

DATED

2023

**THE SECRETARY OF STATE FOR (1)
ENVIRONMENT, FOOD AND RURAL
AFFAIRS**

and

MACE CONSULT LIMITED (2)

**NEC4 PSC OPTION E (WITH UPDATES
FROM JANUARY 2019 AND OCTOBER
2020)**

IN RELATION TO

**Delivery Partner for the SCAH
Programme**

THIS AGREEMENT is made on

2023 BETWEEN:

- (1) **THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS** acting through the Department for Environment Food and Rural Affairs, (DEFRA) and its executive agencies (the "**Client**") (which expression shall include any successors in title and assigns); and
- (2) **MACE CONSULT LIMITED** (company number 07094851) whose registered office 155 Moorgate, London, EC2M 6XB ("**Consultant**").

WHEREAS:

The *Client* wishes to enter into an agreement with the *Consultant* on the terms set out in the Contract for the carrying out and completion of the *service*.

NOW IT IS AGREED THAT:

1 Interpretation

- 1.1 Unless the context otherwise requires any term used with initial capital letters or any italicised term has the meaning given to it in the Contract.

2 Service

- 2.1 The *Consultant* Provides the Service and carries out its duties in accordance with the Contract.

3 Price

- 3.1 The *Client* pays the *Consultant* the amount due under and carries out its duties in accordance with the Contract.

4 Conditions

- 4.1 The terms and conditions of the NEC4 Professional Service Contract (June 2017 Edition (incorporating amendments January 2019 and October 2020)) have effect as modified by this Agreement and the Schedules to this Agreement (together referred to as the "**Contract**").
- 4.2 Where a reference is made to a clause of the NEC4 Professional Service Contract (June 2017 Edition (incorporating amendments January 2019 and October 2020)) contract it shall be read and construed to be a reference to that clause as amended by this Agreement including without limitation Schedule 3 Option Z (additional conditions of contract).
- 4.3 If there is any ambiguity or inconsistency in or between the documents comprising the Contract, the priority of the documents is in accordance with the following sequence:
 - 4.3.1 Security Aspects Letter (Schedule 8);
 - 4.3.2 this Agreement (conditions 1 to 7);
 - 4.3.3 the completed Contract Data part 1 (Schedule 2);
 - 4.3.4 the option Z *additional conditions of contract* (Schedule 3);

- 4.3.5 the Defra Conditions of contract (Schedule 4);
- 4.3.6 the Scope (Schedule 5);
- 4.3.7 the NEC4 Professional Service Contract (June 2017 Edition (incorporating amendments January 2019 and October 2020)) (Schedule 1);
- 4.3.8 the People Rates (Schedule 6);
- 4.3.9 the completed Contract Data part 2 (Schedule 2); and
- 4.3.10 any other document forming part of the Contract (Schedule 1).

5 Complete agreement

- 5.1 The Contract is the complete and entire agreement between the *Client* and the *Consultant* in relation to the *service* and supersedes all other oral and/or written communications. The Parties are not bound by, or liable for, any statement, representation, promise, inducement or understanding not contained in the Contract. No amendments or modifications of the Contract are valid unless agreed in accordance with the Contract.
- 5.2 Without prejudice to clause 5.1, nothing in the *Consultant's* tender for the *service* shall operate to exclude or limit the liability of the *Consultant* under the Contract.
- 5.3 Nothing in this clause 5 shall exclude liability in respect of misrepresentations made fraudulently.

6 Counterparts

- 6.1 This Agreement may be executed in one or more counterparts. Any single counterpart or set of counterparts executed, in either case, by both Parties shall constitute a complete original of this Agreement for all purposes.

7 Execution as a deed

- 7.1 This Agreement is executed as a deed and was delivered when it was dated.

IN WITNESS whereof this Agreement has been executed as a deed by the Parties hereto the day and year first before written.

The corporate seal of **THE
SECRETARY OF STATE FOR
ENVIRONMENT, FOOD AND RURAL
AFFAIRS** is hereunto affixed and is

[REDACTED]

[REDACTED]

[Redacted]

Signed as a deed by **MACE CONSULT
LIMITED** acting by **JASON DAVID MILLETT**,
a Director, in the presence of:

S

[Redacted]

[Redacted]

[Redacted]

Schedule 1

NEC4 Professional Service Contract (June 2017 Edition (incorporating amendments January 2019 and October 2020))

The NEC4 Professional Service Contract (June 2017 Edition (incorporating amendments January 2019 and October 2020)) is incorporated herein and is supplemented and/or (as applicable) amended by the terms of Schedule 2 to Schedule 8 of this Agreement.

Schedule 2

Contract Data

Part one – Data provided by the Client

Completion of the data in full, according to the Options chosen, is essential to create a complete Contract.

Statements given in all contracts

1. General

- The *conditions of contract* are the core clauses of the NEC4 Professional Service Contract (June 2017) (incorporating amendments January 2019 and October 2020)) together with main option E, dispute resolution Option W2, Option Z *additional conditions of contract* set out in Schedule 3, the Defra Conditions set out in Schedule 4 and the following secondary Options:

X1, X2, X20, Y(UK)2 and Y(UK)3

- The *service* is Delivery Partner services
- The *Client* is The Department for Environment, Food and Rural Affairs (as defined in the Agreement)
- Address for communications: Animal and Plant Health Agency, Woodham Lane, Addlestone, KT15 3NB

- [REDACTED]

- The *Service Manager* is [REDACTED]

- [REDACTED]

- [REDACTED]

- The *Scope* is in Schedule 5.
- The *language of this contract* is English.
- The *law of the contract* is the law of England and Wales.
- The *period for reply* is 2 weeks
- The period for retention is 12 year(s) following Completion or earlier termination
- The following matters will be included in the Early Warning Register:

- N/A

- Early warning meeting are to be held at intervals no longer than: One month
2. The *Consultant's* main responsibilities
- The *Consultant* prepares forecasts of the total Defined Cost plus Fee and *expenses* at intervals no longer than: One month
 - The *Consultant* prepares resource schedules at intervals no longer than: One month
3. Time
- The *starting date* is: 14th December 2023
 - The *Client* provides access to the following persons, places and things: N/A
 - The *Consultant* submits revised programmes at intervals no longer than: One month
 - The *completion date* for the whole of the *service* is: 13^h December 2026
 - The period after the Contract Date within which the *Consultant* is to submit a first programme for acceptance is: One month
- 4 Quality management
- The period after the Contract Date within which the *Consultant* is to submit a quality policy statement and quality plan is: 6 months
 - The period between Completion of the whole of the *service* and the *defects date* is: 52 weeks
- 5 Payment
- The *currency of the contract* is the: GBP (pounds sterling).
 - The *assessment interval* is One month.
 - The expenses stated by the *Client* are
 - N/A
 - The *interest rate* is 2% per annum above the base rate of the Bank of England.
 - The exchange rates are those published on a monthly basis by HM Revenue & Customs
 - The locations for which the *Consultant* provides a charge for the cost of support people and office overhead are: N/A
- 6 Compensation events
- If there are additional compensation events, these are additional compensation events: N/A

8 Liabilities and insurance

- These are additional *Client's* liabilities: N/A
- The minimum amount of cover and the periods for which the *Consultant* maintains insurance are:

Event	Minimum Amount of Cover	Period following completion of the whole of the <i>service</i> or termination
Liability of the <i>Consultant</i> for claims made against it arising out of the <i>Consultant's</i> failure to use the Standard of Care.	£5,000,000 (five million pounds) in respect of each claim, without limit to the number of claims	12 years
Loss of or damage to property and liability for bodily injury to or death of a person (not an employee of the <i>Consultant</i>) arising from or in connection with the <i>Consultant</i> Providing the Service	Whichever is the greater of £5,000,000 (five million pounds) or the amount required by law in respect of each event, without limit to the number of events	12 years
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 the contract	Not less than the amount required by law in respect of each event, without limit to the number of events	The period required by law

- The *Client* provides these insurances from the Insurance Table: N/A
- The *Client* provided these additional insurances: N/A
- The *Consultant's* total liability to the *Client* for all matters arising under or in connection with the contract, other than the excluded matters is limited to £5,000,000 (five million pounds) in respect of each claim, without limit to the number of claims

Resolving and avoiding disputes:

- The *tribunal* is: The courts of England and Wales
- The Senior Representatives of the *Client* are:

○ Name (1) [REDACTED]

○ [REDACTED]

○ [REDACTED]

○ Name (2) [REDACTED]

○ [REDACTED]

○

- The *Adjudicator nominating body* is: Institution of Civil Engineers

X2: Changes in the Law

- The law of the project is The Law of England.

X20 Key Performance Indicators (not used with Option X12)

- The incentive schedule for Key Performance Indicators is in: Schedule 1
- A report of performance against each Key Performance Indicator is provided at intervals of: One month

Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996

- The period for payment is 30 days after the date on which payment becomes due

Option Z

- The *additional conditions of contract* are contained in Schedule 3.
- The Defra Conditions are contained in Schedule 4

Part two – Data provided by the *Consultant*

Completion of the data in full, according to the Options chosen, is essential to create a complete Contract.

Statements given in all contracts

1. General

- The *Consultant* is

Name: Mace Consult Limited

Address for communications: 155 Moorgate, London, EC2M 6XB

Address for electronic communications:

[REDACTED]

- The *fee percentage* is 0%
- The *key persons* are

(1) Name: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- Experience as detailed in Schedule 7
- The following matters will be included in the Early Warning Register:
N/A

2. **The *Consultant*'s main responsibilities**

If the *Consultant* is to provide Scope

- The Scope provided by the *Consultant* for its plan is N/A

Invitation to tender forecast of Defined Cost and expenses

- The forecast is identified in: Schedule 1

3. **Time**

If a programme is to be identified in the Contract Data

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

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

- The *completion date* for the whole of the *service* is: N/A

5. **Payment**

If the *Consultant* states

- The expenses stated by the *Consultant* are any expenses: As agreed in advance by the *Service Manager*

People Rates

- The *people rates* are in: Schedule 6

Resolving and avoiding disputes:

- The *Senior Representatives* of the *Consultant* are

(1) Name

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



Data for the Schedule of Cost Components

The overhead percentages for the cost of support people and office overhead are location: N/A

Schedule 3

Option Z (Additional conditions of contract)

Option Z: Schedule of Amendments to the core clauses and additional conditions

Z1 The following is incorporated as part of the *conditions of contract* and in the event of a conflict with any other term, the terms of this Schedule take precedence:

CORE CLAUSES

1 General

Insert new clause 10.3:

“10.3 The appointment of the *Consultant* commences from the Contract Date, *starting date* or from the date on which the *Consultant* starts to Provide the Service, whichever is earlier.”

In clause 11.2(2) in the first bullet point after “Scope” insert “and contract”.

Delete clause 11.2(5) add insert, “Number not used.”

In clause 11.2(6) after “Scope” insert “, the contract, the quality plan”

Insert new clauses 11.2(24) to (30):

- “(24) Exit Plan is the exit plan as referred to in the Scope.
- (25) Fault means from a fault, act or omission of the *Consultant* (which includes the fault, act or omission of any Subcontractor or any employee or supplier of the *Consultant*).
- (26) Framework Agreement means CCS RM6165 framework agreement for construction professional services.
- (27) Framework Index is the index used to calculate any adjustment to the Framework Prices under Schedule 11 of the Framework Agreement.
- (28) Framework Prices are the *Consultant’s* prices under the Framework Agreement as adjusted in accordance with the Framework Agreement.
- (29) The People Rates are the *people rates* unless later changed in accordance with this contract.
- (30) Standard of Care means the reasonable skill, care and diligence to be expected of a fully competent consultant experienced in performing and carrying out services of a similar scope, nature, complexity and timescale to the *service*.

Insert new clauses 12.5 to 12.6:

- “12.5 References in this contract to the *Consultant* include its employees, and suppliers and Subcontractors and their employees and suppliers.

- 12.6 A reference to any Act of Parliament, Statutory Instrument or any specific provision in such legislation is deemed to include a reference to any subsequent re-enactment or amendments or to any replacement enactment covering the same or substantially the same subject matter.”

In clause 15.1 delete “or” at the end of the fourth bullet point and insert a new bullet point before the last:

- “affect a *Client’s* liability; or”

Delete clause 16.1 and replace with:

- “16.1 Subject to clause 16.3, the *Service Manager* or the *Consultant* notifies the other as soon as either becomes aware of an ambiguity, discrepancy, omission, mistake or inconsistency in or between the documents which are part of the contract. The *Service Manager* states how the ambiguity, discrepancy, omission, mistake or inconsistency should be resolved.”

