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traffic management technology framework schedule 4G – template call off agreement (incorporating THE NEC3 TERM SERVICE CONTRACT LONG), contract data and z clauses

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**TMTii 52 - M1 J13-16 - Signs and Signals**

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**Date..................................**

**FORM OF AGREEMENT**

**Incorporating the NEC3 Term Service Contract**

**Between**

**HIGHWAYS ENGLAND COMPANY LIMITED**

**.......................................................................................................................................**

**And**

**.......................................................................................................................................**

**For the provision of**

**TMTii 52 - M1 J13-16 - Signs and Signals**

1. TERM SERVICE CONTRACT ANNEX A - FORM OF AGREEMENT

**THIS AGREEMENT (BY DEED) is made the [..................]day of [.......................]**

**PARTIES:**

1. **HIGHWAYS ENGLAND COMPANY LIMITED** which is a company registered in **[…… ]***(*under company number 09346363)and whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ (the "***Employer***"); and

2. **[FRAMEWORK SUPPLIER NAME]** which is a company incorporated in and in accordance with the laws of **[ ]** (Company No. **[ ]** whose registered office address is at **[ ]**(the "**Contractor**").

**BACKGROUND**

1. 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 traffic management technology and associated services for the benefit of public sector bodies.
2. The *Contractor* was appointed to the framework and executed the framework agreement (with reference number **RM1089**) which is dated *[insert date of framework agreement with the Contractor]* (the “**Framework Agreement**”).
3. On the *[insert date of issue of tender]* the *Employer*, acting as part of the Crown, invited the *Contractor* along with other framework suppliers to tender for the *Employer’s* traffic management technology and associated services requirements in accordance with the Call Off Procedure (as defined in the Framework Agreement).

On the *[insert date of tender response]* the *Contractor* submitted a tender response and was subsequently selected by the *Employer* to provide the *service*

1. The *Contractor* has agreed to provide the *service* in accordance with this agreement and the Framework Agreement.

**IT IS AGREED AS FOLLOWS:**

1. **Definitions and Interpretation**

## This agreement (the “Call Off Contract”) incorporates the conditions set out below of:

* The core clauses of the:

NEC3 Term Service Contract (April 2013)

the clauses for main Option A

dispute resolution Option W2

secondary Options X2 & X18

Y(UK)1, Y (UK)2, Y(UK)3

and option Z (being the amendments identified in the Contract Data),

which are supplemented and amended in accordance with such information and supplementary provisions as are provided in the Contract Schedules.

Together the “Conditions”

## The “Contract Schedules” means any one, or all, of the annexes appended to this Call Off Contract.

1. **Entire Agreement**

2.1. This Call Off Contract is the entire agreement between the parties in relation to the *service* and supersedes and extinguishes all prior arrangements, understandings, agreements, statements, representations or warranties (whether written or oral) relating thereto.

2.2 Neither party has been given, nor entered into this Call Off Contract in reliance on any arrangements, understandings, agreements, statements, representations or warranties other than those expressly set out in this Call Off Contract ..

2.3 Nothing in this Clause 2 shall exclude liability in respect of misrepresentations made fraudulently.

1. **Documents**

3.1 The documents forming part of this Call Off Contract are:

1. this form of agreement duly executed by the Parties
2. the Conditions
3. the Contract Data
4. the TMTii 52 Service Information (and all related Technical Specifications
5. The TMTii 52 - Price List
6. Collaborative Performance Framework v3
7. Contractor’s submitted quality submission
8. Contractor’s submitted form of risk register
9. Bravo online forms completed by supplier:

“Anti-collusion”, “Fair Payment Charter”, “Anti-bribery code of conduct” and “Anti-fraud code of conduct”

10. Tender questions & answers

11. Tender clarifications, validations, sustainability and all other checks

(**to be checked listed at award stage by Highways England**)

**[Delivered** [as a deed] on the date of this document.] ***=***

|  |  |
| --- | --- |
| OPTION 1a *[execution under seal]*Executed as a deed by **[Contracting Authority]** by affixing his common seal in the presence of:  | )) |
|  | [Select Directors or Authorised Signatory options below] |
|  | Director or Authorised Signatory |
|  |  |
|  | Director/Secretary or Authorised Signatory |
| OPTION 1b Executed as a deed by [**Contracting Authority]** acting by: | *))* |
|  | [Select Directors or Authorised Signatory options below] |
|  | Director or Authorised Signatory |
|  |  |
|  | Director/Secretary or Authorised Signatory |

1. TERM SERVICE CONTRACT ANNEX B – CONDITIONS OF CONTRACT

NEC3 Term Service Contract (April 2013) Core Clauses.

*The terms and conditions of contract applied at call-off for the Traffic Management Technology 2 Framework Agreement are the core clauses of the NEC Term Service (TSC) Contract.*

* Optional Clauses are listed in the Contract Data at Annex C
* Z Clauses for this contract are listed at Annex D

1. **TERM SERVICE CONTRACT ANNEX C - CONTRACT DATA PARTS ONE AND TWO**

Contract Data

Part 1 – Data provided by the *Employer*

|  |
| --- |
| Part one – Data provided by the *Employer* |
| 1 General | * The *conditions of contract* are the core clauses and the clauses for main Option A, dispute resolution Option W2 and secondary Options X2, X18, Y(UK)1, Y(UK)2 and Y(UK)3, of the NEC3 Term Service Contract April 2013.
 |
|  | * The *service* is to Supply & Install version 3 Message Signs to Ma Junction 13 – 16 and for all the Signs to have a 7-year warranty.
 |
|  | * The *Employer* is Highways England Company Limited a company incorporated in and in accordance with the laws of England and Wales having its registered number 09346363 of Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ
 |
|  | * The *Service Manager* is

Name – Debraj De Address - Highways England, 2 Colmore Square, Birmingham, B4 6BN |
|  | * The Adjudicator is the person chosen by the Parties from the list of Adjudicators published by the Chartered Institute of Arbitrators.
 |
|  | * The Affected Propertyis – various Highways England motorways/ trunk roads as instructed
 |
|  | * The Service Informationis in the document called ‘TMTii 52 - Service Information’
 |
|  | * The *language of this contract* is English
 |
|  | * The *law of the contract* is the law of England and Wales subject to the jurisdiction of the Courts of England and Wales
 |
|  | * The *period* *for reply* is 2 *weeks*
 |
|  | * The *Adjudicator nominating body* is the Institute of Arbitrators
 |
|  | * The *tribunal* is arbitration
 |
|  |  |
| 3 Time | * *The starting date* is the Contract Date
* The *service period* is 9 years (2-year installation & 7-year warranty)
 |
| 5 Payment | * The *assessment interval* is 4 weeks
* The *currency* of this contract is the pound sterling (£).
* The *interest rate* is, unless the provisions of the Late Payment of Commercial Debts (Interest) Act 1998 otherwise require, 3% per annum above the Bank of England base rate in force from time to time
 |
| 8 Risks and insurance | * The minimum amount of cover for insurance against loss of or damage caused by the *Contractor* to the *Employer’s* property is a limit of indemnity of not less than 10 million pounds £10,000,000 in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period, but 10 million pounds £10,000,000 any one occurrence and in the aggregate per annum in respect of products and pollution liability (to the extent insured by the relevant policy).
* The minimum amount of cover for insurance in respect of loss of or damage to property (except the *Employer’s* property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) arising from or in connection with the *Contractor’s* Providing the Service for any one event is a limit of indemnity of not less than 10 million pounds £10,000,000 in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period, but 10 million pounds £10,000,000 any one occurrence and in the aggregate per annum in respect of products and pollution liability (to the extent insured by the relevant policy).
* The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with this contract for any one event is a limit of indemnity of five million pounds £5,000,000 any one occurrence the number of occurrences being unlimited in any annual policy period or as required by statute whichever is the higher.
 |
| Optional Statements | **If the *tribunal* is arbitration*** The *arbitration procedure* is *Chartered Institution of Arbitrators’ Arbitration Rules (2000)*
* The place where the arbitration is to be held is London
* The person or organisation who will choose an arbitrator
	+ if the Parties cannot agree a choice or
	+ if the *arbitration procedure* does not state who selects an arbitrator is Chartered Institute of Arbitrators

**If no plan is identified in part two of the Contract Data*** The *Contractor* submits a first plan for acceptance within 2 weeks of the Contract Date.
 |
| If Option A is used | 1. The *Contractor* prepares forecasts of the final total of the Price for the whole of the *service* at intervals no longer than 4 weeks.
 |
|  |  |
| Option X18 | * The *Contractors* liability to the *Employer* for indirect or consequential loss is limited to **£5,000,000.**
* For any one event, the *Contractor’s* liability to the *Employer* for loss of or damage to the *Employer’s* property is limited to **£10,000,000.** The *Contractor’s* liability for Defects due to his design of an item of Equipment is limited to **£5,000,000.**
* The *Contractor’s* total liability to the *Employer* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to **£10,000,000.**
* The *end of liability* date is 12 years after the end of the *service period*.
 |
|  |  |
| Option Y(UK)1 | * The *Employer* is to pay any charges made and is paid any interest paid by the *project bank.*
 |
| Option Y(UK)3 | * termperson or organisation

