



DATED

20th January 2025

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

and

GAME ENGINEERING LIMITED

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

FOR THE PROVISION OF

WINDOW DESIGN AND TESTING SERVICES

THIS AGREEMENT is made the _____ day of _____ 2025

PARTIES:

1. **THE SECRETARY OF STATE FOR JUSTICE OF THE MINISTRY OF JUSTICE** 102 Petty France, Westminster, London, SW1H 9AJ (the "**Employer**", with such term including its successors in title and assigns); and
2. **Game Engineering Limited**, which is a company, incorporated in and in accordance with the laws of England (Company No 1872121 whose registered office address is at Witham Street, St. Hughs Business Park, Witham, St. Hughs, Lincoln, LN6 9TW (the "**Consultant**").

BACKGROUND

(A) Redacted

(B) The *Consultant* has agreed to Provide the Services in accordance with this contract¹.

IT IS AGREED AS FOLLOWS:

1. The *Employer* will pay the *Consultant* the amount due and carry out his duties in accordance with the *conditions of contract* identified in the Contract Data and the Contract Schedules.
2. The *Consultant* will Provide the Services in accordance with the *conditions of contract* identified in the Contract Data and the Contract Schedules.
3. This Contract is the entire agreement between the Parties in relation to the *services* and supersedes and extinguishes all prior arrangements, understandings, agreements, statements, representations or warranties (whether written or oral) relating thereto.
4. Neither party has been given, nor entered into this contract in reliance on any arrangements, understandings, agreements, statements, representations or warranties other than those expressly set out in this contract.
5. Nothing in clauses 3 or 4 shall exclude liability in respect of misrepresentations made fraudulently.
6. This contract is comprised of the following documents:
 - 6.1 this Form of Agreement;
 - 6.2 the NEC3 Professional Services Contract (April 2013) edition Option G (the "**NEC3 PSC**");
 - 6.3 the *conditions of contract* of the NEC3 PSC;
 - 6.4 the NEC3 PSC dispute resolution "Option W2" (used in the United Kingdom when

¹ Assumes no framework appointment



the Housing Grants, Construction and Regeneration Act 1996 applies);

- 6.5 Schedule 1: Contract Data;
 - 6.6 the secondary options of the NEC3 PSC as referred to in Contract Data: Part One (including Option Z: Additional conditions of contract set out at Schedule 2);
 - 6.7 Schedule 3: Scope;
 - 6.8 Schedule 4: Prices;
 - 6.9 Schedule 5: Template collateral warranty in favour of a beneficiary;
 - 6.10 Schedule 6: not used;
 - 6.11 Schedule 7: not used;
 - 6.12 Schedule 8: not used;
 - 6.13 Schedule 9: not used;
 - 6.14 Schedule 10: Data Protection Schedule;
 - 6.15 Schedule 11: not used;
 - 6.16 Schedule 12: not used;
 - 6.17 Schedule 13: not used
 - 6.18 Schedule 14: Indexation Schedule; and
 - 6.19 any and all other documents referred to in the Contract Data and/or the other documents comprising this contract which are annexed to this contract and/or have been signed for identification purposes by or on behalf of the Parties.
7. If there is any conflict, ambiguity, discrepancy or inconsistency in or between the documents which are part of this contract, the priority of the documents is in accordance with the following sequence (unless the *Employer* expressly determines or agrees otherwise):
- 7.1 the Form of Agreement;
 - 7.2 the *conditions of contract* (as modified by the *additional conditions of contract*);
 - 7.3 Contract Data: Part One (including any annexures to or documents referred to in the same);
 - 7.4 Contract Data: Part Two (including any annexures to or documents referred to in the same);
 - 7.5 the Scope and each of the documents therein provided by the *Employer* as at the Contract Date and such further information as may be issued to the *Consultant* by the *Employer* pursuant to and in accordance with this contract from time to time; and

- 7.6 any other documents forming part of this contract.
8. If there is any conflict, ambiguity, discrepancy or inconsistency in or between:
- 8.1 the *conditions of contract* and the *additional conditions of contract*, the *additional conditions of contract* take priority over the *conditions of contract* (unless the *Employer* expressly determines or agrees otherwise);
- 8.2 the content of Contract Data: Part One (including any annexures to or documents referred to in the same) and the content of Contract Data: Part Two, Contract Data: Part One takes priority over the Contract Data: Part Two (unless the *Employer* expressly determines or agrees otherwise).
9. This contract shall be governed by and construed in accordance with the law of England and Wales and the Parties hereby irrevocably submit to the non-exclusive jurisdiction of the English courts, provided that other jurisdictions may apply solely for the purpose of giving effect to this paragraph 9 and for the enforcement of any judgment, order or award given under English jurisdiction.

Signed for and on behalf of the <i>Consultant</i>	Signed for and on behalf of the <i>Employer</i> acting on behalf of the Crown
Name: [Redacted] [Redacted] Game Engineering Limited	Name: [Redacted] [Redacted]
Date:	Date:
Signature:	Signature:

Professional Services Contract

SCHEDULE 1

CONTRACT DATA

Part one – Data provided by the *Employer*

- 1 General**
- The *conditions of contract* are the core clauses and the clauses for main Option A, dispute resolution Option W2 and secondary Options X18, Y(UK)2, and Z of the NEC3 Professional Services Contract (April 2013).
 - The *Employer* is

Name: The Secretary of State for Justice of the Ministry of Justice

Address: 102 Petty France, Westminster, London, SW1H 9AJ
 - The *Adjudicator* is the person agreed by the Parties from the list of *Adjudicators* published by the *Adjudicator nominating body* or nominated by the *Adjudicator nominating body* in the absence of agreement.
 - The *services* are as set out and more particularly described in the Scope.
 - The Scope is set out at Schedule 3.
 - The Data Protection Schedule is set out at Schedule 10.
 - The *language of this contract* is English.
 - *The law of the contract* is the law of England and Wales and the Parties hereby irrevocably submit to the non-exclusive jurisdiction of the English courts, provided that other jurisdictions may apply for the enforcement of any judgment, order or award given under English jurisdiction
 - The *period for reply* is two (2) weeks.
 - The *Adjudicator nominating body* is the Technology and Construction Solicitors Association (TeCSA).
 - The *tribunal* is litigation in the courts of England and Wales.
- 2 The Parties' main responsibilities**
- The *Employer* provides access to the following persons, places and things
 - access to Ministry of Justice Technical Standards
access date immediate
- 3 Time**
- The *starting date* is 12th December 2024.
 - The *Consultant* submits revised designs and test results upon request.

- 4 Payment**
- The *assessment interval* is a single payment upon completion of the *services*.
 - For the purposes of Option Y2.2, the **final date for payment** is fourteen (14) days after the date on which payment is stated as becoming due under this contract.
 - The template form of Valid Invoice is set out at Schedule 13 (including a reference to the Purchase Order Number), provided that the *Employer* may (acting reasonably and with reasonable notice) vary the form of invoice from time to time by written notice to the *Consultant*, with any such amendments applying as from the next *assessment date* after such notification and a Valid Invoice must have the relevant VAT invoice attached to it.
 - The *currency of this contract* is the pound sterling (£).
 - The *interest rate* is 3% per annum above the Bank of England base rate in force from time to time.

**Indemnity,
insurance
and liability**

- The amounts of insurance and the periods for which the *Consultant* maintains insurance are

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

- 82.1**
- The *Consultant'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 [Redacted] for each and every claim.

**Optional
Statements**

- The Consultant does not state (nor is entitled to the payment of) any expenses in connection with the *services*.