Insert at the start of clause 16.2: “Subject to clause 16.3”

Insert new clauses 16.3 and 16.4:

- “16.3 Prior to the date of this contract, the *Consultant* is assumed to have proactively and diligently reviewed and raised all queries (including in relation to any ambiguity, discrepancy, omission, mistake and/or inconsistency) in or between the documents, as would be expected of a competent and experienced consultant, exercising the Standard of Care and taking into account the *Consultant’s* experience. Provided that the *Consultant* has complied with this clause 16.3, any ambiguity, discrepancy, omission, mistake and/or inconsistency in or between the documents may entitle the *Consultant* to a compensation event in accordance with this contract.
- 16.4 Where the *Service Manager* gives any instruction which changes the Scope then, to the extent that there is any ambiguity, discrepancy, omission, mistake and/or inconsistency) in or between the documents and/or the Scope, then the *Consultant* shall notify the *Service Manager* as soon as it becomes aware of any such ambiguity, discrepancy, omission, mistake or inconsistency and the *Service Manager* shall states how the ambiguity, discrepancy, omission, mistake or inconsistency should be resolved.”

Delete clause 17 and insert, “Number not used.”

2 The *Consultant’s* Main Responsibilities

In clause 20.1 after “Scope” insert, “, the contract and the quality plan”.

In clause 20.2 delete “skill and care... similar to the *service*” and replace with, “Standard of Care”.

In clause 20.3 delete “carry out the *service* ... similar to the *service*” and insert “comply with this clause 20”.

In clause 20.5 at the end of the clause insert:

“The *Consultant* agrees that its first forecast of the total Defined Cost and *expenses* identified in the Contract Data is based on the relevant part of its forecast submitted by the *Consultant* with its tender submission.”

Insert new clause 20.6:

“20.6 The *Consultant* uses the Standard of Care to prepare a resource schedule for the whole of the *service* in consultation with the *Service Manager* and submits it to the *Service Manager*. Resource schedules are prepared at the intervals stated in the Contract Data from the *starting date* until Completion of the whole of the *service*. An explanation of the changes made since the previous resource schedule is submitted with each resource schedule.”

Insert new clause 20.7:

“20.7 The *Consultant* gives an early warning as soon as it becomes aware that the forecast or resource schedule will not accurately reflect the total of the Prices.”

In clause 22.3 delete the final sentence.

In clause 23.2 insert at the start of the clause: “The *Consultant* does not subcontract work or design forming part of the *service* or under the contract without the consent of the *Service Manager*.”

In clause 23.2 after “name” insert “and proposed payment terms”. After “Provide the Service” before the full stop insert “or the proposed payment terms are not accepted by the *Service Manager*”

In clause 23.3 delete “, except any pricing information,”.

In clause 23.3 delete the first bullet point in the first list of bullet points. In the second list of bullet points insert the following new bullet point:

- “they include terms which restrict the duty of care owed to the *Consultant*, restrict the copyright available, restrict the terms of any professional indemnity insurance required and/or include a net contribution clause or cap on liability.”

Delete clause 25.1 and replace with:

“25.1 The *Consultant* may not assign or transfer the benefit of the contract or any rights under it without the prior written consent of the *Client*.”¹

Delete clause 26 and insert, “Number not used.”

3 Time

Delete clause 30.1 and replace with:

“30.1 The *Consultant* does the work so that Completion is on or before the Completion Date.”

Insert new clause 30.4:

“30.4 “The *Service Manager* may extend the Completion Date for a period or periods

¹ Note: The *Client*’s right to assign is dealt with as part of the Defra Conditions.

of up to 2 years and this is not a compensation event.”

4 Quality Management

In clause 40.2 before the full stop at the end of the last sentence insert “in accordance with the contract”

Insert new clause 40.4:

“40.4 The *Consultant* warrants that the representations contained in the quality plan are accurate and may be relied upon by the *Client*.”

Delete clause 41.2 and insert the following:

“41.2 The *Consultant* corrects a Defect whether or not the *Service Manager* has notified it. The *Consultant* corrects Defects within a time which minimises the adverse effect on the *Client* or Others. If the *Consultant* does not correct a notified Defect within the time required by the contract, the *Client’s* rights in respect of that Defect are not affected.”

Insert new clause 41.3:

“41.3 The *Client* may instruct the *Service Manager* to assesses the cost to the *Client* of having the Defect corrected by other people and the *Consultant* pays this cost. If the *Consultant* pays that cost, the Scope is treated as having been changed to accept the Defect, but any other rights of the *Client* in respect of that Defect is not affected.”

In clause 42.1 insert the following before the full stop: “but such proposal is subject to the *Client’s* approval”

In clause 42.2 in the first line after “Service Manager,” insert “with the *Client’s* approval,”. After “quotation is accepted” insert “by the *Client*”.

5 Payment

In clause 50.3 in the third bullet at the end before the comma insert “(including any lump sum amount to be paid to the *Consultant* in an accepted quotation for a proposed instruction)”

In clause 50.5 insert at the end of the clause before the full stop “and such programme has been accepted by the *Service Manager*”.

In clause 53.2 delete “agrees with this assessment” in the third line and insert “notifies in writing that the assessment is agreed”.

In clause 53.3 delete “the final amount due under or in connection with this contract” and replace with “all and any such compensation events, if any, as are due under clause 60”.

In clause 53.4 delete “under or in connection with” and insert “for all compensation events, if any, as are due under clause 60 of”.

6 Compensation Events

In clause 60.1(1) in the first bullet point before “or” insert “and/or arising as a result of a Defect”.

In clause 60.1(7) insert prior to the full stop “unless the change arises from a Defect”.

Delete clause 60.1(9) and replace with: "An event expressly referred to in clause 80.1."

In clause 60.1(14) insert prior to the full stop "other than information which the *Consultant* accepts liability or is otherwise responsible under the contract".

In clause 61.2 in the first bullet point delete "or" and replace "fault" with "Fault". Insert a new second bullet point "is a *Consultant* liability and/or responsibility under the contract; or"

In clause 61.4 in the second bullet point list delete "fault" and replace with "Fault" and insert a new second bullet point "is a *Consultant* liability and/or responsibility under the contract."

In clause 61.4 in the final paragraph after "notify the *Service Manager*" insert "and the *Client*" and after "two weeks after the *Consultant's* notification" insert "to the *Service Manager* and the *Client*".

In clause 62.6 after "notify the *Service Manager*" insert "and the *Client*". After "*Consultant's* notification" insert "to the *Service Manager* and the *Client*".

In clause 63.2 before the full stop insert "including in any accepted quotation for a proposed instruction".

In clause 63.3, delete "the total Defined Cost, the Prices are not reduced unless otherwise stated in these *conditions of contract*" and replace with "the total Defined Cost, the Prices are reduced".

Delete clause 63.4 and insert, "Number not used."

Delete clause 63.10 and insert, "Number not used."

Insert new clause 63.14:

"63.14 Any compensation event under clauses 60.1(7) and 60.1(12) does not give rise to any changes to the Prices and the *Consultant* is only entitled to an extension to the Completion Date and/or to a Key Date."

Insert new clause 63.15:

"63.15 If, when assessing a compensation event (including assessing a quotation for a proposed instruction), the People Rates do not include a rate for a category of person required, the *Service Manager* and *Consultant* may agree a new rate. If they do not agree, the *Service Manager* assesses the rate based on the People Rates. The agreed or assessed rate becomes the People Rate for that category of person."

7 Rights to Material

Delete clause 70 in its entirety and insert "Number not used."

8 Liabilities and Insurance

In clause 81.1, in the second bullet point delete "skill and care...*service*" and replace with "Standard of Care". Add a fourth bullet point "any other liabilities arising from any Fault."

In clause 82.2 at the end insert, "If the *Consultant* did not give an early warning of the event which an experienced consultant could have given, the cost is assessed as if the *Consultant* had given the early warning."

In clause 83.2 at after “Insurance table” table insert “, with a well-established insurance office or underwriter of repute based in the United Kingdom,”

delete the first row of the Insurance Table and replace with:

Liability of the <i>Consultant</i> for claims made against it arising out of the <i>Consultant's</i> failure to use the Standard of Care.	The amount stated in the Contract Data
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9 **Termination**

In clause 90.1 delete “the *Service Manager and*” in line 2 and in line 3 replace “the *Service Manager*” with “the *Client*”.

In clause 90.2 replace “A” at the start with “Save for so far as the Corporate Insolvency and Governance Act 2020 applies, a”.

In clause 90.2 delete the Termination Table and replace with:

Termination Table			
Terminating Party	Reason	Procedure	Amount Due
The <i>Client</i>	A reason other than R1-R22	P1 and P2	A1 and A3
	R1-R15, R18 or R22	P1 and P2	A1, A2 and A4
	R17, R20 or R21	P1 and P2	A1
The <i>Consultant</i>	R1-R10B, R16 or R19	P1 and P2	A1 and A3
	R17 or R20	P1 and P2	A1

In clause 90.3 replace “the *Service Manager* with “the *Client*”.

In clause 90.4 after “the *Consultant*” insert “complies with the Exit plan but”

In clause 91.1 delete the fourth sub-bullet point of the second main bullet point and replace with:

- “had an administration order made against it, or an administrator appointed and/or an administration application made against it or a notice of intention issued to appoint an administrator by the company or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the 1986 Act) (R8)”.

In clause 91.1 at the end of the second main bullet point, after (R10) delete the full stop and insert the following additional two sub-bullet points:

- provided or taken any step in relation to a Scheme of Arrangement under Part 26 or Part 26A of the Companies Act 2006 but excluding a Scheme of Arrangement as a solvent company for the purposes of amalgamation or re construction (R10A), or
- applied to the court for, or obtained, a moratorium under Part A1 of the Insolvency Act 1986 (R10B)."

In clause 91.2 delete "four weeks" and replace with "two weeks".

In clause 93.2 at A3 after "The" insert "Defined Cost reasonably incurred in complying with the Exit Plan and the"

Insert at the end of clause 93.2:

- "A4 A deduction of the costs, damages, expenses and losses suffered or incurred by or on behalf of the *Client* as a result of termination of the contract. Where this clause A4 applies then the second bullet point in A1 does not apply"

Insert new clauses 93.3 and 93.4:

- "93.3 No other payments are made by the *Client* in consequence of the termination.
- 93.4 On termination of the contract, the *Client* is not liable for any loss of profits, bonuses or incentives.

Secondary Options

Delete X1 and replace with:

"Price Adjustment for Inflation

- X1.1 On each anniversary of the Contract Date, the *Client* or *Consultant* may apply to change the People Rates by multiplying the relevant people rates by the percentage increase or decrease in the Framework Index provided always that any increase shall not exceed 2.5%.
- X1.2 Where the Framework Index is no longer published, the *Client* and *Consultant* may agree a fair and reasonable replacement adjustment to the Framework Index or, if appropriate, shall agree a revised formula that in either event will have substantially the same effect as that specified.
- X1.3 The *Service Manager* notifies the *Consultant* of any change to the People Rates."

In clause X2.1 after "change in the law of the country" insert, "that could not be reasonably foreseen by an experienced consultant."

In clause X20.4 after "is paid the amount" insert, ",if any,"

Delete clause X20.5 and replace with:

- "X20.5 If the *Client* intends to change the Incentive Schedule the *Service Manager* notifies the *Consultant*. The *Consultant* may reply with any proposals for inclusion. The *Client* considers any proposals from the *Consultant*. The *Client* may add or remove a Key Performance Indicator and may add or remove or

reduce a payment stated in the Incentive Schedule. The *Service Manager* notifies the *Consultant* of any change to the Incentive Schedule.”

Schedule of Cost Components

In the Schedule of Cost Components before the people component and after the third bullet point insert the following:

“If an amount could be included in more than one cost component, the *Consultant* notifies the *Service Manager* and proposes which component to include the amount in. The *Service Manager*

- agrees with the Consultant’s proposal or
- determines which component to include the amount in.”

In the Schedule of Cost Components delete Section 1 “People” in its entirety and replace with:

“People	1	The following components of the cost of people who are employed or provided by the <i>Consultant</i> (including its suppliers and Subcontractors and their employees and suppliers) and who are providing part of the <i>service</i> .
	11	A cost calculated by multiplying each of the People Rates by the total time appropriate to that rate properly spent and recorded on work in the contract. Time recorded is shown in the <i>Consultant’s</i> time recording system.”

