

Crown Commercial Service

TRAFFIC MANAGEMENT TECHNOLOGY FRAMEWORK SCHEDULE 4D – TEMPLATE CALL OFF AGREEMENT (INCORPORATING THE NEC3 PROFESSIONAL SERVICES SHORT CONTRACT), CONTRACT DATA AND Z CLAUSES

TABLE OF CONTENTS

CONTRACT DATA - PROFESSIONAL SERVICES SHORT CONTRACT.....	3
THE CONSULTANTS OFFER:.....	5
THE <i>CLIENT'S</i> ACCEPTANCE	6
PRICE LIST.....	6
SCOPE	8
THE CONDITIONS OF CONTRACT	8
PROFESSIONAL SERVICES SHORT CONTRACT OPTIONAL Z CLAUSES	13

Contract Data - Professional Services Short Contract

The *Client* is

Name Innovate UK

Address

Telephone

E-mail address

The *services* are

The *starting date* is

The *completion date* is

The *delay damages* for late per day
Completion are

The *law of the contract* is English

The *period for reply* is two weeks.

The *defects date* is weeks after
Completion

The *assessment day* is the of each month.

Delete if work is not to be carried out on a time charge basis.

If the period for payment is
not four weeks

The period for payment is weeks.

The interest rate on late% per complete
payment is week of delay.

Insert a rate only if a rate less than 0.5% per week of delay has been agreed.

The *Consultant* provides the following insurance cover

Insurance against	Minimum amount of cover	Period following Completion or earlier termination
Failure of the <i>Consultant</i> to use the skill and care normally used by professionals providing services similar to the <i>services</i> in respect of each claim, without limit to the number of claims
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 action or failure to take action by the <i>Consultant</i> in respect of each claim, without limit to the number of claims.
Death of or bodily injury to employees of the <i>arising out of and in the course of their employment in connection with this contract</i> in respect of each claim, without limit to the number of claims

The *Client* provides the following insurance cover

Only enter details here if *Client* is to provide insurance.

.....

.....

.....

The *Consultant's* total liability to the *Client* for matters for which insurance is provided is limited to

The *Consultant's* total liability to the *Client* for other matters is limited to

The *tribunal* is
 If the *tribunal* is arbitration, the arbitration procedure is *[Institution of Civil Engineers Arbitration Procedure (April 2012)] [Chartered Institution of Arbitrators' Arbitration Rules (2000)] [other procedure]*

The place where the arbitration is to be held is

The person who will choose the arbitrator if the Parties cannot agree is *the President or Vice President of the Institution of Civil Engineers] [Chartered Institute of Arbitrators [other nominating body]*

Only include these statements if the *tribunal* is arbitration.

The *conditions of contract* are the NEC3 Professional Services Short Contract (April 2013) and the additional Clauses set out at Part 1 of Annex 3 of Schedule 4 to the Framework Agreement, save for:

The Consultants Offer:

Price List
 Name
 Address
 Telephone
 E-mail address

The *Consultant* offers to Provide the Services in accordance with the *conditions of contract* for an amount to be determined in accordance with the *conditions of contract* The name, job qualifications and experience of the *Consultant's* key people are in

- []
- The *staff rates* are

person or Job	unit of measurement	rate

People not stated here are at open market or competitively tendered rates

The offered total of the Prices is

- []

The following persons or organisations may enforce the following terms of this contract

term	person or organisation
Z15	Named Suppliers
Z17.2	a subcontractor

The *Client's* acceptance

The *Client* accepts the *Consultant's* Offer to Provide the Services by signing

Price List

Entries in the first four columns are made either by the *Client* or the tenderer.

For each row:

- If the *Consultant* is to be paid an amount for the item which is not adjusted in the quantity of work in the item changes, the tenderer enters the amount in the Price column only.
- If the *Consultant* is to be paid an amount for the item of work and which is the rate for the work multiplied by the quantity completed, the tenderer enters the rate which is then multiplied by the Expected quantity to produce the Price, which is also entered.
- If the work is to be paid on a time charge basis, only expenses should be included.