Option X2

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

Option X18

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

Option Z

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

Contract Data relating to Z clauses

Clause Z19 **Not used**

Clause Z45 **Not used**



Part two – Data provided by the *Consultant*

1 Statements given in all contracts

- The *Consultant* is

Name: Game Engineering Limited

Address: Witham Street, St. Hughs Business Park, Witham, St. Hughs,
Lincoln, LN6 9TW

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

SCHEDULE 2
ADDITIONAL CONDITIONS OF CONTRACT

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

11.2(9) Delete and insert:

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

11.2(19) Insert new clause 11.2(26):

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

11.2(20) Insert new clause 11.2(20):

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

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

11.2(21) Insert new clause 11.2(21):

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

11.2(22) Insert new clause 11.2(22):

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

- war, hostilities (whether war is declared or not), invasion, act of foreign enemies,
- rebellion, revolution, insurrection, military or usurped power, or civil war,
- acts of terrorism and action of the United Kingdom government in response to the threat of an act of terrorism,
- riot, civil commotion, disorder, sabotage, or acts of vandalism and neither involving

solely nor originating with the personnel or other employees of the *Consultant* or Subconsultants or lower tier subcontractors or the employees or subcontractors of any group company associated with the *Consultant*,

- munitions of war or explosive materials, ionizing radiation or contamination by radioactivity, except where attributable to the *Consultant's* use of such munitions or explosives,
- pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds,
- any epidemic, pandemic or pestilence (as classified or advised by the World Health Organization or the United Kingdom government other than COVID-19),
- strike, lockout or trade dispute occurring nationwide and neither involving solely nor originating with the personnel or other employees of the *Consultant* or Subconsultants or lower tier subsubcontractors or the employees or subcontractors of any group company associated with the *Consultant*."

11.2(23) Insert new clause 11.2(23):

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

11.2(24) Insert new clause 11.2(24):

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

11.2(25) Insert new clause 11.2(25):

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

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

"Project" means the design and manufacture of at least four number concept window samples and the testing of those samples. To appraise MoJ of all findings from the testing and to release to MoJ all Intellectual Property that the MoJ wishes to incorporate into their technical standards for windows design following conclusion of the testing assessment.

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

"Valid Invoice means a VAT-compliant invoice in the form referred to in Contract Data: Part One, provided that the *Employer* may (acting reasonably and with reasonable notice) vary the form of invoice from time to time by written notice to the *Consultant*, with any such

amendments applying as from the next assessment date after the *Employer's* notification."

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

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

11.2(29) "Working Day means any day other than a Saturday or Sunday or public holiday in England and Wales."

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

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

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

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

12.4 Delete and insert:

"The contract constitutes the entire agreement between the Parties as to the *services* to be provided in accordance with the contract and supersedes and takes the place of all documents which may be in existence at the date hereof and all arrangements, statements, negotiations, discussions, representations, understandings, agreements and warranties which may have been made by or on behalf of either of the Parties hereto. The Parties agree that any of the *services* which the *Consultant* may have performed or undertaken prior to the date of this contract and/or the *starting date* shall be deemed to have been performed or undertaken pursuant to the terms of this contract."

12.5 Insert new clause 12.5:

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

13.1 Delete and insert:

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

The *Consultant* ensures that

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

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

15.1A Insert new clause 15.1A:

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

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

15.5 Insert new clause 15.5 as follows:

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

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

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

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

"18 **Force Majeure Events**

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

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

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

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

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

21.2 Delete and insert:

"The *Consultant*, in Providing the Services, exercises the reasonable skill, care and diligence to be expected of an appropriately qualified, skilled, competent and experienced professional consultant that is experienced in providing services similar in nature, extent and complexity to the *services* in relation to projects of a similar size, scope, value, character and complexity as the Services."

21.5 Insert a new clause 21.5 as follows:

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

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

the *Employer* to the *Consultant*) where that incident causes any personal injury or damage to property which could give rise to personal injury,

- ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the *Employer* on request to the extent required in connection with the *services* being provided by the *Consultant*,
- warrant to the *Employer* that it has complied and will comply with the requirements of the CDM Regulations insofar as they relate to the *services* to be performed by the *Consultant* under this contract."

21.6A Insert a new clause 21.6A as follows:

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

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

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

21.7 Insert new clause 21.7 as follows:

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

21.8 Insert new clause 21.8 as follows:

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

23.1 Delete and insert:

"Without prejudice to any specific co-ordination obligations contained in clause Z56 and/or

Z57 the *Consultant* co-operates with Others in obtaining and providing information which it or they need in connection with the *services*, and in a timely manner having regard to the *Consultant's* obligations under this contract and the obligations of Others which are notified to the *Consultant* or of which the *Consultant* ought reasonably to be aware. The *Consultant* also performs the *services* so as not to interfere, hinder or disrupt Others."

23.3 Delete the final sentence of clause 23.3.

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

"or

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

25.1 Replace the wording of clause 25.1 with the following:

"The *Consultant* obtains approval from Others directly where

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

32.2 In clause 32.2 insert a new bulleted item after the second bulleted item with the wording "following the occurrence of a compensation event,"

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

"50.1 The *Consultant* assesses the amount due and submits a Valid Invoice at the assessment date. The *Consultant* acknowledges and agrees that

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

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

"50.3 The amount due is

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

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

50.8 Insert a new clause 50.8 as follows:

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

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

50.9 Insert a new clause 50.9 with the following wording:

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

50.10 Insert a new clause 50.10 with the following wording:

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

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

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

is the amount due less previous payments.

The Parties agree that

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

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

51.6 Insert a new clause 51.6 with the following wording:

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

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

51.7 Insert a new clause 51.7 with the following wording:

"The *Employer* may at any time if it considers any sums to be due to the *Employer* (including as a result of correction or modification to a previous payment pursuant to clause 51.6 of this contract) issue a notice to the *Consultant* stating the amount which the *Employer* determines to be due and the basis on which that amount has been calculated (an "**Employer's Statement**"). The amount which the *Employer* determines to be due under an Employer's Statement is subject to any pay less notice from the *Consultant* pursuant to Option Y2.3 of this contract."

51.8 Insert a new clause 51.8 with the following wording:

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

51.9 Insert a new clause 51.9 with the following wording:

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

51.10 Insert a new clause 51.10 with the following wording:

"The *Consultant*

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

52 Insert a new clause 52 with the following wording:

"52. Final Assessment

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

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

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

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

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

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

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

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

55 Delete and insert "Not used".

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

"The following are compensation events, but only to the extent that they are not due to any

negligence, default, unlawful act or omission or breach of or failure to comply with this contract by the *Consultant* or any Subconsultant (or its or their employees, agents or suppliers)."

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

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

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

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

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

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

62.6 Delete the final sentence of clause 62.6.

63.4 Delete the wording of clause 63.4 and insert:

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

63.15 Insert new clause 63.15 as follows:

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

63.19 Insert a new clause 63.19 with the following wording:

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

64.4 Delete the final sentence of clause 64.4.

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

Delete the third bullet-point of clause 65.1.

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

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

70.4 Delete the wording of clause 70.4 and insert:

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

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

- "fraud, and
- wilful default."

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

90.1 Replace "Either Party" with "The Employer"

Delete 90.1 and replace as follows:

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

- 90.1.1 a resolution has been passed (or meeting convened or written resolution circulated), a petition has been presented (which is not withdrawn within 7 Working Days or an order has been made, for the purpose of its winding up or an application or order has been made for a provisional liquidator to be appointed;
- 90.1.2 a notice of intention to appoint an administrator has been filed, an application for the appointment of an administrator has been made or other steps in relation to the appointment of an administrator have been taken or an administrator has been appointed;
- 90.1.3 a procedure has been commenced, by the Registrar of Companies or any other person, with a view to striking off under section 652 of the Act;
- 90.1.4 an administrative receiver, receiver, administrator, liquidator or provisional liquidator or similar officer has been appointed or an Encumbrance has been enforced;
- 90.1.5 a floating charge has crystallised and/or the holder of a floating charge has taken steps to enforce such security;
- 90.1.6 an event has occurred or will occur by virtue of the execution and performance of the contract which would cause, or entitle any person to cause, any of the events cited at limbs (91.1.4) and (91.1.5) of this clause;

- 90.1.7 it has stopped paying its creditors, is insolvent, and/or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 90.1.8 any distress, distraint, charging order, attachment, execution or other process has been levied against any of its assets which remains undischarged;
- 90.1.9 a meeting of its creditors, or any class of them, has been held or summoned and/or a proposal has been made or notice given for or in respect of a moratorium, composition, plan or arrangement in relation to any of its debts, or for a voluntary arrangement under Part 1 of the Insolvency Act 1986; or
- 90.1.10 any event or step analogous to any of the above has occurred in any jurisdiction."