Schedule 4

Defra Conditions

A1 Interpretation

A1.1 For the purpose of these Defra Conditions, any terms defined in the Contract shall have the same meaning unless otherwise expressly provided herein

A1.2 In these Defra Conditions, the following definitions shall apply:

Audit Agents are the *Client's* internal and external auditors:

- (a) the *Client's* statutory or regulatory auditors;
- (b) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
- (c) HM Treasury or the Cabinet Office;
- (d) any party formally appointed by the *Client* to carry out audit or similar review functions; and
- (e) successors or assigns of any of the above.

Background IPR are any Intellectual Property Rights which a party owns or controls or which is created or acquired other than in the course of such party performing its obligations or exercising its rights under the Contract.

BCDR Plan is the plan, which shall detail the processes and arrangements that the *Consultant* follows to:

- (a) ensure continuity of the business processes and operations supported by the *service* following any failure or disruption of any element of the *service*; and
- (b) the recovery of the *service* in the event of a Disaster,

Change of Control is an event where:

- (a) a single person (or group of persons acting in concert) acquires:
 - (i) Control of the *Consultant*; or
 - (ii) 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*;
- (b) there is a material detrimental change in the financial standing and/or the credit rating of the *Consultant*;
- (c) the *Consultant* is subject to a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety;

Claim has the meaning given in clause A25.19.

Confidential Information is all confidential or proprietary information relating to the *service* made available to the *Consultant* or its representatives and/or the existence and terms of the Contract and any other agreement entered into between the *Client* and the *Consultant* or any of its Group, or their representatives, before, on or after the date of the Contract and/or any other agreement to be entered into in relation to the *service*. This includes:

- (a) any discussions and negotiations taking place concerning the *service*, the Contract and/or any other agreement entered into between the *Client* and the *Consultant* or any of its Group, or their representatives in relation to the Contract and/or any other agreement to be entered into in relation to the *service* and any other agreement entered into between the *Client* and the *Consultant* (or any of its Group) in relation to the *service*, and the status of those discussions and negotiations;
- (b) the existence and terms of the Contract and/or any other agreement to be entered into in relation to the *service* and any other agreement entered into between the *Client* and the *Consultant* (or any of its Group) in relation to the *service*;
- (c) all confidential or proprietary information relating to:
 - (i) issues in connection with the Contract and/or any other agreement to be entered into in relation to the *service*;
 - (ii) the plans or intentions of the *Client* and/or its representatives; and
 - (iii) the operations, processes, technical information or designs of the *Client*;
- (d) any information, findings, data or analysis derived from Confidential Information;
- (e) any other information that is identified as being of a confidential or proprietary nature; and
- (f) any information in connection with the *service*, the Contract and/or any other agreement to be entered into in relation to the *service*.

Consultant Related Party is any employee, Subcontractor or supplier of the *Consultant*.

Consultant's Final Staff List is the list of all the *Consultant's* Personnel engaged in or wholly or mainly assigned to the provision of the *service* or any part of the *service* at a Subsequent Transfer Date.

Consultant's Personnel is any employee of the *Consultant* or of any Subcontractor who is either partially or fully engaged in the provision of the *service*.

Consultant's Provisional Staff list is a list prepared and updated by the *Consultant* of all the *Consultant's* Personnel engaged in, or wholly or mainly assigned to, the provision of the *service* or any part of the *service* at the date of preparation of the list.

Contracting Authority is any contracting authority (other than the *Client*) as defined in the Regulations.

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

Control is set out in section 1124 of the Corporation Tax Act 2010.

Controller means the single person (or group of persons acting in concert) that:

- (a) has Control of the *Consultant*; or
- (b) holds or controls the largest direct or indirect interest in the relevant share capital of the *Consultant*;

Crown is the Government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, Government ministers, Government departments, Government offices and Government agencies and “**Crown Body**” is an emanation of the foregoing.

Cyber Essentials is the Government-backed, industry-supported scheme managed by the National Cyber Security Centre to help organisations to protect themselves against online threats or the relevant successor or replacement scheme which is published and/or formally recommended by the National Cyber Security Centre.

Data Protection Legislation is:

- (a) all applicable UK law relating to the processing of personal data and privacy, including but not limited to the UK GDPR, and the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and
- (b) (to the extent that it may be applicable) the EU GDPR. The UK GDPR and EU GDPR are defined in section 3 of the Data Protection Act 2018.

In clause A2, the following expressions **Controller**, **Data Subject**, **Personal Data**, **Personal Data Breach** and **Processor** shall have the same meanings as in Article 4 of the GDPR.

Data Protection Impact Assessment is an assessment by the Controller carried out in accordance with Section 3 of the UK GDPR and sections 64 and 65 of the DPA 2018.

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

Data Subject Request is a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

Disaster is the occurrence of one or more events which, either separately or cumulatively, mean that the *service*, or a material part thereof will be unavailable (or could reasonably be anticipated to be unavailable) for seven (7) days or such other period as the parties may agree.

Documents are any and all activity schedules, algorithms, bills of quantities, brochures, budgets, CAD materials, calculations, data, design details, designs, diagrams, drawings, graphs, minutes, models, notes of meetings, photographs, plans, programmes, reports, schedules, sketches, specifications, surveys, source code and build information for proprietary components and other similar materials whether in hard copy, on computer disk, stored electronically on a computer or in a virtual “cloud”, in any other computer-generated format or on any magnetic or optical storage medium prepared by or on behalf of the *Consultant* or any Subcontractor (whether in existence or to be created) in connection with the *service* and all such other documentation as would reasonably be required by a competent third party capable of the Standard of Care contracted by the *Client* to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the *service*.

DOTAS is the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to:

- (a) tell HM Revenue & Customs of any specified notifiable arrangements or proposals; and
- (b) provide prescribed information on those arrangements or proposals within set time limits as:
 - (i) contained in Part 7 of the Finance Act 2004 and in secondary legislation made under powers contained in Part 7 of the Finance Act 2004; and
 - (ii) extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

DPA 2018 is the Data Protection Act 2018.

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

Employees are those employees of the Existing Providers who, as at the Transfer Date(s), are wholly or mainly assigned to, the provision of the *service*.

Employment Liabilities are any costs, claims, demands or expenses (including reasonable legal and other professional expenses) and all losses, damages, compensation, and other liabilities including those incurred by or attributed to any group company or subcontractor of the party with the benefit of the indemnity.

Employment Regulations are the Transfer of Undertakings (Protection of Employment) Regulations 2006 or by any acts or regulations implemented to enact the Acquired Rights Directive (ARD 77/187/3C), in each case as amended or redacted from time to time.

Existing Providers are [the existing providers engaged by the *Client* for the provision of all or part of the *services* which the *Consultant* will take over and provide];

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

Foreground IPR are any Intellectual Property Rights created by or on behalf of a party in the course of the performance of the obligations or exercise of rights under the Contract.

General Anti-Abuse Rule is:

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

Group is in relation to a company, that company, any Subsidiary or Holding Company from time to time of that company, and any Subsidiary from time to time of a Holding Company of that company. Each company in a Group is a member of the Group.

Halifax Abuse Principle is the principle explained in the CJEU Case C-255/02 Halifax and Others.

Holding Company is a holding company as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in section 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of:

- (a) another person (or its nominee) by way of security or in connection with the taking of security; or
- (b) its nominee.

Indemnified Party has the meaning given in clause A25.19.

Indemnifying Party has the meaning given in clause A25.19.

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

Insolvency Event is:

- (a) where the party is an individual, they have:
 - (i) presented an application for bankruptcy;
 - (ii) had a bankruptcy order made against it;
 - (iii) had a receiver appointed over its assets; or
 - (iv) made an arrangement with its creditors;
- (b) where the party is a company or partnership and has:
 - (i) had a winding-up order made against it;
 - (ii) had a provisional liquidator appointed to it;
 - (iii) passed a resolution for winding-up (other than in order to amalgamate or reconstruct);

- (iv) had an administration order made against it, or an administrator appointed and/or an administration application made against it or a notice of intention issued to appoint an administrator by the company or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the 1986 Act);
- (v) had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of its undertaking or assets;
- (vi) made an arrangement with its creditors;
- (vii) provided or taken any step in relation to a Scheme of Arrangement under Part 26 or Part 26A of the Companies Act 2006 but excluding a Scheme of Arrangement as a solvent company for the purposes of amalgamation or reconstruction; or
- (viii) applied to the court for, or obtained, a moratorium under Part A1 of the Insolvency Act 1986.

Intellectual Property Rights are patents, inventions, trademarks, service marks, copyright, moral rights, rights in a design, know-how, database rights, applications for any of the foregoing, domain names, trade or business names, moral rights, goodwill and other similar rights or obligations, Confidential Information and all or any other intellectual or industrial property rights whether or not registered or registrable and whether subsisting in any country (including but not limited to the United Kingdom) together with all or any goodwill relating or attached thereto.

Joint Controllers takes the meaning given in Article 26 of the UK GDPR.

Law Enforcement Processing is processing under Part 3 of the DPA 2018.

Malicious Software is any software programme or code intended to destroy, interfere with, corrupt or cause undesirable effects on programme files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.

New Consultant is the party chosen by the *Client* to take over all or part of the *service* from the *Consultant*.

Occasion of Tax Non-Compliance is:

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

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

Open Book Data is complete and accurate financial and non-financial information which is sufficient to enable the *Client* to verify that part of the Prices already paid or payable and that part of the Prices forecast to be paid during the remainder of the contract (to the extent known), including details and all assumptions relating to:

- (a) the *Consultant's* costs broken down against each element of the *service* including actual capital expenditure and the unit cost and total actual costs of all hardware and software;
- (b) operating expenditure relating to the provision of the *service* including an analysis showing:
 - (i) the unit costs and quantity of consumables (if any) and bought-in services;
 - (ii) manpower resources broken down into the number and grade/role of all *Consultant* Personnel (free of any contingency) together with the applicable rate;
 - (iii) a list of costs underpinning those rates for each manpower grade;
 - (iv) any expenses; and
 - (v) overheads;
- (c) all interest, expenses and any other third party financing costs incurred in relation to the provision of the *service*;
- (d) the *Consultant's* profit achieved over the Term and on an annual basis;
- (e) confirmation that all methods of cost apportionment and overhead allocation are consistent with and not more onerous than such methods applied generally by the *Consultant*; and
- (f) an explanation of the type and value of risk and contingencies associated with the provision of the *service*, including the amount of money attributed to each risk and/or contingency.

Personnel is any director, person or employee who is duly authorised by the *Consultant* or any member of the Supply Chain to act for the purposes of the provision of the *service* and identified in the Contract or in any subsequent notice to act for the purposes of the provision of the *service*.

Personnel Information is, in relation to all persons detailed on the *Consultant's* Provisional Staff List, such information as the *Client* may reasonably request (subject to the Data Protection Legislation), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement and gender;

- (b) details of whether they are employees, workers, self-employed, contractors or consultants, agency workers or otherwise;
- (c) the identity of their employer or relevant contracting party;
- (d) their relevant notice periods and any other terms relating to termination of employment including contractual redundancy payment schemes;
- (e) the current wages, salaries, profit sharing, incentive, and bonus arrangements applicable to them;
- (f) details of other employment-related benefits including (without limitation) medical insurance, life assurance, pension, or retirement benefit schemes, share option schemes and customer car schemes applicable to them;
- (g) any current disciplinary or grievance proceedings ongoing in respect of such individuals and any such proceedings in the preceding two years;
- (h) any claims, current or which the *Consultant* has reasonable grounds to believe will be brought by such individuals or their representatives or which have been brought in the preceding two years; and
- (i) information on any collective agreements applicable.

Processor Personnel is all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-processor engaged in the performance of its obligations under the Contract.

Prohibited Act is:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the *Client* or other Contracting Body or any other public body 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 the 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 the Contract; and/or
- (c) committing any offence:
 - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
 - (ii) under legislation or common law concerning fraudulent acts;
 - (iii) defrauding, attempting to defraud or conspiring to defraud the *Client*; or
 - (iv) 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.

Protective Measures are appropriate technical and organisational measures designed to ensure compliance with obligations of the parties arising under Data Protection Legislation and the Contract, 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 the measures adopted by it including those outlined in clause A2.18.

Regulations is the Public Contracts Regulations (SI 2015/108) as amended, extended, re-enacted or replaced from time to time and '**Regulation**' means any one of them or (as the case may be) any specified provision of such regulations.

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.

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

Request for Information is a request for information or an apparent request under the FOIA and "**Requests for Information**" shall be construed accordingly.

Secret Matter is information or data issued or made available to Personnel in connection with the Contract by or on behalf of the *Client* which is designated by the *Client* in the Security Aspects Letter (as defined in the Contract) or otherwise in writing as "Top Secret" or "Secret", and shall include any information concerning the content of such matter and anything which contains or may reveal that matter.