Costs incurred by the *Consultant* other than the listed expenses are included in the Rates and Prices and the *staff* rates. If expenses are paid at cost, the 'at cost' should be entered into the Rate column.

Delete or strike through unused rows.

Scope

Introduction

Innovate UK is the UK's Innovation agency. We are a public body, arms length from the Department for Business, Energy and Industrial Strategy (BEIS).

Innovate UK supports business-led research and development through grant funding and other support programmes.

See www.innovateuk.gov.uk

Aims

This tender exercise is needed alongside the Vehicle to Grid competition launched in July 2017 to support Innovate UK (on behalf of the funders) to procure a specialist provider of vehicle data collection services to collect an agreed list of data from funded demonstrator projects vehicles and users.

This data will enable Innovate UK to measure the impact of the projects using a consistent data set across all vehicle trials. It will help evidence the success of the Vehicle to Grid competition by reporting on the projects achievements/outcomes.

Background

Innovate UK, working with BEIS and the Office for Low Emission Vehicles (OLEV) have launched an innovation competition to support Vehicle to Grid technologies via business led R&D projects. The competition closed to application in October, with the winners expected to be announced in December 2017.

<https://apply-for-innovation-funding.service.gov.uk/competition/29/overview>

Innovate UK and the funders are providing funding of ca £30 million for innovative projects that develop future V2G products, services and knowledge. This amount will be shared between 3 competitions – Feasibility Studies, Collaborative R&D and Real world demonstrators.

V2G is a system where plug-in electric vehicles, such as battery electric cars (BEV) and plug-in hybrids (PHEV), return electricity to the power grid (with consent from their users). This is usually in return for a financial reward or benefit.

Part of the competition is for V2G demonstrator trials in real-world environments at scale. Projects in this competition should last up to 3 years. They should range from total project costs of £1.5 million to £7 million, some might be larger.

This tender exercise is needed alongside this V2G competition as Innovate UK (on behalf of the funders) wishes to procure a specialist provider of vehicle data collection services to collect an agreed list of data from demonstrator projects vehicles and users. This will enable us to measure the impact of the projects using a consistent data set across all vehicle trials.

Data will be collected at a project level from the real world demonstrators, with the successful organisation setting out how projects should do this and provide it in a consistent way.

The data collected will be a mixture of quantitative and qualitative data. Some it will be personal data, and possibly commercially sensitive.

Details of data collection requirements expected of successful projects were communicated as part of the V2G competition scope. See <https://apply-for-innovation-funding.service.gov.uk/competition/29/download/218>

In addition, further details of the data we now expect to collect are attached to this tender specification. *Bidders are welcome to suggest other data that can be collected and will support the overall objectives of the Vehicle to Grid competition.*

All winning projects are expected to provide data from their trial vehicles to the appointed data collection agent. Total number of demonstrator project which will require data collection is 8. The trial projects from which the successful organisation will collect data to involve up to 2700 individual vehicles, both cars and commercial vehicles.

We also expect the data collection provider to produce a mid-term and final report of their findings and support Innovate UK's wider dissemination of the competition's result.

Objectives

We have identified an initial list of data which we wish to collect. This will be a mixture of data from vehicles, most likely provided via telematics alongside qualitative data directly from the users/operators/owners of the vehicles involved in the trial. Data will be collected by projects in an agreed way and transferred to the successful organisation to amalgamate and analyse.

Details of our initial list are contained within the Annexes to the document.

We expect demonstrator projects to trial vehicles for around 12 months (as per the scope

criteria) as part of project that can last up to 3 years in total.

Therefore, Innovate UK's requirement is to have a contractor in place to collect data for a period up to 4 years including a period to agree the exact data collection framework at the start and producing a final report once all trials have finished.