Z13.1 and Z13.2 A SubcontractorZ46.1 A Subcontractor  |
| Options Y(UK) 1 and Y (UK) 3 both used |

|  |  |
| --- | --- |
| * **term**
 |  **person or organization** |
|  The provisions of Option Y(UK)1Fair Payment |  Named SuppliersSubcontractors |

 |
|  |  |
|  |  |
|  |  |
|  | If Clause Z32 is used* the *failure level* is 6
 |
| Z19 | ● The *relevant services* and the *relevant service conditions* are |
|  |

|  |  |
| --- | --- |
| *relevant service* | *relevant service condition* |
| supply and warranty of signs as per SI 115, SI 205, SI310 and SI 605 | supply and warranty of signs as per SI 115, SI 205, SI310 and SI 605 |
| supply and warranty of signs as per SI 115, SI 205, SI310 and SI 605 | supply and warranty of signs as per SI 115, SI 205, SI310 and SI 605 |
| provision and maintenance of a technical repository in ESCROW as per SI 115 | Technical repository in ESCROW established for the duration of the service as per SI 115 |

 |
| If Option Z is used | * The *additional conditions of contract* are Z1 to Z58
 |
|  |  |

|  |
| --- |
| Part two – Data provided by the *Contractor* |
| 1 Statements given in all contracts | The *Contractor* isName [………………………………….….]Address [………………………………….….]* The *direct fee* *percentage* is [….] %
* The *subcontracted fee percentage* is [….] %
* The key people are:

|  |  |
| --- | --- |
| (1) Name |  |
| Job |  |
| Responsibilities  |  |
| Qualifications  |  |
| Experience  |  |
| (2) Name |  |
| Job |  |
| Responsibilities |  |
| Qualifications  |  |
| Experience |  |

* The following matters will be included in the Risk Register

[ ]* The Quality Statement is in [ ]
 |
|  | The following matters will be included in the Risk Register…………………………………. |
| 2 Optional statements | **If a plan is identified in the Contract Data*** The plan identified in the Contract Data is [….]

**If Option A, C or E is used*** The *price list* is [….]

**If Option A or C is used*** The tendered total of the Prices is [….]

**If Option Y(UK) 1 is used** * The *project bank* is [….]
* The *named suppliers* are [….]
 |
| Contract Data related to Z clauses:Z19 | If clauses Z29, Z54 and Z55 are used:* The *credit ratings* at the Contract Date and the rating agencies issuing them are

|  |  |  |
| --- | --- | --- |
| party | rating agency | *credit rating* |
| [*Contractor*] | ………………..….. | ……………… |
| [Consortium Member] | …………………… | ……………… |
| [Guarantor] | …………………… | ……………… |

If Clause Z19 (IPR long form enhanced for software):The *Software Schedule* is in the document called the “the Software Schedule”. |

1. TERM SERVICE CONTRACT ANNEX D – OPTIONAL Z CLAUSES

**Term Service Contract**

|  |  |
| --- | --- |
| **Clause Z1** | **Interpretation and the law** Z1.1 In this contract, except where the context shows otherwise:* references to a document include any revision made to it in accordance with this contract;
* references to a statute or statutory instrument include any amendment or re-enactment of it from time to time and any subordinate legislation or code of practice made under it;
* references to a British, European or International standard include any current relevant standard that replaces it;
* references to persons or organisations will be construed so as to include bodies corporate, unincorporated associations, partnerships and any other legal entity; and
* the words “includes” or “including” are construed without limitation.
 |
| **Clause Z2** | **Corrupt practices**Z2.1 The *Contractor* does not * offer or give to any person in the service of the *Employer* any gift or consideration of any kind as an inducement or reward in relation to the obtaining or execution of this contract or any other contract with the *Employer* or for showing favour or disfavour to any person in relation to this contract or any other contract with the *Employer* or
* enter into this contract or any other contract with the *Employer* if, in connection with this contract or any such other contract, commission has been paid or an agreement for the payment of commission has been made by him or on his behalf or to his knowledge.

Z2.2 A failure to comply with this clause is treated as the *Contractor* having substantially hindered the *Employer* or Others. |
| **Clause Z3** | **Recovery of sums due from *Contractor***Z3.1 Where under this contract or any other contract between the *Contractor* and the *Employer* any sum of money is recoverable from or payable by the *Contractor*, 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 *Contractor* under this contract or any other contract with the *Employer*.  |
|  **Clause Z4** | **Assignment** Z4.1 The *Contractor* does not assign, transfer or charge the benefit of this contract or any part of it or any benefit or interest under it without the prior agreement of the *Employer*. Z4.2 The *Employer*’s ability to assign this contract or any part of it or any benefit or interest under it is unrestricted. Z4.3 If requested by the *Employer*, the *Contractor* executes a novation agreement transferring the benefit and burden of this contract to* another Department or Office of Her Majesty's Government,
* a local authority,
* an organisation established to take over the *Employer*’s functions or part of his functions or
* any other body (including private sector body) exercising similar functions

The novation agreement is in the form set out in the Service Information of such other form as the *Employer* may reasonably require.  |
|  **Clause Z5** | **Discrimination**Z5.1 The *Contractor* 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 Providing the Service, the *Contractor* 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 Subcontractor employed by the *Contractor* is required to carry out any activity alongside the *Employer*’s [or *Service Manager*’s] employees in any premises, the *Contractor* ensures that each such employee or Subcontractor complies with the *Employer*’s employment policies and codes of practice relating to discrimination and equal opportunities.Z5.4 The *Contractor* notifies the *Service Manager* in writing as soon as he becomes aware of any investigation or proceedings brought against the *Contractor* 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 *Contractor* 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 *Contractor*.Z5.6 The *Contractor* includes in the conditions of contract for each Subcontractor obligations substantially similar to those set out above. |
| **Clause Z6** | **Conflict of interest**Z6.1 The *Contractor* does not take an action which would cause a conflict of interest to arise in connection with this contract. The *Contractor* notifies the *Employer* if there is any uncertainty about whether a conflict of interest may exist or arise.Z6.2 The *Contractor* immediately notifies the *Employer* of any circumstances giving rise to or potentially giving rise to conflicts of interest relating to the *Contractor* 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. |
| **Clause Z7** | **Merger, take-over or change of control**Z7.1 In clauses Z7, Z54 [Financial Distress], Z55 [Change of Control – new guarantee], and Z29 [Parent Company Guarantee]* **Change of Control** is an event where a single person (or group of persons acting in concert)
* acquires Control of the *Contractor* or
* acquires a direct or indirect interest in the relevant share capital of the *Contractor* 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 *Contractor*,
* **Consortium Member** is an organisation or person which is a member of a group of economic operators comprising the *Contractor*, 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 *Contractor* or a Consortium Member or
* holds or controls the largest direct or indirect interest in the relevant share capital of the *Contractor* 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
* **Guarantor** is a person who has given a Parent Company Guarantee to the *Employer* and
* **Parent Company Guarantee** is a guarantee of the *Contractor’s* performance in the form set out in the Service Information.

Z7.2 A Change of Control does not happen without the prior agreement of the *Service Manager* and if a Change of Control occurs without the *Service Managers* prior consent, then the *Employer* may treat the Change of Control as the Contractor having substantially hindered the *Employer* or Others.Z7.3 The *Contractor* notifies the *Service Manager* immediately if a Change of Control has occurred or is expected to occur.Z7.4 If the Change of Control will not allow the *Contractor* to perform its obligations under this contract, the *Employer* may treat the Change of Control as having substantially hindered the *Employer* or Others.Z7.5 The *Contractor* notifies the *Service Manager* immediately of any material change in * the direct or indirect legal or beneficial ownership of any shareholding in the *Contractor*. A change is material if it relates directly or indirectly to a change of 3% or more of the issued share capital of the *Contractor*, or
* the composition of the *Contractor*. A change is material if it
* directly or indirectly affects the performance of this contract by the *Contractor* or
* is considered substantial in accordance with Regulation 72(8) of the Public Contract Regulations 2015.