Security Aspects Letter means the *Consultant's* signed security aspects letter in the form out in Schedule 8.

Security Policy Framework is the HMG Security Policy Framework relating to the Government Security Classification policy as published by the Cabinet Office.

Service Transfer has the meaning given in clause A25.7.

Service Transfer Date is the date on which the *service* (or any part thereof) transfer from the *Consultant* or any Subcontractor to the *Client* or a New Consultant.

Sub-processor is any third party appointed to process Personal Data on behalf of that Processor related to this Contract.

Subcontract is any subcontract entered into or to be entered into by the *Consultant* or any purchase order placed or to be placed by the *Consultant* in connection with the Contract where the aggregate price and/or any other consideration (in each case excluding VAT and before the application of any deduction, set-off or other remedy) payable by the *Consultant* under that subcontract or purchase order is or is reasonably estimated to be greater than the sum of £25,000 (twenty five thousand pounds sterling) or such other Subcontract package that the *Client* consider to be material and '**Subcontractor**' shall be construed accordingly.

Supply Chain is:

- (a) any third party with whom:

- (i) the *Consultant* enters into a contract or agreement for *service* to be carried out; or
- (ii) a third party under (i) above enters into a contract or agreement for *service* to be carried out; and
- (b) all directors, officers, employees, agents, consultants and contractors of any party referred to in this definition engaged in the performance of the *Consultant's* obligations under the Contract.

Subsidiary is a subsidiary as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in section 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of:

- (a) another person (or its nominee) by way of security or in connection with the taking of security; or
- (b) its nominee.

Transparency Information is the content of the Contract in its entirety, including from time to time agreed changes to the Contract, and details of any payments made by the *Client* to the *Consultant* under the Contract.

Transfer Date is 00.01am on 14th December 2023

Transferring Employees are those employees whose contract of employment will be transferred to the *Client* or a New Consultant pursuant to the Employment Regulations on expiry or termination of the Contract (or any part thereof) on the basis that they are wholly or mainly assigned to the provision of the *service* (or any part thereof) at this time.

TULRCA is Trade Union and Labour Relations (Consolidation) Act 1992.

UK GDPR the retained European Union law version of the General Data Protection Regulation (EU) 2016/679 as modified by Schedule 1 to the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 as in force in the UK from time to time.

Ultimate Holding Company Guarantee means a guarantee of the Consultant's performance in a form acceptable to the Client.

A2 Data Protection

- A2.1 In this clause A2 (*Data Protection*), "**Law**" means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, regulation, order, regulatory policy, mandatory guidance or code of practice, judgement of a relevant court of law, or directives or requirements with which the Processor is bound to comply.
- A2.2 In connection with the Personal Data received under the Contract, each party undertakes to comply with its obligations under Data Protection Legislation and in particular, but without limitation, each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of Personal

Data provided to it by the other party, and against accidental loss, alteration, unauthorised disclosure or destruction of or damage to that Personal Data.

- A2.3 The parties acknowledge that for the purposes of Data Protection Legislation, the *Client* is the Controller and the *Consultant* is the Processor. The only processing that the *Consultant* is authorised to do is listed in clause A2.20 by the *Client* and may not be determined by the *Consultant*. The term “processing” and any associated terms are to be read in accordance with Article 4 of the UK GDPR.
- A2.4 The *Consultant* shall notify the *Client* immediately if it considers that any of the *Client*’s instructions infringe Data Protection Legislation.
- A2.5 The *Consultant* shall provide all reasonable assistance to the *Client* in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the *Client*, include;
- A2.5.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - A2.5.2 an assessment of the necessity and proportionality of the processing operations in relation to the *service*;
 - A2.5.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - A2.5.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- A2.6 The *Consultant* shall, in relation to any Personal Data processed in connection with its obligations under the Contract:
- A2.6.1 process that Personal Data only in accordance with clause A2.20 and this clause A2 (*Data Protection*) unless the *Consultant* is required to do otherwise by Law. If it is so required the *Consultant* shall promptly notify the *Client* before processing the Personal Data unless prohibited by Law;
 - A2.6.2 ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the *Client* may reasonably reject. In the event of the *Client* reasonably rejecting Protective Measures put in place by the *Consultant*, the *Consultant* must propose alternative Protective Measures to the satisfaction of the *Client*. Failure to reject shall not amount to approval by the *Client* of the adequacy of the Protective Measures. Protective Measures must take account of the:
 - (a) nature of the data to be protected;
 - (b) harm that might result from a Data Loss Event;
 - (c) state of technological development; and
 - (d) cost of implementing any measures;
 - A2.6.3 ensure that:

- (a) the *Consultant's* Personnel do not process Personal Data except in accordance with the Contract (and in particular clause A2.20);
- (b) it takes all reasonable steps to ensure the reliability and integrity of any *Consultant's* Personnel who have access to the Personal Data and ensure that they:
 - (i) are aware of and comply with the *Consultant's* duties under this clause;
 - (ii) are subject to appropriate confidentiality undertakings with the *Consultant* or any Sub-processor;
 - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the *Client* or as otherwise permitted by the Contract; and
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data;

A2.6.4 not transfer Personal Data outside of the UK unless the prior written consent of the *Client* has been obtained and the following conditions are fulfilled:

- (i) the destination country has been recognised as adequate by the UK government in accordance with Article 45 UK GDPR or section 74 of the DPA 2018;
- (ii) the *Client* or the *Consultant* has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or section 75 DPA 2018) as determined by the Controller;
- (iii) the Data Subject has enforceable rights and effective legal remedies;
- (iv) the *Consultant* complies with its obligations under Data Protection Legislation by providing an appropriate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the *Client* in meeting its obligations); and
- (v) the *Consultant* complies with any reasonable instructions notified to it in advance by the *Client* with respect to the processing of the Personal Data; and

A2.6.5 at the written direction of the *Client*, delete or return Personal Data (and any copies of it) to the *Client* on expiry or earlier termination of the Contract unless the *Consultant* is required by Law to retain the Personal Data.

A2.7 Subject to clause A2.8, the *Consultant* shall notify the *Client* immediately if it:

A2.7.1 receives a Data Subject Request (or purported Data Subject Request);

- A2.7.2 receives a request to rectify, block or erase any Personal Data;
 - A2.7.3 receives any other request, complaint or communication relating to either party's obligations under Data Protection Legislation;
 - A2.7.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under the Contract;
 - A2.7.5 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
 - A2.7.6 becomes aware of a Data Loss Event.
- A2.8 The *Consultant's* obligation to notify under clause A2.7 shall include the provision of further information to the *Client* in phases, as details become available.
- A2.9 Taking into account the nature of the processing, the *Consultant* shall provide the *Client* with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under clause A2.7 (and insofar as possible within the timescales reasonably required by the *Client*) including but not limited to promptly providing:
- A2.9.1 the *Client* with full details and copies of the complaint, communication or request;
 - A2.9.2 such assistance as is reasonably requested by the *Client* to enable the *Client* to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - A2.9.3 the *Client*, at its request, with any Personal Data it holds in relation to a Data Subject;
 - A2.9.4 assistance as requested by the *Client* following any Data Loss Event; and
 - A2.9.5 assistance as requested by the *Client* with respect to any request from the Information Commissioner's Office, or any consultation by the *Client* with the Information Commissioner's Office.
- A2.10 The *Consultant* shall maintain complete and accurate records and information to demonstrate its compliance with this clause A2.
- A2.11 The *Consultant* shall allow for audits of its Data Processing activity by the *Client* or the *Client's* designated auditor.
- A2.12 Each party shall designate its own Data Protection Officer if required by Data Protection Legislation.
- A2.13 Before allowing any Sub-processor to process any Personal Data related to the Contract, the *Consultant* must:
- A2.13.1 notify the *Client* in writing of the intended Sub-processor and processing;
 - A2.13.2 obtain the written consent of the *Client*;

- A2.13.3 enter into a written agreement with the Sub-processor which gives effect to the terms set out in this clause A2 such that they apply to the Sub-processor; and
- A2.13.4 provide the *Client* with such information regarding the Sub-processor as the *Client* may reasonably require.
- A2.14 The *Consultant* shall remain fully liable for all acts or omissions of any of its Sub-processors.
- A2.15 The *Client* may, at any time on not less than thirty (30) Business Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Contract).
- A2.16 The parties agree to take account of any guidance issued by the Information Commissioner's Office. The *Client* may upon giving the *Consultant* not less than thirty (30) Business Days' notice amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- A2.17 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 claim or proceedings under any Data Protection Legislation resulting from any act or omission of the *Consultant* or any Sub-Processor.
- A2.18 Within thirty (30) Business Days of the date of termination or expiry of the Contract, the *Consultant* shall return to the *Client* any Personal Data that is Processed in connection with the exercise of the parties' rights and obligations under the Contract (unless applicable Law requires storage of the Personal Data) and data belonging to the *Client* that is in the *Consultant's* possession, power or control, either in its then current format or in a format nominated by *Client*, save that it may keep one (1) copy of any such data or information for a period of up to twelve (12) months to comply with its obligations under the Contract, or such period as is necessary for such compliance.
- A2.19 The contact details of the Data Protection Officers are as follows:

Details of the <i>Client's</i> Data Protection Officer:	[REDACTED]
Details of the <i>Consultant's</i> Data Protection Officer:	[REDACTED] [REDACTED] [REDACTED];

- A2.20 Personal Data shall be processed in accordance with this clause A2 as set out below:

Identity of the Controller and Processor	The parties acknowledge that for the purposes of Data Protection Legislation, the <i>Client</i> is the Controller and the <i>Consultant</i> is
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	the Processor in accordance with clause A2.3.
Subject matter of the Processing	The Processing is needed in order to ensure that the Processor can provide the <i>service</i> and to exercise and comply with its rights and obligations under the Contract.
Duration of the processing	For the duration of the Contract.
Nature and purposes of the processing	The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, erasure or destruction of data (whether or not by automated means) of the data. The purpose is: for the exercising and compliance with its rights and obligations under the Contract, including the performance of the <i>service</i> .
Type of Personal Data being Processed	As per <i>service</i>
Categories of Data Subject	Staff, suppliers and agents of the <i>Client</i> . Other contactors and consultants employed by the <i>Client</i> . Other associated parties of the <i>Client</i> relevant to the exercising and compliance with its rights and obligations under the Contract, including the performance of the <i>service</i> .
International transfers and legal gateway	No transfers of Personal Data outside of the United Kingdom unless otherwise specified in the Contract.
Plan for return and destruction of the data once the processing is complete	For the duration of the Contract

A2.21 The *Consultant* shall not process and/or transfer any Personal Data outside of the United Kingdom without the *Client's* prior written consent.

A3 Freedom of Information

A3.1 The *Consultant* acknowledges that unless the *Client* has notified the *Consultant* that the *Client* is exempt from the provisions of the FOIA, the *Client* is subject to the requirements of the FOIA and the EIRs. The *Consultant* co-operates with and assists the *Client* so as to enable the *Client* to comply with its information disclosure obligations.

A3.2 The *Consultant*:

- A3.2.1 transfers to the *Client* all Requests for Information that it receives as soon as practicable and in any event within two (2) Business Days of receiving a Request for Information;
- A3.2.2 provides the *Client* with a copy of all Information relevant to the Request for Information in its possession or power in the form that the *Client* requires within five (5) Business Days (or such other period as the *Client* may specify) of the *Client's* request;
- A3.2.3 provides all necessary assistance as reasonably requested by the *Client* to enable the *Client* 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 EIRs; and
- A3.2.4 procures that its Subcontractors do likewise.
- A3.3 The *Client* 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 EIRs.
- A3.4 The *Consultant* does not respond directly to a Request for Information unless authorised to do so by the *Client*.
- A3.5 The *Consultant* ensures that all Information is retained for disclosure throughout the period for retention and permits the *Client* to inspect such records as and when reasonably requested from time to time.

A4 Confidentiality provisions

- A4.1 Subject to clause A4.4:
 - A4.1.1 the *Consultant* shall, and shall procure that each Subcontractor shall, keep confidential and shall not use for any purpose, other than for the purposes of providing the *service*, all information relating to the *Client*, relevant third parties, the *service*, any contracts, the Contract and any customer information which is required to be protected under the Data Protection Legislation; and
 - A4.1.2 the *Client* shall keep confidential all matters relating to the terms of the Contract and the performance by the *Consultant* of its obligations under the Contract.
- A4.2 The *Consultant* shall not:
 - A4.2.1 publish or contribute to any article or utilise for any public presentation, seminars, lectures or other form of dissemination any information or knowledge resulting from its involvement in the Contract;
 - A4.2.2 make any statement on behalf of the *Client* outside the *Consultant's* responsibility for providing the *service*; or
 - A4.2.3 take any photograph or video of the *service* or publish the same,

without the prior written consent of the *Client*.