The total length of the trial projects is between 24 and 36 months. The main deliverables of the work would be

1. Work with Innovate UK and the projects to agree the final list of data to be collected from the successful Vehicle to Grid demonstrator projects
2. Collect an agreed list of data from vehicles involved in the demonstrator projects, over 12 months
3. Collect qualitative data from vehicle users/drivers over 12 months
4. Produce an interim/mid term and final report
5. Facilitate cross project dissemination by hosting an annual project workshop involving all V2G projects funded via this competition and other interest stakeholders

Background to the Requirement

Bidders should be familiar with the V2G competition, and specifically the Real World Demonstrator competition that forms part of it:

<https://apply-for-innovation-funding.service.gov.uk/competition/29/overview>

The collection and pooling of data from the demonstrator trials is vital to gaining an understanding of the benefits of V2G and user acceptance. Data collection details are specified in the competition scope.

This tender is to appoint an independent third party organisation to define a common format for data deemed of value and to collect the data from the demonstrator projects. Data will be anonymised for analysis and publication at the end of the project.

Innovate UK expects that projects will collect data for their own purposes at a project level. However, a condition of funding is that V2G demonstrator projects share the agreed data sets with Innovate UK and that failure to do so could result in funding being terminated.

Please see Annexes A and B for more details.

- Annex A - V2G trial data collection
- Annex B - V2G_data_collection-detailed specifications

Trial projects will collect and report vehicle data monthly throughout the trial for at least 85% of operation.

Innovate UK would be the contracting organisation, but a project steering group with officials from BEIS and OLEV will also shape the project's delivery.

Innovate UK's Innovation Lead - Vehicle to Grid would be the main point of day to day contact for the provider.

Scope

1. Work with Innovate UK and the projects to agree the final list of data to be collected
2. Collect an agreed list of data from vehicles involved in the demonstrator projects, over 12 months
3. Collect qualitative data from vehicle users/drivers over 12 months
4. Produce an interim/midterm and final report
5. Facilitate cross project dissemination by hosting an annual project workshop involving all V2G projects funded via this competition and other interest stakeholders
6. Provide Data Reporting Requirement, Trial statistics, Annual reports, Final reporting and Workshops.

Requirement

The focus of the contract is to collect data from V2G trial/demonstrator projects as per the above.

In addition, we expect as a minimum:

- Kick off and monthly progress meetings in the start-up phase (early 2018)
- Quarterly progress reporting during data collection phase

- Final report meetings and project completion meeting

Timetable

The V2G competition timetable is broadly as follows:

July 2017 – V2G competition opened

October 2017 – Competition closed

January 2018 – Decision on successful projects

April 2018 – Demonstrator projects likely to start – they could last up to 3 years depending on what projects request.

April 2019 – First annual project collaboration/dissemination event

April 2020 – Second annual collaboration/dissemination event

April 2021 – All projects should be complete

Data collection timetable

February 2018 – Start work with appointed contractor to review successful bids and propose data collection methodology

April 2018 – start discussions with successful projects on proposed methodology. Expect to take up to 3 months as projects get underway

Mid to late 2018 – possible start of data collection regime.

Mid to late 2019 – Produce mid term report (dependent on trial projects having progressed sufficiently)

Final report produced from late 2020 early 2021

The Conditions of Contract

NEC3 PROFESSIONAL SERVICES SHORT CONTRACT (APRIL 2013) CORE CLAUSES

The terms and conditions of contract applied at call-off for the Traffic Management Technology 2 Framework Agreement are the core clauses of the NEC Professional Services Short Contract (PSSC).

Access to the NEC suite of contracts, including guidance and membership details can be found via the NEC Website: <https://www.neccontract.com/>

Additionally, Crown Commercial Service has worked together with NEC to provide discounted access to the suite of contracts. Further information can be found on the TMT2 Framework Agreement Webpage:

<http://ccs-agreements.cabinetoffice.gov.uk/contracts/rm1089>

Professional Services Short Contract Optional Z

Clauses

Identified and defined terms A Subconsultant is a person or organisation who has a contract with the *Consultant* to provide part of the *services*.