90.5 Insert a new clause 90.5 as follows:

"90.5 Termination at any time

Notwithstanding any other provision of this contract

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

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

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

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

"92.3 Payment on termination – additional rules

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

the sum stated as due in the Termination Statement.

- The due date in respect of any payment referred to in clause 92.1 is one (1) week after the date of receipt by the payer of the Termination Statement together with (in the case of a Termination Statement of the *Consultant*) a Valid Invoice showing the correct amount of value added tax properly chargeable in respect of the amount stated as due in the Termination Statement pursuant to the first bulleted item of this clause 92.3.

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

X18 Delete X18.1 and X18.2.

Clause Z1 Interpretation and the law

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

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

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

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

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

Contractor means each entity identified as such in (or as notified by the *Employer* to the

Consultant in accordance with) Contract Data: Part One.

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

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

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

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

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

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

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

Data Protection Laws means

- the GDPR and the LED,
- the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy and
- all applicable laws about the processing of personal data and privacy.

Data Protection Officer has the meaning given to the term "data protection officer" in the GDPR.

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

Data Subject has the meaning given to the term "data subject" in the GDPR.

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

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

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

Digital Construction Requirements means the documents comprising the "BIM2AIM Employer's Information Requirements Suite" that set out the requirements for the use and

development of the Building Information Model and input of data into the Building Information Model, as set out in the BIM Schedule (or such other document as the *Employer* may provide to the *Consultant* from time to time).

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

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

GDPR means the General Data Protection Regulation, Regulation (EU) 2016/679 as it forms part of domestic law in the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018 and amended in accordance with the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (as amended by SI 2020 no. 1586);.

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

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

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

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

Personal Data has the meaning given to the term "personal data" in the GDPR.

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

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

Prohibited Act is:

- to directly or indirectly offer, promise or give any person working for or engaged by the *Employer* or any other public body a financial or other advantage to:
 - induce that person to perform improperly a relevant function or activity; or
 - reward that person for improper performance of a relevant function or activity;
- to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this contract; and /or
- committing any offence:
 - under the Bribery Act 2010 (or any legislation repealed or revoked by such

Act)

- under legislation or common law concerning fraudulent acts; or
- defrauding, attempting to defraud or conspiring to defraud the *Employer*; or
- any activity, practice or conduct which would constitute one of the offences listed above if such activity, practice or conduct had been carried out in the UK.

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

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

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

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

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

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

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

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

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

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

detention or imprisonment) of persons, in accordance with applicable law, such as intruder detector systems, lighting systems, surveillance systems, natural surveillance models, physical barriers, information technology systems, communications systems, access control systems, screening arches and areas, entry systems, fire security and safety systems, reinforced glass and strategic and/or any internal or external layouts.

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

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

Clause Z2 Prevention of fraud and bribery

Insert new clauses:

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

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

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

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

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

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

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

or any of its employees or Subconsultants have:

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

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

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

Z2.7 A failure to comply with this clause Z2 is treated as a substantial failure of the *Consultant* to comply with its obligations under this contract.

Z2.8 The *Consultant* indemnifies the *Employer* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Employer* arising out of or in connection with any breach by the *Consultant* of this clause Z2.

Clause Z3 Recovery of sums due from *Consultant*

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

Clause Z4 Assignment and Novation

Z4.1 The *Employer* is entitled to assign or otherwise dispose of its rights under this contract or any part thereof to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the *Employer*.

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

Z4.3 The *Employer* is entitled to, where the *Consultant* consents (consent not to be unreasonably withheld) novate this contract or any part thereof to any other body

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

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

Clause Z5 Discrimination

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

Clause Z6 Conflict of interest

- Z6.1 The *Consultant* does not take an action and takes appropriate steps to ensure that no person engaged by or on behalf of it takes an action, which would cause a conflict of interest to arise in connection with this contract (a "Conflict of Interest"). The *Consultant* notifies the *Employer* if there is any uncertainty about whether a Conflict of Interest may exist or arise.
- Z6.2 The *Consultant* immediately notifies the *Employer* of any circumstances giving rise

to or potentially giving rise to Conflicts of Interest relating to the *Consultant* or any person engaged by or on behalf of it and/or the *Employer* (including without limitation its reputation and standing), of which it is aware or anticipates may justify the *Employer* taking action to protect its interests.

- Z6.3 The *Consultant* must take positive steps to mitigate any Conflict of Interest that may exist or arise under Clause Z6.1 or there are circumstances that may give rise to a Conflict of Interest under Z6.2.
- Z6.4 Should the Parties be unable to either remove the Conflict of Interest and/or to reduce its damaging effect to a reasonably acceptable level, *the Employer* has the right to terminate this contract whereupon the provisions of PSC clause 92.2 apply to the termination.
- Z6.5 The *Consultant* shall take all appropriate steps to ensure that neither it nor any personnel and/or party employed and/or engaged by the *Consultant* (in whatever capacity) is placed in a position where, in the reasonable opinion of the *Employer* the behaviour of the *Consultant* or any personnel and/or party employed and/or engaged by it is not in the *Employer's* best interest or might adversely affect the *Employer's* reputation (a "Reputational Risk").
- Z6.6 The *Consultant*:
- (a) warrants that, as at the date of this contract, it is not aware of any actual or potential Conflict of Interest and/or Reputational Risk,
 - (b) shall notify and disclose to the *Employer* full particulars of any behaviour which might give rise to an actual or potential Conflict of Interest and/or Reputational Risk immediately upon becoming aware of the same.
- Z6.7 A failure to comply with this clause Z6 is treated as a substantial failure of the *Consultant* to comply with its obligations under this contract.

Clause Z7 Merger, take-over or change of control

- Z7.1 In clauses Z7, Z39 (Financial Distress), Z40 (Change of Control – new guarantee) and Z41 (Parent Company Guarantee)
- **Change of Control** is an event where a single person (or group of persons acting in concert)
 - acquires Control of the *Consultant* or
 - acquires a direct or indirect interest in the relevant share capital of the *Consultant* and as a result holds or controls the largest direct or indirect interest in (and in any event more than 25% of) the relevant share capital of the *Consultant*,
 - **Consortium Member** is an organisation or person which is a member of a group of economic operators comprising the *Consultant*, whether as a participant in an unincorporated joint venture or a shareholder in a joint venture company,
 - **Control** has the meaning set out in section 1124 of the Corporation Tax Act 2010,
 - **Controller** is the single person (or group of persons acting in concert) that

- has Control of the *Consultant* or a Consortium Member or
 - holds or controls the largest direct or indirect interest in the relevant share capital of the *Consultant* or a Consortium Member,
 - **Credit Rating Threshold** means the minimum credit rating for the *Consultant*, a Consortium Member or a proposed guarantor, such credit rating being set out at Annex 2 to Schedule 16 of the Framework Agreement,
 - **Framework Agreement** means any framework agreement pursuant to which this contract has been entered into
 - **Guarantor** is a person who has given a Parent Company Guarantee to the *Employer* and
 - **Parent Company Guarantee** is a guarantee of the *Consultant's* performance in the form set out in the Scope, or if not set out in the Scope, the template form attached to this contract.
- Z7.2 A Change of Control does not happen without the prior agreement of the *Employer*, and if a Change of Control occurs without the *Employer's* prior consent, then the *Employer* may treat the Change of Control as a substantial failure by the *Consultant* to comply with his obligations.
- Z7.3 The *Consultant* notifies the *Employer* immediately if a Change of Control has occurred or is expected to occur.
- Z7.4 If the Change of Control will not allow the *Consultant* to perform its obligations under this contract, the *Employer* may treat the Change of Control as a substantial failure by the *Consultant* to comply with his obligations.
- Z7.5 The *Consultant* notifies the *Employer* immediately of any material change in
- the direct or indirect legal or beneficial ownership of any shareholding in the *Consultant*. A change is material if it relates directly or indirectly to a change of 3% or more of the issued share capital of the *Consultant*, or
 - the composition of the *Consultant*. Without limitation a change is material if it directly or indirectly affects the performance of this contract by the *Consultant*.
- Z7.6 The *Consultant* notifies the *Employer* immediately of any change or proposed change in the name or status of the *Consultant*.
- Z7.7 If the *Consultant* does not provide a notification required by clause Z7.5 or Z7.6, the *Employer* may treat that failure as a substantial failure by the *Consultant* to comply with his obligations.
- Z7.8 In this clause Z7 a Change of Control in relation to
- material change in the ownership of shares in, or
 - change in the name or status of
- a Consortium Member is treated as a change relating to the *Consultant*.