- A4.3 The *Consultant* shall inform the *Client* immediately if it comes to the notice of the *Consultant* that any Confidential Information has been improperly disclosed or misused.
- A4.4 The *Consultant* shall, at its own cost, take such steps necessary (including legal proceedings) to prevent the improper disclosure, dissemination or misuse of any Confidential Information. The *Consultant* shall promptly notify the *Client* of the *Consultant's* proposed steps (including legal proceedings) for the approval of the *Client*. The *Consultant* shall, at its own cost, take such additional steps (including legal proceedings) to prevent the improper disclosure, dissemination or misuse of any Confidential Information as the *Client* may reasonably require.

A5 Security Measures

- A5.1 The *Consultant* will at the Contract Date have in place the signed and executed Security Aspects Letter and have delivered it to the *Client*. The *Consultant* will comply with all requirements in the Security Aspects Letter. Failure to comply with this clause A5.1 shall constitute a substantial failure by the *Consultant* to comply with its obligations.
- A5.2 The Official Secrets Acts 1911 to 1989 apply to the Contract.
- A5.3 The *Consultant* shall notify all Personnel engaged on any work in connection with the Contract of their duties under the Official Secrets Acts 1911 to 1989 and that these acts will continue so to apply after the completion or termination of the Contract.
- A5.4 Unless they have the written authorisation of the *Client* to do otherwise, neither the *Consultant* nor any of their Personnel shall, either before or after the completion or termination of the Contract, do or permit to be done anything which they know or ought reasonably to know may result in Secret Matter being disclosed to or acquired by a person in any of the following categories:
- A5.4.1 who does not hold the appropriate authority for access to the protected matter;
 - A5.4.2 in respect of whom the *Client* has notified the *Consultant* in writing that the Secret Matter shall not be disclosed to or acquired by that person; or
 - A5.4.3 who is a Personnel of the *Consultant* and has no need to know the information for the proper performance of the contract.
- A5.5 Unless they have the written authorisation of the *Client* to do otherwise, the *Consultant* and their Personnel shall, both before and after the completion or termination of the Contract, take all reasonable steps to ensure that:
- A5.5.1 no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of the Contract; and
 - A5.5.2 any Secret Matter is at all times strictly safeguarded in accordance with the Security Policy Framework (as amended from time to time) and upon request, is delivered up to the *Client* who shall be entitled to retain it.

A decision of the *Client* on the question of whether the *Consultant* has taken or is taking reasonable steps as required by this clause, shall be final and conclusive.

A5.6 The *Consultant* shall:

A5.6.1 provide to the *Client*:

- (a) upon request, such records giving particulars of those Personnel who have had at any time, access to any Secret Matter that is required to be kept in accordance with clause A5.5.2;
- (b) upon request, such information as the *Client* may from time to time require so as to be satisfied that the *Consultant* and their Personnel are complying with their obligations under this clause, including the measures taken or proposed by the *Consultant* so as to comply with their obligations and to prevent any breach of them; and
- (c) full particulars of any failure by the *Consultant* and their Personnel to comply with any obligations relating to Secret Matter arising under this clause immediately upon such failure becoming apparent;

A5.6.2 ensure that, for the purpose of checking the *Consultant's* compliance with the obligation in clause A5.5.2, a representative of the *Client* shall be entitled, at any time, to enter and inspect any premises used by the *Consultant*, which are in any way connected with the Contract, and inspect any document or thing in any such premises which is being used, or made for the purposes of the Contract. Such representative shall be entitled to all such information as it may reasonably require.

A5.7 If at any time either before or after the completion or termination of the Contract, the *Consultant* or any of their Personnel discovers or suspects that an unauthorised person is seeking or has sought to obtain information directly or indirectly concerning any Secret Matter, the *Consultant* shall forthwith inform the *Client* of the matter with full particulars thereof.

Subcontracts

A5.8 If the *Consultant* proposes to enter into a Subcontract which will involve the disclosure of Secret Matter to the Subcontractor, the *Consultant* shall:

- A5.8.1 submit for approval of the *Client* the name of the proposed Subcontractor, a statement of the work to be carried out and any other details known to the *Consultant* which the *Client* shall reasonably require;
- A5.8.2 incorporate into the Subcontract such secrecy and security obligations as the *Client* shall direct; and
- A5.8.3 inform the *Client* immediately if they become aware of any breach by the Subcontractor of any secrecy or security obligation and, if requested to do so by the *Client*, terminate the Subcontract.

A6 Cyber Essentials Scheme

A6.1 The *Consultant* shall, and shall procure that any Subcontractor (as applicable) shall, obtain and maintain certification to Cyber Essentials (the “**Cyber Essentials**”

Certificate") in relation to the *service*. The Cyber Essentials Certificate shall be provided by the *Consultant* to the *Client* annually on the dates as agreed by the parties.

- A6.2 The *Consultant* shall notify the *Client* of any failure to obtain, or the revocation of, a Cyber Essentials Certificate within two (2) Business Days of confirmation of such failure or revocation. The *Consultant* shall, at its own expense, undertake those actions required in order to obtain a Cyber Essentials Certificate following such failure or revocation. For the avoidance of doubt, any failure to obtain and/or maintain a Cyber Essentials Certificate after the first date on which the *Consultant* was required to provide a Cyber Essentials Certificate in accordance with clause A6.1 (regardless of whether such failure is capable of remedy) shall constitute a substantial failure by the *Consultant* to comply with their obligations.

A7 Transparency

- A7.1 Notwithstanding any other term of the Contract or these Defra Conditions where applicable, the *Consultant* understands that the *Client* may publish the Transparency Information to the general public. The *Consultant* shall assist and co-operate with the *Client* to enable the *Client* to publish the Transparency Information.
- A7.2 Before publishing the Transparency Information to the general public in accordance with clause A7.1 above the *Client* shall redact any information that would be exempt from disclosure if it was the subject of a request for information under the FOIA or the EIRs, including the *Consultant's* Confidential Information.
- A7.3 The *Client* may consult with the *Consultant* before redacting any information from the Transparency Information in accordance with clause A7.2 above. The *Consultant* acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact information is a matter in which the *Client* shall exercise its own discretion, subject always to the provisions of the FOIA or the EIR.
- A7.4 For the avoidance of doubt, nothing in this clause A7 shall affect the *Consultant's* rights at law.

A8 Intellectual Property Rights

- A8.1 The *Client* shall grant the *Consultant* a non-exclusive, revocable, royalty-free licence until the Completion Date to use the *Client's* Intellectual Property Rights where it is necessary for the *Consultant* to provide the *service*. The *Consultant* shall have the right to sub-license a Subcontractor's use of the *Client's* Intellectual Property Rights. At the Completion Date the *Consultant* shall cease use, and shall ensure that *Consultant's* Personnel cease use, of the *Client's* Intellectual Property Rights.

Foreground IPR

- A8.2 The *Consultant* shall assign to the *Client* the Intellectual Property Rights in all Foreground IPR prepared by or on behalf of the *Consultant* under the Contract (which may also be by way of future assignment) and the *Client* shall have the right to make use at its absolute discretion of such Foreground IPR for any purpose whatsoever without payment to the *Consultant*.
- A8.3 Where the *Consultant* is for any reason unable to assign the Intellectual Property Rights in any Foreground IPR under clause A8.2, the *Consultant* shall grant an exclusive, irrevocable and royalty free licence for any such Intellectual Property Rights

to the *Client*, and the *Client* shall have the right to make use at its absolute discretion of such Foreground IPR for any purpose whatsoever without payment to the *Consultant*.

- A8.4 The *Consultant* will take such steps as are necessary to discharge its obligations with regard to Foreground IPR and that any Foreground IPR that vests in the *Consultant* or any of its employees, agents or other associates by virtue of its creation under the Contract shall automatically be assigned to the *Client*, which may include assignment by way of future assignment in accordance with clause A8.2, or pursuant to clause A8.3 is exclusively licensed to the *Client*.
- A8.5 The *Client* grants the *Consultant* a non-exclusive irrevocable royalty free licence to use, modify, develop and sublicense such Foreground IPR on condition that such Foreground IPR is contractually protected and clearly identified as belonging to the *Client*.
- A8.6 If any such Foreground IPR is registrable the *Client* shall have the right to apply for the filing and prosecution of applications for registration in its name in such countries as it considers appropriate at its own expense. The *Consultant* will co-operate in the provision of all necessary assistance in relation to such registrations but will not be obliged to contribute financially.
- A8.7 The *Consultant* shall execute such further documents and do such further acts as the *Client* requires to give full effect to the provisions of this clause A8 and perfect the *Client's* title and/or rights (as applicable) in any such Foreground IPR.

Background IPR

- A8.8 Background IPR owned or controlled by a party shall remain vested in and the property of that party or, where applicable, the third party from whom the right to use the Background IPR has derived.
- A8.9 The *Consultant* hereby grants to the *Client* a non-exclusive, perpetual, irrevocable, royalty-free, transferable licence to use Background IPR:
- A8.9.1 where such Background IPR is necessary for the *Client* to fully exploit its rights under any Foreground IPR in connection with the Contract; and
- A8.9.2 for any purpose relating to the Contract,
- together with the right to grant sub-licences in the same terms as such licence.
- A8.10 The *Consultant* warrants to the *Client* that:
- A8.10.1 it has and will have the legal capacity, right, power and authority to enter into such transfer, assignment or licence of the rights granted in the Contract;
- A8.10.2 it is the legal and beneficial owner of the Background IPR and Foreground IPR created by or on behalf of the *Consultant* and/or has the right to grant the rights granted in the Contract relating to Background IPR and Foreground IPR (and each part thereof);

- A8.10.3 the rights granted by the *Consultant* under the Contract do not infringe (and no part thereof infringes) any Intellectual Property Rights of any third party in any jurisdiction; and
- A8.10.4 it has not entered into any agreement or arrangement (whether or not legally enforceable) for the assignment or licensing or other use of the Intellectual Property Rights granted by it under the Contract (or any part thereof) which would in any way prevent restrict or otherwise inhibit the *Client's* use and exploitation of such Intellectual Property Rights or the Documents (or any part thereof).
- A8.11 The *Consultant* further warrants that no Intellectual Property Rights or Documents provided by the *Consultant* pursuant to the Contract shall infringe any Intellectual Property Rights of any third party and undertakes to indemnify and keep indemnified the *Client* from and against all costs, expenses, liabilities, direct and indirect and consequential losses (including pure economic loss, loss of profits, depletion of goodwill and like loss), damages, claims, proceedings and legal costs (on a full indemnity basis) arising out of or in connection with any such infringement.
- A8.12 The *Consultant* agrees to waive any right to be identified as author of the Documents in accordance with section 77, Copyright Designs and Patents Act 1988 and any right not to have the Documents which have been produced by the *Consultant* subjected to derogatory treatment in accordance with section 80 of that Act.
- A8.13 The *Consultant* shall not be liable to any licensee which the *Client* grants a licence to for any use of the Documents or the Intellectual Property Rights in the Documents for purposes other than those for which the same were originally prepared by or on behalf of the *Consultant*.
- A8.14 In the event that the *Consultant* does not own the copyright or any Intellectual Property Rights in any Documents the *Consultant* uses all reasonable endeavours to procure the right to grant such rights to the *Client* 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 such rights to the *Client* in accordance with the foregoing, the *Consultant* procures that the third party grants a direct licence to the *Client* on industry acceptable terms to use, reproduce, modify, develop and maintain the material. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free and irrevocable. That licence or sub-licence shall also include the right for the *Client* to sub-license, transfer, novate or assign to another Contracting Body, any replacement consultant or to any other third party supplying service to the *Client*.
- A8.15 In the event that any act unauthorised by the *Client* infringes a moral right of the *Consultant* in relation to the Documents the *Consultant* undertakes, if the *Client* so requests and at the *Client's* expense, to institute proceedings for infringement of the moral rights.
- A8.16 The *Consultant* warrants to the *Client* that it has not granted and shall not (unless authorised by the *Client*) grant any rights to any third party to use or otherwise exploit the Documents.
- A8.17 The *Consultant* supplies copies of the Documents to the *Client* and to the *Client's* other contractors and consultants for no additional fee to the extent necessary to enable them to discharge their respective functions in relation to the Contract or related service.