The Time Charge is the sum of the products of each of the *staff rates* multiplied by the total staff time appropriate to that rate properly spent on work in this contract.

Clause Z1 Corrupt practices

Z1.1 The *Consultant* does not

- offer or give to any person in the service of the *Client* any gift or consideration of any kind as an inducement or reward in relation to the obtaining or execution of this contract or any other contract with the *Client* or for showing favour or disfavour to any person in relation to this contract or any other contract with the *Client*, or
- enter into this contract or any other contract with the *Client* if, in connection with this contract or any such other contract, commission has been paid or an agreement for the payment of commission has been made by him or on his behalf or to his knowledge.

Z1.2 A failure to comply with this condition is treated as a substantial failure by the *Consultant* to comply with his obligations.

Clause Z2 Euro functionality

Z2.1 The *Consultant* Provides the Services in such a way that the *services*

- would not be prejudiced by the implementation of the Euro,
- comply with all legal requirements applicable to the Euro in the United Kingdom, including, but without limitation, the rules on conversion and rounding set out in the EC Regulation 1103/97,
- are capable of utilising all symbols and codes adopted by the EU Commission in relation to the Euro and
- are in accordance with the *Client's* requirements both for Sterling and for the Euro.

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 Her Majesty's Government.

Clause Z4 Assignment

Z4.1 The *Consultant* does not assign, transfer or charge the benefit of this contract or any part of it or any benefit or interest under it without the prior agreement of the *Client*.

Z4.2 The *Client's* ability to assign this contract or any part of it or any benefit or interest under it is unrestricted.

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 Providing the Services, the *Consultant* co-operates with and assists the *Client* to satisfy its 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 employed by the *Consultant* is required to carry out any activity alongside the *Client's* employees in any premises, the *Consultant* ensures that each such employee or Subconsultant complies with the *Client's* employment policies and codes of practice relating to discrimination and equal opportunities.

Z5.4 The *Consultant* notifies the *Client* 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 *Client* 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 *Client* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Client* 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 Disclosure of information

Z6.1 A Disclosure Request is a request for information relating to this contract received by the *Client* pursuant to the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or otherwise.

Z6.2 The *Consultant* acknowledges that the *Client* may receive Disclosure Requests and that the *Client* may be obliged (subject to the application of any relevant exemption and, where applicable, the public interest test) to disclose information (including commercially sensitive information) pursuant to a Disclosure Request. Where practicable, the *Client* consults with the *Consultant* before doing so in accordance with the relevant Code of Practice. The *Consultant* uses his best endeavours to respond to any such consultation promptly and within any deadline set by the *Client* and acknowledges that it is for the *Client* to determine whether or not such information should be disclosed.

Z6.3 When requested to do so by the *Client*, the *Consultant* promptly provides information in his possession relating to this contract and assists and co-operates with the *Client* to enable the *Client* to respond to a Disclosure Request within the time limit set out in the relevant legislation.

Z6.4 The *Consultant* promptly passes any Disclosure Request which it receives to the *Client*. The *Consultant* does not respond directly to a Disclosure Request unless instructed to do so by the *Client*.

Z6.5 The *Consultant* acknowledges that the *Client* is obliged to publish the provisions of this contract in accordance with the Cabinet Office Efficiency Reform Group Guidance Note entitled "Transparency – Publication of New Central Government Contracts" dated December 2010 (or any later revision) except to the extent that any information in it is exempt from disclosure pursuant to the Freedom of Information Act 2000. The *Client* consults with the *Consultant* before deciding whether information is exempt, but the *Consultant* acknowledges that the *Client* has the final decision. The *Consultant* co-operates with and assists the *Client* to publish this contract in accordance with the *Client's* obligation.