Clause Z8 Appointment of *Adjudicator*

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

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

Clause Z9 Not used

Clause Z10 *Employer's Codes of Conduct*

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

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

Clause Fair payment

Z11

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

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

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

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

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

Clause Confidentiality

Z12

Z12.1 Except to the extent set out in this clause or where disclosure is expressly permitted

elsewhere in this contract or otherwise required by law, each party shall:

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

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

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

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

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

Z12.4 The *Consultant* may only disclose the *Employer's* Confidential Information to the Consultant Personnel who are directly involved in the provision of the *services* and who need to know the information and shall ensure that such Consultant Personnel are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any default, act or omission of any Consultant Personnel causes or contributes (or could cause or contribute) to the *Consultant* breaching its obligations as to confidentiality under or in connection with this contract, the *Consultant* shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Consultant Personnel, the *Consultant* shall provide such evidence to the *Employer* as the *Employer* may reasonably require (though not so as to risk compromising or

prejudicing the case) to demonstrate that the *Consultant* is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from Consultant Personnel, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with Consultant Personnel in connection with obligations as to confidentiality.

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

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

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

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

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

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

Z12.9 Notwithstanding any other term of this contract

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

prior to such publication the *Employer* may, at its sole discretion, in whole or in part,

redact information that concerns national security, personal data, information protected by intellectual property law, information which is not in the public interest to disclose (under a FOIA analysis), third party confidential information, information technology security and/or the prevention of corruption and/or Fraud.

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

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

Clause Security Requirements

Z13

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

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

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

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

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

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

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

Clause Official Secrets Act

Z14

Z14.1 The Official Secrets Act 1989 applies to this contract from the *starting date* until the *defects date* or earlier termination.

Z14.2 The *Consultant* notifies his employees and Subconsultants of their duties under the Official Secrets Act 1989.

Z14.3 A failure to comply with this clause is treated as a substantial failure by the *Consultant* to comply with his obligations.

Z14.4 The *Consultant* complies with the staff vetting and training requirements stated in the Scope, if any.

Clause Data protection

Z15

- Z15.1 Each of the Parties including the personnel (which term for the purposes of this clause shall include directors, officers, employees, servants, agents, consultants, suppliers and sub-contractors) of each Party will comply with all applicable requirements of the Data Protection Laws and shall not knowingly or negligently by any act or omission, place the other Party in breach, or potential breach of Data Protection Laws. This clause Z15.1 is in addition to and does not relieve, remove or replace a Party's obligations under the Data Protection Laws.
- Z15.2 The Parties each acknowledge and agree that they may need to Process Personal Data relating to the other Party's personnel (in their respective capacities as independent Data Controllers) in order to (as appropriate): (a) administer and Provide the Services (b) request and receive the *services* in connection with the Project (c) request or grant access to sites, including security and background checks where required; (e) compile, dispatch and manage the payment of invoices relating to the Project; (f) manage the contract and resolve any disputes relating to it; (g) respond and/or raise general queries relating to the *services*; and (h) comply with their respective obligations under this contract (the "**Permitted Purposes**"). The Party from whom the Personal Data originates shall be known as the "**Originating Controller**". Given the nature of the Services under the contract, the Parties acknowledge that it is their common understanding that the Parties will not process any Personal Data under or in connection with this contract as joint controllers but, if and only to the extent that it is determined that the Parties do act as joint controllers in relation to any Personal Data, the Parties shall agree and incorporate into this contract any other appropriate provisions required in accordance with Data Protection Laws.
- Z15.3 Each Party shall Process such Personal Data relating to each Party's personnel for the Permitted Purposes in accordance with their own fair processing notices (which each Party shall make available to the other Party). The Parties acknowledge that they may be required to share Personal Data with other relevant third parties in order to carry out the activities listed in clause 25.6(ii) and in doing so each Party will ensure that the sharing and use of this Personal Data complies with applicable Data Protection Laws.
- Z15.4 Each Party shall ensure that all fair processing notices have been given to (and as applicable consents obtained from) the relevant Data Subjects and are sufficient in scope to allow the other Party to Process the Personal Data as anticipated by clauses Z15.2 and Z15.3. At the reasonable request of the *Employer*, the *Consultant* shall support the *Employer* and/or provide on the *Employer's* behalf, all privacy notices to the relevant Data Subjects (and/or as applicable, obtain the necessary consents of such Data Subjects), within a reasonable time frame.
- Z15.5 Without limiting the foregoing, the *Consultant* shall:
- only Process the Personal Data for the Permitted Purposes;

- ensure that;
- make due notification to the Information Commissioner's Office (or other such regulatory authority as required by Data Protection Laws), including in relation to its use and Processing of the Personal Data and comply at all times with the Data Protection Laws;
- maintain complete and accurate records and information to demonstrate its compliance with this clause Z15.5. This requirement does not apply where the Consultant employs fewer than 250 staff, save where the *Employer* is the Originating Controller and:
 - the *Employer* determines that the Processing is not occasional;
 - the *Employer* determines the Processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
 - the *Employer* determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects;
- only to the extent required by Data Protection Laws prepare and/or where the *Employer* is the Originating Controller support the *Employer* (as applicable) in preparing, any Data Protection Impact Assessment prior to commencing any Processing;
- ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event (which where the *Employer* is the Originating Controller the *Employer* may reasonably reject (but failure to reject shall not amount to approval by the *Employer* of the adequacy of the Protective Measures)), having taken account of the:
 - nature of the data to be protected;
 - harm that might result from a Data Loss Event;
 - state of technological development; and
 - cost of implementing any measures;
- not transfer Personal Data outside the United Kingdom unless (and where the *Employer* is the Originating Controller without the prior written consent of the *Employer*) the following conditions are fulfilled:
 - the destination country has been recognised as adequate by the UK government in accordance with Article 45 of the UK GDPR (or section 74A of the DPA);
 - the Consultant has provided appropriate safeguards in relation to the transfer (in accordance with the Data Protection Laws) (and as determined by the *Employer* where the *Employer* is the Originating Controller);
 - the Data Subject has enforceable rights and effective legal remedies;
 - the *Consultant* complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and
 - where the *Employer* is the Originating Controller, the *Consultant* complies with any reasonable instructions notified to it in advance by the Originating Controller with respect to the Processing of the Personal Data;
- ensure that Personal Data is retained for only as long as is necessary for the Permitted Purposes, in accordance with its retention policies and

Data Protection Laws;

