:

- so that the *services* and any Project to which the *services* relate will comply with any third party agreements which the *Employer* shall have notified in writing to the *Consultant* or of which the *Consultant* ought to have reasonably been aware exercising the Standard of Care (the "Third Party Agreements"), and
- so as not to cause the *Employer* to breach any of its obligations under any of the Third Party Agreements

provided always that if compliance with this clause 21.6A imposes any additional obligations on the *Contractor* that would otherwise have not formed part of this contract or any Task Order and relates to a Third Party Agreement notified to the *Contractor* after the date of any Task Order it shall be treated as a compensation event for the purposes of clause 60.1(1)."

21.7 Insert new clause 21.7 as follows:



"Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the *Employer* shall, unless otherwise expressly stated in the contract or agreed in writing by the *Employer*, relieve the *Consultant* of any of its obligations under the contract or any related agreement (including but not limited to any collateral warranty) or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge nor confer impose or imply any liability or responsibility on or on behalf of the *Employer* in respect of or in connection with the matter to or in relation to which such approval consent examination acknowledgement was given or review made."

21.8 Insert new clause 21.8 as follows:

"Subject always to the standard of skill and care referred to in clause 21.2, to the extent the *Consultant* either is obliged to specify or approve materials, products or goods for use in the Project or does so specify or approve, it shall not specify or approve anything that is Deleterious Materials."

23.1 Delete and insert:

"Without prejudice to any specific co-ordination obligations contained in clause Z56 and/or Z57 the *Consultant* co-operates with Others in obtaining and providing information which it or they need in connection with the *services*, and in a timely manner having regard to the *Consultant's* obligations under this contract and the obligations of Others which are notified to the *Consultant* or of which the *Consultant* ought reasonably to be aware. The *Consultant* also performs the *services* so as not to interfere, hinder or disrupt Others."

23.3 Delete the final sentence of clause 23.3.

24.3 In the second bullet-point of clause 24.3 delete the full-stop at the end of the list and insert:

"or

- they do not comply with any requirement set out in this contract, the Scope or any Task Order."

25.1 Replace the wording of clause 25.1 with the following:

"The Consultant obtains approval from Others directly where

- specified in the Scope and/or any Task Order and/or
- necessary to Provide the Services."

30.1 In clause 30.1:

- insert "on a Task" after "does not start work",
- replace "starting date" with "its Task Start Date", and
- insert "Task" before each instance of "Completion".

30.2 Replace the wording of clause 30.2 with the following:

"The *Employer* decides the date of Task Completion and the date on which each Condition



is met. The *Employer* certifies the date of Task Completion for a Task and the date on which each Condition is met within one (1) week of the date of Task Completion or within one (1) week of the date on which each Condition is met (as the context requires)."

30.4 Insert a new clause 30.4 with the following wording:

"This contract is effective from the Contract Date and continues in full force and effect until the end of the Contract Period. Notwithstanding the foregoing, this contract remains effective after the end of the Contract Period until all services under any Task Order issued before the end of the Contract Period have been performed by the *Consultant* or terminated in accordance with this contract."

31.2 In clause 31.2:

- replace the wording of the first bulleted item with "the Task Start Dates, access dates, Key Dates, Task Completion Dates and Task Milestone(s) for each Task,"; and
- replace "planned Completion" with "planned Task Completion for each Task" in the second bulleted item.

31.3 In the final bulleted item of clause 31.3, replace "the Scope" with "this contract and/or any Task Order".

32.2 In clause 32.2:

- insert a new bulleted item after the second bulleted item with the wording "following the occurrence of a compensation event,"; and
- in the final bulleted item, replace the wording "*starting date*" until the end of the item with "Task Start Date for the first Task Order until Task Completion of the final Task".

34.1 In clause 34.1, insert "Task" before each instance of "Completion".

41.1 In clause 41.1, insert "each Task" before each instance of "Completion".

41.2 In clause 41.2 insert a new bulleted item after the word "minimises" with the following wording "where the Defect is identified before Task Completion or the satisfaction of any Condition(s) for any Key Date(s) that apply to that Task, the adverse effect on the relevant Key Date(s) and the Task Completion Date and".

41.3 Insert new clause 41.3 as follows:

"Notwithstanding any other provision of this contract, the *Consultant* is not entitled to any costs incurred or any addition to the Time Charge in respect of staff time spent in repeating a test or inspection after a Defect is found."

50.1 Delete the wording of clause 50.1 and insert the following:

"50.1 The *Consultant* assesses the amount due and submits a Valid Invoice at each assessment date. The first assessment date is decided by the *Consultant* to suit the procedures of the Parties and is not later than the *assessment interval* after the



Task Start Date of the first Task Order. Later assessment dates occur

- at the date of each *assessment interval* until eight weeks after the *defects date*,
- at the last occasions on which Task Completion occurs in respect of a Task Order issued under this contract,
- any other time prior to the last occasion on which Task Completion occurs in respect of a Task Order issued under this contract, when the *Employer* requires an assessment to be made in accordance with clause 51.7 or clause 92.3 of this contract.

The *Consultant* acknowledges and agrees that

- it is a condition precedent to the commencement of the processes set out in clause 50 to clause 52 (inclusive) and Option Y(UK)2 in respect of an invoice submitted by or on behalf of the *Consultant* that the invoice
  - is a Valid Invoice (provided always that the *Employer* must act reasonably and proportionately in making a determination as to whether an invoice is a Valid Invoice based upon the nature and type of the purported non-compliant part(s) of the invoice) and
  - clearly identifies which Task Milestones the sums in the invoice relate to,
- where an invoice submitted by the *Consultant* to the *Employer* at an assessment date is not a Valid Invoice, the *Employer* shall notify the *Consultant* of this in writing and the *Consultant* shall be entitled to apply for payment for the items otherwise referred to in the non-compliant invoice as part of the invoice that it issues to the *Employer* at the next assessment date and no earlier and
- this core clause 5 and Option Y(UK)2 are construed accordingly."

50.3 Delete the wording of clause 50.3 and insert the following:

"50.3 The amount due is

- the Price for Services Provided to Date and
- other amounts to be paid to the *Consultant* less amounts to be paid by or retained from the *Consultant*.

Any tax which the law requires the *Employer* to pay to the *Consultant* is included in the amount due.

If a programme is identified in the Contract Data and is then not provided by the *Consultant* within the period stated in the Contract Data, one quarter (1/4) of the Price for Services Provided to Date is retained in assessments of the amount due until the *Consultant* has submitted a first programme to the *Employer* for acceptance showing the information which this contract requires.

50.6 Replace the wording of clause 50.6 with the following:

"Payments under this contract are made in the *currency of this contract* only."



50.7 Insert a new clause 50.7 with the following wording:

"Notwithstanding any other provision of this contract, the *Consultant* acknowledges and agrees that

- the maximum amount that the *Consultant* is entitled to claim (and, subject to the application of this clause 50, clause 51 and Option Y(UK)2, receive) payment for in relation to any Task Milestone in respect of which the relevant Task Order states that the *Consultant* is to be paid on a Time Charge basis does not exceed the relevant Task Milestone Payment Cap (if any) for that Task Milestone as identified as such in the Task Order, and
- a Task Milestone Payment Cap for a Task Milestone will only be increased if authorised in advance and in writing by the *Employer* at its sole discretion."

50.8 Insert a new clause 50.8 as follows:

"If there is subsequently any adjustment to the consideration due to the *Consultant* under the contract or the extent to which the *Consultant* Providing the Services is a supply on which VAT is chargeable under the applicable law, then

- if the adjustment is upward or the extent to which the supply is a supply on which the VAT that is chargeable increases, then
  - the *Consultant* shall issue a new Valid Invoice or an additional or revised Valid Invoice (as the case may be) to the *Employer*, and
  - the *Employer* will pay to the *Consultant* an amount which is equal to any VAT or additional VAT (as the case may be) arising on and from the date of the adjustment in respect of the supply for which the *Consultant* is liable to account, and
- if the adjustment is downward or the extent to which the supply is a supply on which the VAT that is chargeable decreases, then
  - the *Consultant* shall issue a valid VAT credit note or a revised Valid Invoice to the *Employer*, and
  - the *Consultant* will pay to the *Employer* an amount which is equal to any reduction in the VAT arising in respect of the supply for which the *Consultant* is liable to account, or
- the Parties may agree in writing to withhold from any further sums payable to the *Consultant* an amount which is equal to any reduction in the VAT arising in respect of the supply for which the *Consultant* is liable to account."

50.9 Insert a new clause 50.9 with the following wording:

"If the *Employer* gives the *Consultant* a pay less notice under Option Y2.3 of this contract, the *Consultant* issues a revised Valid Invoice showing the revised amount and tax due within 2 weeks of receipt of the pay less notice."

50.10 Insert a new clause 50.10 with the following wording:

"In addition to any other legal rights and remedies of the *Employer*, whenever any sum of





money is recoverable from or payable by the *Consultant* under this contract that sum may be deducted from any sum then due, or which at any time thereafter becomes due to the *Consultant* under this contract provided that the *Employer* notifies the *Consultant* in writing not later than three (3) days before the final date for payment of the amount to be paid and the basis on which it is calculated."

51.1 Delete the wording of clause 51.1 and insert the following:

"51.1 Subject to any pay less notice under Option Y2.3 of this contract and (insofar as permitted by applicable law) the submission of a Valid Invoice which satisfies the conditions set out in clause 50 of this contract, each payment is made by the final date for payment detailed in the second paragraph of Option Y2.2. Each payment is the amount due less previous payments.

The Parties agree that

- If the *Employer* pays the *Consultant* any sums under or in connection with this contract prior to the submission of a Valid Invoice, such payment shall be deemed to have been paid to the *Consultant* on account and shall be deductible from the next payment to be made to the *Consultant* under this contract and
- the *Consultant* issues a Valid Invoice even if the amount which the *Consultant* assesses to be due is zero, or a negative amount insofar as, on balance, sums are only due from the *Consultant* to the *Employer*."

51.5 In clause 51.5 delete the words "compounded annually" and replace with the words "simple interest".

51.6 Insert a new clause 51.6 with the following wording:

"The *Employer* may in any pay less notice take into account

- any correction or modification that should properly be made to any previous payment, and
- in addition to the *Employer's* common law right of set-off, the amount of any bona fide claim and/or counterclaim for damages, losses, demands, expenses (including reasonable legal and other professional expenses), costs, liabilities and/or fines which the *Employer* may have against the *Consultant* under or arising out of this contract or any other contract to which the *Employer* and the *Consultant* are a party. The foregoing entitlement is in addition to and not in substitution for any other rights of counterclaim, set-off or abatement."

51.7 Insert a new clause 51.7 with the following wording:

"The *Employer* may at any time if it considers any sums to be due to the *Employer* (including as a result of correction or modification to a previous payment pursuant to clause 51.6 of this contract) issue a notice to the *Consultant* stating the amount which the *Employer* determines to be due and the basis on which that amount has been calculated (an "**Employer's Statement**"). The amount which the *Employer* determines to be due under an Employer's Statement is subject to any pay less notice from the *Consultant* pursuant to



Option Y2.3 of this contract."

51.8 Insert a new clause 51.8 with the following wording:

"Payment of the amount due under an Employer's Statement in each currency shall be made into the bank account nominated by the *Employer* in this contract."

51.9 Insert a new clause 51.9 with the following wording:

"The "**due date**" in respect of any payment referred to in clause 51.7 is as detailed in Option Y2.2(1)."

51.10 Insert a new clause 51.10 with the following wording:

"The *Consultant*

- allows the *Employer* (or any representative of the *Employer*) to visit its offices and to inspect its financial records in relation to the *services* at any time subject to reasonable prior notice, and
- ensures that a clause is inserted into each subcontract with a Subconsultant that reserves the right of the *Employer* (or any representative of the *Employer*) to visit that Subconsultant's offices and to inspect its financial records in relation to the *services* at any time subject to reasonable prior notice."

52 Insert a new clause 52 with the following wording:

"52. Final Assessment

"52.1 The *Employer* makes an assessment of the final amount due and certifies a final payment, if any is due, no later than

- four weeks after the *Employer* issued the Defects Certificate or
- thirteen weeks after the *Employer* issues a termination certificate.

The *Employer* gives the *Consultant* details of how the amount due has been assessed. The final payment is made within three weeks of the assessment or, if a different period is stated in the Contract Data, within the period stated.

52.2 If the *Employer* does not make the assessment within the time allowed, the *Consultant* may issue to the Employer an assessment of the final amount due, giving details of how the final amount due has been assessed. If the *Employer* agrees with this assessment, a final payment is made within three weeks of the assessment or, if a different period is stated in the Contract Data, within the period stated.

52.3 An assessment of the final amount due issues within the time stated in the contract is conclusive evidence of the final amount due under or in connection with the contract unless a Party refers to the *tribunal* its dissatisfaction with a decision of the Adjudicator as to the final assessment of the amount due within four weeks of the decision being made.

52.4 The assessment of the final amount due is changes to include

- any agreement the Parties reach and
- a decision of the Adjudicator which has not been referred to the *tribunal* within four weeks of that decision or recommendation.

A changed assessment becomes conclusive evidence of the final amount due under or in connection with the contract.”

55 Delete and insert "Not used".

60.1 Delete the first sentence of clause 60.1 and insert the following:

“The following are compensation events, but only to the extent that they are not due to any negligence, default, unlawful act or omission or breach of or failure to comply with this contract by the *Consultant* or any Subconsultant (or its or their employees, agents or suppliers).”

60.1(1) Delete the wording of clause 60.1(1) and insert:

“The *Employer* gives an instruction changing the Scope except

- a change made in order to accept a Defect or
- a change to the Scope provided by the *Consultant* for its design which is made
  - at the *Consultant's* request or
  - in order to comply with the Scope provided by the *Employer*.”

60.1(5) In clause 60.1(5) after "the full stop" insert “provided that the *Consultant* has complied with the obligations set out in clauses Z56 and 21.5”

60.1(11) Delete the wording of clause 60.1(11) and insert "A Force Majeure Event occurs."

60.1(15) Delete and insert "Not used".

61.3 Insert "Task" before "Completion Date".

61.4 In clause 61.4, insert "Task" before all three instances of "Completion Date" and amend the final instance of "Completion Date" so that it reads "Completion Date(s)".

62.2 In clause 62.2, replace "Completion Date" with "Task Completion Date(s)".

62.6 Delete the final sentence of clause 62.6.

63.1 In clause 63.1 insert "Task" before each reference to "Completion".

63.2 In clause 63.2, insert "for or lump sum prices in respect of a Task" after "Time Charge".

63.4 Delete the wording of clause 63.4 and insert:

"The rights of the *Consultant* to changes to the Prices, the Task Completion Date and the Key Dates are the *Consultant's* exclusive rights and remedies in respect of a compensation event that arises under this contract and/or for any/all breach thereof. The *Consultant* has no additional rights or remedies (including, but not limited to, damages for breach of contract) whether arising by common law, in equity, by statute or otherwise, in respect of any such compensation event."

63.8 Insert "Task" before "Completion Date" in line 3.

63.15 Insert new clause 63.15 as follows:

"Where a compensation event or its effect is in part attributable to the *Consultant's* fault, the Prices, the Task Completion Date or Key Dates shall not be changed to the extent attributable to the *Consultant's* fault. In this contract a "fault" of the *Consultant* includes any failure on the part of the *Consultant* or its Subconsultants (or its or their employees, agents or suppliers) to take any reasonable action to prevent and/or mitigate the compensation event or its adverse effects, or any negligence or breach of this contract on the part of the *Consultant* or its Subconsultants (or its or their employees, agents or suppliers)."

63.19 Insert a new clause 63.19 with the following wording:

"Notwithstanding any other provision of this contract, where the compensation event notified by the *Consultant* to the *Employer* is a Force Majeure Event, the *Consultant* shall not be entitled to any adjustment to the Prices and shall, subject to the provisions of clause 61 to clause 65 (inclusive), be entitled to an adjustment to any Key Date(s) and any relevant Task Completion Date only."

64.4 Delete the final sentence of clause 64.4.

65.1 In the second bullet-point of clause 65.1 delete "or" and insert "."

Delete the third bullet-point of clause 65.1.

70.1 In line 2 of clause 70.1 delete "the purpose stated in the Scope" and insert "any purpose whatsoever in connection with the Project including, but not limited to, the design, construction, completion, operation, extension, maintenance, letting, management, sale, advertisement, alteration, reinstatement and repair of any element(s) of the Project."

70.2 In line 3 delete "Completion" and substitute "completion".

70.4 Delete the wording of clause 70.4 and insert:

"The *Consultant* may not use the materials provided by it under this contract or otherwise in connection with the Project for other work unless expressly permitted in the Scope and/or Task Order or by the *Employer* in writing."

82.1 In the fifth bullet-point of clause 82.1 delete the full-stop at the end of the list and insert:

- "fraud, and
- wilful default."



82.2 Delete the wording of clause 82.2 and insert "Not used."

90.1 Replace "Either Party" with "The Employer" and add ", this contract and/or any Task Order" after "Provide the Services".

Delete 90.1 and replace as follows:

"The *Employer* may terminate the *Consultant's* obligation to Provide the Services, this contract and/or any Task Order by notifying the *Consultant* if in relation to the *Consultant*:

- 90.1.1 a resolution has been passed (or meeting convened or written resolution circulated), a petition has been presented (which is not withdrawn within 7 Working Days or an order has been made, for the purpose of its winding up or an application or order has been made for a provisional liquidator to be appointed;
- 90.1.2 a notice of intention to appoint an administrator has been filed, an application for the appointment of an administrator has been made or other steps in relation to the appointment of an administrator have been taken or an administrator has been appointed;
- 90.1.3 a procedure has been commenced, by the Registrar of Companies or any other person, with a view to striking off under section 652 of the Act;
- 90.1.4 an administrative receiver, receiver, administrator, liquidator or provisional liquidator or similar officer has been appointed or an Encumbrance has been enforced;
- 90.1.5 a floating charge has crystallised and/or the holder of a floating charge has taken steps to enforce such security;
- 90.1.6 an event has occurred or will occur by virtue of the execution and performance of the contract which would cause, or entitle any person to cause, any of the events cited at limbs (91.1.4) and (91.1.5) of this clause;
- 90.1.7 it has stopped paying its creditors, is insolvent, and/or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 90.1.8 any distress, distraint, charging order, attachment, execution or other process has been levied against any of its assets which remains undischarged;
- 90.1.9 a meeting of its creditors, or any class of them, has been held or summoned and/or a proposal has been made or notice given for or in respect of a moratorium, composition, plan or arrangement in relation to any of its debts, or for a voluntary arrangement under Part 1 of the Insolvency Act 1986; or
- 90.1.10 any event or step analogous to any of the above has occurred in any jurisdiction."

90.3 Replace "the Consultant's obligation to Provide the Services" with "this contract and/or any Task Order".

90.4 Replace "the Consultant's obligation to Provide the Services" with "this contract and/or any Task Order". In the second bullet point insert "Task" before "Completion".

90.5 Insert a new clause 90.5 as follows:

"90.5 **Termination at any time**

Notwithstanding any other provision of this contract



- the *Employer* may terminate this contract and/or any Task Order at any time and for any reason and
- in such circumstances, the *Employer* gives the *Consultant* not less than thirty (30) days' notice of such termination, within which period the *Consultant* ceases all activities under this contract or the relevant Task Order (as the context requires) in an orderly manner.

Upon the expiry of the period referred to in the first bulleted item of this clause 90.5

- the *Consultant's* engagement under this contract or in respect of the relevant Task Order (as the context requires) shall terminate,
- the procedure to be followed and the assessment of any further payment that may be due to the *Consultant* arising out of or in connection with the termination under this clause 90.5 shall be determined pursuant to clause 91, clause 92.1 and clause 92.3 respectively."

91.1 Insert "or where termination is of a Task Order, no further work necessary to Provide the Services under that Task Order" after "Provide the Services" in the first bulleted item of the clause.

92.1 In the first and second sentence, insert "of the contract and/or any relevant Task Order(s) (as the context requires)" after each instance of "termination";

92.3 Insert a new clause 92.3 with the marginal heading "**Payment on termination – additional rules**" with the following wording:

"92.3 **Payment on termination – additional rules**

- Within seven (7) days of the *Employer's* assessment of a final payment to or from the *Consultant* pursuant to this clause 92
  - the Party to whom final payment is due issues a statement to the other Party stating the amount which that Party considers to be due and the basis on which that amount has been calculated in accordance with the *Employer's* assessment under this clause 92.3 (a "**Termination Statement**") and
  - in the case of a Termination Statement from the *Consultant*, such Termination Statement includes a Valid Invoice showing the correct amount of value added tax properly chargeable in respect of the amount stated as due in the Termination Statement.
- If no pay less notice is issued by the payer in accordance with Option Y2.3 of this contract, the amount of the termination payment to be made is, subject to the provision of
  - a pay less notice under Option Y2.3 of this contract and
  - the submission of a Termination Statement by the payee but such Termination Statement need not include a Valid Invoice,
 the sum stated as due in the Termination Statement.
- The due date in respect of any payment referred to in clause 92.1 is one (1) week after the date of receipt by the payer of the Termination Statement together with (in the case of a Termination Statement of the *Consultant*) a Valid Invoice showing the correct amount of value added tax properly chargeable in respect of the amount stated as due in the

Termination Statement pursuant to the first bulleted item of this clause 92.3.

The payment by the *Employer* to the *Consultant* pursuant to clause 92.1 and clause 92.3 in connection with the termination shall be the sole and exclusive remedy of the *Consultant* arising out of or in connection with the termination of this contract (whether in contract, tort (including negligence) or any other basis of law) and the *Consultant* shall have no right to claim any amounts in respect of the termination above and beyond such sums, including (without limitation) amounts in respect of loss or deferment of anticipated or actual profit, loss of expectation, loss of revenue, loss of turnover, loss of use, loss of opportunity, loss of production, costs of finance, business interruption and/or redeployment of workforce or any similar damage or for any consequential or indirect losses of any other kind."

X1 Delete the wording of clause X1 and insert:

- "The Parties agree that on the second (2<sup>nd</sup>) anniversary of the Contract Date and annually therefore (each being an "**Indexation Adjustment Date**"), indexation shall be applied to the *staff rates* referred to in the Contract Data subject to and in accordance with the terms of the Indexation Schedule (each being an "**Indexation Adjustment**").
- Following an Indexation Adjustment and the Indexation Schedule:
  - The rates and prices in the Pricing Schedule to which the Indexation Adjustment applies shall be deemed to be adjusted accordingly as from the date of the Indexation Adjustment;
  - such adjusted rates and prices shall apply to each new Order entered into between the Parties following the Indexation Adjustment until the date of the next Indexation Adjustment pursuant to this contract

provided always that such adjusted rates and prices shall not apply to:

- any Order already entered into between the Parties pursuant to and in accordance with this contract; and/or
- any Order or potential Order that is the subject of the process set out at clause 8 or clause 9 but has not yet been entered into between the Parties,

as at the date of the Indexation Adjustment.

- Any such adjustments shall not be applied retrospectively to any preceding Contract Year(s).
- Unless specifically stated in this contract (and without prejudice to the terms and conditions of each individual Task Order), the Consultant shall comply with its obligations under this contract at its own cost and expense and shall have no entitlement to payment from the *Employer* for complying with such obligations."



X2 Delete the wording of clause X2 and insert:

"A change in the *law of the project* is a compensation event if:

- it occurs after the Contract Date; and
- an experienced consultant using the standard of skill, care and diligence as set out in clause 21.2 would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it.

The *Employer* may notify the *Consultant* of a compensation event for a change in the law and instruct it to submit quotations. If the effect of a compensation event which is a change in the law is to reduce the total Time Charge, the Prices are reduced."

X18 Delete X18.1 and X18.2.

X20.1 Delete X20.1 and replace with:

"The Key Performance Indicators are set out in Schedule 12."

X20.3 Delete "Incentive Schedule" and replace with "Key Performance Indicator schedule attached at Schedule 12."

X20.4 Delete the wording of clause X20.4 and insert:

"Without prejudice to clause X20.3 or any other rights or remedies of the *Employer* under this contract, the *Consultant* acknowledges and agrees that where it is subject to a KPI Underperformance at any time, the *Employer* shall have the right to exercise (in its absolute and sole discretion) all or any of the following remedies:

- X20.4.1 the *Employer* may, by written notice to the *Consultant* identifying an on-going **KPI Underperformance**, require the *Consultant* to prepare and submit an Improvement Plan to the *Employer* for acceptance within ten (10) Business Days of the date of the *Employer* notice,
- X20.4.2 where, upon receiving the Improvement Plan, the Improvement Plan is:

a not accepted by the *Employer*, the *Employer* shall:

- notify the *Consultant* in writing of such non-acceptance as soon as is reasonably practicable in the circumstances, specifying why the Improvement Plan is not accepted and specifying the *Employer's* requirements in relation to the content of the Improvement Plan;
- require the *Consultant* to attend a meeting with the *Employer* to jointly review and discuss following the first failed submission



- require the *Consultant* to resubmit an updated Improvement Plan within five (5) Business Days of the date of such notice; and
- unless the *Employer* specifies otherwise in writing, the process set out at in this clause X20.4.2 shall be repeated until such time as the *Employer* accepts any updated Improvement Plan;

b accepted by the *Employer*:

- the *Employer* shall notify the *Consultant* of such acceptance in writing as soon as is reasonably practicable in the circumstances; and
- the *Consultant* shall implement any corrective actions specified in the accepted Improvement Plan in accordance with the requirements and within any timescales specified in such agreed Improvement Plan;

X20.4.3 the *Employer* may issue an Improvement Notice to the *Consultant*, following which the *Consultant* shall implement any corrective actions specified in the Improvement Notice in accordance with the requirements of the *Employer* and within any timescales specified by the *Employer* in the Improvement Notice; and/or

X20.4.4 the *Employer* may, by written notice to the *Consultant*, require the *Consultant* to attend one (1) or more meetings with the *Employer*, at a time and location to be specified by the *Employer* in writing, to discuss and resolve any issues identified by the *Employer* in relation to the identified KPI Underperformance in such notice."

X20.5 Delete "and associated payment in the Incentive Schedule but may not delete or reduce a payment stated in the Incentive Schedule".

X20.6 Insert a new clause X20.6 as follows:

"Any failure to comply with Clause X20.4 is treated as a substantial failure by the *Consultant* to comply with its obligations."

X20.7 Insert a new clause X20.7 as follows:

"Without prejudice to clause X20.6, the *Employer* may allow the *Consultant* to submit up to three (3) Improvement Plans to the *Employer* for acceptance but the *Employer* reserves the right to terminate the *Consultant's* engagement in accordance with clause X20.6 where any Improvement Plan is not accepted by the *Employer*."

## **W2 Dispute Resolution Procedure**

W2.2(1) Delete "*starting date*" and insert "Task Start Date of the first Task Order".

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

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



- references to a document include any revision made to it in accordance with this contract;
- references to a statute or statutory instrument include any amendment or re-enactment of it from time to time and any subordinate legislation or code of practice made under it;
- references to a British, European or International standard include any current relevant standard that replaces it;
- references to persons or organisations will be construed so as to include bodies corporate, unincorporated associations, partnerships and any other legal entity;
- the words “includes” or “including” are construed without limitation; and
- any reference to the *Employer* having the right to terminate this contract or the *Consultant's* obligation to Provide the Services (or any wording with equivalent effect or intent) shall be read as allowing the *Employer* to (at its sole discretion) terminate this contract in its entirety or to terminate any individual Task Order(s) and the operative provisions of this contract shall be construed accordingly.

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

**Authority** means The Minister for the Cabinet Office ("Cabinet Office") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP

**BIM Protocol** means the BIM Protocol set out at schedule 11 to this contract.

**Building Contract** means each building contract entered into or to be entered into by the *Employer* and a Contractor in connection with a Construction Package forming part of the Project, whether pursuant to and in accordance with the terms of any Project Delivery Contract or otherwise.