Z7.6 The *Contractor* notifies the *Service Manager* immediately of any change or proposed change in the name or status of the *Contractor*. Z7.7 If the *Contractor* fails to notify the *Service Manager* as required by clauses Z7.5 or Z7.6, the *Employer* may treat that failure as the *Contractor* having substantially hindered the *Employer* or Others.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 *Contractor*. |
| **Clause Z8** | **Appointment of *Adjudicator***Z8.1 The *Adjudicator*’s appointment under the NEC3 Adjudicator’s Contract (April 2013) includes the following additional condition 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 obtained either by the *Adjudicator* or any person advising or aiding him is confidential, and may not be used or disclosed by the *Adjudicator* or any such person except for the purposes of this Agreement.” |
| **Clause Z9** | **Project Bank Account**Z9.1 Option Y(UK)1 from the NEC3 Term Service Contract (April 2013) applies to this contract. Z9.2 Clause Y1.6 is amended by inserting the following after the second sentence:“The *Employer* may propose that a Supplier or a Subcontractor is added to the Named Suppliers. The *Contractor* accepts the proposal if the addition of the Supplier or Subcontractor to the Named Suppliers is practicable.”Z9.3 The *Employer* may notify the *Contractor* that payments under the contract will no longer be made using the Project Bank Account. This notice is a compensation event. Within one week of the *Employer*’s notice, the *Contractor* notifies the Named Suppliers that the Project Bank Account is no longer to be used and proposes an alternative method to ensure that the Named Suppliers receive payments in accordance with their contracts. |
| **Clause Z10** | **Prevention of fraud and bribery** Z10.1 The *Contractor* 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.

Z10.2 In this clause Z10, Prohibited Act meansany of the following:* 1. to directly or indirectly offer, promise or give any person working for or engaged by the *Employer* a financial or other advantage to:
		1. induce that person to perform improperly a relevant function or activity; or
		2. reward that person for improper performance of a relevant function or activity;
	2. 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;
	3. committing any offence:
		1. under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or
		2. under legislation creating offences concerning fraud; or
		3. at common law concerning fraud; or

committing (or attempting or conspiring to commit) fraud. |
| **Clause Z11** | ***Employer*’s Codes of Conduct**Z11.1 The *Contractor* and anyone employed by him or acting on his behalf complies with the *Employer*’s Anti Bribery Code of Conduct and the *Employer*’s Anti Fraud Code of Conduct, collectively the “Codes”. The *Contractor* complies with the Codes throughout the *service period* and with:* paragraph 4 of the *Employer’s* Anti Bribery Code of Conduct and
* paragraph 3 of the *Employer*’s Anti Fraud Code of Conduct

for a period of not less than 12 years after the end of the *service period*.Z11.2 A failure to comply with this condition is treated as the *Contractor* having substantially hindered the *Employer* or Others. |
| **Clause Z12** | **Payment for subcontracted service**Z12.1 In assessing the amount due at an assessment date, the amount due for the *service* provided by a Subcontractor (other than a Named Supplier) is retained from the *Contractor* unless, at the assessment date, the *Contractor* has paid the Subcontractor for the *service*.Z12.2 An amount retained is included in the amount due at the assessment date after the *Contractor* has paid the Subcontractor for the *service*.Z12.3 When submitting an invoice, the *Contractor* demonstrates that payment has been made for the amount due included in the invoice in respect of the *service* provided by a Subcontractor. |
| **Clause Z13** | **Fair payment**Z13.1 The *Contractor* assesses the amount due to a Subcontractor without taking into account the amount assessed under this contract.Z13.2 The *Contractor* includes in the contract with each Subcontractor* a period for payment of the amount due to the Subcontractor 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 Subcontractor has completed from the previous assessment date up to the current assessment date in this contract,
* a provision requiring the Subcontractor to include in each subsubcontract the same requirement, except that the period for payment is to be not greater than 23 days after the date on which payment becomes due under this contract and
* a provision requiring the Subcontractor to assess the amount due to a subsubcontractor without taking into account the amount paid by the *Contractor*.

Z13.3 The *Contractor* notifies non-compliance with the timescales for payment through the Efficiency and Reform Group Supplier Feedback Service. The *Contractor* includes this provision in each subcontract, and requires Subcontractors to include the same provision in each subsubcontract. Z13.4 A failure to comply with this condition is treated as the *Contractor* having substantially hindered the *Employer* or Others. |
| **Clause Z14** | **Confidentiality** Z14.1 A new clause 70.3 is added as follows:“The *Contractor* keeps (and ensures that anyone employed by him or acting on his behalf keeps) confidential and does not * disclose to any person the terms of this contract nor
* use (except for the purposes of this contract) or disclose to any person any confidential or proprietary information (including Personal Data) provided to or acquired by the *Contractor* in the course of Providing the Service

except that the *Contractor* may disclose information* to his legal or other professional advisers,
* to his employees and Subcontractors as needed to enable the *Contractor* to Provide the Service,
* where required to do so by law or by any professional or regulatory obligation or by order of any court or governmental agency, provided that prior to disclosure the *Contractor* consults the *Service Manager* and takes full account of the *Service Manager’*s views about whether (and if so to what extent) the information should be disclosed,
* which he receives from a third party who lawfully acquired it and who is under no obligation restricting its disclosure,
* which is in the public domain at the time of disclosure other than due to the fault of the *Contractor* or
* with the consent of the *Service Manager*.

Z14.2 The *Contractor* may only disclose the *Employer*’s confidential information to its personnel who are directly involved in Providing the Service and who need to know the information, and shall ensure that such personnel are aware of and shall comply with these obligations as to confidentiality. Z14.3 The *Contractor* may only disclose the *Employer*’s confidential information to its personnel who need to know the information, and shall ensure that its 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 of the *Contractor*’spersonnel causes or contributes (or could cause or contribute) to the *Contractor* breaching its obligations as to confidentiality under or in connection with this contract, the *Contractor* 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 of the *Contractor’s* personnel, the *Contractor* 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 *Contractor* is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from the *Contractor’*s personnel, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with the *Contractor*’s personnel in connection with obligations as to confidentiality. Z14.4 At the written request of the *Employer,* the *Contractor* shall procure that those members of the *Contractor*’s personnel identified in the *Employer*’s notice signs a confidentiality undertaking prior to commencing any work in accordance with this contract. Z14.5 Where the *Employer* supplies the *Contractor* with press cuttings provided to the *Employer* under the terms of the *Employer*’s licence with the Newspaper Licensing Agency (“NLA”), the *Contractor* does not reproduce the cuttings or forward them to any third party unless the *Contractor* has first entered into an agreement with NLA authorising it to do so.  |
| **Clause Z15** | **Not Used** |
| **Clause Z16** | **Official Secrets Act**Z16.1 The Official Secrets Act 1989 applies to this contract from the *starting date* until the end of the *service period* or earlier termination. Z16.2 The *Contractor* notifies his employees and Subcontractors of their duties under the Official Secrets Act 1989.Z16.3 A failure to comply with this clause is treated as a substantial failure by the *Contractor* to comply with his obligations.[Z16.4 The *Contractor* complies with the staff vetting and training requirements stated in the Service Information.]  |
| **Clause Z17** | **Data protection** Z17.1 (1) The Data Protection Acts are the Data Protection Act 1998 (as amended) and any other laws or regulations relating to privacy or personal data.(2) Personal Data is information collected by the *Contractor* on behalf of the *Employer* in relation to this contract, which relates to living individuals who can be identified* from that information or
* from that information combined with other details in (or likely to come into) the possession of the *Employer*.

Z17.2 For the purposes of this contract and the Data Protection Acts * the *Employer* is the Data Controller and
* the *Contractor* is the Data Processor.

Z17.3 The *Contractor* processes the Personal Data in accordance with (and so as not to put the *Employer* in breach of) the Data Protection Acts and only to the extent necessary for the purpose of performing his obligations under this contract.Z17.4 The *Contractor* has in place for as long as he holds the Personal Data* appropriate technical and organisational measures (having regard to the nature of the Personal Data) to protect the Personal Data against accidental, unauthorised or unlawful processing, destruction, loss, damage, alteration or disclosure and
* adequate security programmes and procedures to ensure that unauthorised persons do not have access to the Personal Data or to any equipment used to process the Personal Data.

Z17.5 The *Contractor* immediately notifies the *Employer* through the *Service Manager* if he receives * a request from any person whose Personal Data he holds to access his Personal Data or
* a complaint or request relating to the *Employer*’s obligations under the Data Protection Acts.

Z17.6 The *Contractor* assists and co-operates with the *Employer* and the *Service Manager* in relation to any complaint or request received, including* providing full details of the complaint or request,
* complying with the request within the time limits set out in the Data Protection Acts and in accordance with the instructions of the *Employer* and
* promptly providing the *Employer* with any Personal Data and other information requested by him.