- where the *Employer* is the Originating Controller, notify the *Employer* immediately if it:
 - receives a Data Subject Access Request (or purported Data Subject Access Request);
 - receives a request to rectify, block or erase any Personal Data;
 - receives any other request, complaint or communication relating to any Party's obligations under the Data Protection Laws;
 - receives any communication from the Information Commissioner's Office or any other regulatory authority (including a supervisory authority as defined in the Data Protection Laws) in connection with Personal Data Processed under this contract;
 - receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - becomes aware of a Data Loss Event;
- where the *Employer* is the Originating Controller, following notification to the *Employer* as noted above and the *Employer's* determination and confirmation to the *Consultant* as to whether it or the *Consultant* shall be the primary point of contact and responder to the request, complaint or communication received (and the Parties shall ensure this is reflected within the relevant fair processing notices provided to Data Subjects) then where the *Employer*:
 - designates the *Consultant* as the primary point of contact, provide updates and further information to the *Employer*, including (where directed by the *Employer*) allowing the *Employer* to have final oversight and approval of any response, prior to such response being released to the relevant party; or
 - designates itself as the primary point of contact, provide all support as necessary within the timescales directed by the *Employer*, including providing all Personal Data held by the *Consultant* in respect of the request, complaint or communication received to the *Employer* as soon as practicable and in any event within five (5) days, or as otherwise agreed by the Parties acting reasonably and in good faith;
- where the *Employer* is the Originating Controller and further to the *Consultant's* obligation to notify as set out above, provide further information to the *Employer* in phases, as details become available. The *Consultant* (shall be the primary point of contact for any communication in respect of the Data Loss Event and: (a) the *Consultant* shall act quickly to remedy a Data Loss Event and minimise the impact(s) of a Data Loss Event; and (b) the *Consultant* and the *Employer* shall work together (acting reasonably and in good faith) to formulate responses, notifications and other communications in respect of the Data Loss Event;
- where the *Employer* is the Originating Controller, provide such assistance as is reasonably requested by the *Employer* within such timescales as requested by the *Employer* in relation to any Data Subject Request received by the *Employer*, Data Loss Event suffered by the *Employer* or any request from the Information Commissioner's Office, or any consultation by the *Employer* with the Information Commissioner's Office in relation to any Personal Data shared by the

Consultant with the Employer;

- take reasonable steps to ensure the reliability of and adequate training of, any Personnel who have access to the Personal Data;
 - hold the information contained in the Personal Data confidentially; and
 - not do anything which shall damage the reputation of its (if applicable) or the *Employer's* or any third party from whom the Personal Data may originate (being consultants, contractors and subcontractors) relationship with the Data Subjects.
- Z15.6 The Parties agree to take account of any guidance issued by the Information Commissioner's Office.
- Z15.7 The *Employer* may on not less than thirty (30) Working Days' notice to the *Consultant* amend the contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- Z15.8 The *Consultant* shall be liable for and shall indemnify the *Employer* from and against all claims, proceedings, damages, liabilities, losses, costs and expenses suffered or incurred by the *Employer* where and to the extent that the same arises in connection with any breach of this clause Z15 by the *Consultant* and/or its Personnel (of any type) and/or its Subcontractors.

Clause Freedom of Information

Z16

- Z16.1 The *Consultant* acknowledges that unless the *Employer* has notified the *Consultant* that the *Employer* is exempt from the provisions of the FOIA, the *Employer* is subject to the requirements of the FOIA and the Environmental Information Regulations. The *Consultant* cooperates with and assists the *Employer* so as to enable the *Employer* to comply with its information disclosure obligations.
- Z16.2 The *Consultant*:
- transfers to the *Employer* all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
 - provides the *Employer* with a copy of all Information relevant to the Request for Information in its possession, or power in the form that the *Employer* requires within five (5) Working Days (or such other period as the *Employer* may specify) of the *Employer's* request;
 - provides all necessary assistance as reasonably requested by the *Employer* to enable the *Employer* to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations; and
 - procures that its Subconsultants do likewise.
- Z16.3 The *Employer* is responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- Z16.4 The *Consultant* does not respond directly to a Request for Information unless authorised to do so by the *Employer*.
- Z16.5 The *Consultant* acknowledges that the *Employer* may, acting in accordance with

the MoJ Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000, be obliged to disclose Information without consulting or obtaining consent from the *Consultant* or despite the *Consultant* having expressed negative views when consulted.

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

Clause Records and Audit Access

Z17

- Z17.1 In addition to its obligations under clause 13.6 of the *conditions of contract* the *Consultant* keeps documents and information obtained or prepared by the *Consultant* or any Subconsultant in connection with this contract for the *period for retention*.
- Z17.2 The *Consultant* permits the *Employer*, comptroller, auditor general and any other auditor appointed by the *Employer* to examine documents held or controlled by the *Consultant* or any Subconsultant.
- Z17.3 The *Consultant* provides such oral or written explanations as the *Employer* or comptroller and auditor general considers necessary.
- Z17.4 The *Consultant* acknowledges that, for the purpose of examining and certifying the *Employer's* accounts or any examination pursuant to Section 6(1) of the National Audit Act 1983, the comptroller and auditor general or any other auditor appointed by the *Employer* may examine documents held or controlled by the *Consultant* or any Subconsultant and may require the *Consultant* to provide such oral or written explanations as he considers necessary. The *Consultant* promptly complies with any such requirements at his own cost. This clause does not constitute a requirement or agreement for the purposes of section 6(3)(d) of the National Audit Act 1983 for the examination, certification or inspection of the accounts of the *Consultant* and the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the *Consultant* is not a function exercisable under this contract.

Clause Z18 Reporting: Small and Medium Enterprises

- Z18.1 In this clause "SME" is

- a Subconsultant or
- a subconsultant to a Subconsultant

that also:

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

turnover no greater than 10 million Euros and does not have a balance sheet greater than 10 million Euros and

- for a micro sized enterprise (micro class) employs fewer than 10 staff, has turnover no greater than 2 million Euros and does not have a balance sheet greater than 2 million Euros.

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

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

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

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

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

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

Z18.5 The *Consultant* further ensures that the conditions of contract for each Subconsultant include a requirement that the conditions of contract for any subsubconsultant engaged by the Subconsultant who is an SME include obligations substantially similar to those set out in clause Z218.4.

Clause Z19 Not used

Clause Z20 Tax Non-Compliance

Z20.1

- (1) Tax Non-Compliance is where a tax return submitted by the *Consultant* to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:
- a Relevant Tax Authority successfully challenging the *Consultant* under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rule or legislation with similar effect or
 - the failure of an avoidance scheme in which the *Consultant* was involved which was (or should have been) notified to a Relevant Tax

Authority under the DOTAS or a similar regime or

- gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax-related offences which is not spent at the Contract Date or to a civil penalty for fraud or evasion.
- (2) DOTAS are the Disclosure of Tax Avoidance Schemes rules contained in Part 7 of the Finance Act 2004 and in secondary legislation made pursuant to it, as extended to National Insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012 (SI 2012/1868).
- (3) General Anti-Abuse Rule is
- the legislation in Part 5 of the Finance Act 2013 and
 - any future legislation introduced to counteract tax advantages arising from abusive arrangements to avoid National Insurance contributions.
- (4) Halifax Abuse Principle is the principle explained in the CJEU case C-255/02 Halifax and others.
- (5) IR35 Contractor means any Personnel or any individual engaged either directly by the Consultant (or via any other intermediary or intermediaries) through a PSC;
- (6) ITEPA means the Income Tax (Earnings and Pensions) Act 2003;
- (7) PSC means a limited company or partnership which meets the conditions specified in sections 61O or 61P (as applicable) of ITEPA;
- (8) Relevant Tax Authority is HM Revenue & Customs or, if the *Consultant* is established in another jurisdiction, the tax authority in that jurisdiction.
- Z20.2 The *Consultant* warrants that it has notified the *Employer* of any Tax Non-Compliance or any litigation in which it is involved relating to any Tax Non-Compliance prior to the Contract Date.
- Z20.3 The *Consultant* notifies the *Employer* within one week of any Tax Non-Compliance occurring after the Contract Date and provides details of
- the steps the *Consultant* is taking to address the Tax Non-Compliance and to prevent a recurrence,
 - any mitigating factors that it considers relevant and
 - any other information requested by the *Employer*.
- Z20.4 The *Consultant* is treated as having substantially failed to comply with his obligations if
- the warranty given by the *Consultant* under clause Z20.2 is untrue,
 - the *Consultant* fails to notify the *Employer* of a Tax Non-Compliance or
 - the *Employer* decides that any mitigating factors notified by the *Consultant* are unacceptable.
- Z20.5 Unless specifically authorised by the *Employer* in writing to do so, the *Consultant* shall ensure (and shall ensure that all or any other third parties ensure on behalf of the *Consultant*) that none of its Consultant Personnel will be supplied or otherwise

allowed to be utilised in the undertaking of any *services* if they are an IR35 Contractor.