A8.18 After the termination or conclusion of the Contract, the *Consultant* supplies the *Client* with copies and/or computer discs of such of the Documents as the *Client* may from time to time request.

A8.19 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Rights is made in connection with the Contract or in the reasonable opinion of the *Consultant* is likely to be made, the *Consultant* shall notify the *Client* and, at its own expense and subject to the consent of the *Client* (not to be unreasonably withheld or delayed), use its best endeavours to:

A8.19.1 modify any or all of the *service* without reducing the performance or functionality, or substitute alternative services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply with any necessary changes to such modified service or to the substitute services,

and in the event that the *Consultant* is unable to comply with clause A8.19.1 within twenty (20) Business Days, or such other period of time agreed between the parties, of receipt of the *Consultant's* notification the *Client* may terminate the Contract with immediate effect by notice in writing.

A9 Modern Slavery Act

A9.1 In performing its obligations under the Contract, the *Consultant* undertakes and warrants that it at all times:

A9.1.1 shall comply with all applicable anti-slavery and human trafficking laws and regulations from time to time in force including the Modern Slavery Act 2015 and all related guidance issued by the Government;

A9.1.2 shall comply with any anti-slavery policy of the *Client* notified to the *Consultant* by the *Client*;

A9.1.3 has in place adequate procedures to maintain compliance as described in clauses A9.1.1 and A9.1.2; and

A9.1.4 shall impose on any Subcontractors and suppliers obligations equivalent to those set out in this clause A9.

A9.2 The *Consultant* shall implement and maintain throughout the Contract full and appropriate due diligence processes and procedures for its Subcontractors, suppliers and other participants in its supply chains so as to ensure that there is no slavery, human trafficking or otherwise forced or coerced labour in its supply chains.

A9.3 The *Consultant* shall deliver to the *Client* on or around each anniversary of the Contract:

A9.3.1 written confirmation of its continued compliance with all of the requirements of this clause A9; and

A9.3.2 if requested by the *Client*, a report setting out the steps it has taken to ensure that modern slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.

A9.4 The *Consultant* shall notify the *Client* immediately as it becomes aware of:

- A9.4.1 any breach, or potential breach, of any anti-slavery policy of the *Client* from time to time; or
- A9.4.2 any actual or suspected slavery, human trafficking, forced or coerced labour in a supply chain that has a connection with the Contract or any breach, or potential breach, of any of the requirements of this clause A9.
- A9.5 If the *Client* identifies or becomes aware of any potential or actual breach of this clause A9, the *Client* shall raise this with the *Consultant* and the *Consultant* will immediately implement a remedial plan to ensure that there are no further breaches of this clause A9. Notwithstanding this, it is acknowledged and agreed that the *Client* may, at its option and in its absolute discretion, terminate the with immediate effect by giving written notice to the *Consultant*.

A10 Prevention of fraud and bribery

A10.1 The *Consultant* represents and warrants that neither it, nor to the best of its knowledge any of its Personnel, have at any time prior to the Contract Date:

- A10.1.1 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
- A10.1.2 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.

A10.2 Throughout the duration of the Contract the *Consultant* does not:

- A10.2.1 commit a Prohibited Act; and/or
- A10.2.2 do or suffer anything to be done which would cause the *Client* or any of the *Client's* Personnel, consultants, contractors, subcontractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

A10.3 In providing the *service*, the *Consultant*:

- A10.3.1 establishes, maintains and enforces, and requires that its Subcontractor 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;
- A10.3.2 keeps appropriate records of its compliance with the Contract and make such records available to the *Client* on request; and/or
- A10.3.3 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* Personnel or any person acting on the *Consultant's* behalf from committing a Prohibited Act.

A10.4 The *Consultant* immediately notifies the *Client* in writing if it becomes aware of any breach of clauses A10.1, A10.2 and/or A10.3 or has reason to believe that it has or any of the its Personnel or Subcontractors have:

- A10.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- A10.4.2 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
- A10.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Contract or otherwise suspects that any person or party directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.
- A10.5 If the *Consultant* makes a notification to the *Client* pursuant to clause A10.4, 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 these Defra Conditions and the Contract.
- A10.6 Without prejudice to clause A10.3 if the *Consultant* breaches clause A10.3, the *Client* may instruct the *Consultant* to remove a person employed by the *Consultant* who has caused the *Consultant* breach and the *Consultant* shall immediately ensure that person has no further connection with the work included in the Contract.

A11 Tax Compliance and VAT reverse charge

- A11.1 The *Consultant* represents and warrants that at the Contract Date, it has notified the *Client* in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance.
- A11.2 If, at any point prior to the Completion Date, an Occasion of Tax Non-Compliance occurs, the *Consultant* shall:
- A11.2.1 notify the *Client* in writing of such fact within five (5) Business Days of its occurrence; and
- A11.2.2 promptly provide to the *Client*:
- (a) details of the steps which the *Consultant* is taking to address the Occasions of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
- (b) such other information in relation to the Occasion of Tax Non-Compliance as the *Client* may reasonably require.
- A11.3 Pursuant to paragraph (1A) of Article 8 of The Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019 (the “**Order**”), the *Client* hereby confirms to the *Consultant* that the requirements specified in paragraph (1)(b) of Article 8 of the Order are satisfied in respect of any supply of “specified services” by the *Consultant* to the *Client* under the Contract. Accordingly, any such supplies will be “excepted supplies” due to the *Client* being an “end user” for the purposes of the Order. The *Client* confirms that it will not account for the reverse charge.

A12 The Public Contracts Regulations 2015 (also known as PCR 2015)

Award of Contracts

A12.1 In addition to and without prejudice to the operation of Regulation 71 of the Regulations, the *Consultant* shall:

A12.1.1 not design and/or conduct the procurement process or procedure in respect of any Subcontract with the intention of unduly favouring or disadvantaging one or more economic operators; and

A12.1.2 provide reports to the *Client*, if so requested, on the number, type and value of Subcontract opportunities advertised and awarded in its supply chain during the Contract.

A12.2 The *Consultant's* obligations provided in clauses A12.1.1 to A12.1.2 (inclusive) shall not apply where any of the following applies in relation to a Subcontract:

A12.2.1 if that Subcontract shall have been notified by the *Consultant* to the *Client* as part of the *Consultant's* tender submission; or

A12.2.2 if the *Client* agrees in writing that clauses A12.1.1 to A12.1.2 (inclusive) shall not apply in connection with that Subcontract.

A12.3 The *Consultant* shall not advertise or publicise in any manner the subject matter and/or any provision or provisions of any Subcontract and/or the Contract where the *Client* notifies the *Consultant* in writing directing the *Consultant* not to do so.

Termination under Regulation 73

A12.4 The occurrence of the following event is deemed to be a substantial failure of the *Consultant* to comply with its obligations:

A12.4.1 one or more of the mandatory or discretionary grounds for exclusion referred to in Regulation 57 of the Regulations applied to the *Consultant* at the date of the Contract.

A12.5 The *Client* may terminate the *Consultant's* obligations under the Contract if it has been subject to substantial modification which would have required a new procurement procedure pursuant to Regulation 73 of the Regulations.

A12.6 If such a 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 its obligations.

A13 Equality

A13.1 The *Consultant* shall not unlawfully discriminate either directly or indirectly on the grounds of age, disability, gender (including re-assignment), sex or sexual orientation, marital status (including civil partnerships), pregnancy and maternity, race, or religion or belief.

A13.2 Without prejudice to the generality of the obligation in clause A13.1 above, the *Consultant* shall not unlawfully discriminate within the meaning and scope of the

Equality Act 2010 (or any statutory modification or re-enactment thereof) or other relevant or equivalent legislation in the country where the Contract is being performed.

A13.3 The *Consultant* agrees to take reasonable efforts to secure the observance of the provisions of this clause by any of its employees, agents or other persons acting under its direction or control who are engaged in the performance of the Contract.

A13.4 The *Consultant* agrees to take reasonable efforts to reflect this clause in any Subcontract that it enters into to satisfy the requirements of the Contract and to require its Subcontractors to reflect this clause in their subcontracts that they enter into to satisfy the requirements of the Contract.

A14 Fair payment

A14.1 The *Consultant* assesses the amount due to a Subcontractor without taking into account the amount assessed under the Contract.

A14.2 The *Consultant* includes in the contract with each Subcontractor:

A14.2.1 a period for payment of the amount due to the Subcontractor not greater than twenty-one (21) Business Days after the date on which payment becomes due under the contract. The amount due includes, but is not limited to, payment for work which the Subcontractor has completed from the previous assessment date up to the current assessment date in the contract;

A14.2.2 a provision requiring the Subcontractor to include in each subcontract the same requirement, except that the period for payment is to be not greater than twenty-one (21) Business Days after the date on which payment becomes due under the contract; and

A14.2.3 a provision requiring the Subcontractor to assess the amount due to a subcontractor without taking into account the amount paid by the *Consultant*.

A14.3 The *Consultant* notifies the *Client* of any non-compliance with the timescales for payment. The *Consultant* includes this provision in each Subcontract and requires Subcontractors to include the same provision in each subcontract.

A14.4 A failure to comply with this clause A14 is treated as a substantial failure by the *Consultant* to comply with their obligations.

A14.5 If the *Consultant* wishes to issue to the Subcontractor and rely on any pay less notice issued in relation to any payment, this must be genuine, issued in good faith and it must accurately reflect any sums paid by the *Client*.

A15 Double Counting

A15.1 There shall be no double counting in or under the Contract.

A15.2 Where there is double counting, the *Consultant* shall pay or allow to the *Client* the relevant amount as a debt on demand.

A16 Change of Control

- A16.1 A Change of Control does not happen without the prior agreement of the *Client*, and if a Change of Control occurs without the *Client*'s prior agreement, then the *Client* may treat the Change of Control as a substantial failure by the *Consultant* to comply with its obligations.
- A16.2 The *Consultant* notifies the *Client* immediately if a Change of Control has occurred or is expected to occur.
- A16.3 If the Change of Control will not allow the *Consultant* to perform its obligations under the Contract, the *Client* may treat the Change of Control as a substantial failure by the *Consultant* to comply with its obligations.
- A16.4 The *Consultant* notifies the *Client* immediately of any material change in the:
- A16.4.1 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
 - A16.4.2 composition of the *Consultant*. Without limitation a change is material if it directly or indirectly affects the performance of the Contract by the *Consultant*.
- A16.5 The *Consultant* notifies the *Client* immediately of any change or proposed change in the name or status of the *Consultant*.
- A16.6 If the *Consultant* does not provide a notification required by clause A16.4 or A16.5, the *Client* may treat that failure as a substantial failure by the *Consultant* to comply with its obligations.
- A16.7 Where the *Client* consents to a change or proposed change notified pursuant to this clause A16, such consent may be conditional on, without limitation, the provision of an Ultimate Holding Company Guarantee.
- A16.8 Where the *Client* requests an Ultimate Holding Company Guarantee pursuant to clause A16:
- A16.8.1 the *Consultant* procures the provision of such Ultimate Holding Company Guarantee no later than 2 weeks immediately following the date on which the relevant change comes into effect (or such later date as is agreed with the *Client* in writing);
 - A16.8.2 the *Client* may treat a failure of the *Consultant* to provide such Ultimate Holding Company Guarantee in accordance with clause A16.8.1 as a substantial failure of the *Consultant* to comply with its obligations; and
 - A16.8.3 the counterparties to the Ultimate Holding Company Guarantee shall be required to execute and deliver to the *Client* a signed security aspects letter in a form as the *Client* may request.

A17 Conflicts of Interest

A17.1 The *Consultant* shall take appropriate steps to ensure that neither the *Consultant* nor any Consultant Related Party is placed in a position where, in the reasonable opinion of the *Client*:

A17.1.1 there is or may be an actual conflict or potential conflict, between the pecuniary or personal interests of the *Consultant* and the duties owed to the *Client* under the provisions of the Contract and/or these Defra Conditions; or

A17.1.2 the behaviour of the *Consultant* or the Consultant Related Party is not in the *Client's* best interest or might adversely affect the *Client's* reputation.

A17.2 The *Consultant* shall, as soon as reasonably practicable, disclose to the *Client* full particulars of any behaviour which might give rise to an actual or potential conflict.

A17.3 In exercising its rights or remedies under this clause A17, the *Client* shall:

A17.3.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the nature of the interests that is or may be an actual conflict or potential conflict;

A17.3.2 give all due consideration to and, where appropriate, require the *Consultant* to:

(i) procure the termination of the interest or activity that is or may be an actual conflict or potential conflict (including terminating any relevant Subcontractor or procuring the dismissal of any relevant Personnel); and/or

(ii) put in place appropriate and reasonable procedures (including ethical walls) for the purposes of managing the interest or activity that is or may be an actual conflict or potential conflict.