Z17.7 The *Contractor* complies with the requirements of the *Employer* in relation to the storage, dispatch and disposal of Personal Data in any form or medium.Z17.8 The *Contractor* immediately notifies the *Employer* through the *Service Manager* on becoming aware of any breach of this clause or of the Data Protection Acts.Z17**.**9 The *Contractor* does not process Personal Data outside the European Economic Area (the “EEA”) without the prior written agreement of the *Employer*. Z17.10 If the *Contractor* becomes aware that Personal Data will be transferred or processed outside the EEA, the Contractor sends the *Employer* details of:  Z17.10.1 the Personal Data which will be processed outside the EEA; Z17.10.2 the countries where the Personal Data will be processed;  Z17.10.3 any Subcontractors or other third parties who will be processing and/or receiving Personal Data outside the EEA; and Z17.10.4 proposals to ensure the *Contractor* will provide adequate levels of protection and safeguards of the Personal Data that will be processed outside the EEA to ensure compliance with the Data Protection Acts.Z17.11 Where the *Employer* agrees to the Contractor processing or transferring Personal Data outside the EEA the Contractor complies with the instructions of the *Employer* and provides an adequate level of protection to any Personal Data in accordance with the Data Protection Acts.  |
| **Clause Z18** | **Disclosure of information**Z18.1 A Disclosure Request is a request for information relating to this contract received by the *Employer* pursuant to the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or otherwise. Z18.2 The *Contractor* acknowledges that the *Employer* may receive Disclosure Requests and that the *Employer* may be obliged (subject to the application of any relevant exemption and, where applicable, the public interest test) to disclose information (including commercially sensitive information) pursuant to a Disclosure Request. Where practicable, the *Employer* consults with the *Contractor* before doing so in accordance with the relevant Code of Practice. The *Contractor* uses his best endeavours to respond to any such consultation promptly and within any deadline set by the *Employer* and acknowledges that it is for the *Employer* to determine whether or not such information should be disclosed.Z18.3 When requested to do so by the *Employer*, the *Contractor* promptly provides information in his possession relating to this contract and assists and co-operates with the *Employer* to enable the *Employer* to respond to a Disclosure Request within the time limit set out in the relevant legislation.Z18.4 The *Contractor* promptly passes any Disclosure Request which it receives to the *Employer*. The *Contractor* does not respond directly to a Disclosure Request unless instructed to do so by the *Employer*.Z18.5 The *Contractor* acknowledges that the *Employer* is obliged to publish the provisions of this contract in accordance with the Cabinet Office Efficiency Reform Group Guidance Note entitled “Transparency – Publication of New Central Government Contracts” dated December 2010 (or any later revision) except to the extent that any information in it is exempt from disclosure pursuant to the Freedom of Information Act 2000. The *Employer* consults with the *Contractor* before deciding whether information is exempt, but the *Contractor* acknowledges that the *Employer* has the final decision. The *Contractor* co-operates with and assists the *Employer* to publish this contract in accordance with the *Employer*’s obligation. |
|  |  |
| ***Clause Z19*** | **Intellectual Property Rights**Z19.1   In this contract clause Z19:**Affiliate** is in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time.**Central Government Body** is a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:* Government Department;
* Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
* Non-Ministerial Department; or
* an Executive Agency of one of the above

and any body corporate that is a wholly owned subsidiary of one of the above.**Commission Date** for a *relevant service* is the day on which the commissioning of a *relevant service* is successfully completed and its *relevant service conditions* are met.**Confidential Information** is * information, including all Personal Data, which (however it is conveyed) is provided by the disclosing Party in connection with this contract that relates to
* the Disclosing Party Group or
* the operations, business, affairs, developments, Intellectual Property Rights, trade secrets, know-how and/or personnel of the Disclosing Party Group,
* other information provided by the disclosing Party in accordance this contract that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient’s attention or into the Recipient’s possession in connection with this contract,
* discussions, negotiations, and correspondence between the disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this contract and all matters arising therefrom; and
* information derived from any of the above,

but not including any information which* was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the disclosing Party,
* the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient’s knowledge or belief, bound by a confidentiality agreement with the disclosing Party or otherwise prohibited from disclosing the information to the Recipient,
* was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this contract or breach of a duty of confidentiality or
* was independently developed without access to the Confidential Information.

**Contractor Background IPR** is IPR owned by the *Contractor* or a third party before the Contract Date or created by the *Contractor* or a third partyindependently of this contract, which in each case is or will be used before or during *service period* for designing, testing, implementing or Providing the Service, but excluding IPRs owned by the *Contractor* subsisting in the Contractor Software or by any third party in Third Party Software.**Contractor Equipment** is the hardware, computer and telecoms devices and equipment used by the *Contractor* or its Subcontractors (or any subcontractor of any tier to the *Contractor*) (but not hired, leased or loaned from the *Employer*) for the Providing the Service.**Contractor Software** is software which is proprietary to the *Contractor* (or an Affiliate of the *Contractor*) and which is or will be used by the *Contractor* for the purposes of Providing the Service, including the software specified as such in the Software Schedule.**Contractor** **System** is the information and communications technology system used by the *Contractor* in implementing and performing the *service* including the Software, the Contractor Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the *Employer* System).**Control** is the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and **Controls** and **Controlled** are to be interpreted accordingly.**Deposited Software** is the Software the Source Code of which is to be placed in escrow as required by the *Service Manager* and notified to the *Contractor* from time to time including as identified in the Software Schedule.**Disclosing Party Group** iswhere the disclosing Party is* the *Contractor*, the *Contractor* and any Affiliates of the *Contractor*; and
* the *Employer*, the *Employer* and any Central Government Body with which the *Employer* or the *Contractor* interacts in connection with this contract.

**Documentation** is descriptions of the *service*, the *Contractor’s* *service* solution, performance measures, details of the Contractor System (including (i) vendors and versions for off-the-shelf components and (ii) source code and build information for proprietary components), relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation as* is required to be supplied by the *Contractor* to the *Service Manager* under this contract,
* would reasonably be required by a competent third party capable of Good Industry Practice contracted by the *Employer* to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the *service* or make use of the *service*,
* is required by the *Contractor* in order to Provide the Service and/or
* has been or is generated in order to Provide the Service.

**EmployerBackground IPR** isIPR owned by the *Employer* before the Contract Date, or created by the *Employer* independently of this contract, and Crown Copyright which is not available to the *Contractor* otherwise than under this contract, but excluding IPRs owned by the *Employer* subsisting in the EmployerSoftware.**Employer Software** is software which is owned by or licensed to the *Employer* (other than under or pursuant to this contract) and which is or will be used by the *Contractor* in order to Provide the Service.**Employer System** is the *Employer*'s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the *Employer* or the *Contractor* in connection with this contract which is owned by the *Employer* or licensed to it by a third party and which interfaces with the Contractor System or which is necessary for the *Employer* to receive the *service*.**Good Industry Practice** is at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the *servic*e to a customer like the *Employer*, such supplier seeking to comply with its contractual obligations in full and complying with any applicable laws.**Indemnified Person** is the *Employer* and each and every person to whom the *Employer* (or any direct or indirect sub-licensee of the *Employer*) sub-licenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with this contract.**Intellectual Property Rights** or **IPRs** are:* copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, know-how, trade secrets and other rights in Confidential Information;
* applications for registration, and the right to apply for registration, for any of the rights listed above that are capable of being registered in any country or jurisdiction; and
* all other rights having equivalent or similar effect in any country or jurisdiction**.**

**IPRs Claim** is any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPRs, or the use of the Employer Software by or on behalf of the *Contractor,* in either case for a purpose not reasonably to be inferred from the Service Information or the provisions of this contract.**Object Code** is software and/or data in machine-readable, compiled object code form.**Open Source Software** is software that has its source code made available subject to an open-source licence under which the owner of the copyright and other IPRs in such software provides the rights to use, study, change and distribute the software to any and all persons and for any and all purposes free of charge.**OSS** is the Open Source Software listed in the Software Schedule.**Recipient** is the Party which receives or obtains directly or indirectly Confidential Information.**Relevant IPR** is IPRs used to Provide the Service or as otherwise provided and/or licensed by the *Contractor* (or to which the *Contractor* has provided access) to the *Employer* or a third party in the fulfilment of the *Contractor*’s obligations under this contract including IPRs in the Specially Written Software, the Contractor Software, the Contractor Background IPRs and the Third Party Software but excluding any IPRs in the Employer Software and the Employer Background IPRs.**Software** is Specially Written Software, Contractor Software and Third Party Software.**Software Schedule** is the Software Scheduleunless later changed in accordance with this contract.**Source Code** is computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software.**Specially Written Software** is any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the *Contractor* (or by a Subcontractor (or any subcontractor of any tier to the *Contractor*) or other third party on behalf of the *Contractor*) specifically for the purposes of this contract, including* any Contractor Background IPRs that are embedded in or which are an integral part of such software; and
* any modifications or enhancements to Contractor Software or Third Party Software created specifically for the purposes of this contract.