- Z20.6 Where, as per clause Z20.5 above, the *Employer* provides written authorisation to the Consultant that an IR35 Contractor can be utilised in the undertaking of any *services*, prior to the IR35 Contractor commencing any *services*, the *Consultant* shall provide (and shall ensure that all or any other third parties provide on behalf of the *Consultant*) all such information and documentation as is reasonably required by the *Employer* to make a determination as to whether the IR35 Contractor would be regarded for Income Tax purposes as an employee of the *Employer* under Part 2 Chapter 10 of ITEPA.
- Z20.7 Unless, as per clause Z20.5 above, the *Employer* has provided written authorisation that an IR35 Contractor can be supplied, in any other circumstances, in the event that the *Employer* determines that an IR35 Contractor has been supplied or otherwise engaged, it will be considered that there has been a material breach of this contract.
- Z20.8 The *Consultant* shall pay all Corporation Tax, Income Taxes, National Insurance Contributions, VAT and other taxes, duties, levies, charges and contributions (and any interest or penalties thereon) whatsoever properly payable by the *Consultant* in respect of payments to its Consultant Personnel. In particular, and without limitation, the *Consultant* shall comply with any requirement to make deductions of Income Tax and National Insurance Contributions at source and to pay employer National Insurance Contributions and Apprenticeship Levy in respect of each and any of its Consultant Personnel.
- Z20.9 The *Consultant* shall indemnify the *Employer* and keep the *Employer* indemnified in full against any and all expenses, liability, costs, claims, loss and proceedings of any kind and character howsoever arising in connection with any breach by the *Consultant* of sub-clauses Z20.5 to Z20.8 above. The *Consultant* shall also indemnify the *Employer* and keep the *Employer* indemnified in full against any liability of the *Employer* to account for deductions of Income Tax, and/or employee National Insurance Contributions, or to make a payment of employer National Insurance Contributions or Apprenticeship Levy (and in each case against any liability of the *Employer* to pay interest or penalties in respect of such sums), in respect of services provided by, or payments made to or in respect of, any Consultant Personnel, in each case regardless of whether or not the *Employer* has or is deemed by HM Revenue & Customs to have complied with its own obligations under Chapter 10 of Part 2 Income Tax (Earnings and Pensions) Act 2003 or otherwise.

Clause Not used
Z21

Clause Not used
Z22

Clause Not used
Z23

Clause Z24 Insurance cover

- Z24.1 Without prejudice to its obligation to indemnify or otherwise be liable to the *Employer* under this contract, the *Consultant* will, from the date of this contract, take out and maintain or procure the taking out and maintenance in full force and effect all insurances required to be effected and maintained under this contract and any other insurances as may be required by law or relevant regulation (together the Required Insurances).
- Z24.2 The Required Insurances will be taken out and maintained with insurers who (in the reasonable opinion of the *Employer*) are of good financial standing, appropriately regulated and of good repute in the United Kingdom insurance market.
- Z24.3 The insurance required by line two of the insurance table in the Contract Data will contain an indemnity to principals clause under which the *Employer* is indemnified in respect of claims made against the *Employer* arising from death or bodily injury or third party property damage for which the *Consultant* is legally liable in respect of this contract.
- Z24.4 The Required Insurances will be maintained from time to time (as far as is reasonably practicable), on terms no less favourable than those generally available to a consultant in respect of the risks insured in the United Kingdom insurance market from time to time.
- Z24.5 The *Consultant* will provide, on request, to the *Employer* evidence of the Required Insurances, in a form satisfactory to the *Employer*. Neither inspection, nor receipt of such evidence, will constitute acceptance by the *Employer* of the terms thereof, nor be a waiver of the *Consultant's* liability under this contract.
- Z24.6 Where the insurers purport to cancel, suspend or terminate the Required Insurances, the *Consultant* will procure that the insurers will, as soon as is reasonably practicable, notify the *Consultant* in writing in the event of any such proposed suspension, cancellation or termination. Where the *Consultant* receives notification from insurers, the *Consultant* will promptly notify the *Employer* in writing of receipt of such proposed suspension, cancellation or termination.
- Z24.7 The *Consultant* will promptly notify to insurers any matter arising from or in relation to this contract from which it may be entitled to claim under any of the Required Insurances.
- Z24.8 Where any policy requires the payment of a premium, the *Consultant* will be liable for such premium.
- Z24.9 Where any insurance is subject to an excess or deductible below which the indemnity from the insurers is excluded, the *Consultant* will be liable for such excess or deductible. The *Consultant* will not be entitled to recover from the *Employer* any sum paid by way of excess or deductible under the insurances whether under the terms of this contract or otherwise.

Clause Z25 Professional indemnity insurance

- Z25.1 The *Consultant* obtains and maintains the professional indemnity insurance required by Clause 81.1 of the *conditions of contract* upon customary and usual terms and

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

- Z25.2 The *Consultant* does not without the prior written approval of the *Employer* (such approval not to be unreasonably withheld or delayed) settle or compromise with the insurers any claim which the *Consultant* may have against the insurers and which relates to a claim by the *Employer* against the *Consultant*, nor by any act or omission lose or prejudice the *Consultant's* right to make or proceed with such a claim against the insurers.
- Z25.3 The *Consultant* immediately informs the *Employer* if the professional indemnity insurance ceases to be available at rates and on terms that the *Consultant* considers to be commercially reasonable. Any increased or additional premium required by insurers by reason of the *Consultant's* own claims record or other acts, omissions, matters or things particular to the *Consultant* is deemed to be within commercially reasonable rates.
- Z25.4 The *Consultant* co-operates fully with any measures reasonably required by the *Employer* including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the *Employer* undertakes in writing to reimburse the *Consultant* in respect of the net cost of such insurance to the *Consultant* above commercially reasonable rates or, if the *Employer* effects such insurance at rates at or above commercially reasonable rates, reimbursing the *Employer* in respect of what the net cost of such insurance to the *Employer* would have been at commercially reasonable rates.
- Z25.5 The above obligation in respect of professional indemnity insurance continues notwithstanding termination of the *Consultant's* employment under this contract for any reason whatsoever, including (without limitation) breach by the *Employer*.

Clause Z26 Termination and omission of work

- Z26.1 The *Employer* may, by way of a written instruction to the *Consultant*, remove or omit all or part of the *services* at any time and for any reason.
- Z26.2 If the *Employer* gives an instruction to the *Consultant* which involves the omission of part of the *services*, the *Employer* may engage other people to carry out the part omitted.
- Z26.3 The *Employer* has no liability whatsoever to the *Consultant* in respect of any such removal or omission (whether in contract, tort (including negligence) or otherwise), including in respect of any loss or deferment of anticipated or actual profit, loss of expectation, loss of revenue, loss of turnover, loss of use, loss of opportunity, loss

of production, costs of finance, business interruption and/or redeployment of workforce or any similar damage or for any consequential or indirect losses of any other kind.

- Z26.5 The *Consultant* shall not be entitled to any adjustment to the Completion Date arising out of or in connection with any instruction(s) issued by the *Employer* pursuant to this clause Z26.
- Z26.6 The following is added at the end of the first bullet point in clause 91.1 of the *conditions of contract*:
- “unless instructed otherwise by the *Employer*”.
- Z26.7 The following are treated as a substantial failure by the *Consultant* to comply with his obligations
- a key resource needed by the *Consultant* to Provide the Services is no longer available and the *Consultant* does not propose an alternative resource acceptable to the *Employer*,
 - the *Consultant* breaching the terms of its obligations in clause 22.1 of the *conditions of contract* or
 - any conflict of interest or reputational risk under this contract cannot be resolved to the *Employer's* satisfaction.
- Z26.8 The *Employer* may terminate the *Consultant's* obligation to Provide the Services by notifying the *Consultant* if in the *Employer's* opinion the known or anticipated cost of the Project, which the services are performed (or to be performed) in connection with, has significantly increased.