**Client Designer** means the consultant appointed by the *Employer* to carry out design services in connection with the Project as referred to in Recital (F) of the Form of Agreement and Part 1 of the Contract Data.

**Client Designer Appointment** means the appointment entered into by the *Employer* and the Client Designer in connection with any part(s) of the Project.

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

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

**Contracting Authorities** means the bodies listed in the contract notice **2016/S 180-323830** on 17 September 2016 in the Official Journal of the European Union and “Contracting



Authority" shall be construed accordingly.

**Contractor** means each entity identified as such in (or as notified by the *Employer* to the *Consultant* in accordance with) Contract Data: Part One.

**COVID-19** means the strain of coronavirus known as coronavirus infectious disease 2019 (COVID-19) and/or the causative virus known as severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), including any mutations and/or strains of COVID-19 and/or SARS-CoV-2 recognised by the World Health Organization.

**Data Controller** has the meaning given to the term "controller" in the DPA.

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

**Data Processor** has the meaning given to the term "processor" in the UK GDPR.

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

**Data Protection Act** means the Data Protection Act 2018 as amended in accordance with the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (as amended by SI 2020 no. 1586);

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

**Data Protection Laws** means the UK GDPR and the LED, the DPA (to the extent it relates to Processing of Personal Data and privacy) and all applicable laws about the Processing of Personal Data and privacy;

**Data Protection Officer** has the meaning given such terms in the DPA.

**Data Protection Schedule** is the schedule identified as such in Contract Data: Part One.

**Data Subject** has the meaning given to such term in the DPA.

**Data Subject Access Request** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Laws to access their personal data.

**DBS Check** means a "standard", "enhanced" or "enhanced with lists" check (or any other equivalent check required by the *Employer* at its sole discretion) undertaken by the Disclosure and Barring Service (or such successor or replacement organisation) from time to time.

**Programme Delivery Partner** means the consultant appointed by the *Employer* to carry out programme delivery services in connection with the Project as referred to in Recital (G)



of the Form of Agreement and Part 1 of the Contract Data.

**Programme Delivery Partner Appointment** means the appointment entered into by the *Employer* and the Programme Delivery Partner in connection with any part(s) of the Project.

**Digital Construction Requirements** means the documents comprising the "BIM2AIM Employer's Information Requirements Suite" that set out the requirements for the use and development of the Building Information Model and input of data into the Building Information Model, as set out in the BIM Schedule (or such other document as the *Employer* may provide to the *Consultant* from time to time).

**Disclosure and Barring Service** is a non-departmental public body sponsored by the Home Office established under the provisions of the Protection of Freedoms Act 2012 and which is responsible for the decision-making and maintenance of barring lists covering the children's and vulnerable adults sectors.

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

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

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

**LED** means the Law Enforcement Directive (Directive (EU) 2016/680).

**Material** means all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, feasibility studies, planning submissions, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with this contract and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to this contract.

**MSA Offence** means an offence under the Modern Slavery Act 2015.

**Personal Data** has the meaning given to such term in the UK GDPR.

**Personal Data Breach** has the meaning given to "**personal data breach**" under the UK GDPR.

**Process** has the meaning given to "processing" under the Data Protection Laws (and "**Processed**" and "**Processing**" shall be construed accordingly).

**Prohibited Act** is:

- to directly or indirectly offer, promise or give any person working for or engaged by the *Employer* and/or the Authority or other Contracting Authority 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; and /or
- committing any offence:
  - under the Bribery Act 2010 (or any legislation repealed or revoked by such Act)
  - under legislation or common law concerning fraudulent acts; or
  - defrauding, attempting to defraud or conspiring to defraud the *Employer*; or
  - any activity, practice or conduct which would constitute one of the offences listed above if such activity, practice or conduct had been carried out in the UK.

**Personnel Vetting Procedure** is the *Employer's* procedure for the vetting of the Consultant Personnel as advised to the *Consultant* by the *Employer* in writing from time to time.

**Processor** has the meaning given to the term "**processor**" in the UK GDPR.

**Project Appointment** means any appointment entered into by the *Employer* with a Project Consultant in connection with any part(s) of the Project as notified by the *Employer* to the *Consultant* from time to time.

**Project Consultant** means any consultant identified as such in Contract Data: Part One or as is otherwise notified by the *Employer* to the *Consultant* from time to time in writing.

**Project Delivery Contract** means one or more contracts (that are not in themselves Building Contracts) entered or to be entered into between (1) the *Employer* and (2) multiple parties, including one or more Contractors, in connection with the delivery of the Project, as notified by the *Employer* to the *Consultant* in writing from time to time.

**Project Focused** is the principle applied in the consideration of any decision, outcome, solution or resolution in relation to the overall Project, which facilitates or encourages objectively-assessable quality and performance outcomes and (as the Project is publicly funded) with the intent to achieve value for money.

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

**Relevant Conviction** means, save in relation to minor road traffic offences, any previous pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of The Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order).



**Relevant Policies** are the *Employer's* ethics, anti-bribery and anti-corruption policies, as set out in the Scope.

**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.

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

**Security Policy** means the *Employer's* Security Aspects Letter annexed at Schedule 7 as may be updated from time to time.

**Security Aspects Letter** means the document so titled forming Schedule 7 as may be modified from time to time upon reasonable notice from the *Employer* to the *Consultant*.

**Security Measures** means any and all active and passive, peremptory, contingent and other physical and procedural security and safeguarding measures, deterrents, countermeasures and precautions, designed, taken, implemented and/or intended (including software and coding solutions, as well as physical and strategic solutions) to

- maintain the safety of persons and public and personal property,
- prevent the risk of any person being exposed to actual or potential death, personal injury or any other type of harm,
- prevent the risk of actual or potential damage or harm to public and personal property howsoever caused (including by fire),
- maintain political, national and/or international security,
- prevent the access to a location (or part thereof), persons, information and/or any electronic or information technology system by unauthorised persons or parties and/or
- (as the context permits) facilitate the detention or imprisonment (or continued detention or imprisonment) of persons, in accordance with applicable law,

such as intruder detector systems, lighting systems, surveillance systems, natural surveillance models, physical barriers, information technology systems, communications systems, access control systems, screening arches and areas, entry systems, fire security and safety systems, reinforced glass and strategic and/or any internal or external layouts.

**Sub-Processor** means any third party appointed to Process any Personal Data on behalf of that Data Processor related to this contract.

**UK GDPR** means the General Data Protection Regulation (Regulation (EU) 2016/679) as incorporated into UK law under the UK European Union (Withdrawal) Act 2018), and amended in accordance with the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (as amended by SI 2020 no. 1586);

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

## Clause Z2 Prevention of fraud and bribery

Insert new clauses:

- Z2.1 The *Consultant* represents and warrants that neither it, nor to the best of its knowledge any of its employees, have at any time prior to the Contract Date:
- committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
  - been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- Z2.2 Throughout the period in which the *services* are performed the *Consultant* does not:
- commit a Prohibited Act; and/or
  - do or suffer anything to be done which would cause the *Employer* or any of the *Employer's* employees, consultants, contractors, sub-consultants or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements
- Z2.3 Throughout the period in which the *services* are performed the *Consultant*:
- establishes, maintains and enforces, and requires that its Subconsultants establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
  - complies with, and establishes, maintains and requires that its Subconsultants comply with, the Relevant Policies;
  - keeps appropriate records of its compliance with this contract and make such records available to the *Employer* on request;
  - provides and maintains and where appropriate enforces an anti-bribery policy (which shall be disclosed to the *Employer* on request) to prevent it and any *Consultant's* employees or any person acting on the *Consultant's* behalf from committing a Prohibited Act.
- Z2.4 The *Consultant* immediately notifies the *Employer* in writing if it becomes aware of any breach of clause Z2.1, Z2.2 and / or Z2.3 , or has reason to believe that it has or any of the its employees or Subconsultants have:
- been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
  - received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this contract or otherwise suspects that any person or party directly or indirectly connected with this



contract has committed or attempted to commit a Prohibited Act.

- Z2.5 If the *Consultant* makes a notification to the *Employer* pursuant to clause Z2.4, the *Consultant* responds promptly to the *Employer's* enquiries, co-operates with any investigation, and allows the *Employer* to audit any books, records and/or any other relevant documentation in accordance with this contract.
- Z2.6 Without limitation to clause 22.2 if the *Consultant* breaches Clause Z2.3, the *Employer* may instruct the *Consultant* to remove a person employed by the *Consultant* who has caused the *Consultant's* breach to remove that person and the *Consultant* shall immediately ensure that person has no further connection with the work included in this contract.
- Z2.7 A failure to comply with this clause Z2 is treated as a substantial failure of the *Consultant* to comply with its obligations under this contract.
- Z2.8 The *Consultant* indemnifies the *Employer* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Employer* arising out of or in connection with any breach by the *Consultant* of this clause Z2.

**Clause Z3 Recovery of sums due from *Consultant***

- Z3.1 Where under this contract any sum of money is recoverable from or payable by the *Consultant*, such sum may be deducted from or reduced by the amount of any sum or sums then due or which at any time after may become due to the *Consultant* under this contract or any other contract with any Department or Office of His Majesty's Government.

**Clause Z4 Assignment and Novation**

- Z4.1 The *Employer* is entitled to assign or otherwise dispose of its rights under this contract or any part thereof (including any one or more Task Orders) to:
- any Contracting Authority; or
  - any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the *Employer*.
- Z4.2 The *Consultant* does not, without the written consent of the *Employer*, assign or transfer this contract, or any part of (including any one or more Task Orders), share of or interest in it. In the absence of the *Employer's* written consent no sum of money becoming due under this contract is payable to any person other than the *Consultant*.
- Z4.3 The *Employer* is entitled to, and the *Consultant* gives consent to, the novation of this contract or any part thereof (including any one or more Task Orders) to:
- any Contracting Authority;
  - any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the *Employer*; or
  - any Contractor

upon such terms as the *Employer* proposes, provided that where such novation





increases the burden on the *Consultant* pursuant to this contract, the novation shall be a compensation event. Accordingly a new clause 60.1(13) shall be added that reads "A novation pursuant to clause Z4.3 occurs which increases the burden on the *Consultant* pursuant to this contract".

- Z4.4 Any change in the legal status of the *Employer* such that it ceases to be a Contracting Authority does not affect the validity of this contract. In such circumstances, this contract binds and inures to the benefit of any successor body to the *Employer*.
- Z4.5 If this contract is novated to a body which is not a Contracting Authority or if a successor body which is not a Contracting Authority becomes the *Employer* (both such bodies being referred to in the remainder of this clause as the "transferee") the transferee is able to assign or otherwise dispose of its rights under this contract or any part thereof without the consent of the *Consultant* on two occasions only.

#### Clause Z5 Discrimination

- Z5.1 The *Consultant* does not discriminate directly or indirectly or by way of victimisation or harassment against any person contrary to the Equality Act 2010, any predecessor statute of it or any amendment or re-enactment of it from time to time (the "Discrimination Acts").
- Z5.2 In connection with the *services* the *Consultant* co-operates with and assists the *Employer* to satisfy his duty under the Discrimination Acts to eliminate unlawful discrimination and to promote equality of opportunity between persons of different racial groups and between disabled people and other people.
- Z5.3 Where any employee or Subconsultant is required to carry out any activity alongside the *Employer's* employees, the *Consultant* ensures that each such employee or Subconsultant complies with the *Employer's* employment policies and codes of practice relating to discrimination and equal opportunities.
- Z5.4 The *Consultant* notifies the *Employer* in writing as soon as he becomes aware of any investigation or proceedings brought against the *Consultant* under the Discrimination Acts in connection with this contract and
- provides any information requested by the investigating body, court or tribunal in the timescale allotted,
  - attends (and permits a representative from the *Employer* to attend) any associated meetings,
  - promptly allows access to any relevant documents and information and
  - cooperates fully and promptly with the investigatory body, court or tribunal.
- Z5.5 The *Consultant* indemnifies the *Employer* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Employer* arising out of or in connection with any investigation or proceedings under the Discrimination Acts resulting from any act or omission of the *Consultant*.
- Z5.6 The *Consultant* includes in the conditions of contract for each Subconsultant obligations substantially similar to those set out above.

#### Clause Z6 Conflict of interest



- Z6.1 The *Consultant* does not take an action, and takes appropriate steps to ensure that no person engaged by or on behalf of it takes an action, which would cause a conflict of interest to arise in connection with this contract (a "Conflict of Interest"). The *Consultant* notifies the *Employer* if there is any uncertainty about whether a Conflict of Interest may exist or arise.
- Z6.2 The *Consultant* immediately notifies the *Employer* of any circumstances giving rise to or potentially giving rise to Conflicts of Interest relating to the *Consultant* or any person engaged by or on behalf of it and/or the *Employer* (including without limitation its reputation and standing), of which it is aware or anticipates may justify the *Employer* taking action to protect its interests.
- Z6.3 The *Consultant* must take positive steps to mitigate any Conflict of Interest that may exist or arise under Clause Z6.1 or there are circumstances that may give rise to a Conflict of Interest under Z6.2.
- Z6.4 Should the Parties be unable to either remove the Conflict of Interest and/or to reduce its damaging effect to a reasonably acceptable level, the *Employer* has the right to terminate this contract whereupon the provisions of PSC clause 92.2 apply to the termination.
- Z6.5 The *Consultant* shall take all appropriate steps to ensure that neither it nor any personnel and/or party employed and/or engaged by the *Consultant* (in whatever capacity) is placed in a position where, in the reasonable opinion of the *Employer* the behaviour of the *Consultant* or any personnel and/or party employed and/or engaged by it is not in the *Employer's* best interest or might adversely affect the *Employer's* reputation (a "Reputational Risk").
- Z6.6 The *Consultant*:
- (a) warrants that, as at the date of this contract, it is not aware of any actual or potential Conflict of Interest and/or Reputational Risk,
  - (b) shall notify and disclose to the *Employer* full particulars of any behaviour which might give rise to an actual or potential Conflict of Interest and/or Reputational Risk immediately upon becoming aware of the same.
- Z6.7 A failure to comply with this clause Z6 is treated as a substantial failure of the *Consultant* to comply with its obligations under this contract.

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

- Z7.1 In clauses Z7, Z39 (Financial Distress), Z40 (Change of Control – new guarantee) and Z41 (Parent Company Guarantee)
- **Change of Control** is an event where a single person (or group of persons acting in concert)
    - acquires Control of the *Consultant* or
    - acquires a direct or indirect interest in the relevant share capital of the *Consultant* and as a result holds or controls the largest direct or indirect interest in (and in any event more than 25% of) the relevant share capital of the *Consultant*,
  - **Consortium Member** is an organisation or person which is a member of a

group of economic operators comprising the *Consultant*, whether as a participant in an unincorporated joint venture or a shareholder in a joint venture company,

- **Control** has the meaning set out in section 1124 of the Corporation Tax Act 2010,
  - **Controller** is the single person (or group of persons acting in concert) that
    - has Control of the *Consultant* or a Consortium Member or
    - holds or controls the largest direct or indirect interest in the relevant share capital of the *Consultant* or a Consortium Member,
  - **Credit Rating Threshold** means the minimum credit rating for the *Consultant*, a Consortium Member or a proposed guarantor, such credit rating being set out at Annex 2 to Schedule 16 of the Framework Agreement,
  - **Framework Agreement** means the framework agreement pursuant to which this contract has been entered into
  - **Guarantor** is a person who has given a Parent Company Guarantee to the *Employer* and
  - **Parent Company Guarantee** is a guarantee of the *Consultant's* performance in the form set out in the Scope, or if not set out in the Scope, the template form attached to this contract.
- Z7.2 A Change of Control does not happen without the prior agreement of the *Employer*, and if a Change of Control occurs without the *Employer's* prior consent, then the *Employer* may treat the Change of Control as a substantial failure by the *Consultant* to comply with his obligations.
- Z7.3 The *Consultant* notifies the *Employer* immediately if a Change of Control has occurred or is expected to occur.
- Z7.4 If the Change of Control will not allow the *Consultant* to perform its obligations under this contract, the *Employer* may treat the Change of Control as a substantial failure by the *Consultant* to comply with his obligations.
- Z7.5 The *Consultant* notifies the *Employer* immediately of any material change in
- the direct or indirect legal or beneficial ownership of any shareholding in the *Consultant*. A change is material if it relates directly or indirectly to a change of 3% or more of the issued share capital of the *Consultant*, or
  - the composition of the *Consultant*. Without limitation a change is material if it directly or indirectly affects the performance of this contract by the *Consultant*.
- Z7.6 The *Consultant* notifies the *Employer* immediately of any change or proposed change in the name or status of the *Consultant*.
- Z7.7 If the *Consultant* does not provide a notification required by clause Z7.5 or Z7.6, the *Employer* may treat that failure as a substantial failure by the *Consultant* to comply with his obligations.

- Z7.8 In this clause Z7 a Change of Control in relation to
- material change in the ownership of shares in, or
  - change in the name or status of
- a Consortium Member is treated as a change relating to the *Consultant*.

**Clause Z8 Appointment of *Adjudicator***

- Z8.1 The *Adjudicator's* appointment under the NEC *Adjudicator's* Contract current at the *starting date* includes the following additional conditions of contract
- "The *Adjudicator* complies, and takes all reasonable steps to ensure that any persons advising or aiding him comply, with the Official Secrets Act 1989. Any information concerning the *contract between the Parties* obtained either by the *Adjudicator* or any person advising or aiding him is confidential, and may not be used or disclosed by the *Adjudicator* or any such person except for the purposes of this contract."

**Clause Z9 Not used**

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

- Z10.1 The *Consultant* complies (and ensures that any person employed by him or acting on his behalf complies) with the *Employer's* code of conduct to the extent one is included as a Contract Schedule to this contract. The *Consultant* complies with the code of conduct until Completion and for the *period of retention*.
- Z10.2 A failure to comply with this clause is treated as a substantial failure by the *Consultant* to comply with his obligations.

**Clause Fair payment**

**Z11**

- Z11.1 The *Consultant* assesses the amount due to a Subconsultant without taking into account the amount assessed under this contract.
- Z11.2 The *Consultant* includes in the contract with each Subconsultant
- a period for payment of the amount due to the Subconsultant not greater than 19 days after the date on which payment becomes due under this contract. The amount due includes, but is not limited to, payment for work which the Subconsultant has completed from the previous assessment date up to the current assessment date in this contract,
  - a provision requiring the Subconsultant to include in each subsubcontract the same requirement, except that the period for payment is to be not greater than 23 days after the date on which payment becomes due under this contract and
  - a provision requiring the Subconsultant to assess the amount due to a subsubconsultant without taking into account the amount paid by the *Consultant*.
- Z11.3 The *Consultant* notifies non-compliance with the timescales for payment through



the Efficiency and Reform Group supplier feedback service. The *Consultant* includes this provision in each subcontract, and requires Subconsultants to include the same provision in each subsubcontract.

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

**Clause Confidentiality**

**Z12**

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

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

Z12.1A The *Consultant* does not and procures that its Subconsultants does not make any public statement relating to this contract and/or services without the prior written consent of the *Employer*, such consent not to be unreasonably withheld (provided that nothing in this bulleted item shall prevent the *Consultant* from complying with any legal obligation placed upon it or from making any announcement required by any securities exchange or regulatory or government body to which it subscribes including the London Stock Exchange or the Panel on Takeovers and Mergers).

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

- such disclosure is a requirement of the law of the contract placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause Z16 (Freedom of Information);
- such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure;
- such information was obtained from a third party without obligation of confidentiality;
- such information was already in the public domain at the time of disclosure otherwise than by a breach of this contract;
- it is independently developed without access to the other party's Confidential Information; or
- such disclosure is to professional advisors of either party for the purposes of obtaining advice in relation to this contract provided the relevant party ensures such professional advisors are obliged by an equivalent standard of confidentiality as referred to in this clause Z12.

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

Z12.4 The *Consultant* may only disclose the *Employer's* Confidential Information to the Consultant Personnel who are directly involved in the provision of the *services* and

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

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

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

- to any Crown Body or any other Contracting Authorities. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities 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 Authority;
- to any consultant, contractor or other person engaged by the *Employer* or any person conducting an Office of Government Commerce gateway review;
- for the purpose of the examination and certification of the *Employer's* accounts; or
- for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Employer* has used its resources.

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

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

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



other party's Confidential Information or an infringement of intellectual property rights.

Z12.9 Notwithstanding any other term of this contract

- the *Consultant* consents that the *Employer* can publish this contract in its entirety, including from time to time agreed changes to this contract, to the general public,
- the *Consultant* shall assist and co-operate with the *Employer* in order to make information available to the general public as required by the *Employer* from time to time and

prior to such publication the *Employer* may, at its sole discretion, in whole or in part, redact information that concerns national security, personal data, information protected by intellectual property law, information which is not in the public interest to disclose (under a FOIA analysis), third party confidential information, information technology security and/or the prevention of corruption and/or Fraud.

Z12.10 A failure to comply with this clause Z12 is treated as a substantial failure by the *Consultant* to comply with its obligations.

Z12.11 The *Consultant* indemnifies the *Employer* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Employer* arising out of or in connection with any breach by the *Consultant* of this clause Z12.

#### Clause Security Requirements

##### Z13

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

- the Security Policy;
- the Security Management Plan produced pursuant to the Security Policy;  
and
- the Security Provisions contained within Clause Z53.

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

Z13.3 Without prejudice to Z13.1 and/or Z13.2 the *Consultant* complies with, and procures the compliance of its personnel, with the requirements of the Security Aspects Letter as set out at Schedule 7 in the performance of the *services*.

Z13.4 The *Consultant* acknowledges that the Security Aspects Letter is a standard template and as such cannot be directly amended and agrees that it shall be interpreted as follows for the purposes of this contract:

- (a) any references to "Contractor" shall be construed as the "*Consultant*"; and
- (b) any references to "MOJ" shall be construed as the "*Employer*" as appropriate.

The Parties also agree that if there are any requirements in the Security Aspects Letter that the *Consultant* believes, exercising the standard of care referred to in 21.2, are not relevant to the Project and/or the performance of this contract the *Consultant* shall notify the *Employer* as soon as reasonably practicable and the





*Employer shall confirm whether or not such requirements are applicable or not.*

**Clause Official Secrets Act**

**Z14**

- Z14.1 The Official Secrets Act 1989 applies to this contract from the *starting date* until the *defects date* or earlier termination.
- Z14.2 The *Consultant* notifies his employees and Subconsultants of their duties under the Official Secrets Act 1989.
- Z14.3 A failure to comply with this clause is treated as a substantial failure by the *Consultant* to comply with his obligations.
- Z14.4 The *Consultant* complies with the staff vetting and training requirements stated in the Scope, if any.

**Clause Data protection**

**Z15**

- Z15.1 Each of the Parties including the personnel (which term for the purposes of this clause shall include directors, officers, employees, servants, agents, consultants, suppliers and sub-contractors) of each Party will comply with all applicable requirements of the Data Protection Laws and shall not knowingly or negligently by any act or omission, place the other Party in breach, or potential breach of Data Protection Laws. This clause Z15.1 is in addition to and does not relieve, remove or replace a Party's obligations under the Data Protection Laws.
- Z15.2 The Parties each acknowledge and agree that they may need to Process Personal Data relating to the other Party's personnel (in their respective capacities as independent Data Controllers) in order to (as appropriate): (a) administer and Provide the Services (b) request and receive the *services* in connection with the Project (c) request or grant access to sites, including security and background checks where required; (e) compile, dispatch and manage the payment of invoices relating to the Project; (f) manage the contract and resolve any disputes relating to it; (g) respond and/or raise general queries relating to the *services*; and (h) comply with their respective obligations under this contract (the "**Permitted Purposes**"). The Party from whom the Personal Data originates shall be known as the "**Originating Controller**". Given the nature of the Services under the contract, the Parties acknowledge that it is their common understanding that the Parties will not process any Personal Data under or in connection with this contract as joint controllers but, if and only to the extent that it is determined that the Parties do act as joint controllers in relation to any Personal Data, the Parties shall agree and incorporate into this contract any other appropriate provisions required in accordance with Data Protection Laws.
- Z15.3 Each Party shall Process such Personal Data relating to each Party's personnel for the Permitted Purposes in accordance with their own fair processing notices (which each Party shall make available to the other Party). The Parties acknowledge that they may be required to share Personal Data with other relevant





third parties in order to carry out the activities listed in clause 25.6(ii) and in doing so each Party will ensure that the sharing and use of this Personal Data complies with applicable Data Protection Laws.

Z15.4 Each Party shall ensure that all fair processing notices have been given to (and as applicable consents obtained from) the relevant Data Subjects and are sufficient in scope to allow the other Party to Process the Personal Data as anticipated by clauses Z15.2 and Z15.3. At the reasonable request of the *Employer*, the Contractor shall support the *Employer* and/or provide on the *Employer's* behalf, all privacy notices to the relevant Data Subjects (and/or as applicable, obtain the necessary consents of such Data Subjects), within a reasonable time frame.

Z15.5 Without limiting the foregoing, the *Consultant* shall:

- only Process the Personal Data for the Permitted Purposes;
- ensure that;
- make due notification to the Information Commissioner's Office (or other such regulatory authority as required by Data Protection Laws), including in relation to its use and Processing of the Personal Data and comply at all times with the Data Protection Laws;
- maintain complete and accurate records and information to demonstrate its compliance with this clause Z15.5. This requirement does not apply where the Consultant employs fewer than 250 staff, save where the *Employer* is the Originating Controller and:
  - the *Employer* determines that the Processing is not occasional;
  - the *Employer* determines the Processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
  - the *Employer* determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects;
- only to the extent required by Data Protection Laws prepare and/or where the *Employer* is the Originating Controller support the *Employer* (as applicable) in preparing, any Data Protection Impact Assessment prior to commencing any Processing;
- ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event (which where the *Employer* is the Originating Controller the *Employer* may reasonably reject (but failure to reject shall not amount to approval by the *Employer* of the adequacy of the Protective Measures)), having taken account of the:
  - nature of the data to be protected;
  - harm that might result from a Data Loss Event;
  - state of technological development; and
  - cost of implementing any measures;
- not transfer Personal Data outside the United Kingdom unless (and where the *Employer* is the Originating Controller without the prior written consent of the *Employer*) the following conditions are fulfilled:
  - the destination country has been recognised as adequate by the UK government in accordance with Article 45 of the UK GDPR



(or section 74A of the DPA);

- the *Consultant* has provided appropriate safeguards in relation to the transfer (in accordance with the Data Protection Laws) (and as determined by the *Employer* where the *Employer* is the Originating Controller);
- the Data Subject has enforceable rights and effective legal remedies;
- the *Consultant* complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and
- where the *Employer* is the Originating Controller, the *Consultant* complies with any reasonable instructions notified to it in advance by the Originating Controller with respect to the Processing of the Personal Data;
- ensure that Personal Data is retained for only as long as is necessary for the Permitted Purposes, in accordance with its retention policies and Data Protection Laws;
- where the *Employer* is the Originating Controller, notify the *Employer* immediately if it:
  - receives a Data Subject Access Request (or purported Data Subject Access Request);
  - receives a request to rectify, block or erase any Personal Data;
  - receives any other request, complaint or communication relating to any Party's obligations under the Data Protection Laws;
  - receives any communication from the Information Commissioner's Office or any other regulatory authority (including a supervisory authority as defined in the Data Protection Laws) in connection with Personal Data Processed under this contract;
  - receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - becomes aware of a Data Loss Event;
- where the *Employer* is the Originating Controller, following notification to the *Employer* as noted above and the *Employer's* determination and confirmation to the *Consultant* as to whether it or the *Consultant* shall be the primary point of contact and responder to the request, complaint or communication received (and the Parties shall ensure this is reflected within the relevant fair processing notices provided to Data Subjects) then where the *Employer*:
  - designates the *Consultant* as the primary point of contact, provide updates and further information to the *Employer*, including (where directed by the *Employer*) allowing the *Employer* to have final oversight and approval of any response, prior to such response being released to the relevant party; or
  - designates itself as the primary point of contact, provide all support as necessary within the timescales directed by the *Employer*, including providing all Personal Data held by the *Consultant* in respect of the request, complaint or communication received to the *Employer* as soon as practicable and in any event within five (5) days, or as otherwise agreed by the Parties acting

reasonably and in good faith;

- where the *Employer* is the Originating Controller and further to the *Consultant's* obligation to notify as set out above, provide further information to the *Employer* in phases, as details become available. The *Consultant* (shall be the primary point of contact for any communication in respect of the Data Loss Event and: (a) the *Consultant* shall act quickly to remedy a Data Loss Event and minimise the impact(s) of a Data Loss Event; and (b) the *Consultant* and the *Employer* shall work together (acting reasonably and in good faith) to formulate responses, notifications and other communications in respect of the Data Loss Event;
- where the *Employer* is the Originating Controller, provide such assistance as is reasonably requested by the *Employer* within such timescales as requested by the *Employer* in relation to any Data Subject Request received by the *Employer*, Data Loss Event suffered by the *Employer* or any request from the Information Commissioner's Office, or any consultation by the *Employer* with the Information Commissioner's Office in relation to any Personal Data shared by the *Consultant* with the *Employer*;
- take reasonable steps to ensure the reliability of and adequate training of, any Personnel who have access to the Personal Data;
- hold the information contained in the Personal Data confidentially; and
- not do anything which shall damage the reputation of its (if applicable) or the *Employer's* or any third party from whom the Personal Data may originate (being consultants, contractors and subcontractors) relationship with the Data Subjects.