**Third Party Software** is software which is proprietary to any third party (other than an Affiliate of the *Contractor*) which in any case is, will be or is proposed to be used by the *Contractor* for the purposes of Providing the Service, including the software specified as such in the SoftwareSchedule and including OSS.Z19.2   All Intellectual Property Rights in:* EmployerBackground IPR;
* Employer Software; and
* documents and other materials created by or on behalf of the *Employer* in connection with the contract

are and remain the property of the *Employer* or the Crown, and the *Contractor* does not acquire any right, title or interest therein or thereto.Z19.3 All Intellectual Property Rights in:* Contractor Background IPR,
* Contractor Software and
* Specially Written Software

are and remain the property of the *Contractor*, and neither the *Employer* northeCrownacquire any right, title or interest therein or thereto. Z19.4  The *Contractor* hereby assigns to the *Employer*, with full title guarantee, title to and all rights interest in all present and future Intellectual Property Rights in all documents and other materials (excluding Specially Written Software) created by or on behalf of the *Contractor* or any Subcontractor(or any subcontractor of any tier to the *Contractor*) in performing its obligations under, or otherwise in connection with, this contract, or procures that the first owner thereof assigns them to the *Employer* on the same basis.  The *Contractor* obtains from Subcontractors (or any subcontractor of any tier to the *Contractor*) equivalent rights over all documents and other materials (excluding Specially Written Software) prepared by the Subcontractors (or any subcontractor of any tier to the *Contractor*).  This assignment takes effect either on the Contract Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Intellectual Property Rights, as appropriate. Z19.5 The *Contractor* waives or procures a waiver of any moral rights in any copyright works assigned to the *Employer* pursuant to this contract.Z19.6 The *Contractor* hereby grants, or procures the direct grant, to the *Employer* a perpetual, royalty-free, non-exclusive and irrevocable licences to use (to include the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)) the:* Contractor Software;
* Contractor Background IPR; and
* Third Party Software

for any purpose relating to the *service* (or substantially equivalent services) or for any purpose relating to the exercise of the *Employer*’s (or any other Central Government Body’s) business or function. The licence granted under this clause Z19.6 survives the termination or expiry of this contract and cannot be terminated by the *Contractor* or its assignees or any third party. Z19.7 The *Contractor* hereby grants to the *Employer*, or procures the direct grant to the *Employer* of, a perpetual, worldwide, royalty-free, non-exclusive and irrevocable licence to use for any purpose (which includes the right to load, execute, interpret, store, transmit, display, copy (for the purposes of loading, execution, interpretation, storage, transmission or display), modify, adapt, enhance, reverse compile, decode and translate)* the Documentation, Source Code and the Object Code of the Specially Written Software; and
* all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software (together the “**Software Supporting Materials**”.

The licence granted under this clause Z19.7 survives the termination or expiry of this contract and cannot be terminated by the *Contractor* or its assignees.Z19.8 The *Contractor* delivers to the *Service Manager* the Specially Written Software in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials as necessary to meet its obligations under the contract and upon request by the *Employer* at any time, and provides updates of the Source Code and of the Software Supporting Materials promptly following each new release of the Specially Written Software, in each case on media that is acceptable to the *Service Manager*. The *Contractor* acknowledges and agrees that the ownership of the media referred to in clause in this clause Z19.8 vests in the *Employer* upon their receipt by the *Service Manager*.Z19.9 The *Employer* is freely entitled to sub-license the rights granted to the *Employer* under clauses Z19.6 and Z19.7 to any third party on terms no broader than those granted to the *Employer*. Without prejudice to the generality of the foregoing, the terms of any sub-licence granted pursuant to this clause may, in the *Employer*’s absolute discretion, permit any sub-licensee to further sub-licence the sub-licensed rights. In respect of any sub-licence of the rights granted to the *Employer* under clauses Z19.6, if requested by the *Contractor* the sub-licensee executes a confidentiality undertaking in favour of the *Contractor* or third party owner of the relevant rights in such reasonable form as the *Contractor* requires and the *Service Manager* approves in writing*.*Z19.10 The *Contractor* informs the *Service Manager* of all Specially Written Software that constitutes a modification or enhancement to Contractor Software or Third Party Software.Z19.11The *Contractor* warrants that* the Software does not contain any Open Source Software other than OSS and
* the OSS is licensed upon terms which permit the use of such Open Source Software by the *Contractor*, the *Employer* and the *Employer*'s end users for all purposes contemplated by this contract.

Z19.12 The *Contractor* warrants to the *Employer* that all components of the Software:* are free from material design and programming errors,
* provide the functionality set out in, and perform in all material respects in accordance with, the relevant specifications contained in
* the Service Information,
* the Quality Statement,
* the Documentation and
* do not infringe any Intellectual Property Rights,

Z19.13 The *Employer* grants to the *Contractor,* or procures the direct grant to the *Contractor* of, a royalty-free, non-exclusive, non-transferable, revocable licence to use all *Employer* Software and Employer Background IPR reasonably required by the *Contractor* in order to Provide the Service.  Any such licence is granted for the duration of this contract only and solely to enable the *Contractor* to comply with its obligations under this contract.Z19.14 The *Contractor* at all times, during and after the *service period*, indemnifies the *Employer* and each other Indemnified Person against all losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.Z19.15 If an IPRs Claim is made, or the *Contractor* anticipates that an IPRs Claim might be made, the *Contractor*, at its own expense and sole option, either* procures for the *Employer* or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim or
* replaces or modifies the relevant item with non-infringing substitutes provided that:
* the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item,
* the replaced or modified item does not have an adverse effect on any other services, or the Employer System or the Contractor System,
* there is no additional cost to the *Employer* or relevant Indemnified Person (as the case may be) and
* the terms and conditions of this contract apply to the replaced or modified *service*.

Z19.16 If the *Contractor* * procures a licence or
* modifies or replaces an item

in accordance with clause Z19.15 but this has not avoided or resolved the IPRs Claim, then* the *Employer* may treat this IPRs Claim as the *Contractor* having substantially hindered the *Employer* or Others; and
* without prejudice to the indemnity set out in clause Z19.14, the *Contractor* is liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

Z19.17 The *Contractor* keeps the Software Schedule up to date to reflect the Software used to Provide the Service. The *Contractor* provides the *Employer* a copy of the updated Software Schedule within 5 days of any change to the Software. Z19.18 The *Contractor* deposits, and procures that each owner of the Deposited Software deposits, not less than fourteen (14) days following the relevant Commissioning Date or at such other times as the *Service Manager* may require, the Source Code of such part of the Software that consists of Deposited Software in escrow with the National Computing Centre ("NCC") (or equivalent approved by the *Service Manager*)on the basis of their standard single or multi licensee escrow agreement (as applicable) unless another form is stated in the Service Information, modified as necessary, and where applicable, to be consistent with the provisions clause Z19.19. The *Contractor* ensures that (and procures that each owner of the Deposited Software ensures that) the deposited version of the Source Code is the current version of the Deposited Software and that the deposited version is kept up-to-date as the Deposited Software is modified or upgraded. The *Contractor* pays, or procures that each owner of Deposited Software pays, the initial storage fees and any annual fees under the escrow agreement and the *Employer* pays any release fees.Z19.19 Where Deposited Software includes Specially Written Software, without prejudice to the provisions of clause Z19.8, the *Contractor* ensures there are no restrictions on the release to the *Employer* of Specially Written Software from escrow, which is released whenever required by the *Employer* and without payment of any release fee, unless the *Service Manager* has agreed otherwise.Z19.20 Where the *Contractor* is unable to procure compliance with the provisions of clause Z19.18 in respect of any Third Party Software that is Deposited Software, it provides the *Service Manager* with written evidence of its inability to comply with these provisions and agrees with the *Service Manager* a suitable alternative to escrow that affords the *Employer* the nearest equivalent protection. The *Contractor* is excused from its obligations under clause Z18.18 only to the extent that the *Contractor* and the *Service Manager* have agreed on a suitable alternative.Z19.21 In circumstances where the *Employer* obtains the release of the Source Code from escrow, the *Contractor* hereby grants (and procures that any owner of Deposited Software grants) to the *Employer* a perpetual, worldwide, assignable, royalty-free, irrevocable and non-exclusive licence to use and support (which includes the right to load, execute, interpret, store, transmit, display, copy (for the purposes of loading, execution, interpretation, storage, transmission or display), modify, adapt, enhance, reverse compile, decode and translate) the Source Code version of the Deposited Software to the extent necessary for the receipt of the *service* (or substantially equivalent services) or for any purpose relating to the exercise of the *Employer*’s (or any other Central Government Body’s) business or function. The licence granted under this clause Z19.21 survives the termination or expiry of this contract and cannot be terminated by the *Contractor* or its assignees or any third party. |
| **Clause Z20** | **Records and Audit Access**Z20.1 The *Contractor* keeps documents and information obtained or prepared by the *Contractor* or any Subcontractor in connection with the contract for a period of *12* years after the *service period*. Z20.2 The *Contractor* permits the *Employer*, Comptroller, Auditor General and any other auditor appointed by the *Employer* to examine documents held or controlled by the *Contractor* or any Subcontractor.Z20.3 The *Contractor* provides such oral or written explanations as the *Employer* or Comptroller and Auditor General considers necessary. Z20.4 The *Contractor* 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 *Contractor* or any Subcontractor and may require the *Contractor* to provide such oral or written explanations as he considers necessary. The *Contractor* 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 *Contractor* and the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the *Contractor* is not a function exercisable under this contract. The *Contractor* permits the Comptroller and Auditor General to examine documents held or controlled by the *Contractor* or any Subcontractor. The *Contractor* provides such oral or written explanations as the Comptroller and Auditor General considers necessary. |
| **Clause Z21** | **Reporting: Small and Medium Enterprises**Z21.1 In this clause Z21 SME is* a Subcontractor or
* a subcontractor to a Subcontractor

and * is autonomous,
* is a European Union enterprise not owned or controlled by a 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.