A18 Records and Audit Access

A18.1 The *Consultant* keeps Documents and information, including all Open Book Data, obtained or prepared by the *Consultant* or any Subcontractor in connection with this Contract.

A18.2 The *Consultant* permits the *Client* and any Audit Agent to examine Documents held or controlled by the *Consultant* or any Subcontractor.

A18.3 The *Consultant* provides such oral or written explanations as the *Client* and any Audit Agent considers necessary.

A18.4 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, and any Audit Agent may examine Documents held or controlled by the *Consultant* or any Subcontractor and may require the *Consultant* to provide such oral or written explanations as they consider necessary. The *Consultant* promptly complies with any such requirements at their 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 the Contract.

A19 Retention and supply of records and data

A19.1 The *Consultant* shall maintain all records specified in and connected with the Contract (expressly or otherwise) and make them available to the *Client* when requested on reasonable notice.

A19.2 The *Consultant* shall also permit access to relevant records that relate to the contractual obligations to provide the *service* under the Contract, held by or controlled by them and reasonably required by the Comptroller and Auditor General, their staff and any appointed representative of the National Audit Office, and provide such explanations and information as reasonably necessary for the following purposes to enable the National Audit Office to carry out:

A19.2.1 the *Client's* statutory audits and to examine and/or certify the *Client's* annual and interim report and accounts; and

A19.2.2 an examination pursuant to Part II of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Client* has used its resources.

A19.3 With regard to the records made available to the *Client* under clause A19.1 of this clause, and subject to the provisions of clause A3 (Freedom of Information), the *Consultant* shall permit records to be examined and if necessary copied, by the *Client*, as the *Client* may require.

A19.4 Unless the Contract specifies otherwise the records referred to in this clause shall be retained for a period of at least 6 years from the:

A19.4.1 end of the Contract;

A19.4.2 termination of the Contract; or

A19.4.3 final payment,

whichever occurs latest.

A19.5 The *Consultant* agrees to respond within five (5) Business Days to written requests from the *Client* for copies of all documents related to the delivery of the *service* under the Contract submitted to the *Client*, together with suitable identifying documentation for validation against the prices in the People Rates and Prices.

A20 Waiver

A20.1 The obligations and liabilities of the *Consultant* under the Contract shall not be excluded, limited, modified, qualified, reduced, released, diminished or in any other way affected by:

A20.1.1 any acknowledgment, admission, advice, approval, comment, confirmation, consent, direction, enquiry, guideline, indication of satisfaction, inspection, instruction or anything similar, given or made by or on behalf of the *Client*, *Service Manager* or any of their agents, or failure to give or make any of these; or

A20.1.2 the *Client* or *Service Manager* including the value of any work, materials or goods in any certificate or statement or any interim or final payment or certifying Completion, (where any non-compliance of materials or goods or workmanship with the requirements of the Contract becomes apparent after the date of such certificate, statement or notice).

A20.2 Any forbearance, relaxation, indulgence or delay (“**Indulgence**”) of a party in exercising any right shall not be construed as a waiver of the right and shall not affect the ability of that party subsequently to exercise that right or to pursue any remedy, nor shall any Indulgence constitute a waiver of any other right, whether against that Party or any other person.

A21 Severability

A21.1 If any provision of the Contract is held to be invalid, illegal or unenforceable to any extent then:

A21.1.1 such provision shall (to the extent it is invalid, illegal or unenforceable) be given no effect and shall be deemed not to be included in of the Contract, but without invalidating any of the remaining provisions of the same; and

A21.1.2 the parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid, illegal or unenforceable provision.

A22 Assignment

A22.1 Subject to clause A22.2, the *Client* may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

- (a) any Contracting Authority;
- (a) any other body established or authorised by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the *Client*; or
- (b) any private sector body which substantially performs the functions of the *Client*,
- (c) any private sector body connected with the SCAH Programme including but not limited to any future building contractor,

provided that any such assignment, novation or other disposal shall not increase the burden of the *Consultant's* obligations under the Contract.

A22.2 Any change in the legal status of the *Client* such that it ceases to be a Contracting Authority shall not, subject to clause A22.3, affect the validity of the Contract and the Contract shall bind and inure to the benefit of any successor body to the *Client*.

A22.3 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause A22.1 to a body which is not a Contracting Authority or if there is a change in the legal status of the *Client* such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the “**Transferee**”):

- (a) the rights of termination as a result of an Insolvency Event which the *Consultant* has in respect of *Client* shall be available to the *Consultant* in respect of the Transferee; and
- (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract, or any part thereof, with the prior consent in writing of the *Consultant*.

A23 Continuous Improvement

- A23.1 The *Consultant* shall, throughout the Contract, adopt a policy of continuous improvement in relation to the *service* pursuant to which it will regularly review with the *Client* the *service* and the manner in which it is providing the services with a view to reducing the *Client's* costs (including the People Rates) and/or improving the quality and efficiency of the *service*. The *Consultant* and the *Client* will provide to each other any information which may be relevant to assisting in fulfilling these objectives.
- A23.2 Without limiting paragraph A23.1 and if the *Client* so requires at any point before the Completion Date, the *Consultant* shall produce a Continuous Improvement Plan.
- A23.3 The Continuous Improvement Plan shall be in the format agreed between the Parties and shall contain, as a minimum, proposals in respect of the following:
- A23.3.1 identifying the emergence of relevant new and evolving technologies;
 - A23.3.2 changes in business processes of the *Consultant* or the *Client* and ways of working that would provide cost savings and/or enhanced benefits to the *Client* (such as methods of interaction, supply chain efficiencies, reduction in energy consumption and methods of sale);
 - A23.3.3 new or potential improvements to the provision of the *service* and/or *service* including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and *Client* support services in relation to the *service*; and
 - A23.3.4 measuring and reducing the sustainability impacts of the *Consultant's* operations and supply-chains pertaining to the *service* and identifying opportunities to assist the *Client* in meeting their sustainability objectives.
- A23.4 As and when required, but at least once every three months, the *Consultant* shall review the Continuous Improvement Plan and submit any updates or changes to the *Client* for the *Client's* approval.
- A23.5 Within two weeks of the *Consultant* submitting a Continuous Improvement Plan for acceptance, the *Client* notifies the *Consultant* of the acceptance of the Continuous Improvement Plan or the reasons for not accepting.
- A23.6 If a proposed Continuous Improvement Plan submitted by the *Consultant* is rejected then the *Consultant* shall, within one week of receipt of notice under clause A23.5, submit a revised Continuous Improvement Plan reflecting the changes required.
- A23.7 If it is rejected then the *Consultant* shall, within ten (10) Business Days of receipt of notice of rejection, submit a revised Continuous Improvement Plan reflecting the changes required.

- A23.8 The *Consultant* shall provide sufficient information with each suggested improvement to enable a decision on whether to implement it. The *Consultant* shall provide any further information as requested.
- A23.9 Once the proposed Continuous Improvement Plan has been approved by the *Client*, this shall become the Continuous Improvement Plan for the purposes of the Contract and the *Consultant* shall effect any resultant changes in its practices or procedures as may be necessary. Any such change is at the *Consultant's* expense.
- A23.10 All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement shall be deemed to be included in the Fee.
- A23.11 Should the *Consultant's* costs in providing the *service* to the *Client* be reduced as a result of any changes implemented, all of the cost savings shall be passed on to the *Client* by way of a consequential and immediate reduction in the Prices, Defined Cost and if applicable the People Rates.

A24 Business Continuity

- A24.1 Within sixty (60) Business Days of the commencement of the Contract, the *Consultant* shall prepare and submit to the *Client* for the *Client's* approval the BCDR Plan.
- A24.2 The BCDR Plan shall be divided into three sections:
- A24.2.1 Section 1 which shall set out general principles applicable to the BCDR Plan;
 - A24.2.2 Section 2 which shall relate to business continuity; and
 - A24.2.3 Section 3 which shall relate to Disaster recovery.
- A24.3 Within two weeks of the *Consultant* submitting a BCDR Plan for acceptance, the *Client* notifies the *Consultant* of the acceptance of the BCDR Plan or the reasons for not accepting it.
- A24.4 If a proposed BCDR Plan submitted by the *Consultant* is rejected then the *Consultant* shall, within one week of receipt of notice under clause A24.3, submit a revised BCDR Plan reflecting the changes required.
- A24.5 If the revised BCDR Plan is rejected then the *Consultant* shall, within ten (10) Business Days of receipt of notice of rejection, submit a revised BCDR Plan reflecting the further changes required.
- A24.6 The *Consultant* shall provide sufficient information with each suggested improvement to enable a decision on whether to implement it. The *Consultant* shall provide any further information as requested.
- A24.7 All costs relating to the compilation or updating of the BCDR Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall be deemed to be included in the Fee.
- A24.8 Should the *Consultant's* costs in providing the *service* to the *Client* be reduced as a result of any changes implemented, all of the cost savings shall be passed on to the

Client by way of a consequential and immediate reduction in the Defined Cost and if applicable the People Rates.

Review and Amendment of the BCDR Plan

A24.9 As and when required, but at least once every 3 months, the *Consultant* shall review the BCDR Plan and submit any updates or changes to the *Client* for the *Client's* approval.

A24.10 Each review of the BCDR Plan assesses its suitability having regard to any change to the *service* or any underlying business processes and operations facilitated by or supported by the *service* which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan, and also has regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review is completed by the *Consultant* within such period as the *Client* reasonably requires.

A24.11 Once the proposed BCDR Plan has been approved by the *Client*, this shall become the BCDR Plan for the purposes of the Contract and the *Consultant* shall effect any resultant changes in its practices or procedures as may be necessary. Any such change is at the *Consultant's* expense.

Testing the BCDR Plan

A24.12 The *Consultant* tests the BCDR Plan regularly and in any event not less than once every year.

A24.13 The *Consultant* undertakes and manages testing of the BCDR Plan in full consultation with the *Client* and complies with the reasonable requirements of the *Client*.

A24.14 Following each test, the *Consultant* takes all measures necessary to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the *Consultant*, at its own cost, by the date reasonably required by the *Client*.

Invocation of the BCDR Plan

A24.15 In the event of a complete loss of *service* or in the event of a Disaster, the *Consultant* immediately invokes the BCDR Plan (and informs the *Client* promptly of such invocation). In all other instances the *Consultant* invokes or tests the BCDR Plan only with the prior consent of the *Client*.

Compensation Events

A24.16 The *Consultant* is not entitled to rely on the compensation event provisions under the Contract, if the *Consultant* would not have been impacted by the compensation event had it complied with this clause A24.

Section 1 of the BCDR Plan – General Principles

A24.17 Section 1 of the BCDR Plan:

A24.17.1 sets out how the business continuity and Disaster recovery elements of the BCDR Plan link to each other;

- A24.17.2 provides details of how the invocation of any element of the BCDR Plan may impact upon the provision of the *service* provided to the *Client* by Others;
- A24.17.3 contains an obligation upon the *Consultant* to liaise with the *Client* and Others with respect to business continuity and Disaster recovery;
- A24.17.4 contains a communication strategy including details of an incident and problem management service;
- A24.17.5 contains a risk analysis, including:
 - (i) failure or disruption scenarios and assessments of likely frequency of occurrence;
 - (ii) identification of risks arising from the interaction of the provision of the *service* provided by Others; and
 - (iii) a business impact analysis of different anticipated failures or disruptions;
- A24.17.6 identifies the procedures for reverting to “normal service”; and
- A24.17.7 sets out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to minimise data loss.

A24.18 The BCDR Plan is designed so as to ensure that:

- A24.18.1 the *service* is provided in accordance with this Contract at all times during and after the invocation of the BCDR Plan;
- A24.18.2 the adverse impact of any Disaster is minimised as far as reasonably possible;
- A24.18.3 it complies with the relevant industry standards from time to time in force; and
- A24.18.4 it details a process for the management of Disaster recovery testing.

A24.19 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the *service* and the business operations supported by the provision of the *service*.

A24.20 The *Consultant* is not entitled to any relief from the Key Performance Indicators or to recover any cost from the *Client* to the extent that a Disaster occurs as a consequence of any breach by the *Consultant* of this paragraph A16.