Z15.6 The Parties agree to take account of any guidance issued by the Information Commissioner's Office.

Z15.7 The *Employer* may on not less than thirty (30) Working Days' notice to the *Consultant* amend the contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

Z15.8 The *Consultant* shall be liable for and shall indemnify the *Employer* from and against all claims, proceedings, damages, liabilities, losses, costs and expenses suffered or incurred by the *Employer* where and to the extent that the same arises in connection with any breach of this clause Z15 by the *Consultant* and/or its Personnel (of any type) and/or its Subcontractors.

#### Clause Freedom of Information

##### Z16

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

Z16.2 The *Consultant*:

- transfers to the *Employer* all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
- provides the *Employer* with a copy of all Information relevant to the Request

for Information in its possession, or power in the form that the *Employer* requires within five (5) Working Days (or such other period as the *Employer* may specify) of the *Employer's* request;

- provides all necessary assistance as reasonably requested by the *Employer* to enable the *Employer* to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations; and
- procures that its Subconsultants do likewise.

Z16.3 The *Employer* is responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

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

Z16.5 The *Consultant* acknowledges that the *Employer* may, acting in accordance with the MoJ 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.

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

#### Clause Records and Audit Access

##### Z17

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

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

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

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

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

Z18.1 In this clause “SME” is

- a Subconsultant or
- a subconsultant to a Subconsultant

that also:

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

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

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

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

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

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

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

Z18.5 The *Consultant* further ensures that the conditions of contract for each Subconsultant include a requirement that the conditions of contract for any subsubconsultant engaged by the Subconsultant who is an SME include

obligations substantially similar to those set out in clause Z218.4.

**Clause Z19** Not used

**Clause Z20** Tax Non-Compliance

Z20.1

- (1) Tax Non-Compliance is where a tax return submitted by the *Consultant* to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:
  - a Relevant Tax Authority successfully challenging the *Consultant* under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rule or legislation with similar effect or
  - the failure of an avoidance scheme in which the *Consultant* was involved which was (or should have been) notified to a Relevant Tax Authority under the DOTAS or a similar regime or
  - gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax-related offences which is not spent at the Contract Date or to a civil penalty for fraud or evasion.
- (2) DOTAS are the Disclosure of Tax Avoidance Schemes rules contained in Part 7 of the Finance Act 2004 and in secondary legislation made pursuant to it, as extended to National Insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012 (SI 2012/1868).
- (3) General Anti-Abuse Rule is
  - the legislation in Part 5 of the Finance Act 2013 and
  - any future legislation introduced to counteract tax advantages arising from abusive arrangements to avoid National Insurance contributions.
- (4) Halifax Abuse Principle is the principle explained in the CJEU case C-255/02 Halifax and others.
- (5) IR35 Contractor means any Personnel or any individual engaged either directly by the Consultant (or via any other intermediary or intermediaries) through a PSC;
- (6) ITEPA means the Income Tax (Earnings and Pensions) Act 2003;
- (7) PSC means a limited company or partnership which meets the conditions specified in sections 61O or 61P (as applicable) of ITEPA;
- (8) Relevant Tax Authority is HM Revenue & Customs or, if the *Consultant* is established in another jurisdiction, the tax authority in that jurisdiction.

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

Z20.3 The *Consultant* notifies the *Employer* within one week of any Tax Non-Compliance



occurring after the Contract Date and provides details of

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

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

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

Z20.5 Unless specifically authorised by the *Employer* in writing to do so, the *Consultant* shall ensure (and shall ensure that all or any other third parties ensure on behalf of the *Consultant*) that none of its Consultant Personnel will be supplied or otherwise allowed to be utilised in the undertaking of any services if they are an IR35 Contractor.

Z20.6 Where, as per clause Z20.5 above, the *Employer* provides written authorisation to the *Consultant* that an IR35 Contractor can be utilised in the undertaking of any services, prior to the IR35 Contractor commencing any services, the *Consultant* shall provide (and shall ensure that all or any other third parties provide on behalf of the *Consultant*) all such information and documentation as is reasonably required by the *Employer* to make a determination as to whether the IR35 Contractor would be regarded for Income Tax purposes as an employee of the *Employer* under Part 2 Chapter 10 of ITEPA.

Z20.7 Unless, as per clause Z20.5 above, the *Employer* has provided written authorisation that an IR35 Contractor can be supplied, in any other circumstances, in the event that the *Employer* determines that an IR35 Contractor has been supplied or otherwise engaged, it will be considered that there has been a material breach of this contract.

Z20.8 The *Consultant* shall pay all Corporation Tax, Income Taxes, National Insurance Contributions, VAT and other taxes, duties, levies, charges and contributions (and any interest or penalties thereon) whatsoever properly payable by the *Consultant* in respect of payments to its Consultant Personnel. In particular, and without limitation, the *Consultant* shall comply with any requirement to make deductions of Income Tax and National Insurance Contributions at source and to pay employer National Insurance Contributions and Apprenticeship Levy in respect of each and any of its Consultant Personnel.

Z20.9 The *Consultant* shall indemnify the *Employer* and keep the *Employer* indemnified in full against any and all expenses, liability, costs, claims, loss and proceedings of any kind and character howsoever arising in connection with any breach by the *Consultant* of sub-clauses Z20.5 to Z20.8 above. The *Consultant* shall also indemnify the *Employer* and keep the *Employer* indemnified in full against any liability of the *Employer* to account for deductions of Income Tax, and/or employee National Insurance Contributions, or to make a payment of employer National



Insurance Contributions or Apprenticeship Levy (and in each case against any liability of the *Employer* to pay interest or penalties in respect of such sums), in respect of services provided by, or payments made to or in respect of, any Consultant Personnel, in each case regardless of whether or not the *Employer* has or is deemed by HM Revenue & Customs to have complied with its own obligations under Chapter 10 of Part 2 Income Tax (Earnings and Pensions) Act 2003 or otherwise.

Clause Not used  
Z21

Clause Not used  
Z22

Clause Changes to *staff rates* and Subconsultants  
Z23

Z23.1 When the *Consultant* proposes a revision to an existing *staff rate* or a new *staff rate*, the proposal is accompanied by a certificate from the *Consultant's* (or if appropriate Consortium Member's – as defined in clause Z7) Chief Financial Officer or Director of Finance (or an equivalent officer authorised to bind the *Consultant* and agreed by the *Employer* before the proposal is issued) confirming that the proposal

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

Z23.2 If a Subconsultant wishes to propose revisions to an existing staff rate or a new staff rate and the *Consultant* considers that, in order to comply with any law, the Subconsultant should submit its proposal directly to the *Employer*, the *Consultant* submits a request to that effect to the *Employer* for acceptance. A reason for not accepting the *Consultant's* request is that the law does not require the Subconsultant to submit its proposal directly to the *Employer*. If the *Employer* accepts the *Consultant's* request, the *Consultant* directs the Subconsultant to submit its proposal directly to the *Employer*.

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

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

and the *Consultant* considers that, in order to comply with any law, the Subconsultant should submit its records and certificate directly to the *Employer*, the *Consultant* submits a request to that effect to the *Employer* for acceptance. A reason for not





accepting the *Consultant's* request is that the law does not require the Subconsultant to submit its records and certificate directly to the *Employer*. If the *Employer* accepts the *Consultant's* request, the *Consultant* directs the Subconsultant to submit its records and certificate directly to the *Employer*.

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

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

#### Clause Z24 Insurance cover

- Z24.1 Without prejudice to its obligation to indemnify or otherwise be liable to the *Employer* under this contract, the *Consultant* will, from the date of this contract, take out and maintain or procure the taking out and maintenance in full force and effect all insurances required to be effected and maintained under this contract and any other insurances as may be required by law or relevant regulation (together the Required Insurances).
- Z24.2 The Required Insurances will be taken out and maintained with insurers who (in the reasonable opinion of the *Employer*) are of good financial standing, appropriately regulated and of good repute in the United Kingdom insurance market.
- Z24.3 The insurance required by line two of the insurance table in the Contract Data will contain an indemnity to principals clause under which the *Employer* is indemnified in respect of claims made against the *Employer* arising from death or bodily injury or third party property damage for which the *Consultant* is legally liable in respect of this contract.
- Z24.4 The Required Insurances will be maintained from time to time (as far as is reasonably practicable), on terms no less favourable than those generally available to a consultant in respect of the risks insured in the United Kingdom insurance market from time to time.
- Z24.5 The *Consultant* will provide, on request, to the *Employer* evidence of the Required Insurances, in a form satisfactory to the *Employer*. Neither inspection, nor receipt of such evidence, will constitute acceptance by the *Employer* of the terms thereof, nor be a waiver of the *Consultant's* liability under this contract.
- Z24.6 Where the insurers purport to cancel, suspend or terminate the Required Insurances, the *Consultant* will procure that the insurers will, as soon as is reasonably practicable,

notify the *Consultant* in writing in the event of any such proposed suspension, cancellation or termination. Where the *Consultant* receives notification from insurers, the *Consultant* will promptly notify the *Employer* in writing of receipt of such proposed suspension, cancellation or termination.

- Z24.7 The *Consultant* will promptly notify to insurers any matter arising from or in relation to this contract from which it may be entitled to claim under any of the Required Insurances.
- Z24.8 Where any policy requires the payment of a premium, the *Consultant* will be liable for such premium.
- Z24.9 Where any insurance is subject to an excess or deductible below which the indemnity from the insurers is excluded, the *Consultant* will be liable for such excess or deductible. The *Consultant* will not be entitled to recover from the *Employer* any sum paid by way of excess or deductible under the insurances whether under the terms of this contract or otherwise.

#### **Clause Z25 Professional indemnity insurance**

- Z25.1 The *Consultant* obtains and maintains the professional indemnity insurance required by Clause 81.1 of the *conditions of contract* upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business on the basis and in an amount not less than that stated in the Contract Data, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions do not include any term or condition to the effect that the *Consultant* must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010 or the Third Parties (Rights Against Insurers) Act (Northern Ireland) 1930 as amended by the Insolvency (Northern Ireland) Order 1989.
- Z25.2 The *Consultant* does not without the prior written approval of the *Employer* settle or compromise with the insurers any claim which the *Consultant* may have against the insurers and which relates to a claim by the *Employer* against the *Consultant*, nor by any act or omission lose or prejudice the *Consultant's* right to make or proceed with such a claim against the insurers.
- Z25.3 The *Consultant* immediately informs the *Employer* if the professional indemnity insurance ceases to be available at rates and on terms that the *Consultant* considers to be commercially reasonable. Any increased or additional premium required by insurers by reason of the *Consultant's* own claims record or other acts, omissions, matters or things particular to the *Consultant* is deemed to be within commercially reasonable rates.
- Z25.4 The *Consultant* co-operates fully with any measures reasonably required by the *Employer* including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the *Employer* undertakes in writing to reimburse the *Consultant* in respect of the net cost of such insurance to the *Consultant* above commercially

reasonable rates or, if the *Employer* effects such insurance at rates at or above commercially reasonable rates, reimbursing the *Employer* in respect of what the net cost of such insurance to the *Employer* would have been at commercially reasonable rates.

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

**Clause Z26 Termination and omission of work**

- Z26.1 The *Employer* may, by way of a written instruction to the *Consultant*, remove or omit all or part of the *services* (including under any individual Task Order) at any time and for any reason.
- Z26.2 If the *Employer* gives an instruction to the *Consultant* which involves the omission of part of the *services*, the *Employer* may engage other people to carry out the part omitted.
- Z26.3 Where the *Employer* gives an instruction to the *Consultant* to remove or omit any *services* (including from any individual Task Order), the Prices for any Task Orders that are subject to a lump sum price are adjusted accordingly and the *Employer* shall pay for the *Consultant's* unavoidable demobilisation costs, including for removal of plant and equipment.
- Z26.4 The *Employer* has no liability whatsoever (other than the above paragraph Z26.3) to the *Consultant* in respect of any such removal or omission (whether in contract, tort (including negligence) or otherwise), including in respect of any loss or deferment of anticipated or actual profit, loss of expectation, loss of revenue, loss of turnover, loss of use, loss of opportunity, loss of production, costs of finance, business interruption and/or redeployment of workforce or any similar damage or for any consequential or indirect losses of any other kind.
- Z26.5 The *Consultant* shall not be entitled to any adjustment to any Task Completion Date arising out of or in connection with any instruction(s) issued by the *Employer* pursuant to this clause Z26.
- Z26.6 The following is added at the end of the first bullet point in clause 91.1 of the *conditions of contract*:
- “unless instructed otherwise by the *Employer*”.
- Z26.7 The following are treated as a substantial failure by the *Consultant* to comply with his obligations
- a key resource needed by the *Consultant* to Provide the Services is no longer available and the *Consultant* does not propose an alternative resource acceptable to the *Employer*,
  - the *Consultant* breaching the terms of its obligations in clause 22.1 of the *conditions of contract* or
  - any conflict of interest or reputational risk under this contract cannot be resolved to the *Employer's* satisfaction.
- Z26.8 The *Employer* may terminate the *Consultant's* obligation to Provide the Services by



notifying the *Consultant* if in the *Employer's* opinion the known or anticipated cost of the Project, which the *services* are performed (or to be performed) in connection with, has significantly increased.

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

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

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

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

- this contract has been subject to substantial modification which would have required a new procurement procedure pursuant to regulation 72 of the Public Contracts Regulations 2015 or
- a United Kingdom or European court declares that a serious infringement of the obligations under the European Union Treaties and/or the Public Contracts Regulations 2015 has occurred in relation to this contract.

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

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

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

**Clause Z29 Tax Arrangements of Public Appointees**

Z29.1 For the purposes of this clause

- **Associated Company** is any company, corporation, partnership, joint venture or other entity which directly or indirectly controls, is controlled by or is under common control with the *Consultant*. The word "control" in this context means the ability or entitlement to exercise, directly or indirectly, at least 50 per cent of the voting rights attributable to the shares or other interest in the controlled company, corporation, partnership, joint venture or other entity.
- **Staff** are individuals (other than direct employees of the *Consultant*, an Associated Company or any Subconsultant) made available by the *Consultant* to the *Employer* for the purpose of Providing the Services.

Z29.2 Where any Staff are liable to be taxed in the United Kingdom in respect of consideration received under this contract, the *Consultant* complies, and procures

that the Staff comply, with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration.

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

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

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

- within the *period for reply* or
  - which adequately demonstrates either how any member of Staff is complying with clauses Z29.2 and Z29.3 or why those clauses do not apply to it
- the *Employer* may
- treat such failure as a substantial failure by the *Consultant* to comply with his obligations or
  - instruct the *Consultant* to replace the relevant member of Staff

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

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

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

to the Commissioners of Her Majesty's Revenue & Customs or Revenue Scotland for the purpose of the collection and management of revenue for which they are responsible.

**Clause Z30 Not used**

**Clause Z31 Subconsulting**

Z31.1 Before:

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

the *Consultant* submits to the *Employer* for acceptance

- a Single Procurement Document (as described in regulation 59 of the Public Contracts Regulations 2015) in respect of the proposed Subconsultant or subsubconsultant or



- other means of proof that none of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applies to the proposed Subconsultant or subsubconsultant.

Z31.2 The *Consultant* does not appoint the proposed Subconsultant (or allow the Subconsultant to appoint the proposed subsubconsultant) until the *Employer* has accepted the submission. A reason for not accepting the submission is that it shows that there are grounds for excluding the proposed Subconsultant or subsubconsultant under regulation 57 of the Public Contracts Regulations 2015.

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

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

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

**Clause Z32 Not used**

**Clause Z33 Compliance with statutory requirements**

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

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

**Clause Z34 Negotiation and mediation**

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

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



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

#### Clause Z35 Collateral Warranty Agreements

Z35.1 Add the following sub-clauses to option X8:

- X8.2 The *Consultant* procures that the Subconsultants referred to in the Contract Data enter into the *subconsultant collateral warranties*.
- X8.3 The *Consultant* shall provide the *Employer* with duly completed *collateral warranty agreements* and / or *subconsultant collateral warranties* in accordance with clauses X8.1 and X8.2 (as appropriate) no later than ten (10) Working Days after the *Employer* has provided the *Consultant* with appropriate forms suitable for execution.
- X8.4 If the *Consultant* fails to deliver the required *collateral warranty agreements* and / or *subconsultant collateral warranties* (or any one of them) in the manner and within the time stipulated by this contract, one quarter (1/4) of the Price for Services Provided to Date is retained in assessments of the amount due until the *Consultant* has remedied the failure.

#### Clause Z36 Not used

Clause Not used  
Z37

#### Clause Intellectual Property Rights Z38

Z38.1 In this clause Z38:

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

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

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

Z38.4 In the event that the *Consultant* does not own the copyright or any Intellectual





Property Rights in any Material the *Consultant* uses all reasonable endeavours to procure the right to grant such rights to the *Employer* to use any such copyright or Intellectual Property Rights from any third party owner of the copyright or Intellectual Property Rights. In the event that the *Consultant* is unable to procure the right to grant to the *Employer* in accordance with the foregoing the *Consultant* procures that the third party grants a direct licence to the *Employer* on industry acceptable terms.

- Z38.5 The *Consultant* waives any moral right to be identified as author of the Material in accordance with section 77, Copyright Designs and Patents Acts 1988 and any right not to have the Material subjected to derogatory treatment in accordance with section 8 of that Act as against the *Employer* or any licensee or assignee of the *Employer*.
- Z38.6 In the event that any act unauthorised by the *Employer* infringes a moral right of the *Consultant* in relation to the Material the *Consultant* undertakes, if the *Employer* so requests and at the *Employer's* expense, to institute proceedings for infringement of the moral rights.
- Z38.7 The *Consultant* warrants to the *Employer* that he has not granted and shall not (unless authorised by the *Employer*) grant any rights to any third party to use or otherwise exploit the Material.
- Z38.8 The *Consultant* supplies copies of the Material to the *Employer* and to the *Employer's* other contractors and consultants (including the Client Designer and the Programme Delivery Partner) for no additional fee to the extent necessary to enable them to discharge their respective functions in relation to this contract or related works.
- Z38.9 After the termination or conclusion of the *Consultant's* employment, the *Consultant* supplies the *Employer* with copies and/or computer discs of such of the Material as the *Employer* may from time to time request and the *Employer* pays the *Consultant's* reasonable costs for producing such copies or discs.
- Z38.10 In Providing the Service the *Consultant* does not infringe any Intellectual Property Rights of any third party. The *Consultant* indemnifies the *Employer* against claims, proceedings, compensation and costs arising from an infringement or alleged infringement of the Intellectual Property Rights of any third party.

**Clause Financial Distress**

**Z39**

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



- it is subject to a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety,
- it commits a material breach of its covenants to its lenders or
- its financial position or prospects deteriorate to such an extent that it would not meet the Credit Rating Threshold.

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

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

Z39.5 If

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

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

#### Clause Change of Control – new guarantee

##### Z40

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

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

Z40.2 If the Controller does not comply with the tests in clause Z40.1 or (if applicable)

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

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

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

Z40.5 If

- neither the Controller nor any alternative guarantor proposed by the *Consultant* complies with the tests in clause Z40.1 or provides the legal opinion required by clause Z40.6,
- the *Consultant* does not give to the *Employer* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Employer* within four weeks of a request from the *Employer* to do so or
- the *Consultant* fails to demonstrate to the *Employer* that the Controller or the alternative guarantor accepted by the *Employer* will comply with the tests in clause Z40.1 within 18 months of the *Employer's* acceptance

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

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

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

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

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



**Clause Parent Company Guarantee**

**Z41**

Z41.1 If required by the *Employer*, the *Consultant* gives to the *Employer* a Parent Company Guarantee in the form set out at Schedule 6 of this contract (with such amendments as the *Employer* may reasonably require). If the Parent Company Guarantee was not given by the Contract Date, it is given to the *Employer* within four weeks of the Contract Date or the *Employer's* request, whichever is later.

Parent Company Guarantees are given by the ultimate parent company where the *Consultant* is a limited company within a group of companies.

The *Employer* reserves the right to request an alternative where the *Consultant* is not a limited company or is a limited company but (i) its ultimate parent company is not in England and Wales or (ii) there is no ultimate parent company.

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

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

**Clause Offshoring of data**

**Z42**

Z42.1 In this clause

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

Z42.2 The *Consultant* does not store any of the *Employer's* data that is classified as Official or higher in accordance with HMG Security Policy Framework (SPF) including HMG IA Standard No. 1 - Technical Risk Assessment, October 2009, Issue No: 3.51, MoJ ICT Information Assurance (IA) Policy and Guidance for offshoring and MOJ Offshore Security Policy v0.6, or any later revision or replacement

- offshore or
- in any way that it could be accessed from an offshore location until the *Employer* has confirmed to the *Consultant* that either
- the *Employer* has gained approval for such storage in accordance with HMG Security Policy Framework (SPF) including HMG IA Standard No. 1 - Technical Risk Assessment, October 2009, Issue No: 3.51, MoJ ICT Information Assurance (IA) Policy and Guidance for offshoring and MOJ Offshore Security Policy v0.6, or any later revision or replacement.or
- such approval is not required.

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

- such premises have passed a Risk Assessment or
- the *Employer* confirms to the *Consultant* that no Risk Assessment is

required.

- Z42.4 The *Consultant* complies with a request from the *Employer* to provide any information required to allow the *Employer* to
- gain approval for storing data or allowing access to data from an offshore location in accordance with Z42.2 or
  - conduct a Risk Assessment for any premises for the purpose of Z42.3.
- Z42.5 The *Consultant* ensures that any subcontract (at any stage of remoteness from the *Employer*) contains provisions to the same effect as this clause.
- Z42.6 A failure to comply with this condition is treated as a substantial failure by the *Consultant* to comply with his obligations.

**Clause Payment forecast**

**Z43**

- Z43.1 Prior to the submission of the *Consultant's* first invoice, the *Consultant* submits to the *Employer* a payment forecast based on the *Consultant's* estimate of the interim payments (including fees and expenses) which the *Consultant* anticipates will fall due in relation to all Task Orders that have been instructed by the *Employer* at the date of the payment forecast.
- Z43.2 Each subsequent invoice from the *Consultant* is accompanied by an updated payment forecast, amended to show the effects of any changes in the Scope and Accepted Programme and the addition or removal of any Task Orders.

**Clause Responsibility for documents**

**Z44**

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

**Clause Not used**

**Z45**

**Clause Termination following prolonged suspension**

**Z46**

- Z46.1 The *Consultant* may terminate his obligation to Provide the Services by notifying the Employer if
- the whole of the *services* has been stopped under clause 33 of the *conditions of contract* for a period in excess of six months;
  - the *Consultant* has given the *Employer* a request for an instruction that the *services* be resumed; and

- the *Consultant* has not been given instructions to resume the *services* within a period of 30 days after the *Employer* receives from the *Consultant* a request for an instruction that the *services* be resumed.

**Clause Z47  
Employer's Property**

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

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

Z47.2 The *Consultant* shall use the Employer's Property in accordance with any instructions of the Employer and/or as set out in the Scope and/or any Task Order.

Z47.3 The *Consultant* shall be liable for all claims, proceedings, damages, liabilities, losses, costs and expenses suffered or incurred by the Employer as a result of any loss or damage suffered or incurred in relation to the Employer's Property caused by the *Consultant* including as a result of the *Consultant's* negligence.

**Clause Z48 Building Information Modelling**

Z48.1 If the Contract Data states a BIM Protocol applies, then the *Employer* and the *Consultant* shall:

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

Z48.2 The *Consultant* complies with the Digital Construction Requirements at all times and shall input into the Building Information Model in accordance with the Digital Construction Requirements and other documents developed, prepared and/or contributed towards by the *Consultant* in connection with the Project as required by the BIM Coordinator from time to time.

**Clause Z49  
Task Orders**

- Z49.1
- (1) A Task is work within the *services* which the *Employer* may instruct the *Consultant* to carry out pursuant to, and within a stated period of time specified in, the relevant Task Order.
  - (2) A Task Order is the *Employer's* instruction to carry out a Task which is substantially in the form of the Template Task Order set out at Schedule 9.
  - (3) Task Completion is when the *Consultant* has done all the work in the Task and

corrected Defects in the relevant *services* to which that Task Order relates.

- (4) Task Completion Date is the date for completion of an individual Task stated in the Task Order unless later changed in accordance with this contract.

Z49.2 A Task Order includes

- a detailed description of the work in the Task,
- a priced list of items of work in the Task in which items taken from the Task Schedule are identified,
- the Task Milestones and (as applicable) such lump sum prices forming part of the overall price for the Task Order attributable to it,
- the Task Milestone Payment Cap for any Task Milestone that is to be priced (and to be payable) on a Time Charge basis,
- the Task Start Date, Task Completion Date and the Task Milestone(s) for the Task,
- the basis upon which the Task is priced, whether by reference to Time Charges, lump sum prices or a combination of both, and
- the tendered total of the Prices for the Task (where the Task Order is subject to a lump sum pricing model).

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

When a Task Order is issued

- the priced list of items for the Task is added to the Prices, and
- the work involved is added to the Scope.

An instruction to carry out a Task is not a compensation event.

Z49.3 The Prices for items in the Task price list which are not taken from Schedule 4 are assessed in the same way as compensation events.

Z49.4 The *Consultant* does not start any work included in the Task until the *Employer* has instructed him to carry out the Task and does the work so that Task Completion is on or before the Task Completion Date. The *Employer* may issue an instruction changing a Task Order.

Z49.5 The *Consultant* submits a Task Order programme to the *Employer* for acceptance within the period stated in the Contract Data.

Z49.6 The *Consultant* shows on each Task Order programme which he submits for acceptance

- the Task starting date and the Task Completion Date,
- planned Task Completion,
- the order and timing of the operations which the *Consultant* plans to do in order to complete the Task,
- provisions for
  - float,
  - time risk allowances,
  - health and safety requirements and
  - the procedures set out in this contract,
  - the dates when, in order to Provide the Service in accordance with the Task Order programme, the *Consultant* will need
  - access to any relevant property,
  - acceptances,
  - Plant and Materials, equipment and other things to be provided by the *Employer* and
  - information from Others,
- for each operation, a statement of how the *Consultant* plans to do the work identifying the principal Equipment and other resources which he plans to use and
- other information which the Scope requires the *Consultant* to show on a Task Order programme submitted for acceptance.

Z49.7 Within one week of the *Consultant* submitting a Task Order programme to him for acceptance, the *Employer* either accepts the programme or notifies the *Consultant* of his reasons for not accepting it. A reason for not accepting the Task Order programme is that

- the *Consultant's* plans which it shows are not practicable,
- it does not show the information which this contract requires, or
- it does not comply with the Scope.