Clause Z7 Conflict of interest

Z7.1 The *Consultant* does not take an action which would cause a conflict of interest to arise in connection with this contract. The *Consultant* notifies the *Client* if there is any uncertainty about whether a conflict of interest may exist or arise.

Z7.2 The *Consultant* immediately notifies the *Client* of any circumstances giving rise to or potentially giving rise to conflicts of interest relating to the *Consultant* and/or the *Client* (including without limitation its reputation and standing), of which it is aware or anticipates may justify the *Client* taking action to protect its interests.

Clause Z8 Not Used

Clause Z9 Not Used

Clause Z10 Records and Audit Access

Z10.1 The *Consultant* keeps documents and information obtained or prepared by the *Consultant* or any Subconsultant in connection with the contract for a period of 6 years after the end date.

Z10.2 The *Consultant* permits the *Client*, Comptroller, Auditor General and any other auditor appointed by the *Client* to examine documents held or controlled by the *Consultant* or any Subconsultant.

Z10.3 The *Consultant* provides such oral or written explanations as the *Client* or Comptroller and Auditor General considers necessary.

Z10.4 The *Consultant* acknowledges that, for the purpose of examining and certifying the *Client'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 *Client* 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. The *Consultant* permits the Comptroller and Auditor General to examine documents held or controlled by the *Consultant* or any Subconsultant. The *Consultant* provides such oral or written explanations as the Comptroller and Auditor General considers necessary.

Clause Z11 Appointment of Adjudicator

Z11.1 The *Adjudicator's* appointment under the NEC3 *Adjudicator's* Contract (April 2013) includes the following additional condition of contract

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

Clause Z12 Confidentiality

Z12.1 Clause 70.3 is deleted and replaced by the following:

"The *Consultant* keeps (and ensures that his employees and

Subconsultants keep) confidential and does not:

- disclose to any person the terms of this contract nor
- use (except for the purposes of this contract) or disclose to any person any confidential or proprietary information (including Personal Data) provided to or acquired by the *Consultant* in the course of Providing the Services

except that the *Consultant* may disclose information

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

Z12.2 The *Consultant* may only disclose the *Client's* confidential information to its personnel who are directly involved in Providing the Services and who need to know the information, and shall ensure that such personnel are aware of and shall comply with these obligations as to confidentiality.

Z12.3 The *Consultant* may only disclose the *Client's* confidential information to its personnel who need to know the information, and shall ensure that its personnel are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any default, act or omission of any of the *Consultant's* 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 of the *Consultant's* personnel, the *Consultant* shall provide such evidence to the *Client* as the *Client* 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 the *Consultant's* personnel, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with the *Consultant's* personnel in connection with obligations as to confidentiality.

Z12.4 At the written request of the *Client*, the *Consultant* shall procure that those members of the *Consultant's* personnel identified in the *Client's* notice signs a confidentiality undertaking prior to commencing any work in accordance with this contract.

Z12.5 Where the *Client* supplies the *Consultant* with press cuttings provided to the *Client* under the terms of the *Client's* licence with the Newspaper Licensing Agency ("NLA"), the *Consultant* does not reproduce the cuttings or forward them to any third party unless the *Consultant* has first entered into an agreement with NLA authorising it to do so.

Clause Z13 Data protection

Z13.1

(1) The Data Protection Acts are the Data Protection Act 1998 (as amended) and any other laws or regulations relating to privacy or personal data.

(2) Personal Data is information collected by the *Consultant* on behalf of the *Client* in relation to this contract, which relates to living individuals who can be identified

- from that information or
- from that information combined with other details in (or likely to come into) the possession of the *Client*.

Z13.2 For the purposes of this contract and the Data Protection Acts

- the *Client* is the Data Controller and
- the *Consultant* is the Data Processor.

Z13.3 The *Consultant* processes the Personal Data in accordance with (and so as not to put the *Client* in breach of) the Data Protection Acts and only to the extent necessary for the purpose of performing his obligations under this contract.