Z21.2 For each SME employed on the *service*, the *Contractor* reports to the *Service Manager* each quarter from the *starting date* and throughout the *service period:* * the name of the SME,
* the class of SME (medium, small or micro),
* the value of the contract undertaken by the SME,
* the monthly amounts paid to each SME in the quarter and
* the aggregated value paid to paid to each SME since the *starting date*.

Z21.3 The *Contractor* acknowledges that the *Employer* may * publish the information supplied in accordance with Z21.1, along with the names of the SMEs, the *Contractor*’s name and this contract name and
* pass this information supplied under this clause to any Government Department who may then publish it along with the names of the SMEs, the *Contractor*’s name and this contract name.

Z21.4 The *Contractor* ensures that the conditions of contract for each Subcontractor who is an SME include * a term allowing the *Employer* to publish the information supplied under Z21.2 and
* obligations substantially similar to those set out in this clause Z21.

Z21.5 The *Contractor* further ensures that the conditions of contract for each Subcontractor include a requirement that the conditions of contract for any sub-subcontractor engaged by the Subcontractor who is an SME include obligations substantially similar to those set out in clause Z21.4.Z21.6 The *Contractor* keeps accounts and records of his charges and expenses and allows the *Employer* to inspect them at any time within working hours. |
| **Clause Z22** | **Changes to rates and prices**Z22.1 The Parties may at any time agree to a reduction to the rates or Prices in the Price List.Z22.2 The reduced rates or Prices apply to any part of the *service* provided after the reduction is agreed.Z22.3 If the *Contractor* does not agree a reduction requested by the *Employer*, the *Employer* may terminate the *Contractor*’s obligation to Provide the Service by notifying the *Contractor*. |
| **Clause Z23** | **Euro functionality**Z23.1 The *Contractor* Provides the Service in such a way that the *service** would not be prejudiced by the implementation of the Euro,
* comply with all legal requirements applicable to the Euro in the United Kingdom, including, but without limitation, the rules on conversion and rounding set out in the EC Regulation 1103/97,
* are capable of utilising all symbols and codes adopted by the EU Commission in relation to the Euro and
* are in accordance with the *Employer*’s requirements both for Sterling and for the Euro.
 |
| **Clause Z24** | **Payment of the *Contractor*’s share**Z24 Not used. |
| **Clause Z25** | **The *Employer*’s liability**Z25.1 The *Employer*'s total liability to the *Contractor* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to £10,000,000, and applies in contract, tort or delict or otherwise to the extent allowed under the *law of the contract*.Z25.2 The excluded matters are any items which cannot be excluded by law, for example death and personal injury, and the amounts payable to the *Contractor* as stated in this contract for* the total of the Prices if Option A applies,
* the Price for the Service Provided to Date and the *Contractor*'s share if Option C applies and
* the Price for the Service Provided to Date if Option E applies.

Z25.3 The *Employer*'s liability to the *Contractor* is limited to that proportion of the *Contractor*'s losses for which the *Employer* is responsible under this contract. |
| **Clause Z26** | **Tax Non-Compliance**Z26.1 (1) Tax Non-Compliance is where a tax return submitted by the *Contractor* 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 *Contractor* 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 *Contractor* was involved which was (or should have been) notified to a Relevant Tax Authority under the DOTAS or a similar regime or
* gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax-related offences which is not spent at the Contract Date or to a civil penalty for fraud or evasion.

(2) DOTAS are the Disclosure of Tax Avoidance Schemes rules contained in Part 7 of the Finance Act 2004 and in secondary legislation made pursuant to it, as extended to National Insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012 (SI 2012/1868). (3) General Anti-Abuse Rule is* the legislation in Part 5 of the Finance Act 2013 and
* any future legislation introduced to counteract tax advantages arising from abusive arrangements to avoid National Insurance contributions.

(4) Halifax Abuse Principle is the principle explained in the CJEU case C-255/02 Halifax and others.(5) Relevant Tax Authority is HM Revenue & Customs or, if the *Contractor* is established in another jurisdiction, the tax authority in that jurisdiction. Z26.2 The *Contractor* warrants that he has notified the *Employer* of any Tax Non-Compliance or any litigation in which he is involved relating to any Tax Non-Compliance prior to the Contract Date.Z26.3 The *Contractor* notifies the *Employer* within one week of any Tax Non-Compliance occurring after the Contract Date and provides details of * the steps the *Contractor* is taking to address the Tax Non-Compliance and to prevent a recurrence,
* any mitigating factors that he considers relevant and
* any other information requested by the *Employer*.

Z26.4 The *Contractor* is treated as having substantially hindered the *Employer* or Others if* the warranty given by the *Contractor* under clause Z26.2 is untrue,
* the *Contractor* fails to notify the *Employer* of a Tax Non-Compliance or
* the *Employer* decides that any mitigating factors notified by the *Contractor* are unacceptable.
 |
| **Clause Z27** | **TUPE**Not used. |
| **Clause Z28** | **Extension of the *service period***Not used. |
| **Clause Z29** | **Parent Company Guarantee**Z29.1 If required by the *Service Manager*, the *Contractor* gives to the *Employer* a Parent Company Guarantee. If a Parent Company Guarantee was not requested by the Contract Date, it is given to the *Employe*r within four weeks of the *Service Manager’s* request. Parent Company Guarantees are given by* for a standalone company – the Controller,
* for an unincorporated JV (“more than one party”) – the Controller of each Consortium Member, or
* for an incorporated JV – the Controller of each Consortium Member.

In all cases it is for the *Employer* to decide (in its discretion) whether it will accept a Parent Company Guarantee from a company other than the Controller.Z29.2 A failure to comply with this condition is treated as the *Contractor* having substantially hindered the *Employer* or Others. |
| **Clause Z30** | **Illegal and impossible requirements**Z30.1 Delete clause 18.1 and replace with the following:“18.1 The *Contractor* notifies the *Service Manager* as soon as he considers that the Service Information requires him to do anything which is illegal or impossible. If the *Service Manager* requests, the *Contractor* submits proposals for overcoming the illegality or impossibility to the *Service Manager* within the *period for reply*. The *Service Manager* decides how the illegality or impossibility is to be overcome and what (if any) changes are required to the Service Information and the *Service Manager* gives an instruction to change the Service Information appropriately.” |
| **Clause Z31** | **Use of equipment, Plant and Materials**Not used |
|  **Clause Z32** | **Termination and omission of work** Z32.1 If the *Service Manager* instructs a change to the Service Information which involves the omission of part of the *service*, the *Employer* may engage other people to carry out the part omitted. The instruction is assessed as a compensation event, except that if the instruction is given for insolvency or a default by the *Contractor*, the assessment includes a deduction of the forecast additional cost to the *Employer* of completing the *service*.Z32.2 The following are treated as a the *Contractor*  having hindered the *Employer* or Others:* a key resource needed by the *Contractor* to Provide the Service is no longer available and the *Contractor* does not propose an alternative resource acceptable to the *Employer*, or
* the *Contractor*’s performance as measured in accordance with the Collaborative Performance Framework (or any replacement for it) is below the *failure level*.
 |
|  **Clause Z33** | **Not Used**  |
|  **Clause Z34** | **Termination – PCRs, Regulation 73**Z34.1 The *Employer* may terminate the *Contractor*’s obligation to Provide the Service if one of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applied to the *Contractor* at the Contract Date. This is treated as a termination because of a substantial failure of the *Contractor* to comply with his obligations.Z34.2 The *Employer* may terminate the *Contractor*‘s obligation to Provide the Service if* this contract has been subject to substantial modification which would have required a new procurement procedure pursuant to regulation 72 of the Public Contracts Regulations 2015 or
* the Court of Justice of the European Union declares, in a procedure under Article 258 of the Treaty on the Functioning of the European Union, that a serious infringement of the obligations under the European Union Treaties and the Public Contracts Directive has occurred.