Z49.8 The *Consultant* shows on each revised Task Order programme



- the actual progress achieved on each operation and its effect upon the timing of the remaining work,
- the effects of implemented compensation events,
- how the *Consultant* plans to deal with any delays and to correct notified Defects and
- any other changes which the *Consultant* proposes to make to the Task Order programme.

Z49.9 The *Consultant* submits a revised Task Order programme to the *Employer* for acceptance

- within the period for reply after the Employer has instructed him to and
- when the Consultant chooses to.

The latest programme accepted by the *Employer* supersedes previous accepted programmes.

Z49.10 If, due to the compensation event, planned Task Completion is delayed, the delay to the Task Completion Date is stated in the *Consultant's* quotation for the event and a programme is submitted with details of the assessment of the delay.

Assessments of delay include time risk allowances and are based on the assumption that the Task Order programme can be changed and that delays were or will be reasonably incurred.

The *Employer* may assess the delay if, when the *Consultant* submits quotations for a compensation event, the *Consultant* has not submitted a Task Order programme required by this contract.

Z49.11 The changes to the calculated total of the Prices for the Task Order and any delay to the Task Completion Date are included in the *Employer's* notification implementing a compensation event.

Z49.12 The Consultant does not commence (nor have any entitlement under this contract to any payment in connection with) any services included in a Task until both the Employer and the Consultant have countersigned a Task Order.

**Clause Agreeing Task Orders**  
**Z49A**

Z49A.1 Each Task Order must be agreed between the Parties prior to its implementation.





- Z49A.2 If the *Employer* intends to instruct the *Consultant* to undertake a Task pursuant to and in accordance with a new Task Order, it will first issue a draft version of the relevant Task Order to the *Consultant* in writing (a "draft Task Order" for the purposes of this clause Z49A).
- Z49A.3 As soon as reasonably practicable (but, in any event, no later than three (3) Working Days after receiving a draft Task Order issued by the *Employer* pursuant to clause Z49A.2 or within such longer period as may be specified in the draft Task Order), the *Consultant* shall issue a written response to the *Employer* in respect of such draft Task Order.
- Z49A.4 A response to a draft Task Order issued by the *Consultant* to the *Employer* pursuant to clause Z49A.3
- states the *Consultant* accepts the draft Task Order as originally prepared,
  - responds to any queries raised by the *Employer* in connection with such Task Order and populates any sections of the draft Task Order that are identified as having to be populated by the *Consultant* (and includes any proposals of the *Consultant* in response to such queries as appropriate),
  - proposes any modifications to the draft Task Order as the *Consultant* (acting reasonably) considers necessary in order to clarify the content of the Task Order and/or to reflect the scope and nature of the Task and the *Consultant's* pricing proposal for delivering the Task and/or
  - advises on the *Consultant's* proposed subcontracting and other third party arrangements in respect of the Task Order (if any) and the *Consultant's* anticipated timescales for procuring any such subcontractors and/or anything else from any third parties necessary in order to allow the *Consultant* to undertake the Task, proposing any modifications to the Task Completion Date and/or any Task Milestones as the *Consultant* may consider appropriate in connection with the same.
- Z49A.5 If the *Consultant* does not respond to a draft Task Order as required by clause Z49A.3, the *Employer* may withdraw the Task Order with no cost or liability to the *Consultant*.
- Z49A.6 Following the receipt by the *Employer* of the *Consultant's* response to a draft Task Order in accordance with clause Z49A.4 and clause Z49A.5, the Parties shall, as soon as reasonably practicable after such receipt by the *Employer* (or within such other period that the *Employer* notifies the *Consultant* of in writing, acting reasonably), work together to develop and finalise the Task Order (which may involve the revision of the original draft Task Order to take into account comments made by the *Consultant* in its response to the same), following which the *Employer* shall issue a final version of the Task Order to the *Consultant* for acceptance that reflects the outcome of such discussions (a "final Task Order" for the purposes of this clause Z49A).



Z49A.7 If a final Task Order is

- agreed between the Parties pursuant to clause Z49A.6, the *Employer* will issue such final Task Order to the *Consultant* in writing for its final acceptance and signature, following which the *Consultant* shall sign and return the final Task Order to the *Employer* no later than three (3) Working Days after its receipt of the final Task Order (failing which the *Employer* may withdraw the Task Order at its sole discretion at no cost or liability to the *Consultant*) or
- not agreed between the Parties, the *Employer* has the discretion to reissue a further draft Task Order to the *Consultant* pursuant to clause Z49A.2 in connection with the proposed Task or to withdraw the draft Task Order at its sole discretion and at no cost or liability to the *Consultant*.

Z49A.8 If a draft Task Order issued by the *Employer* pursuant to clause Z49A.2 requires the *Consultant* to perform any services as a precursor (or prior) to that Task Order being issued,

- the *Employer* states this in the draft Task Order and the basis upon which it will remunerate the *Consultant* for undertaking such services,
- in the *Consultant's* response to the draft Task Order as issued pursuant to clause Z49A.4, the costs of such services shall be identified in the response and form part of the *Consultant's* proposal for the overall Task Order and
- if a final Task Order is
  - agreed between the Parties pursuant to clause Z49A.7, such costs will be paid to the *Consultant* on the basis set out in the Task Order by reference to an initial Task Milestone or
  - not agreed or is withdrawn by the *Employer*, the *Consultant* shall be entitled to include in its next application for payment issued pursuant to clause 50.1 an amount equal to the agreed value of such services.

Z49A.9 Without prejudice to the generality of clause Z58, the *Consultant* acknowledges and agrees that the decision to issue any Task Order shall be at the sole and absolute discretion of the *Employer* and that the *Employer* shall be entitled without payment of any compensation to the *Consultant*, to elect not to issue Task Orders for, or to elect to award to another person or persons a contract or contracts in respect of, the whole or any part of the services contemplated by this contract.

Z49A.10 No general terms and conditions contained in any Task Order or other document customarily required by the *Consultant* in connection with any request, quotation, proposal and/or acceptance of a request to provide services and/or works (including where referred

and/or annexed to any notice issued by the *Consultant* to the *Employer* under this clause Z49A) shall be binding on the *Employer*.

**Clause Z50 Convictions**

- Z50.1 Unless agreed in writing in advance by the *Employer*, the *Consultant* shall procure that, in respect of all potential persons performing any of the *services*, whether an employee of the *Consultant* or any Subconsultant (each a "**Named Employee**"), before a Named Employee begins to attend any site at which the *services* are being or are to be carried out in connection with this contract
- each Named Employee is questioned as to whether they have any Relevant Convictions,
  - a Disclosure and Barring Services check is undertaken in respect of each Named Employee and
  - save to the extent prohibited by applicable law, a copy of the results of such check are notified to the *Employer*.
- Z50.2 The *Consultant* shall procure that no person who discloses any Relevant Convictions, or who is found to have any Relevant Convictions following the results of a Disclosure and Barring Services check is employed without the *Employer's* prior written consent (such consent not to be unreasonably withheld or delayed).
- Z50.3 Save to the extent prohibited by applicable law, the *Consultant* shall procure that the *Employer* is informed if any member of staff of the *Consultant* (or any employee of a Subconsultant), whether a Named Employee or otherwise, involved in the provision of the *services* who, subsequent to their commencement of employment as a member of staff, receives a Relevant Conviction or whose previous Relevant Convictions become known to the *Consultant*.
- Z50.4 Without prejudice to clause Z50.1 to clause Z50.3 (inclusive), where the *Employer* notifies the *Consultant* that the *Consultant* will be working in a regulated activity with vulnerable groups for the purposes of the Safeguarding Vulnerable Groups Act 2006, or is working in an environment deemed as sensitive and/or vulnerable for any reason by the *Employer*, the *Consultant* shall comply at its own cost with the *Employer's* requirements to the extent relevant to the delivery of the *services* to the *Employer*, which may include (without limitation)
- asking any person acting for or on behalf of the *Consultant* in connection with this contract for details of any Relevant Convictions, obtaining an enhanced Disclosure and Barring Services disclosure (including a barred list) check and/or
  - complying with the HM Government Baseline Personnel Security Standard or similar standard,

and the results of such disclosures shall be shared with the *Employer* in writing.

**Clause Whistleblowing**



**Z51**

The *Consultant* shall ensure that staff engaged by the *Consultant* in connection with any of the *services* (and use reasonable endeavours to ensure that any staff engaged by any Subconsultant, where appropriate) are aware of the requirements of the Public Interest Disclosure Act 1998, any whistle blowing policy that the *Consultant* may have and the arrangements to be followed in the event of any staff having any concerns and wishing to make a disclosure pursuant to the Public Interest Disclosure Act 1998.

**Clause Sustainability**

**Z52**

Z52.1 The *Consultant* shall

- comply with the applicable Government Buying Standards,
- provide, from time to time, in a format reasonably required by the *Employer*, reports on the environmental effects of providing the *services*,
- maintain ISO 14001 (as the family of standards related to environmental management published by the International Organisation for Standardisation) or BS 8555 (as the standard published to help organisations improve their environmental performance by the British Standards Institution) or an equivalent standard intended to manage its environmental responsibilities and
- perform its obligations under this contract in a way that
  - supports the *Employer's* achievement of the Greening Government Commitments,
  - conserves energy, water, wood, paper and other resources,
  - reduces waste and avoids the use of ozone depleting substances and
  - minimises the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

**Clause Security Provisions**

**Z53**

Z53.1 Where the *Employer* advises the *Consultant* that Consultant Personnel are required to have a pass for admission to any Project Site and such Consultant Personnel are identified by the *Consultant* (provided always that the *Consultant* first notifies the *Employer* in writing of such Consultant Personnel within a reasonable period ahead of their scheduled attendance(s) at any such Project Site), the *Employer*, subject to its satisfactory completion of its own approval procedures in respect of such admission by Consultant Personnel, shall arrange for passes to be issued. Consultant Personnel who cannot produce a proper pass when required to do so by any of the *Employer's* personnel, or who contravene any conditions on the basis of which a pass was issued, may be refused admission to the relevant Project Site or required to leave that Project Site if already there.

Z53.2 The *Consultant* shall promptly return any pass issued to any Consultant Personnel pursuant to clause Z53.1 if at any time the *Employer* so requires or if the person



to whom the pass was issued ceases to be involved in the performance of the services at a Project Site. The *Consultant* shall promptly return such passes on completion or earlier termination of their appointment under this contract.

- Z53.3 Consultant Personnel attending a Project Site may be subject to a search at any time. Strip searches are only conducted on the specific authority of the *Employer* under the same rules and conditions applying to the *Employer's* personnel. The *Consultant* is deemed to be familiar with the Prison Rules 1999 Part III and the Prison (Amendment) Rules 2005 and the Young Offender Institute Rules 2000 Part III and the Young Offender Institute (Amendment) Rules 2008 and all other applicable law in this regard.
- Z53.4 The *Employer*, whose decision is final and conclusive, reserves the right to refuse admission to, or to withdraw permission to remain on, a Project Site or any premises occupied by or on behalf of the *Employer*, any Consultant Personnel whose admission or continued presence is, in the opinion of the *Employer*, undesirable.
- Z53.5 If and when directed by the *Employer*, the *Consultant* shall provide a list of the names and addresses, national insurance numbers, periods of employment, immigration status and tax exemption certificates of all persons who it is expected may require admission in connection with the contract to a Project Site or any premises occupied by or on behalf of the *Employer*, specifying the capacities in which they are concerned with the Project and giving such other particulars as the *Employer* may reasonably require.
- Z53.6 The *Consultant* shall ensure that its Consultant Personnel undertaking services and/or works within the boundaries of a Government establishment shall comply with rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of Consultant Personnel when at that establishment and when outside that establishment.
- Z53.7 If the *Consultant* fails to comply with clause Z53.2 and/or clause Z53.5, the *Employer*, (whose decision shall be final and conclusive in the matter) may decide that such failure is prejudicial to the interests of the Crown and if that the *Consultant* does not comply with the *Employer's* reasonable requests within four (4) weeks of the date of a written notice from the *Employer* so to do, then the *Employer* may terminate the appointment of all or any part of the *Consultant's* appointment under this contract (including under any individual Task Order(s)) without providing the *Consultant* with a further period of time within which to remedy the default, provided that such termination does not prejudice or affect any right of action or remedy which has accrued or thereafter accrues to the *Employer*.
- Z53.8 The *Consultant* shall bear the costs of complying with the requirements, notices, instructions or decisions received from the *Employer* in relation to its obligations in respect of information relating to Consultant Personnel pursuant to this clause Z53.
- Z53.9 The *Consultant* shall not employ any person that it knows, or by reason of the circumstances which it might reasonably be expected to know, is involved in any unlawful procurement of social security benefits or tax exemptions in connection with his employment by the *Consultant*. The *Consultant* shall not make, facilitate



or participate in the procurement of any unlawful payments to any person employed by them, whether in the nature of social security fraud, evasion of tax or otherwise.

- Z53.10 The *Consultant* shall comply with the *Employer's* procedures for the vetting of Consultant Personnel in respect of all persons to be employed or engaged to carry out and complete any part(s) of the Project. The *Consultant* shall confirm that all persons employed or engaged by it or that will be employed or engaged by it in relation to the contract are vetted and recruited on a basis that is equivalent to and no less strict than the Personnel Vetting Procedure.
- Z53.11 Without prejudice to the generality of this clause Z53, the *Employer* may require the *Consultant* to ensure that any person engaged by it in connection with the Project has undertaken a DBS Check as per the Personnel Vetting Procedure (or as otherwise requested by the *Employer*), with the level of DBS Check to be determined by the *Employer* at its sole discretion, or any other security check as may be required by the *Employer* from time to time. The *Consultant* shall ensure that no person who discloses that they have a Relevant Conviction, or is found by that *Consultant* to have a Relevant Conviction (whether as a result of a police check or through the DBS Check or otherwise) is employed or engaged in connection with the Project.
- Z53.12 Individuals, including those held in lawful custody or on probation shall be regarded as vulnerable persons under the Safeguarding Vulnerable Groups Act 2006. Where the *Employer* deems it necessary, the *Consultant* shall provide a list of Consultant Personnel who are engaged by it in connection with the services that are vetted by the Disclosure and Barring Service. The *Employer* may in its sole discretion refuse access to a Project Site by any Consultant Personnel who do not successfully complete the vetting procedures under the Vetting and Barring Scheme.
- Z53.13 Whilst on a Project Site, the *Consultant* must ensure that its Consultant Personnel comply with all Security Measures implemented by the *Employer* in respect of staff and other persons attending a Project Site. The *Employer* shall provide copies of its written security procedure to the *Consultant* on request. The *Consultant* and all of its Consultant Personnel shall be prohibited from taking any photographs on a Project Site unless the *Employer* has given prior written consent and a representative of the *Employer* is present so as to have full control over the subject matter of each photograph to be taken.
- Z53.14 The *Employer* shall have the right to carry out any search of any Consultant Personnel or of vehicles used by the *Consultant* at a Project Site at its sole discretion from time to time.
- Z53.14 The *Consultant* shall co-operate with any investigation relating to security which is carried out by the *Employer* or by any person who is responsible to the *Employer* for security matters, and when required by the *Employer*
- take all reasonable measures to make any Consultant Personnel identified by the *Employer* available to be interviewed by the *Employer* or by a person who is responsible to the *Employer* for security matters, for the purposes of the investigation (and all Consultant Personnel have the right to be accompanied by and to be advised or represented to the



other person whose attendance at the interview is acceptable to the *Employer*) and

- subject to any legal restriction on their disclosure, provide all documents, records or other material of any kind which may reasonably be required by the *Employer* or by a person who is responsible to the *Employer* for security matters, for the purposes of the investigation, so long as the provision of that material does not prevent the *Consultant* from carrying out and completing the *services* (and the *Employer* has the right to retain any such material for use in connection with the investigation and, so far as possible, provide the *Consultant* with a copy of any material retained).

**Clause Modern Slavery**

**Z54**

Z54.1 The *Consultant* undertakes that it shall comply with all requirements of the Modern Slavery Act 2015 and it warrants and represents to the *Employer* that neither the *Consultant* nor any of its employees, agents and/or Subconsultants (as far as the *Consultant* is aware, having made reasonable enquiries of each Sub consultant prior to the date of their sub-consultant agreement and having also included wording in their sub-consultant agreement that is no less onerous than this clause Z54) has

- committed an MSA Offence,
- been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015 and/or
- is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015.

Z54.2 The *Consultant* shall notify the *Employer* immediately in writing if it becomes aware or has reason to believe that it has, or any of its employees, agents and/or Subconsultants have, breached or potentially breached any of the *Consultant's* obligations under clause Z54.1 and any such notice shall set out full details of the circumstances concerning the breach or potential breach of the *Consultant's* obligations under clause Z54.1.

Z54.3 The *Consultant* indemnifies the *Employer* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Employer* arising out of or in connection with any breach by the *Consultant* of this clause Z54.

**Clause COVID-19 management and mitigation**

**Z55**

Z55.1 For the purposes of this clause Z55, the term "**impact of COVID-19**" includes but is not limited to the following events

- the infection or suspected infection of any person engaged by the *Consultant* (or any Subconsultant) in connection with the *services* by COVID-19,
- the implementation by the *Consultant* (or any Subconsultant) of any public health measures mandated by the United Kingdom government (including Public Health England) in relation to COVID-19, including any



- preventative measures intended to minimise the transmission of COVID-19 which result in shortages of labour and/or supervision in relation to the *services* (including pursuant to any self-isolation measures and the restricted use of public transport) and
- measures to contain COVID-19 resulting in the mandatory closure of any Project Site and/or any office(s) of the *Consultant* (or any Subconsultant), restricted access to such site(s) and/or offices and/or amended working hours and/or methods that impact the delivery of the *services* and the performance by the *Consultant* of its duties and obligations under this contract,
- the exercise by the United Kingdom government of any statutory power in connection with COVID-19 that is not occasioned by a default of the Consultant or any person for whom the Consultant is responsible, and
- the shortage of equipment, plant and/or materials intended for use by the *Consultant* in connection with the *services* due to a delay in their manufacture, importation and/or transportation as a consequence of COVID-19.

Z55.2 Without prejudice to the generality of clause 60.1(11) the *Consultant* acknowledges and agrees that it

- has complied (and will comply) with any requirements set out in the Scope (or specified by the *Employer* in writing from time to time, acting reasonably) in connection with the management of and/or reporting by the *Consultant* in connection with the management and mitigation of the potential and actual impact of COVID-19 on the delivery of the *services* (and the performance of the *Consultant's* other duties and obligations under this contract),
- has and will maintain at all times during the performance of the services suitable business continuity and absence management programmes in relation to the management and mitigation of the impact of COVID-19 on the delivery of the *services* (and the performance of the *Consultant's* other duties and obligations under this contract),
- (without prejudice to the generality of clause 15) will notify the *Employer* as soon as reasonably practicable upon the *Consultant* becoming aware of any potential and/or actual adverse impact on the delivery of the *services* (and the performance of the *Consultant's* other duties and obligations under this contract) attributable to the impact of COVID-19,
- shall at all times use the standard of care referred to in clause 21.2 to mitigate the impact of COVID-19 on the delivery of the *services* (and the performance of the *Consultant's* other duties and obligations under this contract), and
- shall, if requested by the *Employer* from time to time (acting reasonably), confirm in writing what measures the *Consultant* has (and its Subconsultants have) in place (or proposes to put in place) in order to





so manage and mitigate the impact of COVID-19 on the delivery of the *services* (and the performance of the *Consultant's* other duties and obligations under this contract).

- Z55.3 The *Consultant* shall ensure that all subcontracts with its Subconsultants reflect the requirements of this clause Z55 on a mutatis mutandis basis.

## Clause Collaboration

### Z56

- Z56.1 The *Consultant* shall, using the standard of care set out at clause 21.2
- promote collaborative behaviours throughout its organisation and its supply chain in connection with the Project and act collaboratively with the Project Consultants, the Client Designer, the Programme Delivery Partner and the Contractor(s) at all times,
  - comply with any requirements in the Scope in connection with the cooperation and/or interfacing with the Project Consultants, the Client Designer, the Programme Delivery Partner, and the Contractor(s) in connection with the Project,
  - establish an integrated collaborative team environment in order to encourage proactive, open and efficient sharing of knowledge and information between the *Consultant*, the Project Consultants, the Client Designer, the Programme Delivery Partner and the Contractor(s), and
  - proactively consult the Project Consultants, the Client Designer, the Programme Delivery Partner and the Contractor(s) when seeking to make decisions in relation to the Project,

in each case so far as reasonably practicable on a Project Focused basis.

- Z56.2 The *Consultant* shall work with the Project Consultants, the Client Designer, the Programme Delivery Partner and the Contractor(s) (and using the standard of care set out at clause 21.2) to
- (to the extent reasonably within the *Consultant's* control) assist the Project Consultants, the Client Designer, the Programme Delivery Partner and the Contractor(s) in performing their obligations under their respective Project Appointments, Client Designer Appointment, Programme Delivery Partner Appointment or Building Contract (as the context permits) in respect of which they are reliant upon information provided and/or developed by and/or input provided by the *Consultant* in connection with the *services*,
  - share best practice in connection with the Project, and
  - collaboratively seek to manage and mitigate any potential risks identified in relation to the design and construction of the Project,

on a Project Focused basis.

- Z56.3 The *Consultant* agrees, for the purposes referred to in this clause Z56, to promptly supply or allow each Project Consultant, Client Designer, Programme Delivery Partner and Contractor access to all information and documentation in its possession or control that is reasonably requested by each Project Consultant,

Client Designer, Programme Delivery Partner or Contractor in connection with the Project, insofar as the same is

- not subject to disclosure and/or confidentiality restrictions under applicable law or this contract and
- reasonably required by a Project Consultant, Client Designer, Programme Delivery Partner or Contractor to properly perform its obligations under its Project Appointment, Client Designer Appointment, Programme Delivery Partner Appointment or Building Contract as the case may be.

Z56.4 The *Consultant* shall, in complying with its obligations under this clause Z56, consult with each Project Consultant, Client Designer, Programme Delivery Partner, Contractor and the *Employer* and attend such meetings as and when reasonably requested by the *Employer* to discuss any matters arising under this contract, any Project Appointment, Client Designer Appointment, Programme Delivery Partner Appointment, Building Contract and/or in relation to any part(s) of the Project.

Z56.5 Nothing in this clause Z56 shall require the *Consultant* to perform tasks and/or duties which are the responsibility of a Project Consultant, Client Designer, Programme Delivery Partner or Building Contractor under its Project Appointment, Client Designer Appointment, Programme Delivery Partner Appointment or Building Contract as the case may be.

**Clause Basis of engagement**

**Z57**

Z57.1 The *Consultant* acknowledges and agrees that

- it is appointed by the *Employer* under this contract solely to provide the *services* and perform its duties and obligations under this contract,
- it does not have the exclusive right to undertake any services and/or works on behalf of the *Employer* in connection with the Project (whether forming part of the Scope or otherwise) and the *Employer* may, at its sole discretion, instruct any other party to carry out services and/or works which are the same as or are similar to those to be undertaken by the *Consultant* under this contract,
- the *Employer* makes no guarantee to the *Consultant* in relation to any minimum value or volume of services and/or works that the *Consultant* will be required to undertake under this contract, pursuant to one (1) or more Task Orders or otherwise and
- the *Consultant* shall have no entitlement to make any claim against the *Employer* whatsoever (whether in contract, tort or any other basis of law) in respect of, without limitation, any costs, damages, expenses and/or losses arising out of or in connection with it not undertaking any minimum value or volume of services and/or works under or in relation to this contract or the Project generally (including in respect of any loss or deferment of anticipated or actual profit, loss of expectation, loss of revenue, loss of turnover, loss of use, loss of opportunity, loss of production, costs of finance, business interruption and/or redeployment



of workforce or any similar damage or for any consequential or indirect losses of any other kind),

- provided that nothing in this clause Z57.1 shall affect the entitlement of the *Consultant* to be paid for services properly performed under this contract.

**Clause Building Regulations**

**Z58** Z58.1 The *Consultant* warrants to the *Employer* that:

- where the *Consultant* is not acting as the Principal Contractor and/or Principal Designer as the case may be in respect of each actual and potential Construction Package, the *Consultant* will liaise and cooperate with the Principal Designer and Principal Contractor appointed by the *Employer* in connection with that Construction Package (and as notified by the *Employer* to the *Consultant* in writing) as and when required by the relevant Principal Designer and the Principal Contractor in the performance by it of all functions and duties allocated to it by the Building Regulations,

**SCHEDULE 3**

**SCOPE**

<b>Programme</b>	<b>MoJ Future Prison Supply Service Providers</b>
<b>Discipline</b>	<b>Cost Management Services</b>
<b>Jaggaer Project Code:</b>	<b>prj_12461</b>
<b>CCS Code</b>	
<b>Appendix</b>	<b>Appendix F: Scope of Services</b>

## Summary

### Instruction to Bidders

This document is for the purpose of describing the services to be performed by a Cost Consultant. The Client, to the best of its knowledge, has provided the full range of services that may be required, however, this list is not exhaustive. It is the duty of the Bidder to interpret the requirements and submit their proposal using Appendix E Pricing Schedule. For all services within each role, the Client shall assume that the activity may be carried out as part of the Bidders undertaking and that no claim for extra expense will be made.

<b>Key Terms</b>	<b>Description</b>
<b>CMS</b>	Cost Management Services
<b>Client/Contracting Authority</b>	Ministry of Justice.
<b>Early Warning System</b>	Anticipated that the agreed software will be CEMAR which will be free for the CMS to access.
<b>GSL</b>	Government Soft Landing.
<b>Handover Programme</b>	The Handover Programme developed by the incumbent and to be undertaken by the awarded supplier.

<b>Lead Designer/ Architect</b>	Naming convention to maintain integrity with the CCS Framework. The Architect role will change as design responsibility is handed over at different stages of the projects. Typically, the Client Designer role appointed by the Authority is as Architect for RIBA Stages 0,1 & 2, then from RIBA Stages 3-7 this would become a Technical Assessor role, as do those of the other Design Services roles. However, the CD role may continue to deliver to RIBA 3 or 4 or may be projects where the Client Designer is nominated to provide design services for the main Contractor appointed to such project. In which case, the Technical Assessor role would move to the Programme Delivery Partner.
<b>MoJ</b>	Ministry of Justice.
<b>PDP</b>	Programme Delivery Partner
<b>Planning Advisor</b>	Cushman and Wakefield.
<b>Project</b>	MoJ Future Prison Supply Service Providers
<b>Project Programme</b>	The contractual Programme.
<b>Project Team</b>	Consisting of the different organisations, workstreams, and team members allocated to the Project.
<b>Sustainability Strategy</b>	As developed in the lifetime of the Project, in conjunction with MoJ Sustainability Policy.