Z13.4 The *Consultant* has in place for as long as it holds the Personal Data

- appropriate technical and organisational measures (having regard to the nature of the Personal Data) to protect the Personal Data against accidental, unauthorised or unlawful processing, destruction, loss, damage, alteration or disclosure and
- adequate security programmes and procedures to ensure that unauthorised persons do not have access to the Personal Data or to any equipment used to process the Personal Data.

Z13.5 The *Consultant* immediately notifies the *Client* if it receives

- a request from any person whose Personal Data it holds to access his Personal Data or
- a complaint or request relating to the *Client's* obligations under the Data Protection Acts.

Z13.6 The *Consultant* assists and co-operates with the *Client* in relation to any complaint or request received, including

- providing full details of the complaint or request,
- complying with the request within the time limits set out in the Data Protection Acts and in accordance with the instructions of

the *Client* and

- promptly providing the *Client* with any Personal Data and other information requested by him.

Z13.7 The *Consultant* complies with the requirements of the *Client* in relation to the storage, dispatch and disposal of Personal Data in any form or medium.

Z13.8 The *Consultant* immediately notifies the *Client* on becoming aware of any breach of this clause or of the Data Protection Acts.

Z13.9 The *Consultant* does not process Personal Data outside the European Economic Area (the “EEA”) without the prior written agreement of the *Client*.

Z13.10 If the *Consultant* becomes aware that Personal Data will be transferred or processed outside the EEA, the *Consultant* sends the *Client* details of:

Z13.10.1 the Personal Data which will be processed outside the EEA;

Z13.10.2 the countries where the Personal Data will be processed;

Z13.10.3 any Subconsultants or other third parties who will be processing and/or receiving Personal Data outside the EEA; and

Z13.10.4 proposals to ensure the *Consultant* will provide adequate levels of protection and safeguards of the Personal Data that will be processed outside the EEA to ensure compliance with the Data Protection Acts.

Z13.11 Where the *Client* agrees to the *Consultant* processing or transferring Personal Data outside the EEA the *Consultant* complies with the instructions of the *Client* and provides an adequate level of protection to any Personal Data in accordance with the Data Protection Acts.

Clause Z14 The *Client*'s liability

Not Used

Clause Z15 Project Bank Account

Not Used

Clause Z16 Payment for subcontracted services

Z16.1 In assessing the amount due at an assessment date, the Time Charge for *services* provided by a Subconsultant (other than a Named Supplier) is retained from the *Consultant* unless, at the assessment date, the *Consultant* has paid the Subconsultant for the *services*.

Z16.2 An amount retained is included in the amount due at the assessment date after the *Consultant* has paid the Subconsultant for

the *services*.

Z16.3 When submitting an invoice, the *Consultant* demonstrates that payment has been made for the Time Charge included in the invoice in respect of services provided by a Subconsultant.

Clause Z17 Fair payment

Z17.1 The *Consultant* assesses the amount due to a Subconsultant without taking into account the amount assessed under this contract.

Z17.2 The *Consultant* includes in the contract with each Subconsultant

1. 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,
2. 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
3. a provision requiring the Subconsultant to assess the amount due to a subsubconsultant without taking into account the amount paid by the *Consultant*.

Z17.3 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.

Clause Z18 Reporting: Small and Medium Enterprises

Z18.1 In this clause Z18 SME is

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

Z18.2 For each SME employed on the *services*, the *Consultant* reports to the *Client* each quarter 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 of the contract undertaken by the SME,
- the monthly amounts paid to the SME in the quarter and
- the aggregated value paid to the SME since the *starting date*.

Z18.3 The *Consultant* acknowledges that the *Client* 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 *Client* 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 subconsultant engaged by the Subconsultant who is an SME include obligations substantially similar to those set out in Z18.4.

Z18.6 The *Consultant* keeps accounts and records of his charges and expenses and allows the *Client* to inspect them at any time within working hours.