Clause Z27 Termination – PCRs, Regulation 73

- Z27.1 The occurrence of the following events are deemed to be a substantial failure of the *Consultant* to comply with his obligations:
- one or more of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applied to the *Consultant* at the Contract Date.
- Z27.2 The *Employer* may terminate the *Consultant's* obligation to Provide the Services by notifying the *Consultant* if
- this contract has been subject to substantial modification which would have required a new procurement procedure pursuant to regulation 72 of the Public Contracts Regulations 2015 or
 - a United Kingdom or European court declares that a serious infringement of the obligations under the European Union Treaties and/or the Public Contracts Regulations 2015 has occurred in relation to this contract.
- If the modification or infringement was due to a default by the *Consultant*, this is treated as a termination because of a substantial failure of the *Consultant* to comply with his obligations.

Clause Z28 Value Added Tax (VAT) Recovery

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

Clause Z29 Tax Arrangements of Public Appointees

Z29.1 For the purposes of this clause

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

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

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

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

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

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

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

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

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

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

Clause Z30 Not used

Clause Z31 Subconsulting

Z31.1 Before:

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

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

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

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

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

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

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

Clause Z32 Not used

Clause Z33 Compliance with statutory requirements

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

- acts of parliament and any instruments, rules, orders, regulations, notices, directions, bye-laws, permissions and plans for the time being made under or

deriving validity from them;

- European Directives or Regulations legally enforceable in England and Wales;
- rules, regulations, building regulations, orders, bye-laws or codes of practice or similar of any local or other competent authority or of any statutory undertaker; and
- permissions, consents, approvals, licences, certificates and permits as may be necessary lawfully to commence, carry out, complete and maintain the *services*.

Clause Z34 Negotiation and mediation

- Z34.1 Without prejudice to either Party's right to refer a dispute to the *Adjudicator* in accordance with clause W1 or W2 (as appropriate), any dispute or difference between the Parties arising out of or relating to this contract is referred by either Party initially to representatives of the *Employer* and *Consultant* for negotiation and resolution.
- Z34.2 If any dispute is not resolved within ten Working Days after it has been referred to the Parties' representatives (or such longer period as the Parties may agree), it is referred to an authorised senior officer of the *Employer* and an authorised senior officer of the *Consultant* for negotiation and resolution.
- Z34.3 If any dispute cannot be resolved within ten Working Days after it has been referred to the authorised senior officers of the *Employer* and *Consultant* (or such longer period as the Parties may agree) either Party may decline to continue to participate in the negotiation but both should give serious consideration to referring the dispute to mediation.

Clause Z36 Not used

Clause Not used Z37

Clause Intellectual Property Rights Z38

- Z38.1 In this clause Z38:
- "**Intellectual Property Rights**" means any and all patents, trademarks, service marks, copyright, moral rights, rights in a design, know-how, Confidential Information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto; and
 - "**Material**" means all Material prepared by or on behalf of the *Consultant*.
- Z38.2 The *Consultant* hereby agrees to transfer to the *Employer*, or shall procure the transfer to the *Employer*, of all Intellectual Property Rights relating to the *Services*. The *Consultant* shall execute such transfers and/or assignments as are required to ensure that any Intellectual Property Rights are transferred to the *Employer*.
- Z38.3 The *Consultant* shall not be liable to the *Employer* for any use of the Material or the Intellectual Property Rights in the Material for purposes other than those for which the same were originally prepared by or on behalf of the *Consultant*.
- Z38.4 In the event that the *Consultant* does not own the copyright or any Intellectual

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

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

Clause Not used
Z39

Clause Change of Control – new guarantee
Z40

- Z40.1 If a Change of Control occurs, the *Consultant* provides to the *Employer*
- certified copies of the audited consolidated accounts of the Controller for the last three financial years,
 - a certified copy of the board minute of the Controller confirming that it will give to the *Employer* a Parent Company Guarantee if so required by the *Employer* and any other information required by the *Employer* in order to determine whether the Controller has a credit rating at least equal to the *credit rating* for the original Guarantor (if there is one) or the *Consultant* (if

there is not).

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

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

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

Z40.5 If

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

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

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

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

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

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

Clause Not used
Z41

Clause Not used
Z42

Clause Not used
Z43

Clause Responsibility for documents
Z44

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

Clause Not used
Z45

Clause Termination following prolonged suspension
Z46

Z46.1 The *Consultant* may terminate his obligation to Provide the Services by notifying the Employer if

- the whole of the *services* has been stopped under clause 33 of the *conditions of contract* for a period in excess of six months;
- the *Consultant* has given the *Employer* a request for an instruction that the *services* be resumed; and
- the *Consultant* has not been given instructions to resume the *services* within a period of 30 days after the *Employer* receives from the *Consultant* a request for an instruction that the *services* be resumed.

Clause Employer's Property
Z47

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

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

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

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

Clause Z48 Not used

Clause Z49 Not used

Clause Z50 Convictions

Z50.1 Unless agreed in writing in advance by the *Employer*, the *Consultant* shall procure that, in respect of all potential persons performing any of the *services*, whether an employee of the *Consultant* or any Subconsultant (each a "**Named Employee**"), before a Named Employee begins to attend any site at which the *services* are being or are to be carried out in connection with this contract

- each Named Employee is questioned as to whether they have any Relevant Convictions,
- a Disclosure and Barring Services check is undertaken in respect of each Named Employee and
- save to the extent prohibited by applicable law, a copy of the results of such check are notified to the *Employer*.

Z50.2 The *Consultant* shall procure that no person who discloses any Relevant Convictions, or who is found to have any Relevant Convictions following the results of a Disclosure and Barring Services check is employed without the *Employer's* prior written consent (such consent not to be unreasonably withheld or delayed).

Z50.3 Save to the extent prohibited by applicable law, the *Consultant* shall procure that the *Employer* is informed if any member of staff of the *Consultant* (or any employee of a Subconsultant), whether a Named Employee or otherwise, involved in the provision of the *services* who, subsequent to their commencement of employment as a member of staff, receives a Relevant Conviction or whose previous Relevant Convictions become known to the *Consultant*.

Z50.4 Without prejudice to clause Z50.1 to clause Z50.3 (inclusive), where the *Employer* notifies the *Consultant* that the *Consultant* will be working in a regulated activity with vulnerable groups for the purposes of the Safeguarding Vulnerable Groups Act 2006, or is working in an environment deemed as sensitive and/or vulnerable for any reason by the *Employer*, the *Consultant* shall comply at its own cost with the *Employer's* requirements to the extent relevant to the delivery of the *services* to the *Employer*, which may include

(without limitation)

- asking any person acting for or on behalf of the *Consultant* in connection with this contract for details of any Relevant Convictions, obtaining an enhanced Disclosure and Barring Services disclosure (including a barred list) check and/or
- complying with the HM Government Baseline Personnel Security Standard or similar standard,

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

Clause Whistleblowing
Z51

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

Clause Sustainability
Z52

Z52.1 The *Consultant* shall

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

Clause Not used
Z53

Clause Modern Slavery

Z54

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

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

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

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

Clause Not used

Z55

Clause Not used

Z56

Clause Basis of engagement

Z57

Z57.1 The *Consultant* acknowledges and agrees that

- it is appointed by the *Employer* under this contract solely to provide the *services* and perform its duties and obligations under this contract,
- it does not have the exclusive right to undertake any services and/or works on behalf of the *Employer* in connection with the Project (whether forming part of the Scope or otherwise) and the *Employer* may, at its sole discretion, instruct any other party to carry out services and/or works which are the same as or are similar to those to be undertaken by the *Consultant* under this contract,
- the *Consultant* shall have no entitlement to make any claim against the *Employer* whatsoever (whether in contract, tort or any other basis of law)



in respect of, without limitation, any costs, damages, expenses and/or losses arising out of or in connection with it not undertaking any minimum value or volume of services and/or works under or in relation to this contract or the Project generally (including in respect of any loss or deferment of anticipated or actual profit, loss of expectation, loss of revenue, loss of turnover, loss of use, loss of opportunity, loss of production, costs of finance, business interruption and/or redeployment of workforce or any similar damage or for any consequential or indirect losses of any other kind),