<b>Programme</b>	<b>MoJ Future Prison Supply Service Providers</b>
<b>Discipline</b>	<b>Cost Management Services</b>
<b>Jaggaer Project Code:</b>	<b>prj_12461</b>
<b>CCS Code</b>	
<b>Appendix</b>	<b>Appendix F: Scope of Services</b>

<b>Ref.</b>	<b>Cost Consultant</b>
<b>General services</b>	
1.1	Provide the Services for all Workplan stages unless instructed otherwise by the Contracting Authority
1.2	Consult and liaise with other suppliers on the Project Team to ensure that the Services provided by the Supplier are fully coordinated with the services provided by those suppliers.
1.3	Where there is duplication between the Services provided by the Supplier and the services of another supplier(s), the Supplier shall assist the Project Lead to resolve the service duplication by agreement with the supplier(s) concerned. The Supplier shall implement the actions the Project Lead confirms in writing.
1.4	Participate in the operation of an Early Warning System.
1.5	Co-operate at all times with the Principal Designer and provide information and Risk Assessments as required.
1.6	Attend meetings with the Contracting Authority, Project Lead, Lead Designer, other suppliers and the Contractor as necessary.
1.7	Provide cost plans and cost checking services to ensure the Client's interests are protected in achieving value for money and commercial support for Contractor's proposals across all packages and sites.
1.8	Identify activities to be undertaken and responsibility for the activities in accordance with the strategy and programme.
1.9	Attend and contribute to regular meetings, workshops and exercises with other parties including but not limited to the Contracting Authority, Key Stakeholders, Project Manager / Client Representative, Designers / Technical Assessors, design & build Constructor and other Contractors, to progress the Cost Information for each of the projects and sites in line with the Clients Requirements
1.10	Work collaboratively with but not limited to; Contracting Authority, Key Stakeholders, Project Manager / Client Representative, Designers / Technical Assessors, design & build Constructor and other Contractors and all other relevant parties and stakeholders to foster a collaborative culture.
1.11	Consult and liaise with the Project Manager / Client Representative, Contracting Authority and other parties to ensure that the services provided by the Cost Consultant and Constructor are fully co-ordinated, meet the Clients Requirements and are costed accordingly.
1.12	Evaluation of any additional costs incurred by the Client as a result of any party not achieving a key date
1.13	In conjunction with the Project Manager / Client Representative, compile Monthly Project Data Sheets to measure progress against programme, actual spend and forecasted cash flow for the current and future financial years

1.14	Provide regular commercial and cashflow reporting, consistent cost data, commercial assurance, cost checking and reporting, Should Cost Models, capital and whole life cost plans, including but not limited to benchmarking of costs against previous projects at all stages but significantly at Business Case (RIBA Stage 2), tender (RIBA 3) and Detailed Project Proposals / Agreed Maximum Price (Stage 4).
1.15	Attend and contribute to workshops and exercises with other suppliers to carry out value engineering, value management, environmental performance improvement initiatives and risk management. Contribute to recommendations for Contracting Authority approval based on the results of these exercises to deliver the best overall value for money.
1.16	Participate in the Change Control Procedure and monitor development of the Cost Information against the Project Budget and Project Programme.
1.17	Work closely with the Contracting Authority, other suppliers and all stakeholders to foster a partnering culture. The culture will embody the principles of mutual trust and co-operation with an overall aim of delivering a successful project to the Project Brief, Project Budget and the Project Programme.
1.18	Quantity surveying services in connection with Building Services, Civil & Structural Engineering and Sustainability elements of buildings/projects.
1.19	The Client is committed to the implementation of Information Management as outlined in the UK BIM Framework and BS EN ISO 19650. All parties will be expected to comply with the Client Information Management Standards (based on ISO 19650) under their specific role as Lead Appointed Party or Appointed Party. Full commitment is required to deliver the Client Information Management suite of standards.
1.20.	Responsible for measuring PMV (Pre Manufactured Value) at each RIBA stage. Once a contractor is appointed, the contractor will be responsible for continuing the calculation of PMV with the cost consultant moving to validating the measurement.. Client currently have a defined calculation for PMV being: $\text{PMV (\%)} = \text{PMV (\pounds)} / \text{Total Measured Works Cost (\pounds)} (-\text{FFE}) \times 100$ Where; $\text{PMV (\pounds)} = \text{Total Measured Works Cost (\pounds)} \text{ excluding FFE, minus on-site labour and plant.}$ $\text{Total Measured Works Cost (\pounds)} = \text{Gross Capital Cost, minus preliminaries, risk and OH\&P.}$
1.21	Where the Supplier is required to obtain quotes for services/works from a subconsultant or third party, they must provide a minimum of 3 quotes to the Client to demonstrate value for money.
1.22	Contingency Required Forecast: Ensure contingency required is assessed in the required level of detail dependent on the project stage, and reviewed monthly if necessary. This to include setting design risk and client contingency estimates and recording and quantifying the crystallisation of design and client risk throughout the lifetime of the project, to ensure that movements in cost between each RIBA stage can be clearly recorded and reported, and supported by the required governance, authorising the changes.



1.23	<p>Adhere to the monthly forecasting cycle as set out by MOJ Finance Business Partners and Management Accounts Teams to provide, on time, forecast :</p> <ul style="list-style-type: none"> <li>- for cost and contingency required, revised for material changes on a monthly basis</li> <li>- that has a cashflow for costs and contingency by site by month</li> <li>- that is subject to deep dive analysis for the current financial year, including a high and low forecast in addition to the central view</li> <li>- that builds in client-side costs such as mobilisation and escort forecasts</li> <li>- where the inflation estimate is updated quarterly in line with BCIS</li> <li>- that has the required level of detail relevant to the stage the project is at</li> <li>- considers and quantifies the impact on cost and cashflow given different potential delivery timescale scenarios (acceleration and delay, annualised profile)</li> </ul>
1.24	<p>"Service Delivery Plan (SDP): Central to the delivery of the services, suppliers are required to maintain and submit a written Service Delivery Plan (SDP) at the service start date and quarterly thereafter, or when otherwise instructed by the Employer. The SDP must outline how the services will be delivered and include:</p> <p>Strategy for Delivery: Detail the strategic approach, methodologies, tools, and resources to deliver the services. Explain how the services address the requirements of the Scope and programme objectives, aligning with the organisation's broader objectives and priorities. Prioritise function over form, defining how services will be delivered and linking this to required resources.</p> <p>Continuous Improvement: Describe mechanisms for capturing lessons learned, feedback loops, performance evaluations, and setting specific, measurable, time-bound service improvement targets. Update progress against these targets with each submission.</p> <p>Project Delivery Handbook: Create a comprehensive, living document that codifies processes, procedures, and standards for service delivery. Maintain this to incorporate new lessons learned and best practices, ensuring consistency and quality across all projects within the programme. "</p>
<b>RIBA Stage 0 - Strategic Definition</b>	
2.1	Provide comments to the Contracting Authority and Project Manager / Client Representative and attend workshops to discuss the Business Case and to develop the Strategic Brief for the project.
2.2	Review findings from post project evaluations from relevant projects and contribute to the Sustainability Checklist to inform the approach to the Strategic Definition for the Project.
2.3	Provide contributions to the Contracting Authority and Project Lead Manager / Client Representative to establish the Project Brief, the Initial Project Budget and the Project Programme.
2.4	Provide contributions to the Project Manager / Client Representative to draft the Project Execution Plan.
<b>RIBA Stage 1 - Preparation and Brief</b>	

3.1	Lead and manage the contribution in respect of budgetary considerations to the development of the Initial Project Brief and prepare the Project Budget. The Initial Project Brief shall include Project Objectives, Quality Objectives, Project Outcomes, environmental performance/Sustainability Aspirations, Project Budget and Project Programme and all other parameters, risks and/or constraints.
3.2	Review Site Information and Project Information and provide comments and attend workshops, as required, to assist the development of the Initial Project Brief.
3.3	Contribute to the agreement of the procurement route and the standard form of Building Contract.
3.4	Provide comment for the development of the Project Roles Table and Contractual Tree by the Project Lead.
3.5	In conjunction with the Project Manager / Client Representative and other Project Team members and Key Stakeholders, prepare the Project Risk Register, taking ownership of this is allocate costs to Client risks for Client Contingency.
3.6	Provide comment to the Project Manager / Client Representative and Lead Designer for the preparation of the Information Exchange and Technology Strategy for the Initial Project Brief.
3.7	<p>Lead and manage the Cost Information contribution to the preparation of option appraisals that meet the Initial Project Brief. Options produced by the Project Team should collectively address:</p> <ul style="list-style-type: none"> <li>- Built Form: including building size, shape, orientation, sub-division, shading, weather and noise protection etc.</li> <li>- Construction standards: including floor load capacities, column to column spans, insulation, fire protection, glazing ratios, thermal and noise insulation, thermal capacity, natural and artificial illumination, ventilation etc.</li> <li>- Structural and hard surfacing materials, foundations, temporary structures etc:</li> <li>- Engineering Services and components: including heating, hot water, cooling, ventilation, lighting, communications, lifting or transportation equipment and public health systems etc.; their operational relationships, methods of control and means of energy supply, distribution and recovery etc.</li> <li>- Foul and surface water drainage, attenuation and rainwater harvesting</li> <li>- External paving and surfacing, roads, car parks and footpaths</li> <li>- Compliance with Client / HMCTS Technical Standards including (but not limited to) Security requirements appropriate to the Establishment</li> <li>- Considers Operational constraints and requirements in both the design solutions and in undertaking the required construction work</li> <li>- Considers whole life costs over a 30 / 60 year life for refurbishment / new build as applicable</li> </ul>
3.8	Lead and manage the Cost Information contribution to the preparation of an Outline Business Case including Whole Life Costs for options and if required , a Feasibility Study for the Contracting Authority preferred option(s)
3.9	Contribute to the update of the Project Programme. Lead and manage the update of the Project Budget.
3.10.	Contribute to the preparation of the Handover Strategy and Risk Assessments in preparation for Concept Design stage and contribute to the Sustainability Checkpoint and the development of the Project Execution Plan.
3.11	Assist in the selection one or more specialists, where appropriate and legally compliant, to provide input into option appraisals and/or the Feasibility Study in consultation with the Contracting Authority and the Project Team.
<b>RIBA Stage 2 - Concept Design</b>	

4.1	Prepare the preliminary Cost Information.
4.2	Update the preliminary Cost Information and the Project Budget for the agreed changes to the Concept Design, Site Information and Project Information in compliance with the Change Control Procedures and the Information Exchanges and contribute to the production of the Final Project Brief.
4.3	Contribute to the development of the Sustainability Strategy, the Maintenance and Operational Strategy and the Sustainability Checkpoint.
4.4	Contribute to the development of the Handover Strategy and review and update Risk Assessments.
4.5	Contribute to the Construction Strategy and the development of the Health and Safety Strategy.
4.6	Contribute to the review and update of the Project Execution Plan.
4.7	Contribute to the review and update of the Project Programme.
4.8	Comply with the Information Exchange requirements.
4.9	Contribute to the selection of a list of tenderers.
4.10.	Contribute to the preparation of the Employer's Requirements.
4.11	Contribute to the preparation of the tender documentation.
4.12	Contribute to the assessment of tenders and the preparation of the tender report. The assessment should include the review and evaluation of the alignment of all pricing and cash-flow information in each of the Constructor's Initial Project Proposals (IPP) with the Employer's Requirements set out in the tender documentation. and the further review and evaluation of responses to any clarifications from the tenderers. Review and comment on then add Client costs to complete the Client required Cost Component Breakdown format for costs from the Constructor for Client Benchmarking and to produce the Product Value etc to support a recommendation to proceed with the tender.
4.13	In conjunction with the Project Manager / Client Representative and other Project Team members and Key Stakeholders, review and update the Project Risk Register, taking ownership of this to allocate costs to Client risks for Client Contingency and assess Constructor proposed costs for their risks.
4.14	Assist in the agreement of the detailed content and the finalisation of the contract documentation (for pre-construction activities).
<b>RIBA Stage 3 - Spatial Coordination</b>	
5.1	Update the preliminary Cost Information and the Project Budget for the agreed changes to the Developed Design, Site Information and Project Information in compliance with the Change Control Procedures and the Information Exchanges
5.2	Contribute to the development of the Project Strategies.
5.3	Contribute to the review and update of the Sustainability Strategy and the Maintenance and Operational Strategy and contribute to the Sustainability Checkpoint.

5.4	Contribute to the review and update of the Handover Strategy and review and GSL Checklist
5.5	Contribute to the review and update of the Construction Strategy and the Health and Safety Strategy.
5.6	Contribute to the review and update of the Project Execution Plan.
5.7	Contribute to the review and update of the Design Programme and Project Programme.
5.8	Comply with the Information Exchange requirements.
5.9	Assist in the agreement of the detailed content and the finalisation of the contract documentation (for pre-construction activities).
5.10.	Lead the assessment of the Agreed Maximum Price (AMP) and Risk Register submission from the Constructor of pricing information and cash-flows, to ensure alignment with the contract documentation (for pre-construction activities) and the further review and evaluation of responses to any clarifications from the Constructor
<b>RIBA Stage 4 - Technical Design</b>	
6.1	Update the Cost Information and the Project Budget for the agreed changes to the Technical Design and Detailed Project Proposals submitted by the Constructor including Site Information and Project Information in compliance with the Change Control Procedures and the Information Exchanges
6.2	Contribute to the review and update of the Sustainability Strategy and the Maintenance and Operational Strategy and contribute to the Sustainability Checkpoint.
6.3	Contribute to the review and update of the Handover Strategy and GSL Checklist
6.4	Contribute to the review and update of the Construction Strategy and the Health and Safety Strategy
6.5	Contribute to the review and update of the Project Execution Plan.
6.6	Contribute to the review and update of the Design Programme and Project Programme.
6.7	Comply with the Information Exchange requirements.
6.8	In conjunction with the Project Manager / Client Representative and other Project Team members and Key Stakeholders, review and update the Project Risk Register, taking ownership of this to allocate costs to Client risks for Client Contingency and assess Constructor proposed costs for their risks.
6.9	Lead and manage the Cost Information contribution to the preparation of a Full Business Case if required, including Whole Life Costs for options and if required
6.10.	Assist in the agreement of the detailed content and the finalisation of the contract documentation.
6.11	Undertake a detailed assessment of the submission from the Constructor of pricing information, Cost Component Breakdown and cash-flows, to ensure value for money and alignment with the contract documentation and the further review and evaluation of responses to any clarifications from the Constructor before preparing a Recommendation Report.
<b>RIBA Stage 5 - Manufacture and Construction</b>	
7.1	Contribute, as necessary, to the provision of information to the Contract Administrator / Project Manager / Client Representative to assist contract administration.

7.2	Attend regular progress meetings with the Constructor and other members of the Project Team and provide ongoing advice on the overall cost of the project in relation to the Project Budget and recommend any corrective action that may be necessary. Undertake valuations of the works in accordance with the provisions of the Building Contract and provide cashflow updates to the Contracting Authority.
7.3	In consultation with the Contracting Authority and the Project Team, ensure that rigorous cost control is undertaken in accordance with Change Control Procedures and provide estimates of cost in connection therewith and negotiate the costs of approved changes with the Contractor.
7.4	Visit the site at such intervals as are necessary in order to be fully aware of all matters which could affect the cost of the project.
7.5	Produce financial statements at monthly intervals, or at such other intervals as shall be agreed with the Contracting Authority that demonstrate the current financial position of the project and a forecast of the cost at completion and submit to the Project Lead and the Contracting Authority.
7.6	Review and update the Risk Register at least monthly to reflect changes, additional risks and expenditure of Contingency.
7.7	Contribute to the review and update of the Project Programme.
7.8	Contribute to the review and update of the Sustainability Strategy and contribute to the Sustainability Checkpoint.
7.9	Contribute to the review and update of the Construction Strategy and the Health and Safety Strategy.
7.10.	Contribute to the implementation of the Handover Strategy and GSL Checklist
7.11	Comply with the Information Exchange requirements.
7.12	In consultation with the Contracting Authority and the Project Team, contribute to the preparation of a planned maintenance programme for the project, post handover, and contribute to recommendations for the procurement of the planned maintenance.
7.13	Lead the assessment of the submission from the selected tenderer of pricing information and cash-flows, to ensure alignment with the contract documentation and the further review and evaluation of responses to any clarifications from the tenderer.
7.14	Alert the the Project Lead, the Contract Administrator and the Contracting Authority other members of the Project Team to the possibility of receiving claims from the Contractor. If such claims are submitted, advise the Project Lead and the Contracting Authority.
7.15	Assist the Contract Administrator with all activities in connection with the adjudication of disputes between the Contracting Authority and the Contractor.
7.16	In co-operation with the other members of the Project Team concerned, evaluate claims and make recommendations.
<b>RIBA Stage 6 - Handover</b>	
8.1	Undertake tasks listed in Handover Strategy and contribute to the Sustainability Checkpoint.
8.2	Agree the final account, or equivalent, in accordance with the Building Contract.
8.3	Provide a detailed statement of final cost to the Contracting Authority and Contract Administrator.

8.4	Contribute to the provision of information to the Contract Administrator to assist administration of the contract.
8.5	Contribute to the update of the Project Information.
<b>RIBA Stage 7 - Use</b>	
9.1	Undertake the tasks listed in the Handover Strategy.
9.2	Contribute to the Post Occupancy Evaluation
9.3	Contribute to the update of Project Information in response to ongoing Contracting Authority Feedback
9.4	Contribute to the post completion defect rectification process in accordance with GSL requirements.
9.5	Contribute to the post completion monitoring process in accordance with GSL requirements.
9.6	Contribute to the review of Project Performance, Project Outcomes, the Sustainability Checkpoint and the outcome of any research and development aspects

**SCHEDULE 4**

**PRICES**









**SCHEDULE 5**

**TEMPLATE FORM OF COLLATERAL WARRANTY IN FAVOUR OF A BENEFICIARY**

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

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

(1) [Consultant]

(2) [Beneficiary]

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

**relating to the**

*[insert details of Project]*



Date:

**Parties**

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

**Introduction<sup>1</sup>**

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

**Agreed terms**

**1 INTERPRETATION**

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

**1.1 Definitions:**

**Material** all [designs,] drawings, models, plans, [specifications, design details,] photographs, brochures, reports, feasibility studies, planning submissions, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Project and all updates, amendments, additions and revisions to them and any works, [designs,] or inventions incorporated or referred to in them for any purpose relating to the Project.

**Permitted Uses** without limitation the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, extension, building information modelling and repair of the Property and the Project.

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



<b>Professional Appointment</b>	a professional appointment in writing dated [DATE] between the Employer <sup>1</sup> and the Consultant which includes all Task Orders issued under that professional appointment.
<b>Project</b>	[DESCRIPTION OF PROJECT].
<b>Property</b>	[DESCRIPTION OF PROPERTY].
<b>Required Standard</b>	all the reasonable skill, care and diligence to be expected of a qualified and experienced member of the Consultant's profession undertaking the Services in relation to projects of a similar size, scope, complexity and character to the Project.
<b>Services</b>	the services referred to in the Professional Appointment, performed by or on behalf of the Consultant under the Professional Appointment.

- 1.2 Clause headings shall not affect the interpretation of this agreement.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.
- 1.4 A reference to a company includes any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.8 A reference to legislation is a reference to all legislation having effect in the United Kingdom from time to time, including:
- 1.8.1 directives, decisions and regulations of the Council or Commission of the European Union;
  - 1.8.2 acts of Parliament;
  - 1.8.3 orders, regulations, consents, licences, notices and bye-laws made or granted;
    - (a) under any act of Parliament; or
    - (b) under any directive, decision or regulation of the Council or Commission of the European Union; or
    - (c) By a local authority or by a court of competent jurisdiction; and
  - 1.8.4 any mandatory codes of practice issued by a statutory body.



- 1.9 A reference to legislation is a reference to that legislation as amended, modified, consolidated, re-enacted or replaced from time to time and to all subordinate legislation made under it from time to time.
- 1.10 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.11 A reference to writing or written does not include fax or email.
- 1.12 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of this agreement) at any time.
- 1.13 References to clauses are to the clauses of this agreement.
- 1.14 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2 COMPLY WITH PROFESSIONAL APPOINTMENT**

- 2.1 The Consultant warrants to the Beneficiary that
  - 2.1.1 it has and shall continue to comply with the Professional Appointment:
  - 2.1.2 it has exercised and shall continue to exercise the Required Standard:
    - (a) when performing the Services;
    - (b) to comply with any legislation;
    - (c) to perform the Services and prepare all Material for those elements of the Project for which the Consultant is responsible in sufficient time to facilitate the efficient progress of the Project;
    - (d) to ensure that the Project complies with all planning agreements, permissions and conditions; and
- 2.2 In proceedings for breach of any of the clauses in this agreement, the Consultant may:
  - 2.2.1 rely on any limit of liability or other term of the Professional Appointment; and
  - 2.2.2 raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint client, with the Employer<sup>1</sup>, under the Professional Appointment (for this purpose not taking into account any set-off or counterclaim against the actual client under the Professional Appointment).
- 2.3 The Consultant's duties or liabilities under this agreement shall not be negated or diminished by:
  - 2.3.1 any approval or inspection of:
    - (a) the Property; or
    - (b) the Project; or



(c) any designs or specifications for the Property or the Project; or

2.3.2 any testing of any work, goods, materials, plant or equipment; or

2.3.3 any omission to approve, inspect or test,

by or on behalf of the Beneficiary or the Employer<sup>1</sup>.

2.4 This agreement shall not negate or diminish any other duty or liability otherwise owed to the Beneficiary by the Consultant.

### 3 PROFESSIONAL INDEMNITY INSURANCE

3.1 The Consultant shall maintain professional indemnity insurance for an amount of at least £*[insert level of professional indemnity insurance required to be maintained under the Professional Appointment]* for a period beginning on the date of this agreement and ending 12 years after the date of practical completion of the Project, provided that such insurance is available at commercially reasonable rates. The Consultant shall maintain that professional indemnity insurance:

3.1.1 with reputable insurers lawfully carrying on insurance business in the European Union; and

3.1.2 on customary and usual terms and conditions prevailing for the time being in the insurance market.

3.2 Any increased or additional premium required by insurers because of the Consultant's claims record or other acts, omissions, matters or things particular to the Consultant shall be deemed to be within commercially reasonable rates.

3.3 The Consultant shall immediately inform the Beneficiary if the Consultant's required professional indemnity insurance ceases to be available at commercially reasonable rates, so that the Consultant and the Beneficiary can discuss how best to protect the respective positions of the Beneficiary and the Consultant regarding the Project and the Property, without that insurance.

3.4 Whenever the Beneficiary reasonably requests, the Consultant shall send the Beneficiary evidence that the Consultant's professional indemnity insurance is in force, including, if required by the Beneficiary, an original letter from the Consultant's insurers or brokers confirming the Consultant's then current professional indemnity insurance and that the premiums for that insurance have been paid in full at the date of that letter.

### 4 COPYRIGHT

4.1 The Consultant grants to the Beneficiary, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by, or on behalf of, the Consultant for any purpose relating to the Project and the Property, including any of the Permitted Uses.

4.2 This licence allows the Beneficiary to use the Material in connection with any extension of the Project, but not to reproduce the designs contained in the Material in any such extension.

4.3 This licence carries the right to grant sub-licences and is transferable to third parties without the consent of the Consultant.



- 4.4 The Consultant shall not be liable for use of the Material for any purpose other than that for which it was prepared and/or provided
- 4.5 The Beneficiary may request a copy (or copies) of some or all of the Material from the Consultant. On the Beneficiary's payment of the Consultant's reasonable charges for providing the copy (or copies), the Consultant shall provide the copy (or copies) to the Beneficiary.

## **5 LIABILITY PERIOD**

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

## **6 ASSIGNMENT**

- 6.1 The Beneficiary may assign the benefit of this agreement:
- 6.1.1 on two occasions to any person with an interest in the Project; and
- 6.1.2 without counting as an assignment under clause 6.1.1:
- (a) by way of security to a funder (including any reassignment on redemption of security); or
- (b) to and from subsidiary or other associated companies within the same group of companies as the Beneficiary so long as that assignee company remains within the same group of companies as the Beneficiary.
- 6.2 The Beneficiary shall notify the Consultant of any assignment. If the Beneficiary fails to do this, the assignment shall still be valid.
- 6.3 The Consultant shall not contend that any person to whom the benefit of this agreement is assigned under clause 6.1 may not recover any sum under this agreement because that person is an assignee and not a named party to this agreement.

## **7 THIRD PARTY RIGHTS**

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

## **8 GOVERNING LAW**

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

## **9 JURISDICTION**

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



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



## SCHEDULE 6

### TEMPLATE FORM OF DEED OF GUARANTEE

**THIS DEED OF GUARANTEE** is made the                      day of                      20[ ]  
**BETWEEN:**

- (1) Turner & Townsend UK Limited a company incorporated in England and Wales with number 03512868 whose registered office is at Low Hall, Calverley Lane, Horsforth, Leeds, West Yorkshire, LS18 4GH [ ("**Guarantor**")];  
and
- (2) The Secretary of State for Justice (of the Ministry of Justice) 102 Petty France, Westminster, London, SW1H 9AG ("**Beneficiary**")

**WHEREAS:**

- (A) The Guarantor has agreed, in consideration of the Beneficiary entering into the Call Off Contract with the Consultant, to guarantee all of the Consultant's obligations under the Call Off Contract.
- (B) It is the intention of the Parties that this Deed of Guarantee be executed and take effect as a deed. The Beneficiary has paid £10 to the Guarantor as consideration under this Deed of Guarantee the receipt and sufficiency of which the Guarantor acknowledges

#### 1. DEFINITIONS AND INTERPRETATION

In this Deed of Guarantee:

- 1.1 unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Call Off Contract;
- 1.2 the words and phrases below shall have the following meanings:

<b>Call Off Contract</b>	means the professional appointment agreement in writing between the Beneficiary and the Consultant dated [insert date of Call Off Contract] and all Task Orders issued under the professional appointment agreement;
<b>Consultant</b>	means the Consultant as defined in the Call Off Contract;
<b>"Guaranteed Obligations"</b>	means all obligations and liabilities of the Consultant to the Beneficiary under the Call Off Contract together with all obligations owed by the Consultant to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Call Off Contract;

- 1.3 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Call Off Contract) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time;
- 1.4 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;





- 1.5 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
- 1.6 the words "other" and "otherwise" are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;
- 1.7 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
- 1.8 unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
- 1.9 unless the context otherwise requires, any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
- 1.10 references to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee; and
- 1.11 references to liability are to include any liability whether actual, contingent, present or future.

## **2. GUARANTEE AND INDEMNITY**

- 2.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Consultant duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Consultant to the Beneficiary.
- 2.2 The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Consultant to the Beneficiary under or in connection with the Call Off Contract or in respect of the Guaranteed Obligations as if it were a primary obligor.
- 2.3 If at any time the Consultant shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:
  - 2.3.1 fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Call Off Contract had been entered into directly by the Guarantor and the Beneficiary; and
  - 2.3.2 as a separate and independent obligation and liability, indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Consultant to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Consultant under the Call Off Contract.
- 2.4 As a separate and independent obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's



liability shall be no greater than the Consultant's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

2.5 Notwithstanding anything expressed or implied to the contrary in this of Guarantee, the Guarantor shall not by virtue of this Guarantee acquire any liability to the Beneficiary under this Guarantee in respect of the Call Off Contract which is greater or of longer duration than it would have acquired had the Guarantor been a party to the Call Off Contract in substitution for the Consultant. The Guarantor shall be entitled, in defence of any claim brought against it under this Guarantee in respect of any breach or other failure of the Consultant under the Call Off Contract, to all defences, limitations and exclusions (including set-off and counterclaim) that would have been available to the Guarantor had the Guarantor been a party to the Call-Off Contract in substitution for the Consultant, provided that the Guarantor acknowledges and agrees that it shall not be discharged nor shall its liability be reduced, discharged or adversely affected by any legal limitation or incapacity relating to the Consultant or any Insolvency of the Consultant.

### **3. OBLIGATION TO ENTER INTO A NEW CONTRACT**

3.1 If the Call Off Contract is terminated for any reason, whether by the Beneficiary or the Consultant, or if the Call Off Contract is disclaimed by a liquidator of the Consultant or the obligations of the Consultant are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Call Off Contract and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the Call Off Contract or under an agreement entered into on the same terms and at the same time as the Call Off Contract with the Beneficiary.

### **4. DEMANDS AND NOTICES**

4.1 Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:

4.1.1 [Address of the Guarantor in England and Wales]

4.1.2 For the Attention of [insert details]

or such other address in England and Wales as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address for the receipt of such demands or notices.

4.2 Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:

4.2.1 if delivered by hand, at the time of delivery; or

4.2.2 if posted, at 10.00 a.m. on the second Working Day after it was put into the post.

4.3 In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter.

4.4 Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.

### **5. BENEFICIARY'S PROTECTIONS**

5.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Consultant and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Call Off Contract or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the



Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.

5.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:

- 5.2.1 it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Consultant of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;
- 5.2.2 it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Consultant, the Beneficiary, the Guarantor or any other person;
- 5.2.3 if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Consultant for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and
- 5.2.4 the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.