Clause Z19 *Client's* Codes of Conduct

Z19.1 The *Consultant* complies (and ensures that any person employed by him or acting on his behalf complies) with the *Client's* Anti Bribery Code of Conduct and Anti-Fraud Code of Conduct, collectively 'the Codes'. The *Consultant* complies with the Codes until Completion and with

- paragraph 4 of the *Client's* Anti Bribery Code of Conduct and
- paragraph 3 of the *Client's* Anti-Fraud Code of Conduct

for a period of 6 years after Completion.

Z19.2 A failure to comply with this clause is treated as a substantial failure by the *Consultant* to comply with his obligations.

Clause Z20 Prevention of fraud and bribery

Z10.1 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.

Z10.2 During the *services period* the *Consultant* does not:

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

Z10.3 During the *services period* the *Consultant*:

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

Z10.4 The *Consultant* immediately notifies the *Client* in writing if it becomes aware of any breach of clause Z10.1, or has reason to believe that it has or any of the its employees or SubConsultants have:

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

Z10.5 If the *Consultant* makes a notification to the *Client* pursuant to clause Z10.4, the *Consultant* responds promptly to the *Client's* enquiries, co-operates with any investigation, and allows the *Client* to audit any books, records and/or any other relevant documentation in accordance with this contract.

Z10.6 If the *Consultant* breaches Clause Z10.3, the *Client* may by notice require the *Consultant* to remove from Providing the Service any *Consultant* employee whose acts or omissions have caused the *Consultant's* breach.

Z10.7 In this Clause Z10, Prohibited Act means any of the following:

- a) to directly or indirectly offer, promise or give any person working for or engaged by the *Client* a financial or other advantage to:
 - i) induce that person to perform improperly a relevant function or activity; or
 - ii) reward that person for improper performance of a relevant function or activity;
- b) 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;
- c) committing any offence:
 - i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or
 - ii) under legislation creating offences concerning fraud; or
 - iii) at common law concerning fraud; orcommitting (or attempting or conspiring to commit) fraud.]

Clause Z21

Termination and omission of work

Z21.1 If the *Client* instructs a change to the Scope which involves the omission of part of the *services*, the *Client* may engage other people to carry out the part omitted. The instruction is assessed as a compensation event, except that if the instruction is given for insolvency or a default by the *Consultant*, the assessment includes a deduction of the forecast additional cost to the *Client* of completing the services.

Z21.2 The following is added at the end of the second sentence in clause 91.1 of the *conditions of contract*.

“unless instructed otherwise by the *Client*”.

Z21.3 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 *Client*,

Clause Z22

Not Used

Clause Z23

Termination - PCRs, Regulation 73

Z23.1 The *Client* may terminate the *Consultant's* obligation to Provide the Services if one 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. This

is treated as a termination because of a substantial failure of the *Consultant* to comply with his obligations.

Z23.2 The *Client* may terminate the *Consultant's* obligation to Provide the Services if

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

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

Clause Z24

Value Added Tax (VAT) Recovery

Z24.1 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 Z25**Subconsulting**

Z25.1 Before

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

Z25.2 The *Consultant* does not appoint the proposed Subconsultant (or allow the Subconsultant to appoint the proposed subsubconsultant) until the *Client* 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.

Z25.3 If requested by the *Client*, the *Consultant* provides further information to support, update or clarify a submission under clause Z25.1.

Z25.4 If, following the acceptance of a submission under clause Z25.2, 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 *Client* may instruct the *Consultant* to

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

Clause Z26**Energy Efficiency Directive**

Not Used

Clause Z27**Collateral Warranty Agreements**

Not Used

Clause Z28**Access to MOD sites**

Not Used

Clause Z29**MoD DEFCON Requirements**

Not Used

Clause Z30**Contracts (Rights of Third Parties) Act 1999**

Z30.1 A person or organisation who is not a party to this contract may enforce a term of this contract under the Contracts (Rights of Third

Parties) Act 1999 only if the term and the person or organisation are stated in the Contract Data.