If the modification or infringement was due to a default by the *Contractor*, this is treated as a termination because of the *Contractor* having substantially hindered the *Employer* or Others. |
|  **Clause Z35**  | **Value Added Tax (VAT) Recovery**Z35.1 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 Z36** | **Tax Arrangements of Public Appointees**Z36.1   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 *Contractor*.  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 *Contractor*, an Associated Company or any Subcontractor) made available by the *Contractor* to the *Employer* for the purpose of Providing the Service.

Z36.2   Where any Staff are liable to be taxed in the United Kingdom in respect of consideration received under this contract, the *Contractor* 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. Z36.3   Where any Staff are liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, the *Contractor* 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. Z36.4    The *Employer* may, at any time during the term of this contract, request the *Contractor* to provide information to demonstrate either how any member of Staff is complying with clauses Z36.2 and Z36.3 or why those clauses do not apply to it. Z36.5  If the *Contractor* fails to provide information in response to a request under clause Z36.4* within the *period for reply* or
* which adequately demonstrates either how any member of Staff is complying with clauses Z36.2 and Z36.3 or why those clauses do not apply to it

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

Z36.6 If the *Employer* receives or identifies information through any means which demonstrates that a member of Staff is not complying with clauses Z36.2 and Z36.3, the *Employer* may treat such non-compliance as a substantial failure by the *Contractor* to comply with his obligations.Z36.7   The *Contractor* acknowledges that the *Employer* may * supply any information which it receives under clauses Z36.4 or Z36.6 or
* advise the non-supply of information

to the Commissioners of Her Majesty’s Revenue & Customs [or Revenue Scotland][[1]](#footnote-2)[1] for the purpose of the collection and management of revenue for which they are responsible. |
| **Clause Z37** | **Change in law**Z37.1 In clause X2.1 after “Contract Date”, add “unless the change in the law and its effects could reasonably have been anticipated by the *Contractor* prior to the Contract Date”.  |
| **Clause Z38** | **Not Used** |

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
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| **Clause Z39** | **Audit, Quality Management Points and Correction of Nonconformities**Z39.1 The *Contractor* carries out a programme of internal audits in accordance with the requirements of ISO 9001. The *Contractor* notifies the *Service Manager* of the internal audit dates and makes provision for the *Service Manager* and *Employer* to attend. The *Contractor* supplies the *Service Manager* with copies of all internal audit documentation including reports and action plans.Z39.2 The *Employer* or *Service Manager* may carry out audits of the *Contractor*’s quality management system from time to time. The *Contractor* allows access at any time within working hours to any place where he or any Subcontractor carries out any work that relates to this contract for the *Employer* or *Service Manager* to carry out audits, to inspect work and materials and generally to investigate whether the *Contractor* is performing his obligations under this contract. The *Contractor* provides all facilities and assistance necessary to allow such audits and inspections to be carried out. Z39.3 Additional audits may be carried out when the number of Quality Management Points in effect exceeds 25. The location, frequency and extent of additional audits will be determined by the *Employer* in his absolute discretion having regard to the root causes for the accrual of Quality Management Points in effect. The *Contractor* pays the cost of the additional audits. Z39.4 Following notification of a non-conformity, the *Contractor* submits to the *Service Manager* for acceptance the corrective and preventative action that he proposes to take to deal with the non-conformity. The *Contractor* does not take action to deal with the non-Conformity until the *Service Manager* has accepted his proposalsZ39.5 Within one week of the *Contractor* submitting the proposed corrective and preventative action to him for acceptance, the *Service Manager* either accepts the proposal or notifies the *Contractor* of his reason for not accepting it. A reason for not accepting the proposed action is that * it does not take action required to ensure that non-conformities do not recur,
* it does not comply with this contract or
* the time for completing the corrective and preventative action is unreasonable or will hinder the *Employer* or Others.

Z39.6 If the *Service Manager* does not accept the proposed action, the *Contractor* submits a revised proposal to the *Service Manager* for acceptance within one week.Z39.7 The *Contractor* corrects non-conformities and takes action to eliminate the causes of actual or potential non-conformities within a time which minimises the adverse affect on the *Employer* or Others and in any event before carrying out any operation the same or similar as that in respect of which the non-conformity occurred. Z39.8 The *Contractor* notifies the *Service Manager* when the proposed actions have been taken and provides with his notification verification that the defective part of the service has been correctedZ39.9 Quality Management Points are points accrued by the *Contractor* in accordance with the Quality Table below. Quality Management Points accrue for the failures listed on the Quality Table whether arising from an audit by the *Contractor*, the *Employer* or the relevant accreditation body.Z39.10 If the *Contractor* fails to comply with his quality management system, the *Contractor* accrues Quality Management Points from the date when the failure is identified in accordance with the Quality Table. The number of Quality Management Points is reduced in accordance with the Quality Table. If in the opinion of the *Employer* the *Contractor* has failed to properly accrue Quality Management Points, the *Service Manager* instructs the *Contractor* to accrue the applicable number of Quality Management Points calculated in accordance with the Quality Table and they are deemed to have accrued from the date of the *Service Manager*’s instruction.Z39.11 The *Contractor* maintains a register of the number of Quality Management Points in effect, showing when Quality Management Points accrue and are removed. Z39.12 If the number of Quality Management Points in effect at any time is more than 25 points, the *Contractor*, the *Service Manager* and *Employer* meet within one week to consider ways of reducing the number of Quality Management Points in effect to 25 or less and to avoid accruing further Quality Management Points. The *Contractor* submits a report to the *Service Manager* within one week of the meeting setting out* the actions agreed at the meeting and
* any other actions which the *Contractor* proposes to take immediately to reduce the number of Quality Management Points in effect to 25 or less and to avoid accruing further Quality Management Points.

Z39.13 If the *Service Manager* does not accept the *Contractor*’s proposals or the *Contractor* does not take the agreed actions, the *Service Manager* serves a quality warning notice on the *Contractor*. Within one week of receipt of the quality warning notice, the *Contractor* submits a report to the *Service Manager* setting out the actions which the *Contractor* has taken and what further or alternative actions he proposes to take to reduce the number of Quality Management Points in effect to 25 or less.Z39.14 Until the number of Quality Management Points in effect is reduced to 25 or less, the *Contractor* takes the actions detailed in his reports and submits weekly up date reports to the *Service Manager* setting out the actions he has taken, the results of those actions and the actions which are still to be taken by him.Z39.15 Failure to take actions to reduce the number of Quality Management Points in effect to 25 or less is treated as the *Contractor* having substantially hindered the *Employer* or Others.**Quality Table**

| Failure | Quality Management Points | Period of effect |
| --- | --- | --- |
| Failure to have a complete quality plan in place and operating | 25 | Until audit confirms that quality plan complete and operating |
| The quality plan does not comply with the requirements of this contract | 10 per failure | Until audit confirms that quality plan complies |
| Failure to raise a non-conformity report | 5 per non-conformity | 6 months |
| Failure to raise a corrective action report | 5 per non-conformity | 6 months |
| Failure to correct quality plan in manner set out in a corrective action report(see note 1 below) | 10 per failure | Until failure corrected |
| Failure to implement recommendations in audit report(see note 1 below) | 5 per recommendation | Until audit confirms that recommendation implemented |
| Failure to carry out internal audit | 25 per audit | Until audit carried out |
| Carrying out work without release of hold point | 10 per item | 6 months |
| Failure to make records available for inspection by the *Employer* | 10 per failure | Until the records are made available |
| Failure to allow access for *Employer* audits | 10 per failure | Until *Employer* audit is carried out |
| Failure by *Contractor* to accrue Quality Management Points that should have been accrued | The number of Quality Management Points that should have been accrued | Applicable to the failure that should have accrued Quality Management Points |
| plus an additional number of Quality Management Points equivalent to the Quality Management Points that should have been accrued | 6 months |
| Note 1: For these failures additional Quality Management Points are accrued at each audit until an audit confirms that rectification/correction/implementation/action has taken place. |

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| **Clause Z40** | **Quality Statement**The *Contractor* Provides the Service in accordance with the Quality Statement. The Quality Statement is the statement of that name referred to in the Contract Data setting out the *Contractor’s* proposals for the management and resourcing of the *service*. |
| **Clause Z41** | **Objects and Materials within the Affected Property**Z41.1 The *Contractor* takes all reasonable steps (by way of sale, re-use or otherwise) to maximise the value to the *Employer* of any waste equipment and/or Plant and Materials to which the *Employer* has title arising in the course of Providing the Service. Any amount received by the *Contractor* from the sale of such waste equipment and/or Plant and Materials is paid to the *Employer* in accordance with clause 50.2.  |
| **Clause Z42** | **Construction Industry Scheme**Z42.1 In this clause Z42 (but not otherwise)* the Act is the Finance Act 2004 and
* the Regulations are the Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045).