5.3 This Deed of Guarantee is a continuing guarantee and accordingly shall remain in full force and effect notwithstanding any legal limitation or incapacity relating to the Consultant or any Insolvency of the Consultant until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by the Consultant under the Call Off Contract shall have been fully satisfied or performed and is in addition to and not in substitution for any other security which the Beneficiary may at any time hold for the performance of such obligations and may be enforced without first having recourse to any such security and without taking any steps or proceedings against the Consultant.

5.4 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non performance by the Consultant of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.

5.5 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Consultant or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Consultant or any third party, or to take any action whatsoever against the Consultant or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.

5.6 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.

5.7 Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.

5.8 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set



aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

## 6. GUARANTOR INTENT

6.1 Without prejudice to the generality of Clause 5 (Beneficiary's protections), the Guarantor expressly confirms that it intends that this Deed of Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Call Off Contract and any associated fees, costs and/or expenses.

## 7. RIGHTS OF SUBROGATION

7.1 The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Consultant and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:

- 7.1.1 of subrogation and indemnity;
- 7.1.2 to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Consultant's obligations; and
- 7.1.3 to prove in the liquidation or insolvency of the Consultant,

only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor hereby acknowledges that it has not taken any security from the Consultant and agrees not to do so until Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this Clause on trust for the Beneficiary.

## 8. DEFERRAL OF RIGHTS

8.1 Until all amounts which may be or become payable by the Consultant under or in connection with the Call Off Contract have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:

- 8.1.1 exercise any rights it may have to be indemnified by the Consultant;
- 8.1.2 claim any contribution from any other guarantor of the Consultant's obligations under the Call Off Contract;
- 8.1.3 take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Call Off Contract or of any other guarantee or security taken pursuant to, or in connection with, the Call Off Contract;
- 8.1.4 demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Consultant; or
- 8.1.5 claim any set-off or counterclaim against the Consultant;

8.2 If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.



## **9. REPRESENTATIONS AND WARRANTIES**

9.1 The Guarantor hereby represents and warrants to the Beneficiary that:

- 9.1.1 the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
- 9.1.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;
- 9.1.3 the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to Clause 3) have been duly authorised by all necessary corporate action and do not contravene or conflict with:
  - (a) the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
  - (b) any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
  - (c) the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;
- 9.1.4 all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
- 9.1.5 this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

## **10. PAYMENTS AND SET-OFF**

- 10.1 All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 10.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 10.3 The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

## **11. GUARANTOR'S ACKNOWLEDGEMENT**

- 11.1 The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

## **12. ASSIGNMENT**



12.1 The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.

12.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.

### 13. SEVERANCE

13.1 If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

### 14. THIRD PARTY RIGHTS

14.1 A person who is not a Party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

### 15. GOVERNING LAW

15.1 This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.

15.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.

15.3 Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).

15.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.

IN WITNESS whereof the Guarantor has caused this instrument to be executed and delivered as a Deed the day and year first before written.


EXECUTED as a DEED by


Turner & Townsend UK Limited whose registered office is at

Low Hall  
Calverley Lane  
Horsforth  
Leeds  
West Yorkshire  
LS18 4GH

acting by two directors:



Director (signature) \_\_\_\_\_ 

Director (signature) \_\_\_\_\_ 



**EXECUTED AS A DEED** by **THE SECRETARY OF STATE FOR JUSTICE (OF THE MINISTRY OF JUSTICE)** affixing hereto its corporate seal and authenticated by:

**Authorised Signatory (signature):**

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**Authenticated Signatory (printed name):**

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**SCHEDULE 7**  
**SECURITY ASPECTS LETTER**



Property  
Directorate

# **SECURITY ASPECTS LETTER**

Property Directorate: Project Control Framework

STD/BIM/P001.6

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Document Ref	SECURITY ASPECTS LETTER
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Version Control			
Issue No	Issue Date	Issue Author	Reason for Issue
1	2023-01-01	John Doe	Initial release
2	2023-01-05	Jane Smith	Bug fix
3	2023-01-10	John Doe	Feature update
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8	2023-02-05	Jane Smith	Bug fix
9	2023-02-10	John Doe	Feature update
10	2023-02-15	Jane Smith	Bug fix
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14	2023-03-05	Jane Smith	Bug fix
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## 1. Background

- 1.1 This document will form part of the Contract between all parties. If there is any conflict between the terms of that contract and this letter, then the terms of the contract shall prevail.
- 1.2 All MoJ Property projects will require appropriate security minded approach to proceed safely. This letter has been developed to set out some of the strategic intent of the Authority's requirements in relation to security for any Project undertaken by the MOJ and its Contractors.
- 1.3 All Parties shall comply with all applicable laws in relation to this letter and the Project.
- 1.4 The following Acronyms will be used

MoJ	Ministry of Justice
BASM	Built Asset Security Manager
BASMP	Built Asset Security Management Plan
BASS	Built Asset Security Strategy
CDE	Common Data Environment
HMPPS	Her Majesty's Prison and Probation Service
HMCTS	Her Majesty's Courts and Tribunals Service
DHR	Data Handling Request
ROTL	Release on Temporary Licence
SMP	Security Management Plan
ISMP	Information Security Management Plan

## 2. Definitions

- 2.1 The following terms will be used throughout this document:

<b>Authority</b>	This refers to the Ministry of Justice (MoJ).
<b>Governor</b>	A person who manages a Prison and other units such as Young Offenders Institutions. They are responsible for the security and the overall care, progress and rehabilitation of prisoners.
<b>Manager</b>	Managing agent or officer manager in charge of building operations.

### 3. Definitions of Environments

3.1 The following Environments will be referred to throughout this document:

<b>Brownfield sites</b>	This refers to any land that is within the existing perimeter of an MoJ site or any previously developed land that is not currently in use, whether contaminated or not.
<b>Greenfield sites</b>	This refers to areas of land, usually agricultural or amenity land which is being considered for development.
<b>Other MoJ Establishments</b>	This refers to Courts, Probation offices, other offices such as the Office of the Public Guardian

### 4. Security Management Culture and Awareness

4.1 Security is defined in accordance with business impact levels defined in the HMG [Security Policy Framework December 2022](#) and [Government Security Classifications July 2023](#).

4.2 Security is everyone's responsibility, and its effectiveness relies on processes, procedures and policies being in place to help people to behave in the right way. This is enabled through a clear understanding of what is required by all those on MoJ projects and allows for the detection of security threat, The development of an appropriate security culture is essential for all MoJ Projects.

4.3 To satisfy Government requirements, the contractor should have:

- Staff who are well trained to exercise good judgement, take responsibility and be accountable for the information they handle.
- Mechanisms and processes in place to ensure assets and information are properly classified and appropriately protected
- An auditable, centralised security management system and security controls that are effective so that systems and services can protect the information they carry.

4.4 The level of security will differ from project to project and a security working group will be established, which will include the Mace Security Manager; Project Manager and Project Sponsor as a minimum this will determine the most appropriate form of security.

4.5 For all virtual and built assets, specific security measures related to information exchange will be identified on a project specific basis and communicated to the supply chain accordingly. The Client will dictate those procurement packages that have been deemed OFFICIAL-SENSITIVE. This has been developed by the MoJ and is subject to review and revision as necessary.

4.6 The Information Delivery Plan will communicate the information requirements for construction, assembly and asset management. This will be developed in conjunction with the Main Contractor's BIM Team(s). The details of the Employer's security requirements as

derived from ISO 19650-5 (Security-minded approach to Information Management) compliant materials such as the Security Strategy and the Security Management Plan including the Security Information Requirements and Security Breach and Incident Management Plan. The Security Strategy is an internal MoJ document which will not be made generally available, the Security Management Plan is authorised for general release. Please see link for an introduction to [ISO 19650-5](#) (and any other future policies as directed by the Authority).

4.7 The Construction Security Manager will be required to develop and submit a Security Management Plan which will include an Incident Management Plan which reflects the MoJ's policies. Within the Incident Management Plan a clear Communications Plan will detail the responsibilities and actions required by the Incident Control Officer in response to a physical or information breach. It will include the necessity to engage, at the earliest possibility, and collaborate with the MoJ's Built Asset Security Manager (BASM) to resolve the security breach until it has been suitably contained. This will involve liaising with other Security Stakeholders. In addition, it will be the responsibility of the Contractor to undertake corrective action to safeguard against any future breaches of a similar nature.

4.8 The Contractor's Security Manager will be required to produce reports which will be recorded and stored on the MoJ's CDE by exception within 24hrs of an incident occurring and will extend to the following areas:

<b>Site</b>	Site Incident Management.
<b>Personnel</b>	Not likely to be applicable prior to construction phase.
<b>Data</b>	IT departments will be required to provide specialist reports

Additionally, all security incidents should be reported to the MoJ or it's nominated Security representative who will instigate a security working group and if appropriate a security investigation will be conducted.

4.9 The Contractor will assist in supporting auditing procedure to provide the MoJ with Assurance statements involving the MoJ Security Stakeholders.

## 5. Personnel Security Screening and Vetting

5.1 Security checks and vetting are to be completed as a priority prior to access to any MoJ data or information being granted, however, a Data Handling Request (DHR) form can be used (details of which can be found in section 9) **as a temporary measure** (the minimum BPSS checks must be completed no later than 3 months of personnel starting). All personnel working on MoJ projects must obtain, as a minimum, a successful Baseline Personal Security Standard (BPSS) check (UK Governmental Requirement). The responsibility of these checks (including cost) will belong to the contractor and may be audited at any time by the MoJ or it's nominated Security representative.

5.2 Those who work next to or within a live environment will be required to meet the security requirements of that Establishment. General conditions are set out in the Table 1 below.



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5.3 For certain types of establishment or for access to certain types of information either CTC (CTC clearance may be required if access is required to information assessed to be of value to terrorists) or DV clearance may be required. This will be advised by the MoJ.

5.4 Please refer to the following CDE viewpoint area for access to [HMPPS Security Conditions Document](#), [HMCTS Conditions Document](#) and [Home Office and Border Force Conditions Document](#).

Note: All other Establishments will be covered by the general conditions.

Role and/or Working Area	Vetting Contact Point (VCP)	Minimum Level of Clearance Required
Professional Services (Client Representative, Technical Advisor, Cost Consultant, Principal Designer etc.) Access to information only	Contractor NSVC This requires List X Registration*	BPSS Check**
Other MoJ Establishments	Contractor NSVC This requires List X Registration*	BPSS Check**

Table 1 Security and Vetting Requirements

\*For link to further information please see section 12

\*\* CTC clearance may be required if access to a large aggregate of information is required

5.5 The approximate time frames to obtain checks/ clearance are set out in table 2 below.

	BPSS	Enhanced Level 1
Time to Process	5 working days to 3 months	1-6 months*
Expiry Time	10 years BPSS's don't generally expire. However, for best practice we will be renewing these every 10 years.	10 years (Expires if subject leaves site for more than 6 months)

Table 2. Guidance for Application Time Frames against Vetting Stipulation

\*This period of risk is mitigated by the Data Handling Request

5.6 The contractor must make allowances for absences by your regular teams and therefore have the ability to fill gaps with already cleared personnel. In addition, you must have a strategy in place for managing the recruitment and attrition of staff over the duration of the project. These conditions are to ensure you have planned contingency into your base to minimise any effect on the project.

5.7 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

5.9 The contractor will have signed a Non-Disclosure Agreement (NDA) in order to review all documents involved in any MoJ tender or access to information on the Client's CDE. This NDA applies to your entire team so you must have appropriate NDAs in place with your supply chain. A record of which should be stored on the clients CDE. The MoJ or it's nominated security representative will conduct quarterly audits across the supply chain to ensure the NDAs are being implemented.

5.11 The Security Working Group (SWG) involving the MoJ or it's nominated security representative and the Supply chain security manager will dictate which people with current and spent convictions will be allowed to operate or work on site. The minutes from the SWG will be shared with the client for any feedback.

Response	Percentage
U.S. should take action	95%
U.S. should take strong action	90%

Government	Percentage
Current government	80%
Previous government	20%

## HMPSS

5.13 The minimum baseline requirements for Individuals working on HMPPS sites and HMPPS staff is an Enhanced Level 1 check. This differs from the BPSS as it checks both spent and unspent criminal records in line with the criminal record filtering rules. Non-directly employed workers providing services to any HMPPS public or private organisations with prisoner contact and issued keys and where a risk assessment identifies no further vetting is required.

5.14 For further information on the criteria for working on HMPPS sites please refer to [HMPPS conditions document](#) on the Viewpoint security section.

## 6. Provision of Information to Non-Contracted Third Parties

6.1 Permission requests for access to information by non-contracted and/or non-security cleared personnel will be managed through the MoJ's DHR form (the document can be found on Viewpoint Security section).

6.2 The DHR is a time bound document (maximum 3 months from submission of DHR) and will not cover members of the team for the life of the project. This is not a replacement BPSS check. This is an interim document to allow access to information/Viewpoint and will prevent delay to the works. If a BPSS is not achieved within three months, access to information will be removed from the individual.

6.3 The DHR identifies the reason, role and the context of the request, as well as the responsible persons, storage and internal security of that information. The process of this request will be done by a Construction Security Manager, and the MoJ BASM within their responsibility will grant or escalate the access request.

6.4 There are currently two DHRs in use. The first being for non-security cleared Main Contractors. The second is for non-security cleared Sub-contractors. The exact process for the provision of information to non-security cleared Contractors and Sub-Contractors is shown in Figure 1 below.

6.5 In granting access information, there will be a number of handling stipulations that will be dictated by the Security Manager / Information Assurance Officer. These will be recorded within the DHRs and then be referred to in the [MoJ's Transmittal Note](#) available via the Viewpoint Security Section.

## 6.6

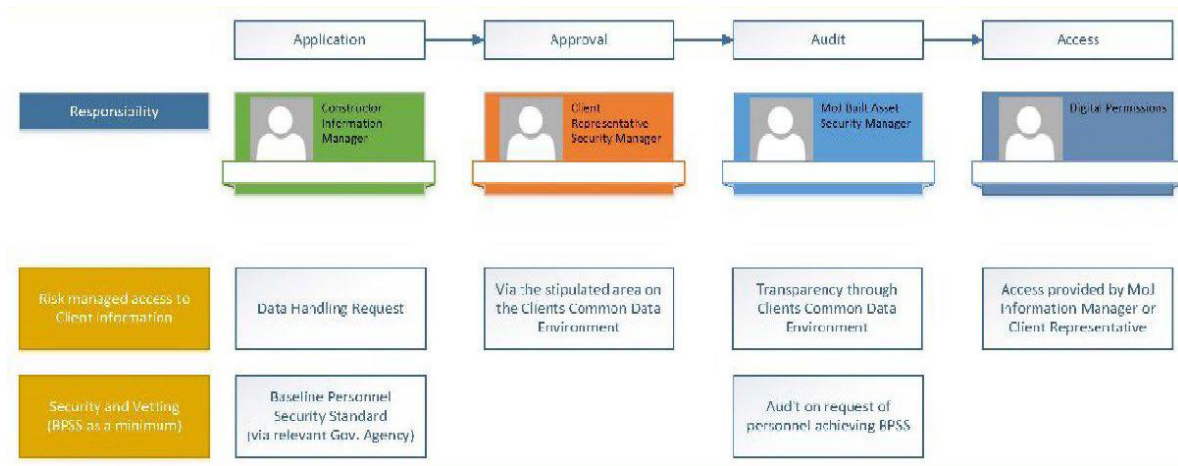


Figure 1. Provision of Information Process

6.7 The Information Transmittal Note will be a pre-condition to the final access to the information to the individual, thus communicating the handling conditions and transferring responsibility to the new user.

## 7. ROTL

7.1 ROTL facilitates the rehabilitation of those in custody by helping them to prepare for resettlement in the community once they are released.

7.2 Where a particular role is identified for an individual on ROTL, this role will be declared to the prison. The individual will then go through a detailed risk assessment process by the prison to establish their suitability for carrying out that specific role on site. They are approved for ROTL by job role and if this changes then a further risk assessment will be required however this will not be as in depth as the original risk assessment.

7.3 Guidance for the Security Working Group has been produced (please refer to the [Viewpoint Security section](#) for document), which sets out what is required by the Contractor and the Project SWG to ensure the proper management of those individuals on ROTL.

7.4 The SWG will work alongside HMPPS and the MoJ to ensure that all the requirements set out in the Guidance are met.

## 8. Information Management

8.1 All documents used in the implementation of the programme for the MoJ constitute a security risk. Documents issued to contractors remain at all times the property of the MoJ and on completion of the contract shall either be returned to the MoJ in accordance with the conditions of contract or be certified by the Contractor as having been destroyed in a secure manner. A [data destruction form](#) is to be completed and returned to the Mace Security team

## OFFICIAL

(the document can be found in the Viewpoint Security section) this shall be the responsibility of the Contractor Security Manager.

8.2 The Contractor is responsible at all times for the security of all information whether issued by the MoJ or copied, produced or obtained by the contractor or their agents. These security requirements have been incorporated in order to prevent information detrimental to the security of the MoJ coming into the possession of unauthorised persons and at the same time establish an audit trail of document movement.

8.3 In this context the term “documents” shall mean any and every drawing (including CAD), plan, schedule, specification standard presentation brochure, model, photograph, asset information and bill of quantities, whether in hard copy or electronic format.

8.4 [Government Document Security Classification](#) should be adopted, balancing the project specific needs of Confidentiality, Integrity and Accessibility with the consequences of any loss or unauthorised release of information.

8.5 The majority of MoJ project data sets will be typically categorised as OFFICIAL unless stated otherwise. However, although subsets of information may be OFFICIAL, if a large amount of OFFICIAL information is stored together the aggregated information may be treated under the same condition as though it were OFFICIAL – SENSITIVE. If OFFICIAL information is grouped with OFFICIAL- SENSITIVE data the classification will be raised to OFFICIAL- SENSITIVE. The security level will be decided by the Authority, please refer to [Government Security Classifications - GOV.UK \(www.gov.uk\)](#)

8.6 If, by exception and with the express authority of the client, OFFICIAL- SENSITIVE information needs to be sent via email it should be password protected. It should also include OFFICIAL- SENSITIVE markings in the email title. The password should be sent in a separate email. Sending documents via email will be avoided in all but essential circumstances.

Documents will be shared in one of two ways:

- a) Via short codes from MoJ Viewpoint
- b) Via links from the external document library on SharePoint

It is forbidden to send any private personal information without the subject's specific approval and following 7.5 guidance.

8.7 The Contractor Security Manager will be on site for the duration of the project. This person is accountable for the control of all documents relating to the contract and in particular the whereabouts of each individual document. A document register should be created and maintained by the Contractor Security Manager to monitor the physical movement of documents.

8.8 The Contractor must notify all personnel handling documents of the requirements imposed by the MoJ and of the procedures for maintaining a security register.

8.9 Any security hierarchy is only as good as its weakest link. It is imperative therefore, that the Contractor must include in all contracts with sub-contractors, suppliers etc., where they will have access to sensitive information, similar but no less strict conditions of document security and shall be responsible for their compliance.



## OFFICIAL

8.10 The Construction Security Manager is responsible for the issue of documents to site operatives including any subcontractors (whether nominated, approved, appointed or otherwise) to all others including suppliers and specialists and to representatives of the MoJ.

8.11 The Contractor must provide, both at any relevant project location and at their offices, secure lockable, computers, cabinets and cupboards used for storing documents and these shall be kept locked at all times when not in use and secured at all times when the premises are unoccupied. In line with information management good practice no data should be left vulnerable to theft/loss.

8.12 At the completion of the works the Contractor must obtain from all others having an interest in the contract, the return of all documents issued to and created by the other parties and shall remind them of the contractual obligations required by these security conditions.

8.13 The Contractor must continue to safeguard and secure documents after completion of the works until such time as the contract has finally completed and the contractor has received all monies due from the MoJ. At that stage, and in agreement with the MOJ, the contractor shall confirm in writing what documents shall be returned, destroyed or kept and if kept shall continue to keep them secure as required above.

8.14 Classification of documents/Information Delivery references will be guided by a standard set of protocols to be detailed in the Information Delivery Plan; confirmed by the MoJ/ MoJ's Representative BASM.

8.15 The Construction Security Manager and Information Managers must ensure that all the relevant data protection legislation is adhered to. All procedures for management of a breach are incorporated and reported as part of the Incident Management Plan. Personnel data is to be stored and updated with the appropriate metadata on Viewpoint / client databases. The personnel data is to be held in a container with restricted permissions and in accordance with the BASM Plan.

### **8.16 Data Protection Impact Assessment (DPIA)**

- The Security Working Group will be required to deal with information, which may result in a high risk to individuals rights and freedoms. In order to protect this information, the contractor will be required to complete a mandatory [DPIA](#) (please refer to the Viewpoint Security section) at the earliest opportunity via MoJ's One Trust tool.
- The DPIA is a tool for identifying and minimising risks around the collection, processing and disclosure of personal data and allows the Security Working Group to demonstrate compliance with the requirements of the law.
- A DPIA will allow the Security Working Group to systematically analyse, identify and minimise the data protection risks of a project.

### **8.17 Data Retention Policy**

- The purpose of the Policy is to ensure only information relevant to support the work of Property Directorate is retained in compliance with the General Data Protection Regulation 2018 (GDPR), Data Protection Act 2018 (DPA), Freedom of Information Act 2000 (FOI) and [MoJ's Estates Records Retention and Disposition Schedule](#) . All

## OFFICIAL

information no longer relevant or required is disposed of or destroyed correctly and in line with departmental guidance. Please refer to [Information Wise — What to keep \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk)

- The Policy will also ensure information is readily available in the event of requests arising from external audits, reviews etc. Where there is a need to keep electronic records permanently, these will need to be stored in the Property Directorate agreed filing system.
- A [Records Retention and Disposal Schedule \(RRDS\)](#) is required to manage MoJ's obligation to destroy records not selected for permanent preservation. This can be found in the policy.

## 9. Digital/Cyber Security

9.1 The handling of all information; shared, published or exchanged is to be secure in accordance with the [HMG - Technology Code of Practice](#). Guidance is to comply with these standards can be found in [ISO 19650-5](#) and Ministry of Justice publications. Furthermore, the Construction Partner shall comply with the Digital Security requirements that are available on the [Viewpoint for projects website](#).

9.2 MoJ Viewpoint will be the official Common Data Environments (CDE) for MoJ projects. Any software systems such as office 365, Viewpoint etc will need prior approval from the Authority before they can be used on any project. Contractors will be required to complete the Secure Data Impact Assessment Document (SDIA). Any such system must adhere to the principles of Accessibility, Auditability and Security and as such the system must be effectively managed by a suitably trained/experienced manager. All those with access to a software platform that contains any MoJ data must demonstrate that they have appropriate Security Clearance. Approved software via the SDIA process remains on an approved list for 18 months and okay to be used by suppliers unless there is a change (e.g., location) in which case a new SDIA needs to be raised for reassessment.

9.3 All information must be stored in a secure area within the CDE and must be restricted to a strictly "need to know" group of named individuals.

9.4 All data produced and collated on behalf of the MoJ in connection with the activity in question is the property of the MoJ. Therefore, the contractor must produce, upon request by the Authority, any and all information held within the CDE to be audited by the BASM or their delegated authority.

9.5 The Contractor must notify all personnel, and the personnel of their supply chain handling information relating to the Project of these security requirements. The Contractor must include the requirements of this letter in all contracts with their supply chain and is responsible for ensuring compliance. They shall be responsible for the issue and return of all documents to its own personnel and the personnel of their supply chain.

## OFFICIAL

9.6 The Contractor must report immediately to the MoJ by the most expedient method, the loss of any document stating details of the loss and what the Contractor is doing to secure its recovery.

## 10. Remote Working

10.1 Personal devices and personal online accounts should not be used for MoJ work.

10.2 Those working remotely or from home should be careful not to draw attention to the fact they are working on OFFICIAL information.

10.3 Any loss of information while working remotely should be reported immediately.

10.4 Avoid working in a public area where there is a risk of being overlooked.

10.5 No information above OFFICIAL should be viewed in a public area.

10.6 The MoJ policy is that people working on MoJ projects are not able to travel and work abroad, the MOJ policy on the ability to be able to work abroad applies to MOJ permanent employees only. Contractors are not permitted to work remotely from abroad in any capacity.

## 11. Security Incident Management

11.1 It is the responsibility of every individual to ensure that they maintain the most appropriate levels of security. They can do this by complying with this document. Breaches of security not only cause embarrassment and reputational damage to the MoJ but can result in the compromise of the confidentiality, integrity, or availability of assets. In the most serious of cases the damage caused may impact on operations, prejudice national security, and endanger lives. All breaches, or suspected breaches of security, must be taken seriously and reported immediately.

11.2 Personnel should be in no doubt that if they deliberately or negligently breach security disciplinary/administrative action and, in serious cases, termination of employment/Service and/or criminal prosecution may follow. The MOJ have stipulated that security breaches and loss compromise of their assets including data, will not be tolerated.

11.3 All breaches of security will be notified to the MOJ and may be investigated further.

11.4. The [Security breach management process](#) can be found on the Viewpoint Security section along with the activity guides on reporting procedures.

## 12. Physical Security Conditions

12.1 If appointed to a MoJ project, the Contractor will need to ensure that there is a designated 'on- call' Incident Control Officer identified to react to a breach in security.



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12.2 The Contractor must appoint at the earliest opportunity a Construction Security Manager from within their team who will be accountable for all Security matters during the Project within that Contractor team. The Contractor's project director will remain responsible for ensuring their teams comply with the security requirements as a basis for meeting their contractual requirements.

### 12.3 General Conditions:

12.3.1 The following conditions must be met by all Contractors working on any MoJ Establishment:

12.3.2 Security precautions arise from the need for the establishments to continue to function during the works of the contract and from the paramount need to maintain appropriate security during the execution of the works. The Contractor shall allow in their rate for the necessary flexibility in working hours and conditions commensurate with these needs.

12.3.3 Security requirements arise from the need for the Authority to control risk at all times and to prevent a breach or compromise of the security as a direct result of the execution of the works. The Contractor shall take appropriate measures for complying with such conditions in meeting these requirements.

12.3.4 A Security, Health and Safety and Access Requirements pre-start meeting is to be undertaken at the earliest opportunity; to review security requirements in line with this document; to include a record of further meetings; and to log bespoke security conditions that will be required for each site. These conditions must be logged in the [SAL Response Document](#) available through the Viewpoint Security Section. This will be led by the Construction Security Manager.

12.3.5 The appointment of the Construction Security Manager must be made at the earliest opportunity. Their responsibilities will be guided by the MoJ's Built Asset Security Management Strategy and Plan and will include managing site specific security procedures, training and checks.

12.3.6 All conditions set out below shall be strictly observed by the Contractor, their employees, subcontractors and all others under their direction from the start to the completion of the works.

12.3.7 All plant, tools and vehicles, scaffolding, temporary accommodation etc. mentioned elsewhere in the document shall comply with these security conditions.

12.3.8 Nothing contained in this document shall relieve the Contractor of his obligations to comply with the Health and Safety at Works Act, Local Authority Requirements and other similar obligations imposed under the contract.

12.3.9 The Construction Security Manager will ensure a comprehensive site security induction is carried out with all personnel. On completion of which all site employees are to sign and return a security disclaimer, which will be filed and recorded and maintained by the Construction Security Manager.

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12.3.10 Security induction training will be refreshed every 6 months for personnel who are continually employed. Re-engagement of personnel will also require a new induction. In addition to which, updates in security procedure will be disseminated by the most expedient and effective method to all personnel on site within a week of the update. Personnel records shall show that the individual has received any such updates. The occurrence of this update and its dissemination to personnel shall be recorded and retained by the contractor

12.3.11 The Construction Security Manager shall ensure the implementation of personnel site access controls (biometrics or equivalent assurance system). A robust procedure will be implemented to ensure that site access is only granted to those presenting the correct identification with the correct clearances. Furthermore, the digital security surrounding the storage must be addressed to provide appropriate assurance (backup, encryption and site servers).