Section 2 of the BCDR Plan – Business Continuity

A24.21 Section 2 of the BCDR Plan sets out the arrangements that are to be invoked to ensure that the business processes facilitated by the provision of *service* remains supported and to ensure continuity of the business operations supported by the *service* including:

- A24.21.1 the alternative processes, options and responsibilities that may be adopted in the event of a failure in or disruption to the provision of the *service*; and

- A24.21.2 the steps to be taken by the *Consultant* upon resumption of the provision of the *service* in order to address the effect of the failure or disruption.

Section 3 of the BCDR Plan – Disaster Recovery

A24.22 Section 3 of the BCDR Plan (which shall be invoked only upon the occurrence of a Disaster) is designed to ensure that upon the occurrence of a Disaster the *Consultant* ensures continuity of the business operations of the *Client* supported by the *service* following any Disaster with, as far as reasonably possible, minimal adverse impact.

A24.23 The BCDR Plan includes an approach to business continuity and Disaster recovery that addresses the following:

- A24.23.1 loss of access to any property owned or occupied by the *Client*;
- A24.23.2 loss of utilities to any property owned or occupied by the *Client*;
- A24.23.3 loss of a Subcontractor;
- A24.23.4 emergency notification and escalation process;
- A24.23.5 post implementation review process;
- A24.23.6 any applicable Key Performance Indicators;
- A24.23.7 details of how the *Consultant* shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the BCDR Plan is invoked; and
- A24.23.8 testing and management arrangements.

A25 TUPE

Transfer of Employees to the *Consultant* at the Transfer Date(s)

- A25.1 The parties acknowledge that, pursuant to the Employment Regulations, the employment of the Employees will transfer from the Existing Providers to the *Consultant* (or, as appropriate, the relevant Subcontractor) with effect from the Transfer Date subject to the right to object to the transfer under regulation 4(7) of the Employment Regulations.
- A25.2 The *Client* shall use its reasonable endeavours to procure the assistance and co-operation of the Existing Providers to assist the *Consultant* to effect the smooth transfer(s) of the employment of the Employees.
- A25.3 The *Client* shall seek to procure from the Existing Providers such information about the Employees as it is contractually entitled to obtain from the Existing Providers or that the *Consultant* reasonably requests.
- A25.4 The *Consultant* shall indemnify the *Client* (for its benefit and the benefit of any Existing Provider) in full for and against all Employment Liabilities in relation to the following:
- A25.4.1 any failure by the *Consultant* or any Subcontractor to comply with its obligations pursuant to the Employment Regulations, save where this

arises from a failure of an Existing Provider to comply with its or their duties under regulation 13 of the Employment Regulations; or

A25.4.2 anything done or omitted to be done by the *Consultant* or any Subcontractor in respect of the Employees.

Provisions during the term

A25.5 During the term of this Contract, the *Consultant* shall provide to the *Client* any information the *Client* may reasonably require relating to any individual employed, assigned or engaged in providing the *service* under this Contract (subject to the Data Protection Legislation).

A25.6 During the term of this Contract, the *Consultant* shall not and shall procure any Subcontractor will not, without the prior written consent of the *Client* (such consent not to be unreasonably withheld or delayed):

A25.6.1 introduce or increase the sums payable under any contractual scheme or arrangement under which any member of *Consultant* Personnel who is wholly or mainly assigned to the provision of the *service* would be entitled to a payment upon redundancy in excess of the statutory scheme provided under the Employment Rights Act 1996 (ERA);

A25.6.2 make, propose or permit any material changes to the terms and conditions of employment or other arrangements of any of the *Consultant* Personnel;

A25.6.3 introduce, or increase the sums payable under, any contractual bonus or other incentive scheme which a member of the *Consultant's* Personnel is contractually entitled to participate in or receive payments or awards under; or

A25.6.4 introduce into any pension scheme in which any member of the *Consultant* Personnel who is wholly or mainly assigned to the provision of the *service* participates or increase any enhanced rights in respect of early or deferred retirement or any rights which do not relate to benefits for old age, invalidity or survivors.

Exit Provisions

A25.7 If the identity of the provider of the *service* (or any part of the *service*) changes (whether because of termination or expiry of the Contract) this may result in a transfer of the *service* in whole or in part (a "**Service Transfer**").

A25.8 If a Service Transfer is a relevant transfer for the purposes of the Employment Regulations, then the employment of the Transferring Employees will transfer to the *Client* or any New Consultant with effect from the Service Transfer Date subject to the right to object to the transfer under regulation 4(7) of the Employment Regulations.

A25.9 Save where the parties reasonably believe that there will be no relevant transfer for the purposes of the Employment Regulations, the parties shall co-operate in agreeing a list of Transferring Employees prior to the Service Transfer Date and shall co-operate in seeking to ensure the orderly transfer of the Transferring Employees to the *Client* and/or any New Consultant.

A25.10 The *Consultant* will, to the extent it is compliant with the Data Protection Legislation:

- A25.10.1 Within twenty (20) days of the earliest of:
- (i) receipt of a notification from the *Client* of a Service Transfer or intended Service Transfer;
 - (ii) receipt of the giving of notice of early termination of this Contract or any part thereof; or
 - (iii) the date which is six (6) months before the expiry of Contract,

and, in any event, on receipt of a written request of the *Client* at any time, provide the *Consultant's* Provisional Staff List and the Personnel Information to the *Client* or, at the direction of the *Client*, to a New Consultant.

- A25.10.2 At least 28 days before the Service Transfer Date, the *Consultant* shall prepare and provide to the *Client* and/or, at the direction of the *Client*, to the New Consultant, the *Consultant's* Final Staff List. The *Consultant's* Final Staff List shall identify which of the Consultant's Personnel named are Transferring Employees.

- A25.10.3 The *Client* shall be permitted to use and disclose the *Consultant's* Provisional Staff List, the *Consultant's* Final Staff List and the Personnel Information for informing any tenderer or other prospective New Consultant for any services which are substantially the same type of services (or any part thereof) as the *service*, provided that such information is only disclosed by the *Client* after the tenderer or prospective New Consultant has entered into a suitably worded confidentiality agreement with the *Client* warranting to keep the information confidential.

A25.11 From the date of the earliest event referred to in clause A25.10, the *Consultant* agrees that it shall not, and will procure any Subcontractor will not, without the prior written consent of the *Client* assign any person to the provision of the *service* (or the relevant part) which is the subject of a Service Transfer who is not listed in the *Consultant's* Provisional Staff List and shall not without the prior written consent of the *Client* (such consent not to be unreasonably withheld or delayed):

- A25.11.1 make, propose, or permit any changes to the terms and conditions of employment of any employees listed on the *Consultant's* Provisional Staff List;
- A25.11.2 increase the proportion of working time spent on the *service* (or the relevant part) by any of the *Consultant's* Personnel save for fulfilling assignments and projects previously scheduled and agreed with the *Client*;
- A25.11.3 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the *Consultant's* Provisional Staff List; and
- A25.11.4 replace any of the *Consultant's* Personnel listed on the *Consultant's* Provisional Staff List or deploy any other person to provide the *service* (or the relevant part) or increase the number of employees on the *Consultant's* Provisional Staff List; or

- A25.11.5 terminate or give notice to terminate the employment or contracts of any persons on the *Consultant's* Provisional Staff List save where this is by reason of conduct or capability (performance).
- A25.12 From the date of the earliest event referred to in clause A25.10, the *Consultant* will promptly notify the *Client* or, at the direction of the *Client*, the New Consultant of any notice to terminate employment received from any persons listed on the *Consultant's* Provisional Staff List regardless of when such notice takes effect.
- A25.13 In connection with a relevant transfer to which the Employment Regulations apply, the parties agree that the *Consultant* shall, or shall procure that any Subcontractor shall, perform and discharge all its obligations pursuant to the Employment Regulations in respect of all the Transferring Employees and their representatives for its own account up to and including the Service Transfer Date.
- A25.14 The parties shall co-operate to ensure that any requirement to inform and consult employee representatives in relation to any relevant transfer as a consequence of a Service Transfer in accordance with the Employment Regulations will be fulfilled. The *Consultant* agrees that it will consent to, and co-operate with, pre-transfer consultation by any New Consultant under Part IV of TULRCA, provided that the New Consultant acts fairly and reasonably and complies with its collective consultation obligations and provided that the *Client* agrees that any disruption to the provisions of the *service* caused by such pre-transfer consultation would not constitute a breach of this Contract.
- A25.15 The *Consultant* shall indemnify the *Client* (for its benefit and the benefit of any New Consultant) in full for and against all Employment Liabilities in relation to the following:
- A25.15.1 the termination by the *Consultant* or any Subcontractor of the employment of any of the Transferring Employees at any time before the Service Transfer Date;
 - A25.15.2 any emoluments payable to the *Consultant's* Personnel (including without limitation all wages, accrued holiday pay, bonuses, commissions, PAYE, national insurance contributions, pension contributions and other contributions) payable in respect of any period on or before the Subsequent Transfer Date, or if there is no Subsequent Transfer Date, the date with effect from which this Contract is terminated;
 - A25.15.3 anything done or omitted to be done by the *Consultant* or any Subcontractor in respect of the Transferring Employees on or before the Service Transfer Date which is deemed to be done by the *Client* or New Consultant by virtue of the Employment Regulations;
 - A25.15.4 any failure by the *Consultant* or any Subcontractor to comply with its or their obligations under regulations 13 and 14 of the Employment Regulations, or any award of compensation under regulation 15 of the Employment Regulations, save where such failure arises from the failure of the *Client* or any New Consultant to comply with its or their duties under regulation 13 of the Employment Regulations; or
 - A25.15.5 a claim by any person who transfers or alleges that they have transferred to the *Client* or the New Consultant but who is not a Transferring Employee identified on the *Consultant's* Final Staff List.

A25.16 The *Client* shall assume (or shall procure that the New Consultant shall assume) the outstanding obligations of the *Consultant* or any Subcontractor in relation to any Transferring Employees in respect of accrued holiday entitlements and accrued holiday remuneration before the Service Transfer Date.

A25.17 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to this clause A25 to the extent necessary to ensure that any New Consultant shall have the right to enforce the obligations owed to, and indemnities given to, the New Consultant by the *Consultant* or the *Client* to the *Consultant* under clause A25.4 and A25.15 in its own right pursuant to section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

A25.18 Notwithstanding clause A25.17, it is expressly agreed that the parties may by agreement rescind or vary this clause A25 without the consent of any other person who has the right to enforce the terms of this clause A25 or the term in question notwithstanding that such rescission or variation may extinguish or alter that person's entitlement under that right.

Conduct of Claims

A25.19 In the event of any claim being made or threatened against either Party ("**Indemnified Party**") which involves or gives rise to or is likely to involve or give rise to an obligation which the other Party ("**Indemnifying Party**") is required to discharge, reimburse or indemnify the Indemnified Party under this clause A25 (a "**Claim**"), then the Indemnified Party shall procure that its subcontractors, employees, agents and successors in title shall promptly:

- A25.19.1 take such action in connection with the Claim, as the Indemnifying Party shall from time to time reasonably request;
- A25.19.2 provide free of charge all such assistance and information as the Indemnifying Party may reasonably request relating to the Claim to enable the Claim to be pursued;
- A25.19.3 subject to any restriction imposed by Law, provide the Indemnifying Party, its legal and other advisers with access to all documents, records or other information held by it relating to the Claim;
- A25.19.4 provide the Indemnifying Party and/or its professional advisers and experts with access from time to time to such members of staff as may be necessary to assist the Indemnifying Party with the preparation of its cases in relation to the Claim;
- A25.19.5 permit and require such employees as the Indemnifying Party and/or its professional advisers may reasonably request to meet with the Indemnifying Party and/or its legal advisers in normal working hours to prepare witness statements for trial, attend meetings with Counsel or experts and/or to attend any court hearing or trial in connection with the Claim for so long and as frequently as the Indemnifying Party and/or its legal or other professional advisers may reasonably require;
- A25.19.6 provide such other assistance as the Indemnifying Party may reasonably request in order to ensure the due and timely prosecution of the Claim;

A25.19.7 resist in connection with the Claim any request for documents, information, access to relevant premises or to employees of the business by any third party without first informing the Indemnifying Party and obtaining its agreement to any approval of the request; and

A25.19.8 preserve and not waive legal professional privilege or any other privilege attaching to any of the documents or other information relating to the Claim in their possession without first obtaining the Indemnifying Party consent to such waiver, such consent not to be unreasonably withheld.

A25.20 At its own cost the Indemnifying Party shall have the right to control, conduct or settle any such Claim but shall consult fully with the Indemnified Party as to the question of resisting, appealing, compromising or contesting it save that the Indemnified Party will not be required to comply with any instructions that amount to or are likely to amount to unlawful discrimination.