Clause Z31

Intellectual Property Rights

Z31.1 Intellectual Property Rights are any current and future legal and equitable interests in patents, trademarks, design rights, copyright, know-how and other similar rights, whether or not registered or capable of registration.

Z31.2 All Intellectual Property Rights in documents and other materials created by or on behalf of the *Client* in connection with the contract are the property of the *Client* or the Crown.

Z31.3 The *Consultant* hereby assigns to the *Client* all present and future Intellectual Property Rights in all documents and other materials created by or on behalf of the *Consultant* or any Subconsultant in performing its obligations under, or otherwise in connection with, the contract. The *Consultant* obtains from Subconsultants equivalent rights over the documents and other materials prepared by the Subconsultants. This assignment takes effect either on the Contract Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Intellectual Property Rights, as appropriate.

Z31.4 Background IPR means Intellectual Property Rights owned by the *Consultant*, a Subconsultant or a third party and which are not assigned to the *Client* pursuant to clause Z31.3. In respect of Background IPR, the *Consultant* grants a non-exclusive, world-wide, perpetual, irrevocable, royalty free licence (including the right to sub-licence) to the *Client* to use the Background IPR for all purposes of the *Client*. Each licence granted under this clause Z31.4 by the *Consultant* survives the termination or expiry of this contract and cannot be terminated by the *Consultant* or its assignees. The *Consultant* obtains from the Subconsultants or third parties equivalent rights over Background IPR owned by the Subconsultants or third parties.

Z31.5 The *Client* grants to the *Consultant*, or procures the direct grant to the *Consultant* of, a non-exclusive, non-transferable, revocable licence to use all Intellectual Property Rights and Background IPR owned (or capable of being so licensed or procured without cost) by the *Client* and reasonably required by the *Consultant* in order to Provide the Service. Any such licence is granted for the duration of this contract solely to enable the *Consultant* to comply with its obligations under this contract.

Clause Z32

Parent Company Guarantee

Z32.1 In this contract

- **Change of Control** is an event where a single person (or group of persons acting in concert)
 - acquires Control of the *Consultant* or
 - acquires a direct or indirect interest in the relevant share capital of the *Consultant* and as a result holds or controls the largest direct or indirect interest in (and in any event

more than 25% of) the relevant share capital of the *Consultant*.

- **Control** has the meaning set out in section 1124 of the Corporation Tax Act 2010.
- **Controller** is the single person (or group of persons acting in concert) that
 - has Control of the *Consultant* or
 - holds or controls the largest direct or indirect interest in the relevant share capital of the *Consultant*.
- **Parent Company Guarantee** is a guarantee of the *Consultant's* performance in the form set out in the Scope.

Z32.2 If required by the *Client* at any time, the *Consultant* within four weeks gives to the *Client* a Parent Company Guarantee from

- the Controller or
- if the *Client* (in its discretion) agrees, a company other than the Controller.

Z32.3 The *Consultant* notifies the *Client* immediately if a Change of Control has occurred or is expected to occur.

Z32.4 The *Consultant* notifies the *Client* immediately of

- any material change to 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
- any material change in the composition of the *Consultant's* partnership. A change in the composition of the partnership is material if it directly or indirectly affects the performance of this contract by the *Consultant*.
- any change, or proposed change in the name of or status of the *Consultant*.

Z32.5 The *Client* may treat any of the following as a substantial failure by the *Consultant* to comply with this contract

- the *Consultant* does not give to the *Client* a Parent Company Guarantee within four weeks of the *Client's* request,
- the *Consultant* fails to notify the *Client* of a Change of Control or a Change of Control will not allow the *Consultant* to Provide the Services.
- the *Consultant* does not provide the Client with the information described at clause Z32.4.

Clause Z33

The Housing Grants, Construction and Regeneration Act 1996

Not Used

Clause Z34

Payment

Not Used

Clause Z650

Offshoring of data

Not Used