12.3.12 All Contractors must complete the General section within the [SAL Response Document](#) (this can be found in the Viewpoint Security section) to reflect how the conditions in this document are to be met. Depending on the type of establishment you are working in, there will be further conditions that need to be addressed. Further details can be found in this section and the SAL Response Document. If working adjacent to or on a live site, the procedures are to reflect those held locally and be approved by that establishment, Access to the procedures will be supplied upon request.

12.3.13 The Construction Security Manager must implement the update of security measures required for the site, zones, floors or rooms as the lifecycle of the project progresses and develops. It will be the Construction Security Manager's responsibility to detail the sequencing of the security upgrades, communicating and coordinating the changes to ensure that as the build sequence continues, vulnerable points are not exposed in the site security management.

12.3.14 The Construction Security Manager will ensure that vehicular booking in/ out procedures are adhered to and passes shown on all vehicles at all times (note that security clearance will not be required for delivery drivers escorted within the establishment).

12.3.15 The Construction Security Manager will set the specific digital strategy which will include the use of any internet, radio and telecommunication devices. The use of any such device will not be permitted unless the Site Specific Security Risk Assessment; local operational Establishment procedures; or Health and Safety risk assessments dictate otherwise.

12.3.16 Unless expressly permitted to the contrary, no mobile phones will be allowed within the establishment. Nor will any photographic device.

12.3.17 If [Unmanned Aerial Vehicles](#) are to be used to record site progress, permission must be sought from the Authority and relevant establishment and obtained before use. Only certified and accredited Drone operators are to be used during the works with prior agreement from the MoJ. All footage from the drone should be immediately removed and transferred to the MoJ's CDE. In some

## OFFICIAL

circumstances it is an offence to fly a drone over certain prisons without specific authority.

12.3.18 Rubbish and surplus excavated material is not to be allowed to accumulate on the site unless authorised by the authority beforehand to the contrary (i.e. to be stored for later landscaping use). This accumulation of materials should never be close to an operational prison.

12.3.19 The Construction Security Manager must ensure the security of the site 24 hours a day, seven days a week for the duration of the contract.

12.3.20 Contractors must employ and support the [MoJ Whistle Blowing Policy](#), whereby observed breaches of security protocol and procedure can be highlighted in the correct manner.

12.3.21 All plant, tools and materials must be accounted for during the course of the project. The Contractor will be required to report and record the losses of any tools, taking loss statements and mapping approximate location of lost items is essential and must be done immediately upon discovery of the loss.

## 13. Social Media

13.1 The Ministry of Justice encourages responsible use of social media. When participating online you are accountable for your contributions and the correct handling of security marked documents.

13.2 The [social media policy](#) applies to permanent and temporary employees, probationers, agency workers and all others who may be representing the Department at various times.

13.3 For more information please refer to the Ministry of Justice [Social Media Policy and Guidance Documents](#).

13.4 All project posts released on social media should only be done so with written approval from the MoJ Comms team.

13.5 The contractor should take reasonable steps to communicate to their teams about the risks of social media and how to protect themselves and project information.

## 14. Use of Information

14.1 No information provided by, or generated in connection with an MoJ project may be used, reproduced, transmitted or adapted for alternative use outside the project scope without prior express permission from the MoJ.

**SCHEDULE 8**

**NOT USED**

**SCHEDULE 9**

**TEMPLATE FORM OF TASK ORDER**

<b>EMPLOYER:</b>	<b>THE SECRETARY OF STATE FOR JUSTICE OF THE MINISTRY OF JUSTICE</b> of 102 Petty France, Westminster, London, SW1H 9AJ
<b>CONSULTANT:</b>	[ ] (company number [ ]) whose registered office is situated at [ ]
<b>CONTRACT:</b>	An NEC3 Professional Services Contract: Option G (as amended) between (1) the Employer and (2) the Consultant dated [INSERT DATE] 20[ ]
<b>DATE:</b>	[INSERT DATE]

Unless otherwise stated, capitalised terms used in this Task Order shall have the meaning given to such terms in the contract as identified above (the "**Contract**"). Any attachments referenced in this Task Order form part of the Task Order. The Parties acknowledge and agree that this Task Order is issued pursuant to, forms part of and shall be subject to the terms and conditions of the Contract.

<b>SECTION 1 – KEY INFORMATION</b>	
<b>Task Order number:</b>	[INSERT NUMBER]
<b>Purchase order number:</b>	[INSERT NUMBER]
<b>Task Order title:</b>	[INSERT DESCRIPTION]
<b>Consultant's representative:</b>	[INSERT NAME] (email address: [INSERT EMAIL ADDRESS])
<b>Employer's representative:</b>	[INSERT NAME] (email address: [INSERT EMAIL ADDRESS])
<b>BIM Coordinator:</b>	[INSERT NAME] (email address: [INSERT EMAIL ADDRESS])
<b>CDM Principal Designer</b>	[INSERT NAME] (email address: [INSERT EMAIL ADDRESS])
<b>CDM Principal Contractor</b>	[INSERT NAME] (email address: [INSERT EMAIL ADDRESS])
<b>Building Regulations Principal Designer</b>	[INSERT NAME] (email address: [INSERT EMAIL ADDRESS])
<b>Building Regulations Principal Contractor</b>	[INSERT NAME] (email address: [INSERT EMAIL ADDRESS])

<b>SECTION 2 – SCOPE</b>	
<b>The services:</b>	[INSERT DESCRIPTION]
<b>Task-specific Scope:</b>	[INSERT DETAILS (INCLUDING DELIVERABLES)]
<b>Physical works required:</b>	[Yes – the requirements in respect of which are more particularly described in [INSERT LOCATION]] [No]



<b>Project Site(s):</b>	[Insert details of the relevant Project Site(s), whether by reference to the original Scope in the contract or otherwise]
<b>Security requirements:</b>	[Any additional security and/or site requirements or other terms and conditions to be agreed prior to site visitation to ensure compliance with safety and security protocols not covered in the Security Aspects Letter or the other terms and conditions to be inserted. This may include requirements from any 4.20 meeting held on site with the Establishment.]

### SECTION 3 – START DATE, COMPLETION DATE & MILESTONES

<b>Task Start Date:</b>	[INSERT NUMBER]
<b>Task Completion Date:</b>	[INSERT NUMBER]
<b>Task Milestones:<sup>2</sup></b>	[INSERT DESCRIPTION][Not used]
<b>Key Dates and Conditions:</b>	[Details of the Key Dates and their associated Conditions are set out at [INSERT LOCATION]][Not used]
<b>Access Dates:</b>	[INSERT DETAILS][Not used]

### SECTION 4 – PAYMENT

<b>Basis of payment:</b>	[Lump sum / Time Charge / Combination of lump sum and Time Charge] as set out below
<b>[Agreed lump sum:</b>	[INSERT SUM IN WORDS] pounds (£[INSERT NUMBER])
<b>[Agreed Time Charge rates:</b>	As set out at [INSERT LOCATION]
<b>[Task Milestone(s) breakdown:<sup>3</sup></b>	[INSERT DETAILS OF ANY BREAKDOWN OF THE AGREED PRICES ACROSS THE MILESTONES]
<b>[Task Milestone Payment Cap(s):<sup>4</sup></b>	[INSERT NUMBER]

### SECTION 5 – OTHER

<b>Key Persons:</b>	[INSERT DETAILS]
<b>Risk Register:</b>	The following matters will be included in the Risk Register  .....
<b>Subconsultant collateral warranties for this Task Order are</b>	[Add details of any specific Subconsultants to provide collateral

<sup>2</sup> **TASK ORDER DRAFTING NOTE** – These are milestones that are to be completed as part of the Task and need to be completed in order for the Consultant to claim payment for the relevant milestone. The contract assumes that milestones will be used as default.

<sup>3</sup> **TASK ORDER DRAFTING NOTE** – If Task Milestones are used in conjunction with a lump sum (or lump sums), the lump sum(s) can be split across multiple Task Milestones as required.

<sup>4</sup> **TASK ORDER DRAFTING NOTE** – If any Task(s) will be paid on a Time Charge basis, the amount payable to the Consultant can be capped by allocating a fixed (cap) amount to each specified milestone.



	warranties here]. <sup>5</sup>
Additional information:	[INSERT DETAILS]

#### SECTION 6 – TASK ORDER ACCEPTANCE BY THE EMPLOYER

This Task Order is accepted by the *Employer* acting by its authorised representative:

Print name:	_____
Signature:	_____
Position:	_____
Date:	_____

#### SECTION 7 – TASK ORDER ACCEPTANCE BY THE CONSULTANT

This Task Order is accepted by the *Consultant* acting by its authorised representative:

Print name:	_____
Signature:	_____
Position:	_____
Date:	_____

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<sup>5</sup> **TASK ORDER DRAFTING NOTE:** Any Subconsultants who are to provide collateral warranties should be identified and listed here.



**ANNEX 1**

**PART 1 – ANCILLARY DETAILS AND INFORMATION**

[INSERT ANY ANCILLARY DETAILS AND INFORMATION REFERRED TO IN THE BODY OF THE TASK ORDER HERE]

**PART 2 – TASK SCHEDULE**

[THIS IS A LIST OF TASKS BUT NOT A LIST OF DATES]



**SCHEDULE 10**

**DATA PROTECTION SCHEDULE**



### **DATA PROTECTION SCHEDULE**

This Schedule 10 sets out the data processing particulars.

The contact details of the data protection officers (if required by law) for each of the *Employer* and the *Consultant* are as follows:

Party	Name	Email address	Telephone no.
<i>Employer</i>	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Without prejudice to the generality of clause Z15 and this Schedule 10:

- the *Consultant* shall comply with any further written instructions from the *Employer* / Data Controller in connection with the Processing of any Personal Data in relation to the contract; and
- any such further instruction shall be deemed to be automatically incorporated into this Schedule 10 as from the date of any such instruction.



Description	Details
<b>Identity of the Controller and Processor</b>	<p>The Parties acknowledge and agree that, for the purpose of the Data Protection Laws and clause Z15 of this contract:</p> <ul style="list-style-type: none"> <li>the <i>Employer</i> is the Data Controller; and</li> <li>the <i>Consultant</i> is the Data Processor.</li> </ul>
<b>Permitted Purpose</b>	<p>The <i>Consultant</i> shall be permitted to Process the Personal Data solely to the extent required to allow the <i>Consultant</i> to Provide the Services in accordance with this contract (and/or where such Processing is a reasonably incidental requirement of so Providing the Services).</p>
<b>Duration of the Processing</b>	<p>Unless otherwise expressly agreed by the <i>Employer</i> in writing, the duration of the processing shall be the <i>period for retention</i>.</p>
<b>Nature of the Processing</b>	<p>The nature of the Processing means any operations including the collection, recording, organisation, structuring, storage, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, erasure, destruction of Personal Data (whether or not by automated means) are limited to the performance of the <i>Consultant's</i> obligations under and in accordance with the terms of this contract.</p>
<b>Type of Personal Data</b>	<p>These are as follows:</p> <ul style="list-style-type: none"> <li>full name;</li> <li>occupation;</li> <li>workplace / home address;</li> <li>workplace / home telephone number;</li> <li>date of birth;</li> <li>place of birth;</li> <li>age;</li> <li>nationality;</li> <li>next of kin and emergency contact details;</li> <li>email address;</li> <li>national insurance number;</li> <li>tax code;</li> <li>salary or remuneration;</li> <li>photographic facial image;</li> <li>contract type;</li> <li>start date, end date and any reason(s) for early termination;</li> <li>curriculum vitae;</li> <li>passport and driving licence details;</li> <li>visa details;</li> <li>right to work documentation;</li> <li>hours worked and records of absence / annual leave;</li> <li>details of physical and psychological health of medical conditions;</li> <li>information about investigations and criminal proceedings;</li> <li>equalities monitoring information (age, disability, gender, sexual orientation, race, religion belief and ethnicity); and</li> <li>voice recordings from calls.</li> </ul>
<b>Categories of Data Subject</b>	<p>These are:</p> <ul style="list-style-type: none"> <li>the <i>Consultant's</i> agents / staff and Subconsultants or suppliers of any type; and</li> <li>any user of the <i>services</i> of any type (if required by law).</li> </ul>



<b>Plan for return and destruction of the Personal Data once the processing is complete</b>	<p>The Personal Data will be retained for the <i>period for retention</i>.</p> <p>The <i>Consultant</i> will ensure that there is an effective policy to control access to computerised data and to prevent unauthorised access at all times. On termination of this contract, all relevant documentation and records will be transferred back to the <i>Employer</i> or to any new provider of the <i>services</i>, which is applicable. Any such transfer of these records will be conducted in accordance with the requirements of the Data Protection Laws.</p> <p>Notwithstanding the above, the <i>Consultant</i> shall either return or destroy the Personal Data upon the expiration of the <i>period for retention</i> at the <i>Employer's</i> election (unless otherwise advised by the <i>Employer</i>).</p>
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**SCHEDULE 11**

**BIM PROTOCOL**

**CIC STANDARD PROTOCOL SECOND EDITION 2018 TO BE INCORPORATED INTO SIGNATURE COPY**



**BUILT ENVIRONMENT  
PROFESSIONS TOGETHER**

# **BUILDING INFORMATION MODELLING (BIM) PROTOCOL**

SECOND EDITION

Standard Protocol for use in projects  
using Building Information Models

The BIM Protocol has been drafted by  
Beale & Company on behalf of the CIC.

The CIC acknowledges the technical  
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**BUILT ENVIRONMENT  
PROFESSIONS TOGETHER**

**CIC/BIM Pro**  
Second Edition 2018

# **BUILDING INFORMATION MODELLING (BIM) PROTOCOL**

## **SECOND EDITION**

Standard Protocol for use in projects  
using Building Information Models

### **Construction Industry Council Members**

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Royal Town Planning Institute  
The Safety Assessment Federation



## 1. Introduction

The BIM Protocol was first commissioned by the Construction Industry Council (CIC) in 2013 as part of its response to the UK Government BIM Strategy. The Protocol was drafted for use with all common construction contracts (i.e. contracts for design and construction in respect of an asset) and supports BIM working at Level 2.

The Protocol, when completed:

1. puts into place specific contractual obligations on the Employer and the Project Team Member (clause 2–4) in connection with Specified Information and Project Information;
2. sets out the rights the Project Team Member and the Employer have to use that Specified Information and Project Information and their liability for such use (clauses 5–7);
3. identifies the information which members of the Project Team are required to produce (as set out in the Responsibility Matrix identified in Appendix 1 and in Appendix 2 (and the Employer's Information Requirements and BIM Execution Plan referred to in Appendix 2)); and
4. can require compliance with security standards and processes (clause 8 and Appendix 3).

The following principles have informed the drafting of the Protocol:

- minimum changes necessary have been made to the pre-existing contractual arrangements on construction projects;
- there is an obligation to provide and share specified information using a Common Data Environment process and to comply with the Employer's Information Requirements and BIM Execution Plan;
- the Project Team Members can be required to comply with the Employer's security processes and procedures in providing their work/services;
- the Protocol should be incorporated into the contracts of all the project team, creating a consistent framework in respect of BIM; and
- the Protocol is flexible and suitable for use on all Level 2 BIM projects (whatever form of procurement is adopted, whether traditional or more collaborative, such as alliancing and partnering).

This guidance outlines the changes made in the Second Edition (paragraph 2), explains how the Protocol should be used (paragraph 3) and sets out some of the key considerations when completing the Appendices (paragraph 4).

## 2. Changes in the Second Edition

Now that the UK Government's BIM mandate (requiring the use of BIM on centrally procured public sector projects) is in force and BIM is widely used, the First Edition of the Protocol has been updated to reflect current practices and standards regarding the use of BIM.

In particular, the Second Edition of the Protocol is closely aligned with PAS 1192-2 (which at the time of publication is in the process of being updated). This means that rather than Specified Models, the Project Team Member now must produce Specified Information (i.e. information required in the Responsibility Matrix and the Information Particulars). This is because PAS 1192-2 applies to all information (not just models). Some of the terminology has also been changed to be consistent with PAS 1192-2.

The changes which have been made include the following:

- **Responsibility Matrix** – the Protocol now includes a Responsibility Matrix (rather than a Model Production and Delivery Table). PAS 1192-2 provides for a Responsibility Matrix to be produced setting out responsibility for model or information production in line with defined project stages.
- **Information Particulars** – Appendix 2 now refers to the Employer's Information Requirements for the Project and the BIM Execution Plan, both of which are to be produced under PAS 1192. All references to the Information Particulars in the Protocol include these two key documents. In addition, for the Protocol to "work" as intended, where not covered in these documents, further information should be included in Appendix 2 for the specific items set out under the heading "project procedures".
- **Permitted Purpose** – the Permitted Purpose (which determines how information can be used) now refers to:
  - o the Level of Definition (rather than Level of Detail, to be consistent with PAS 1192-2) which is comprised of the Level of Information and the Level of Model Detail (as applicable);
  - o the status code of information (which under BS1192:2007+A2:2016 indicates the approved "suitability" for use of information at the stage it is issued);
  - o the functional state of the Project Information (i.e. either Work in Progress, Shared, Published or Archive under BS1192:2007+A2:2016); and
  - o the purpose for which the information was prepared.
- **Protocol and Agreement** – the Protocol will now only take precedence over the Agreement if there is a conflict in respect of clause 3, 4 and Appendix 1 or 2 of the Protocol. This achieves the intention of creating a minimum set of consistent obligations across the project team, without overriding the agreed contractual position any more than necessary. It does mean however, that for the Protocol as a whole to have effect, the Agreement should state that the Protocol takes precedence.
- **Co-ordination** – a new process has been included for co-ordinating information and resolving inconsistencies (clause 2.1-2.2). The statement that Models take precedence has been removed as this may not always be appropriate. Coordination meetings are to be attended as stated in the Information Particulars. If one Party becomes aware of an inconsistency it will inform the other Party and then seek to resolve it with the project team.

- **Standards, Methods and Procedures** – the processes in PAS 1192–2 and a number of other standards are typically followed on a BIM project to clarify the basis on which information is produced and exchanged. These standards often assume that certain tasks will be carried out by the procurer of a Project. The Employer therefore commits to performing its obligations under the Standards, Methods and Procedures identified in the Information Particulars (clause 3.1.2).
- **Common Data Environment Process (“CDE Process”)** – the Project Team Member is now to share and publish information using the CDE Process. Unless this is part of the Project Team Member’s obligations, the Employer must arrange that the Project Team Member can make use of the CDE Process to the extent necessary to perform its obligations and to download a record copy (clause 3.1.3(c)–(d)).
- **Programme** – the Specified Information must be shared and/or published during the stage and at the times stated in the Responsibility Matrix, the Information Particulars or the Agreement. This is subject to any extension of time applicable under the Agreement (rather than reasonable endeavours and events outside the Project Team Member’s control as it was under the First Edition). This will help create certainty as to the timescale for the development of information.
- **Interoperability** – interoperability is a key issue on any BIM project. The Project Team Member now (without prejudice to their other obligations) gives no warranty that software is compatible with that of any other Project Team Member/the Employer (clause 5.1). This is more balanced than the First Edition (in which the Project Team Member did not warrant the integrity of electronic data).
- **Copyright** – the copyright provisions are now more flexible. Clauses 6.2–6.4 (stating that the Project Team Member retains copyright ownership and grants a licence) only apply if the Agreement contains no provisions regarding intellectual property; if the Agreement contains such provisions, they will apply to the Material (Specified Information and information prepared under the Agreement comprised in or extracted from the Specified Information). This means that the Protocol can be used (unamended) even if the Project Team Member will not retain ownership of its intellectual property (because it will be transferred to the Employer).

If ownership of the intellectual property in the Specified Information is being transferred to the Employer, the Agreement should make clear if there is any “background intellectual property” which the Project Team Member will retain ownership of (e.g. information model objects).

- **Security** – security is a key factor to take into account on any project when BIM is used, as outlined in PAS 1192:5:2015. The Second Edition therefore refers to:
  - o the Built Asset Security Manager – this role is described in PAS 1192–5:2015;
  - o the Security Requirements – the applicable security policies etc. are to be set out in Appendix 3 and must be included for the security provisions to have effect;
  - o Sensitive Information – on some projects there will be Sensitive Information which will not be shared in the CDE Process. Sensitive Information is to be defined in the Security Requirements and in any instructions given by the Employer under clause 4.1.7. The application of a number of the terms in the Protocol is also subject to the obligations in relation to Sensitive Information; and
  - o Employer remedies if security obligations are breached – including, ultimately, to terminate.

If additional security measures are not required, the Parties can elect to omit the drafting by not including Appendix 3 in the final Protocol or stating NOT USED in Appendix 3.

- **Appendices** – the “pro forma” editable Appendices have been updated to reflect the updated Protocol. These are very much “pro formas” which a) must be completed and b) can be changed to suit the requirement of each Project. The key items which should be included in the Appendices are highlighted in paragraph 4.

## 3. How to use the Protocol

For the Protocol to have contractual effect, it is essential that an “incorporation clause” is included in each contract into which it is to be incorporated. A suggested incorporation clause is as follows:

‘The [Employer] and the [Contractor/Consultant/Subcontractor] shall:

1. comply with their respective obligations set out in the CIC Building Information Modelling Protocol, Second Edition 2018, in the form attached at Appendix [X] (“**BIM Protocol**”);
2. have the benefit of any rights granted to them in the BIM Protocol; and
3. have the benefit of any limitations or exclusions of their liability contained in the BIM Protocol.

The [Employer] and the [Contractor/Consultant/Subcontractor] agree that, subject to clause 1.4 of the BIM Protocol, this Agreement shall be amended as set out in the BIM Protocol.’

A completed version of the Protocol, including Appendices 1, 2 (and if used 3) should then be appended to the Agreement in the place referred to in the incorporation clause. If Appendices 1 and 2 are not completed the Protocol will have limited effect.

It is essential that they are completed carefully, otherwise this may prevent the benefits of using BIM being obtained. If Appendix 1, 2 or 3 need to be updated after the Agreement is concluded, this should be instructed or agreed in accordance with the terms of the Agreement.

The incorporation clause should be considered on a contract by contract basis and legal advice sought in this regard. For example, amendments may be required to the scope of services/works of the Project Team to reflect the fact that BIM is being used and to be consistent with Appendix 1. Any conflict between the Agreement and the Protocol and the order of priority should also be considered carefully. If the Parties wish the Protocol as a whole to have the intended effect, any order of priority should state that the Protocol takes precedence over the Agreement.

The JCT suite of contracts provide that nothing will override or modify the Agreement or the contract conditions (clause 1.3, JCT Design and Build Contract, 2016) and therefore if the Protocol is used alongside a JCT contract consider either 1) amending the JCT form to enable the Protocol to take precedence; or 2) deleting from “provided that” in clause 1.4 until the end of the clause.

Guidance on the use of the Protocol with the NEC4 Suite of contracts has been published and is available at [neccontract.com/NEC4-Products/NEC4-Contracts](https://www.neccontract.com/NEC4-Products/NEC4-Contracts).

## 4. Appendices

The key items to be included in Appendices 1–3 are as follows:

Appendix	Key Items to Include
Appendix 1	<p><b>Responsibility Matrix</b> – Refer to or attach the Responsibility Matrix. This should identify the <b>Specified Information</b> to be produced, shared and published by the Project Team Member and the applicable Level of Definition (the <b>Level of Information</b> and/or <b>Level of Model Detail</b>).</p>
Appendix 2	<p><b>Employer’s Information Requirements (EIRs)</b> – Refer to any EIRs (see PAS 1192–2) in Appendix 2.</p> <p><b>BIM Execution Plan (BEP)</b> – Refer to the agreed BEP (see PAS 1192–2) which will apply to the Project Team Member in Appendix 2. Set out the process for developing/amending the BEP. State how any conflict between the EIRs and the BEP will be resolved.</p> <p>Unless these are set out in the EIRs or the BEP the following should also be stated in Appendix 2 for the Protocol to “work”:</p> <ul style="list-style-type: none"> <li>• <b>Co-ordination</b> – timetable of project coordination meetings (see clause 2.1).</li> <li>• <b>Inconsistency</b> – any process/approach for resolving inconsistency in or between information (see also clause 2.2).</li> <li>• <b>Standards, methods and procedures</b> – the applicable standards, methods and procedures (see clause 3.1.2), e.g. PAS 1192–2.</li> <li>• <b>Asset Information Model</b> – the information and assistance required in respect of the Asset Information Model, including in connection with any applicable Soft Landings process (see clause 4.1.5).</li> <li>• <b>Software</b> – the agreed approach in respect of different software formats/ interoperability (see clause 5.1).</li> <li>• <b>Amendments</b> – the extent to which Project Information can be amended (see clauses 6.4.1 and 6.7.1) (if at all).</li> <li>• <b>Specified Information</b> – specify any additional Specified Information (clause 10.30).</li> </ul>
Appendix 3	<p><b>Application</b> – state whether or not the Security Minded Provisions in the Protocol apply. If nothing is included at Appendix 3 or if it states “not used” the Security Minded Provisions will not apply.</p> <p><b>Sensitive Information</b> – specify any project information which is “Sensitive Information” and therefore treated differently to other information.</p> <p><b>Employer’s Standards</b> – identify the Employer’s general Security Requirements.</p> <p><b>Project Specific Standards</b> – identify the Security Requirements specific to the Project.</p> <p>If the EIRS or BEP contain the above cross refer to the appropriate section.</p>

## **BUILDING INFORMATION MODELLING (BIM) PROTOCOL** SECOND EDITION

## 1. Definitions

- 1.1 In this Protocol, unless the context otherwise requires, the words and phrases used shall have the meanings set out in clause 10 of the Protocol.
- 1.2 The Security Minded Provisions shall not apply and any references to the same shall have no effect if:
  - 1.2.1 the Security Requirements are not included at Appendix 3 of this Protocol; or
  - 1.2.2 Appendix 3 is stated to be "Not Used" or otherwise stated not to apply.
- 1.3 Notwithstanding clause 1.1, in this Protocol the effect and/or application of the following terms:
  - 1.3.1 Information Model;
  - 1.3.2 Specified Information;
  - 1.3.3 Project Information;
  - 1.3.4 Other Project Team Information;
  - 1.3.5 Federated Information Model;
  - 1.3.6 Material;
  - 1.3.7 Proprietary Material; and
  - 1.3.8 Common Data Environment, is subject to clause 4.1.7 of this Protocol in respect of any Sensitive Information forming part of the same.
- 1.4 This Protocol forms part of the Agreement. In the event of any conflict or inconsistency between the Protocol and any other documents contained in and/or forming part of the Agreement, such conflict or inconsistency shall be resolved in accordance with the Agreement, provided that:
  - 1.4.1 if there is any conflict or inconsistency between:
    - a. clause 3, 4, Appendix 1 and Appendix 2; and
    - b. the rights and/or obligations in any other documents contained in and/or forming part of the Agreement, except where the Protocol states otherwise, the part of this Protocol referred to in clause 1.4.1(a) shall prevail, and
  - 1.4.2 if the Agreement does not include provisions stating how such conflict or inconsistency should be resolved, the terms of this Protocol shall prevail.

## 2. Coordination and Resolution of Conflicts

- 2.1 The Project Team Member shall attend such meetings with the Employer's Information Manager and/or the Other Project Team Members in connection with the co-ordination of Project Information as required in the Agreement and in the Information Particulars.
- 2.2 The Parties shall comply with any applicable provisions in the Agreement in respect of any ambiguity, conflict or inconsistency in or between any Project Information and/or any information extracted from the Project Information. If there are no such provisions and a Party becomes aware of any ambiguity, conflict or inconsistency in or between any Project Information and/or any information extracted from the Project Information, or if a Party becomes aware of any other ambiguity, conflict or inconsistency which the Information Particulars state will be resolved in accordance with this clause 2.2, that Party shall notify the other Party and the Parties shall seek to agree how such ambiguity, conflict or inconsistency shall be resolved. If no agreement is reached, the Parties shall, having regard to the Information Particulars, meet with each other, the Employer's Information Manager and such Other Project Team Members as is necessary, in order to seek to resolve the ambiguity, conflict or inconsistency.