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

SCHEDULE 3

SCOPE

1. For GAME to attend consultation and design meetings to understand the issues that are arising, and to propose a potential product solution to enhance the current Concept 2005 Window design
2. For GAME to undertake design works to present a drawn solution to discuss with MoJ Technical Standards department.
3. For GAME to under-take the further detailed design of 4Nr Test Pieces utilising different product suggestions, including 1Nr Standard Concept 2005 window to enable accurate comparisons to be made.
4. Test Samples are:
 - a. 16mm Glass / Polycarbonate laminate with enhanced ventilator and beading frame (aka 'Manchester Detail')
 - b. 11.5mm Anti-Bandit with 4mm Sacrificial polycarbonate with enhanced ventilator and beading frame
 - c. 8mm Polycarbonate and with enhanced ventilator and enhanced beading frame
 - d. Concept 2005 Window (Standard)
5. Procurement of components and manufacture of the test pieces, including packaging ready for shipment to test centre.
 - a. Note, all glass components have the possibility to 'fail' during manufacture so our price includes for 2Nr of all components to ensure that if a piece of glass fails during manufacture, we have a good chance the other will not.
6. Our price includes for the manufacture of a test rig to facilitate the testing of all 4Nr units
7. For GAME to secure test facilities with an approved test house, and to facilitate the tests including hosting of stakeholders at the test centre
8. For GAME to liaise with the stakeholders after the initial testing, and to be part of the 'next steps' development whilst the results are formally written up.
9. Provide full reports from the testing of the various units.
10. To relinquish IPR on all product that the MoJ incorporate into their standards following conclusions of the testing assessment.

SCHEDULE 4

PRICES

[REDACTED]

**SCHEDULE 5
NOT USED**

**SCHEDULE 6
NOT USED**

**SCHEDULE 7
NOT USED**

**SCHEDULE 8
NOT USED**

**SCHEDULE 9
NOT USED**



SCHEDULE 10

DATA PROTECTION SCHEDULE

This Schedule 10 sets out the data processing particulars.

The contact details of the data protection officers (if required by law) for each of the *Employer* and the *Consultant* are as follows:

Party	Name	Email address	Telephone no.
<i>Employer</i>			
<i>Consultant</i>			

Without prejudice to the generality of clause Z15 and this Schedule 10:

- the *Consultant* shall comply with any further written instructions from the *Employer* / Data Controller in connection with the Processing of any Personal Data in relation to the contract; and
- any such further instruction shall be deemed to be automatically incorporated into this Schedule 10 as from the date of any such instruction.



Description	Details
Identity of the Controller and Processor	<p>The Parties acknowledge and agree that, for the purpose of the Data Protection Laws and clause Z15 of this contract:</p> <ul style="list-style-type: none">• the <i>Employer</i> is the Data Controller; and• the <i>Consultant</i> is the Data Processor.
Permitted Purpose	<p>The <i>Consultant</i> shall be permitted to Process the Personal Data solely to the extent required to allow the <i>Consultant</i> to Provide the Services in accordance with this contract (and/or where such Processing is a reasonably incidental requirement of so Providing the Services).</p>
Duration of the Processing	<p>Unless otherwise expressly agreed by the <i>Employer</i> in writing, the duration of the processing shall be the <i>period for retention</i>.</p>
Nature of the Processing	<p>The nature of the Processing means any operations including the collection, recording, organisation, structuring, storage, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, erasure, destruction of Personal Data (whether or not by automated means) are limited to the performance of the <i>Consultant's</i> obligations under and in accordance with the terms of this contract.</p>
Type of Personal Data	<p>These are as follows:</p> <ul style="list-style-type: none">• full name;• occupation;• workplace / home address;• workplace / home telephone number;• date of birth;• place of birth;• age;• nationality;• next of kin and emergency contact details;• email address;• national insurance number;• tax code;• salary or remuneration;• photographic facial image;• contract type;• start date, end date and any reason(s) for early termination;• curriculum vitae;• passport and driving licence details;• visa details;• right to work documentation;• hours worked and records of absence / annual leave;• details of physical and psychological health of medical conditions;• information about investigations and criminal proceedings;• equalities monitoring information (age, disability, gender, sexual orientation, race, religion belief and ethnicity); and• voice recordings from calls.
Categories of Data Subject	<p>These are:</p> <ul style="list-style-type: none">• the <i>Consultant's</i> agents / staff and Subconsultants or suppliers of any type; and• any user of the <i>services</i> of any type (if required by law).



Plan for return and destruction of the Personal Data once the processing is complete	<p>The Personal Data will be retained for the <i>period for retention</i>.</p> <p>The <i>Consultant</i> will ensure that there is an effective policy to control access to computerised data and to prevent unauthorised access at all times. On termination of this contract, all relevant documentation and records will be transferred back to the <i>Employer</i> or to any new provider of the <i>services</i>, which is applicable. Any such transfer of these records will be conducted in accordance with the requirements of the Data Protection Laws.</p> <p>Notwithstanding the above, the <i>Consultant</i> shall either return or destroy the Personal Data upon the expiration of the <i>period for retention</i> at the <i>Employer's</i> election (unless otherwise advised by the <i>Employer</i>).</p>
---	--

SCHEDULE 11

NOT USED

SCHEDULE 12

NOT USED

**SCHEDULE 13
NOT USED**

SCHEDULE 14

INDEXATION SCHEDULE

This Schedule 14 is to be read in conjunction with Option X1 (Price Adjustment for Inflation) of the contract.

1. In this Schedule 14:

- (i) “**EARN Dataset**” means the “EARN01: Average Weekly Earnings” dataset published by the Office for National Statistics and accessible online at:

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkhours/datasets/averageweeklyearningsearn01>.
- (ii) “**EARN AWE Monthly Percentage**” means the “single month” percentage for the “private sector” for a particular month as set out in the “AWE Regular Pay” section of the EARN Dataset with the dataset reference “KAJ3”.
- (iii) “**Current Rate**” means each current hourly rate of the Consultant set out in the Pricing Schedule as at the relevant Indexation Adjustment Date and taking into account (as applicable) previous Indexation Adjustments.
- (iv) “**Indexation Adjustment**” has the meaning given to such term in clause X1 of this contract.
- (v) “**Indexation Adjustment Date**” has the meaning given to such term in clause X1 of this contract.
- (vi) “**Indexation Adjustment Equation**” means the following equation:

$\text{Current Rate} \times \text{The average EARN AWE Monthly Percentage for the twelve (12) month period immediately preceding the Indexation Adjustment Date.} = \text{Indexation Adjustment}$

2. On each Indexation Adjustment Date:

- (i) the *Employer* shall apply the Indexation Adjustment Equation to each Current Rate;
- (ii) the maximum increase to each Current Rate shall, notwithstanding the application of the Adjustment Equation, not exceed four per cent (4%) (this being the Indexation Adjustment for the purposes of clause X1 of this contract);
- (iii) following an Indexation Adjustment, the provisions of clause X1 of this contract shall apply until the next Indexation Adjustment date; and
- (iv) the *Employer* shall provide to the Consultant an updated version of the Pricing Schedule as soon as reasonably practicable after the Indexation Adjustment Date to reflect the Indexation Adjustment(s), which shall be deemed to replace the Pricing Schedule as from the Indexation Adjustment Date.

Where the EARN Dataset and/or expression of the EARN AWE Monthly Percentage is replaced and/or superseded from time to time by an alternative dataset and/or indexation basis, the Parties shall, acting reasonably, seek to agree in writing an alternative basis upon which to apply the abovementioned principles to the Current Rates at each Indexation Adjustment Date.



3. Example (for illustrative purposes only):

Current Rate <i>(as at the Indexation Adjustment Date)</i>	x	The average EARN AWE Monthly Percentage for the twelve (12) month period immediately preceding the Indexation Adjustment Date	=	Indexation Adjustment	=	Current Rate as adjusted until the next Indexation Adjustment Date
£100	x	5%	=	4% (capped)	=	£104