Z42.2 This contract falls within the scope of the Construction Industry Scheme provided for by Chapter 3, Part 3 of the Act.Z42.3 The *Contractor* provides the information required by the Regulations to enable the *Employer* to verify (in accordance with paragraph 6 of the Regulations) whether the *Contractor* under the Act* is registered for gross payment,
* is registered for payment under deduction,
* is exempt from registration as a local authority or other public body or
* is neither registered nor exempt from registration.

Z42.4 If the *Contractor* is registered for payment under deduction or is neither registered nor exempt from registration* the *Contractor* submits an application for payment which separately identifies the cost of labour and
* the *Employer* deducts the relevant percentage from the payment in accordance with the Act and the Regulations.
 |
| **Clause Z43** | **Not Used** |
| **Clause Z44** | **Not Used** |
| **Clause Z45** | **Consortia** Z45.1 Where two or more Consortium Members comprise the *Contractor,* each Consortium Member is jointly and severally liable to the *Employer* for the performance of the *Contractor’s* obligations under this contract.Z45.2 If the joint venture arrangement is terminated for any reason, the *Employer* may * terminate this contract with immediate effect and
* treat the termination of this contract as the *Contractor* having substantially hindered the *Employer* or Others.

Z45.3 Clause 91.1 of the *conditions of contract* is amended by inserting after “the other Party” in each place where it appears (three times) the words “(or, in the case of the *Contractor*, any Consortium Member)”. |
| **Clause Z46** | **Subcontracting**Z46.1 Before: * appointing a proposed Subcontractor or
* allowing a Subcontractor to appoint a proposed subsubcontractor

the *Contractor* submits to the *Employer* for acceptance * a European Single Procurement Document (as described in regulation 59 of the Public Contracts Regulations 2015) in respect of the proposed Subcontractor or subsubcontractor 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 Subcontractor or subsubcontractor.

Z46.2 The *Contractor* does not appoint the proposed Subcontractor (or allow the Subcontractor to appoint the proposed subsubcontractor) 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 Subcontractor or subsubcontractor under regulation 57 of the Public Contracts Regulations 2015.Z46.3 If requested by the *Employer*, the *Contractor* provides further information to support, update or clarify a submission under clause Z46.1. Z46.4 If, following the acceptance of a submission under clause Z46.2, it is found that one of the grounds for excluding the Subcontractor or subsubcontractor under regulation 57 of the Public Contracts Regulations 2015 applies, the *Employer* may instruct the *Contractor* to * replace the Subcontractor or
* require the Subcontractor to replace the subsubcontractor.
 |
| **Clause Z47** | **Energy Efficiency Directive**Z47.1 The *Contractor* includes in the conditions of contract for each Subcontractor and subsubcontractor obligations substantially similar to those set out in the Service Information for * compliance with the Procurement Policy Note 7/14 entitled “Implementing Article 6 of the Energy Efficiency Directive” and
* demonstrating to the *Employer* how in Providing the Service how the Subcontractor and subsubcontractor complies with the requirements of Procurement Policy Note 7/14 entitled “Implementing Article 6 of the Energy Efficiency Directive”.
 |
| **Clause Z48** | **Compliance with statutory requirements** Z48.1 The *Contractor* Provides the Service 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 *service*.
 |
| **Clause Z49** | **Not Used** |
|  **Clause Z50** | **Not Used** |
|  **Clause Z51** | **NOT USED** |
|  **Clause Z52** | **NOT USED** |
|  **Clause Z53** | **NOT USED** |
| **Clause Z54** | **Financial Distress**Z54.1 In this clause Z54 **Credit Rating** is the *credit rating* or any revised long term *credit rating* issued by a rating agency accepted by the *Service Manager* in respect of the *Contractor*, a Consortium Member or any Guarantor.Z54.2 The *Contractor* notifies the *Service Manager* within one week if any of the following events occurs in relation to the *Contractor*, 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.

Z54.3 If any of the events listed in clause Z54.2 occurs, the *Service Manager* may require the *Contractor* to give to the *Employer* a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Contractor* and accepted by the *Service Manager* who (in either case)* meets the Credit Rating Threshold and
* has a Credit Rating at least equal to the *credit rating* for the person to whom the event listed in clause Z54.2 has occurred.

Z54.4 The *Service Manager* may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Contractor* who does not comply with clause Z54.3 if the *Contractor* gives to the *Service Manager* an assurance that the Controller or the alternative guarantor will so comply within [18] months of the *Service Manager‘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 *Service Manager* that it will so comply by the end of that period.Z54.5 If* the *Contractor* fails to notify the *Service Manager* that an event listed in clause Z54.2 has occurred,
* neither the Controller nor any alternative guarantor proposed by the *Contractor* complies with clause Z54.3,
* the *Contractor* does not give to the *Employer* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Service Manager* within four weeks of a request from the *Service Manager* to do so or
* the *Contractor* fails to demonstrate to the *Service Manager* that the Controller or the alternative guarantor accepted by the Service Manager will comply with clause Z54.3 within [18] months of the *Service Manager‘s* acceptance

the *Employer* may treat such failure as the *Contractor* having substantially hindered the *Employer* or Others. |
| **Clause Z55** | **Change of Control – new guarantee**Z55.1 If a Change of Control occurs, the *Contractor* provides to the *Service Manager* * 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 *Service Manager* and
* any other information required by the *Service Manager* in order to determine whether the Controller
* meets the Credit Rating Threshold and
* has a Credit Rating at least equal to the *credit rating* for the original Guarantor (if there is one) or the *Contractor* (if there is not).

Z55.2 If the Controller does not comply with the tests in clause Z55.1 or (if applicable) does not provide the legal opinion required in clause Z55.6, the *Contractor* may propose an alternative guarantor to the *Service Manager* for acceptance. The *Contractor* provides to the *Service Manager* the details set out in clause Z55.1 and (if applicable) the legal opinion required in clause Z55.6 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 Z55.1 or (if applicable) does not provide the legal opinion required in clause Z55.6.Z55.3 If so required by the *Service Manager*, the *Contractor* within four weeks gives to the *Employer* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Service Manager.*Z55.4 The *Service Manager* may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Contractor* who does not comply with the tests in clause Z55.1 if the Contractor gives to the *Service Manager* an assurance that the Controller or the alternative guarantor will so comply within [18] months of the *Service Manager‘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 *Service Manager* that *it will so comply by the end of that period.*Z55.5 If* neither the Controller nor any alternative guarantor proposed by the Contractor complies with the tests in clause Z55.1 or provides the legal opinion required by clause Z55.6,
* the *Contractor* does not give to the *Employer* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Service Manager* within four weeks of a request from the *Service Manager* to do so or
* the *Contractor* fails to demonstrate to the *Service Manager* that the Controller or the alternative guarantor accepted by the *Service Manager* will comply with the tests in clause Z55.1 within 6 months of the *Service Manager‘s* acceptance

the *Employer* may treat such failure as the *Contractor* having substantially hindered the *Employer* or Others.Z55.6 If the Controller, or any alternative guarantor proposed by the *Contractor*, is not a company incorporated in and subject to the laws of England and Wales, the *Contractor* 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 *Service Manager.*

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 *Service Manager.*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 Service Information. |
| **Clause Z56** | **Offshoring of data** Z56.1 In this clause * **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 and ICT Offshoring (International Sourcing) Guidance dated July 2011] or any later revision or replacement.

Z56.2 The *Contractor* does not store any of the *Employer*‘s data that is classified as Official or higher in accordance with “Government Security Classifications” dated April 2014 (or any later revision or replacement) * offshore or
* in any way that it could be accessed from an offshore location

until *the Project Manager has confirmed to the Contractor that* either* the *Employer* has gained approval for such storage in accordance with “*Offshoring information assets classified at OFFICIAL” dated November 2015* (or any later revision or replacement) *or*
* such approval is not required.

Z56.3 The *Contractor* ensures that no premises are used in Providing the Works until * such premises have passed a Risk Assessment or
* the *Project Manager* confirms to the *Contractor* that no Risk Assessment is required.

Z56.4 The *Contractor* complies with a request from the *Project Manager* 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 Z56.2 or
* conduct a Risk Assessment for any premises in accordance with Z56.3.

Z56.5 The *Contractor* ensures that any subcontract (at any stage of remoteness from the *Employer*) contains provisions to the same effect as this clause.Z56.6 A failure to comply with this condition is treated as a substantial failure by the *Contractor* to comply with his obligations. |

1. TERM SERVICE CONTRACT ANNEX E – THE SERVICE INFORMATION

See PDF document titled: “TMTii 52 - Service Information”

1. TERM SERVICE CONTRACT ANNEX F – PRICE LIST

 See Excel document titled: “TMTii 52 – Price List”

1. NOT USED

1. Not USed
1. [↑](#footnote-ref-2)