## 3. Obligations of the Employer

- 3.1 The Employer shall:
  - 3.1.1 arrange for a completed protocol and for the obligations set out herein to be incorporated into all Project Agreements in substantially the same terms as this Protocol;
  - 3.1.2 comply with its obligations under the Project standards, methods and procedures referred to in the Information Particulars; and
  - 3.1.3 save to the extent that such obligations are within the scope of the Project Team Member's obligations under the Agreement, arrange for:
    - (a) the Information Particulars and the Responsibility Matrix to be reviewed and updated (if necessary) at each defined Project stage until the end of the Project. The Project Team Member's rights (if any) following any such update after the date of the Agreement shall be assessed in accordance with the Agreement and this Protocol;
    - (b) the appointment of the Employer's Information Manager to be made, changed or renewed as necessary such that there is at all times until the end of the Project an Employer's Information Manager;
    - (c) the Project Team Member to be able to make use of the CDE Process to the extent necessary to enable the Project Team Member to comply with the Agreement;
    - (d) the Project Team Member to access Project Information shared through the CDE Process for the purpose of retaining a record copy of the Project Information at the end of the Project or following any earlier termination of the Agreement;



- (e) the Security Requirements to be reviewed and updated (if necessary) at each defined Project stage until the end of the Project. The Project Team Member's rights (if any) following any such update after the date of the Agreement shall be assessed in accordance with the Agreement and this Protocol; and
- (f) the appointment of the Built Asset Security Manager to be made, changed or renewed as necessary such that there is at all times until the end of the Project a Built Asset Security Manager.

## **4. Obligations of the Project Team Member**

- 4.1 The Project Team Member shall, exercising the relevant level of skill and care applicable to its equivalent obligations in the Agreement:
  - 4.1.1 produce the Specified Information (excluding any material forming part of the same which is provided to the Project Team Member by or on behalf of the Employer);
  - 4.1.2 subject to any events or circumstances which entitle the Project Team Member to an extension of time or additional time under the Agreement, use the CDE Process to share and/or publish the Specified Information:
    - (a) at the Level of Definition specified in the Responsibility Matrix;
    - (b) during the Project stage specified in the Responsibility Matrix; and
    - (c) at such times as stated in:
      - the Responsibility Matrix;
      - the Information Particulars; and/or
      - any other part of the Agreement,
  - 4.1.3 comply with the Information Particulars when producing, sharing and/or publishing the Specified Information;
  - 4.1.4 use the Other Project Team Information in accordance with the Information Particulars;
  - 4.1.5 provide such information and assistance as specified in the Information Particulars in connection with any Asset Information Models at such times as required in the Information Particulars;
  - 4.1.6 co-operate with the Built Asset Security Manager;
  - 4.1.7 comply with those parts of the Security Requirements which relate to Sensitive Information and any reasonable instructions the Employer may issue to the Project Team Member in respect of any Sensitive Information. The Project Team Member's rights (if any) following any instruction issued in accordance with this clause 4.1.7 after the date of the Agreement shall be assessed in accordance with the Agreement and this Protocol; and
  - 4.1.8 comply with the Security Requirements and the policies, processes and procedures identified therein and not cause or contribute to any breach by the Employer of the same to the extent that such policies, processes and procedures relate to the Project Team Member's obligations under the Agreement and have been provided to the Project Team Member.

- 4.2 Subject to clause 4.1.7 in respect of any Sensitive Information (if applicable), the Project Team Member shall arrange for this Protocol (or such other provisions as may be appropriate) to be incorporated into all sub-contracts that it enters into in relation to the Project to the extent required to enable the Project Team Member to comply with this Protocol.

## 5. Electronic Data Exchange

- 5.1 Without prejudice to any of the Project Team Member's obligations or duties under or in connection with this Protocol and/or the Agreement, the Project Team Member does not warrant, expressly or impliedly, that:
- 5.1.1 any software used to prepare the Specified Information; or
  - 5.1.2 any software format in which the Specified Information is shared, published or otherwise issued in accordance with this Protocol and the Agreement, is compatible with any software or software format used by or on behalf of the Employer, the Employer's Information Manager or any Other Project Team Member in connection with the Project.
- 5.2 Save where it is a result of the Project Team Member's failure to comply with this Protocol and/or the Agreement, the Project Team Member shall have no liability to the Employer in connection with any corruption or unintended amendment, modification or alteration of the electronic data (including, without limitation, any software) in any Specified Information which occurs after it has been shared, published or otherwise issued through the CDE Process by the Project Team Member.

## 6. Use of Information

- 6.1 The Employer and the Project Team Member agree that:
- 6.1.1 if there are any provisions in the Agreement in relation to copyright (or any other rights) in material, information or documents prepared and/or provided by the Project Team Member, clauses 6.2 to 6.4 shall not apply, and such provisions of the Agreement are hereby varied so far as is necessary to:
    - (a) apply to the Material and any proprietary work contained in or extracted from the Material; and
    - (b) enable the Employer to grant licences or sub-licences to the Other Project Team Members in respect of the Material on terms substantially the same as clause 6.5 and/or 6.6 of this Protocol;
  - 6.1.2 if there are no such provisions, clauses 6.2 to 6.4 shall apply.
- 6.2 Subject to clause 6.1, any rights (including but not limited to any copyright) subsisting in the Material and any proprietary work contained in or extracted from the Material shall, as the case may be, vest or remain vested in the Project Team Member.
- 6.3 Subject to clause 6.1 and 6.4, the Project Team Member grants to the Employer a non-exclusive, royalty free and irrevocable licence, and, to the extent that the Material and any rights subsisting therein are owned by third parties, grants a sub-licence (including

the right to grant sub-licences on identical terms to Other Project Team Members, which shall include the right to grant sub-sub-licences on identical terms to Other Project Team Members' sub-contractors) to transmit, copy and use the Material and any proprietary work contained in or extracted from the Material for the Permitted Purpose.

- 6.4 Any licence and/or sub-licence granted in clause 6.3 shall not include the right to:
- 6.4.1 amend or modify the Material without the Project Team Member's written consent (not to be unreasonably withheld), save where such amendment or modification is:
    - (a) provided for in the Information Particulars; or
    - (b) made for the Permitted Purpose following the termination of the Project Team Member's employment under the Agreement; or
  - 6.4.2 reproduce any designs contained in the Material for any extension of the Project.
- 6.5 Subject to clause 6.7, the Employer grants to the Project Team Member a non-exclusive sub-licence (including the right to grant sub-sub-licences on identical terms to the Project Team Member's sub-contractors) to transmit, copy and use such Proprietary Material as is owned by the Other Project Team Members or any other third party (other than the Project Team Member's subcontractors (of any tier)) for the Permitted Purpose.
- 6.6 Insofar as the Employer owns any rights subsisting in the Proprietary Material, subject to clause 6.7, the Employer grants to the Project Team Member a non-exclusive licence (including the right to grant sub-licences on identical terms to the Project Team Member's sub-contractors (of any tier)) to transmit copy and use such Proprietary Material for the Permitted Purpose.
- 6.7 The licence and sub-licence (if any) granted in clauses 6.5 and 6.6 shall not include the right to:
- 6.7.1 amend or modify any Proprietary Material (other than to the extent produced by the Project Team Member) without the written consent (not to be unreasonably withheld) of the Employer or the Other Project Team Member who owns such Proprietary Material, save where such amendment or modification is:
    - (a) provided for in the Information Particulars; or
    - (b) in respect of material produced or delivered by an Other Project Team Member, made for the Permitted Purpose following the termination of the Other Project Team Member's employment under the Agreement.
  - 6.7.2 reproduce any designs contained in the Proprietary Material (other than to the extent produced by the Project Team Member) for any extension of the Project.
- 6.8 Insofar as clause 6.2 to 6.4 apply the Project Team Member represents to the Employer that it has, or that it will procure, the right to grant either a licence and/or a sub-licence in the form granted in clause 6.3.
- 6.9 The Employer represents to the Project Team Member that it has, or that it will procure, the right to grant a sub-licence in the form granted in clause 6.5 and/or a licence in the form granted in clause 6.6.

## **7. Liability in Respect of Proprietary Material**

- 7.1 The Employer and the Project Team Member agree that any provisions in the Agreement concerning any Proprietary Material shall be varied to the extent necessary to give effect to clauses 7.2 and 7.3. If there are no such provisions clauses 7.2 and 7.3 shall apply.
- 7.2 The Project Team Member shall have no liability to the Employer arising out of any modification or amendment to, or any transmission, copying or use of the Material, or any proprietary work contained therein, by the Employer, any Other Project Team Member or any third party for any purpose other than the Permitted Purpose.
- 7.3 The Employer shall have no liability to the Project Team Member arising out of any modification or amendment to, or any transmission, copying or use by the Project Team Member or any third party of any Proprietary Material in respect of which a sub-licence or licence is granted by the Employer pursuant to clauses 6.5 and 6.6, for any purpose other than the Permitted Purpose.

## **8. Remedies – Security**

- 8.1 Without prejudice to the Employer's rights under the Agreement and subject to clause 8.2 of this Protocol:
  - 8.1.1 if the Built Asset Security Manager has reasonable grounds to consider that the Project Team Member is likely to breach clauses 4.1.7 and/or 4.1.8 of this Protocol, the Employer may give notice to the Project Team Member requiring that steps are taken to prevent the breach within a reasonable period as specified in the notice; and
  - 8.1.2 if the Project Team Member breaches clauses 4.1.7 and/or 4.1.8 of this Protocol, the Employer may at its discretion give notice to the Project Team Member requiring that steps are taken to remedy the breach and/or mitigate the consequences of the same within a reasonable period as specified in the notice.
- 8.2 If the Agreement contains provisions entitling the Employer to terminate the Agreement, those provisions shall be amended insofar as is necessary such that if the Project Team Member has:
  - 8.2.1 not taken the steps required in accordance with clause 8.1.1 and/or 8.1.2 of this Protocol; and/or
  - 8.2.2 committed any breach of clause 4.1.7 and/or 4.1.8 of this Protocol which relates to Sensitive Information, is not capable of remedy and/or cannot be mitigated, the Employer shall be entitled to terminate the Agreement forthwith. The consequences of any such termination shall be the same as the consequences under the Agreement of any other termination by the Employer of the Agreement as a result of the Project Team Member's act, omission or breach of the Agreement.
- 8.3 If the Agreement contains no such provisions as referred to in clause 8.2, the Employer shall be entitled to terminate the Agreement forthwith in the circumstances referred to in clause 8.2.1 and 8.2.2 and following such termination the Project Team Member shall:

- 8.3.1 immediately stop providing any works and/or services under the Agreement and require that its sub-contractors and suppliers (of any tier) do the same;
- 8.3.2 not be entitled to any further payment (other than of any sums which are due and payable under the Agreement as a result of work and/or services provided prior to the date of termination), including but not limited to any costs or losses incurred after or as a result of termination; and
- 8.3.3 comply with (and require that its subcontractors and suppliers (of any tier) comply with) all instructions of the Employer in relation to the termination of the Agreement, including but not limited to taking any steps necessary to comply with the Security Requirements and/or to mitigate the consequences of any breach of this Protocol.

## 9. Termination

- 9.1 Clauses 1.4, 2, 3, 4.1.6 to 4.1.8, 5, 6, 7, 8.2 and 8.3 of this Protocol shall continue to apply following termination of the Agreement.

## 10. Defined Terms

- 10.1 Agreement means the agreement between the Employer and the Project Team Member into which this Protocol is incorporated.
- 10.2 Asset Information Model means a maintained Information Model used to manage, maintain and operate the asset.
- 10.3 Built Asset Security Manager means the individual reporting directly to, or employed by, the Employer or asset owner and undertaking the role of security management in relation to the Project.
- 10.4 BIM Execution Plan means the plan prepared by the Project Team Member to explain how the information modelling aspects of the Project for which it is responsible will be carried out.
- 10.5 Common Data Environment or CDE Process means a combination of hardware, software and workflow that is used to collect, manage and disseminate all relevant approved files, documents and data for multidisciplinary teams in a managed process.
- 10.6 Employer means the person (or persons) appointing the Project Team Member pursuant to the Agreement and the beneficiary of any novation of the Employer's rights and obligations under this Protocol, subject to the terms of such novation.
- 10.7 Employer's Information Manager means the person (or persons) appointed, initially by the Employer or the owner of the built asset which is the subject of the Project, to perform a role in connection with the Project which includes, amongst other things, the establishment and management of the processes, protocols and procedures set out in the Information Particulars.
- 10.8 Employer's Information Requirements means a document setting out the information to be delivered and the standards and processes to be adopted in the delivery of Project Information.

- 10.9 Federated Information Model means an Information Model consisting of connected but distinct individual Information Models.
- 10.10 Information Model means a collective set of documentation, non-graphical information and graphical information that represents a constructed, under-construction or to-be constructed physical asset.
- 10.11 Information Particulars means Appendix 2 of this Protocol, the Employer's Information Requirements, the BIM Execution Plan and any other documents identified in Appendix 2.
- 10.12 Level of Definition means the Level of Model Detail and Level of Information (as applicable).
- 10.13 Level of Information means the level of detail of non graphical content as defined in the Information Particulars.
- 10.14 Level of Model Detail means the graphical appearance of Information Model objects as specified in the Information Particulars.
- 10.15 Material means the Specified Information and all information prepared by or on behalf of the Project Team Member under the Agreement and comprised in or extracted from:
- (a) the Specified Information; and
  - (b) the Federated Information Models, to the extent that these comprise Specified Information or to the extent that the Project Team Member owns any additional rights in any Federated Information Model, excluding any material forming part thereof which is provided to the Project Team Member by or on behalf of the Employer.
- 10.16 Other Project Team Member means any person having responsibilities in relation to the production, delivery and/or use of Information Models and appointed by the Employer in relation to the Project, excluding the Project Team Member.
- 10.17 Other Project Team Information means any information which Other Project Team Members produce, publish and/or share as specified in the Responsibility Matrix and the Information Particulars and/or any Federated Information Models (or any part thereof) produced and/or delivered by Other Project Team Members.
- 10.18 Parties means the Employer and the Project Team Member.
- 10.19 Proprietary Material means the Project Information and any proprietary work contained therein or extracted from the same.
- 10.20 Permitted Purpose means a purpose related to the Project (and/or the construction, refurbishment, extension, operation, management and/or maintenance of the Project) which is consistent with:
- (a) the applicable Level of Definition of the relevant Project Information;
  - (b) the applicable status code of the Project Information in accordance with BS1192:2007+A2:2016;
  - (c) the applicable functional state of the Project Information in accordance with BS1192:2007+A2:2016; and
  - (d) the purpose for which the relevant Project Information was prepared.

- 10.21 Project means the project to which the Agreement relates.
- 10.22 Project Information means the Material, the Specified Information, the Federated Information Models and the Other Project Team Information.
- 10.23 Project Agreement means any agreement entered into between the Employer and any Other Project Team Member in relation to the Project.
- 10.24 Project Team Member means the person or persons appointed by the Employer pursuant to the Agreement.
- 10.25 Protocol means this building information modelling protocol including Appendices 1, 2, and 3.
- 10.26 Responsibility Matrix means the document setting out responsibility for model or information production in line with defined Project stages as attached at or referred to in Appendix 1.
- 10.27 Security Minded Provisions means clause 1.3, clause 3.1.3(e) to (f), clause 4.1.6 to 4.1.8; and clause 8.1 to 8.3 of this Protocol.
- 10.28 Security Requirements means the document attached at Appendix 3 of this Protocol setting out the security requirements for carrying out the Project in a security-minded way, including any policies, protocols, processes and procedures referred to therein.
- 10.29 Sensitive Information means information which is sensitive information as defined in PAS 1192-5:2015, section 3.1.28, and which is identified in:
  - (a) the Security Requirements; and/or
  - (b) any instruction issued under clause 4.1.7 of this Protocol.
- 10.30 Specified Information means the information, including, without limitation any Information Models, which the Project Team Member is to produce, share and/or publish as specified in the Responsibility Matrix and the Information Particulars.

## Appendix 1 – Responsibility Matrix

The Responsibility Matrix is  
[set out or refer to the Responsibility Matrix].



*This is a framework of a generic Information Particulars. Parties may choose to include further detail if they require.*

## Appendix 2 – Information Particulars

### 1. Employer's Information Requirements

- 1.1 The Employer's Information Requirements are set out in the following document \_\_\_\_\_

### 2. BIM Execution Plan

- 2.1 The BIM Execution Plan is the following document \_\_\_\_\_ as may be amended following agreement by the Parties.
- 2.2 If there is any ambiguity, conflict or inconsistency between the BIM Execution Plan and the Employer's Information Requirements it will be resolved in accordance with clause 2.2 of this Protocol.

### 3. Project Procedures

[Set out the following matters which are referred to in the Protocol, to the extent not covered in the above documents].

- 3.1 **Co-ordination** – coordination meetings are to take place on the Project (see clause 2.1) as follows \_\_\_\_\_
- 3.2 **Inconsistency** – the process/approach for resolving inconsistency in or between Project Information and information extracted from Project Information (see clause 2.2) is \_\_\_\_\_
- 3.3 **Project standards, methods and procedures** – the applicable standards, methods and procedures (see clause 3.1.2) are \_\_\_\_\_
- 3.4 **Level of Definition** – Level of Information and Level of Model Detail will be defined on the Project (see definition of Permitted Purpose and clause 4.1.2(a)) as \_\_\_\_\_
- 3.5 **Asset Information Model** – the information and assistance required in respect of the Asset Information Model (see clause 4.1.5) is \_\_\_\_\_
- 3.6 **Software** – the agreed approach in respect of different software formats/interoperability is (see clause 5.2) \_\_\_\_\_
- 3.7 **Amendments** – the extent to which Project Information can be amended (see clauses 6.4.1 and 6.7.1) is \_\_\_\_\_
- 3.8 **Specified Information** – the information to be published and/or shared by the Project Team Member which is not stated in the Responsibility Matrix (clause 10.30) is \_\_\_\_\_

*This is a framework of a generic Security Requirements. Parties may choose to include further detail if they require.*

## Appendix 3 – Security Requirements

[State “Not Used” or do not include the Security Requirements in the Protocol if the Security Minded Provisions are not to apply]

[If the matters referred to below are included in the Employer’s Information Requirements refer to the relevant parts of that document]

### 1. Sensitive Information

1.1 The following information is Sensitive Information:

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1.2 The Employer’s requirements in respect of the Sensitive Information are as follows:

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### 2. Project Specific Security Requirements

2.1 The Built Asset Security Information Requirements applicable to the Project Team Member are as follows:

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[Refer to the Built Asset Security Information Requirements included in the EIRs. See paragraph 10 PAS 1192.5]

2.2 The Employer’s Baseline Security Requirements are:

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[See PAS 1192–5 (5.6). The contractual obligations under the Agreement in relation to security should be considered carefully (see paragraph 11.4 of PAS 1192:5) and referred to here if necessary]

### 3. Employer’s Policies and Procedures

3.1 Employer’s Standards

- PAS1192–5

[any other Employer specific security standards (see PAS 1192–5, 11.4.4)]

3.2 Built Asset Security Manager

The Built Asset Security Manager shall be the following person:

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## 3.3 Built Asset Security Management Plan

The Built Asset Security Management Plan is contained in the following document:

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[See Paragraph 8 of PAS 1192:5]

## 3.4 Security Breach/Incident Management Plan is contained in the following document:

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[See Paragraph 9 of PAS 1192:5]





**SCHEDULE 12**

**KEY PERFORMANCE INDICATOR SCHEDULE**

The Value Toolkit						Red: Escalation required	Amber	Green	Supplier Quarter xx/xx/xx	Supplier Quarterly report	Client Quarter xx/xx/xx	Client Quarterly report
KPI Title		KPI Overview (What is measured)		What is the Target	How is Measured and Frequency	0 Points	3	5 Points	Score achieved	Explanation	Score achieved	Explanation
General	Collaboration	Quarterly Meeting and Review	Meeting with all key stakeholders from the Supplier and Client in attendance each quarter to present the KPI progress report	Every quarter, the Supplier is to initiate a meeting with the Client's key stakeholders (this includes Grade 6s, Heads of Department and Project/Contract Management colleagues) as well as their own key stakeholders (project level and senior management) to present their results and progress against these KPIs. It should offer a true representation of their performance and opportunity to present mitigation and remediation measures where any KPIs are not in green.	Quarterly KPI report to be prepared and issued to the Client prior to the meeting	1+ Quarterly meetings missed and/or poor attendance, report not provided	All Quarterly meetings held but not to the requirement (e.g. not full attendance, delayed, report not complete etc.)	All Quarterly meetings held, attended and reports provided				
	Task Order	Task Orders fulfilled efficiently	Task Orders to be completed on time and accurately	When the Client issues a Task Order, the supplier must provide the resource schedule, cost breakdown and required information within the number of working days requested	Monthly Time taken for the Task Order to be completed by the Supplier	Some or all information delayed 5+ days	Majority of requested information provided on time but some information delayed 1-4	All requested information provided on time				
Time and Budget	Time and Budget	Maintenance of agreed timeline and budget	Delivery of the Task Order Milestones and Schedule consistent with the pre-agreed time and budget	On Time (or Early) Completion Prior to commencing works, agree the Task Schedule, Milestones, Key Delivery Dates and budgeted value including any applicable caps, key dates and Deliverables.  The key measurement will be meeting the timescales and budgeted values set out in the Task Order	Monthly Target date vs originally agreed date and  Current budget vs originally agreed budget	<95% compliance with originally agreed budget/timescales	95-100% compliance with originally agreed budget/timescales	100% compliance with originally agreed budget/timescales				
	BREEAM	BREEAM Score	To ensure sustainable buildings are produced which deliver the MoJ BREEAM policy and targets. Provide a constructive challenge function to the project, design, and construction teams to identify cost effective solutions and raise the performance and quality of the project. The timely and accurate submission of all requested financial information.	Targets: All projects to comply with the MoJ Sustainability policy, with the supplier enabling appropriate oversight by the Client's Sustainability Team. Sustainability costs and benefits provided to support sustainability deliverables. The establishment (with the Contractor and other parties) of a robust performance monitoring process and communication protocol with the MoJ Sustainability Team to inform on Whole Life costs and BREEAM Compliant LCC in a timely manner. Government Soft Landings to be applied to all projects linked to BREEAM credits to ensure whole life environmental benefits realised.	Monthly - The development of a robust BREEAM and sustainability delivery strategy with regular reports including LCC and updates to the MoJ Sustainability Team to support the achievement of BREEAM credits and to support the business case for sustainability	BREEAM tracker assessment is not provided or completed and the MoJ has no oversight of BREEAM credits, LCC and costed credits	BREEAM reporting is provided but not up to date not enough evidence of delivery of reports to deliver early credits. LCC not completed at correct time	Agreed reporting for all projects with up to date information for MoJ to ensure BNG commitments and BREEAM credits and reports are costed and LCC reports carried out to ensure BREEAM are delivered and are in on target to deliver the MoJ Policy.				
Cost	Financial Accuracy	Accuracy of information provided	This is to ensure financial reporting and commercial activity is consistent.	All information as requested submitted on time and accurate	Monthly Total number of inaccurate submissions in a period and are late by more than 3 working days	More than 1 late or inaccurate reports	No more than 1 late or inaccurate reports	No late or inaccurate reports				
	Estimations	Cost forecast accuracy	To measure the variation between forecasted costs and actual costs incurred.	On cost or saving to budgeted spend Prior to commencing works, agree and record cost forecast for each of the projects. This will then be assessed against the agreed contract value at the point of works commencing, prior to any compensation events/changes in scope etc.	Monthly Percentage difference between forecast cost and actual cost in a period.	10%+ difference	5-10% difference	Less than 5% difference or saving				
Human Resourcing	Personnel resource	Provision of staff meets qualification and experience requirement	The proposed team must have the agreed amount of resources with the skills, qualification and experience required to deliver the Task Order	Supplier's resource meets the qualification, skills and experience requirements and no rejections of key personnel or other team members	Monthly Number of personnel (key or otherwise) rejected as part of the proposed resource plan	2+ rejection of personnel with no demonstration of mitigation	1+ rejection of personnel but the supplier is demonstrating how they are being supported/qualifications being obtained	All personnel meet requirements. No rejections of personnel				
	Personnel Change	Personnel changes are dealt with efficiently and effectively	Where the Client requests a personnel change, this is dealt with efficiently and effectively and mitigations are put in place to prevent re-occurrence (e.g. further training/recruitment etc)	Any personnel change requests are acknowledged and rectified within the number of working days requested by the Client	Monthly Time taken from date of personnel change request to resolution and acceptance by the Client	Requests are resolved beyond 4+ days	Requests are resolved within 1-3 days	No personnel change requests or requests are resolved on time				
	Quality of service	Completion of works to standard/ specification	Provision of the Consultant's services in a timely manner, to meet the levels of service required	No Escalations over service (be it communication, timeliness of response, quality of service etc.); this includes service and key personnel	Quarterly Monitoring the number of formal escalations made by the Client regarding the standard of performance being delivered.	2+ escalations on service/personnel quality	1 escalations on service/personnel quality	No escalations				
Social Value	Employment	Employment Opportunities (ROTL/Prison Leavers)	Creation of project initiated sustainable employment opportunities, ROTL placements or prison leavers (who have been released from prison for 6 months or less), during the term of the Contract	To employ prisoners or prison leavers during the Contract: 1 person supported per year  • Sustainable employment opportunities for prison leavers and / or ROTL work placement opportunities for men or women in custody (paid National Living Wage and min. 3 months duration)	Quarterly Supplier to provide an update showing employed workers (clarifying those prison leavers and not) showing the forecast and actual total employed to date. Measurement subject to anti-discrimination policies and Ex-Offenders right to non-disclosure.	Not currently on track to deliver 100% compliance and unlikely to achieve or not achieving	No currently on track to deliver 100% compliance but has clear demonstration of ability to achieve	On track to deliver 100% compliance				
	Community	Community Engagement - Volunteering Hours	To give back to the local community who may have been impacted by the works, improving positive public perception of project(s) and a point of contact for any community related issues or measures.	• 1 activity per region per year, minimum of one day, with a charity, community organisation, education establishment, or social enterprise in the region. • Learning, upskilling, and reskilling of men or women in custody or the criminal justice system to develop their life and employment skills (minimum 2 week duration) providing career pathways and helping reduce the skills gap in construction. • A dedicated community liaison manager for the project	Quarterly Supplier to provide an update showing: • Number of volunteering hours occurred each month • Upskilling opportunities that have been provided • Appointment of a dedicated community liaison manager for community liaison activities e.g. communications, site tours, town hall meetings.	Not currently on track to deliver 100% compliance and unlikely to achieve or not achieving	No currently on track to deliver 100% compliance but has clear demonstration of ability to achieve	On track to deliver 100% compliance				

**SCHEDULE 13**

**TEMPLATE FORM OF VALID INVOICE**



**Invoice No:**

**VAT Reg No.**

**Invoice Date:**

**In Account With:**

MoJ Estates Directorate  
Shared Service Centre

████████████████████  
Newport  
Gwent  
NP20 9BB

**PROJECT DESCRIPTION**

**Purchase Order No.**

**Interim Application No.1 for a payment on account**

*Description to exactly match description on purchase order*

To Services rendered in the period dd/mm/yyyy to dd/mm/yyyy

All as attached supporting detail

Total of Application	£0.00
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£0.00

<u>Less:</u> Previous Applications	£0.00
------------------------------------	-------

Total Excl. VAT	£0.00
-----------------	-------

VAT @ 20%	£0.00
-----------	-------

<b>INVOICE TOTAL</b>	<b>£0.00</b>
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**Please forward remittance to:**

Contractor name

**Bank Name:**

Address  
Classification - Public

**Account Name:**

**Sort Code:**

**Account No.**





SCHEDULE 14  
INDEXATION SCHEDULE

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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(iii) [REDACTED]

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[REDACTED]



[REDACTED]

■

[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]