

Crown Commercial Service

**CONTRACT FOR RAIDS WORK PACKAGE 4 - AUTOMATED VEHICLE
COLLISION SUPPORT**

Based on

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

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Date 1 May 2021

FORM OF AGREEMENT

Incorporating the NEC3 Professional Services Contract

Department for Transport

.....

.....

And

TRL

Limited

.....

.....

For the provision of

RAIDS Work Package 4 – Automated Vehicle Collision Support

.....

.....

A. PROFESSIONAL SERVICES CONTRACT ANNEX A - FORM OF AGREEMENT

THIS AGREEMENT is made the 1st day of

May 2021 PARTIES:

1. **Department for Transport** whose registered office is at Great Minster House, 76 Marsham Street, London, SW1P 4DR, the "**Employer**", acting as part of the Crown]; and
2. **TRL Limited** which is a company incorporated in and in accordance with the laws of England and Wales Company No. 03142272 whose registered office address is at Crowthorne House, Nine Mile Ride, Wokingham RG40 3GA (the "**Consultant**").

BACKGROUND

- (A) The Minister for the Cabinet Office (the "**Cabinet Office**") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, without separate legal personality (the "**Authority**"), established a framework for traffic management technology and associated services for the benefit of public sector bodies.
- (B) The *Consultant* was appointed to the framework and executed the framework agreement (with reference number **RM1089**) which is dated 31st October 2016 (the "**Framework Agreement**").
- (C) On the 16th October 2020 [the *Employer*,] acting as part of the Crown, invited the *Consultant* along with other framework suppliers to tender for the *Employer's* traffic management technology and associated services requirements in accordance with the Call Off Procedure (as defined in the Framework Agreement).
- (D) On the 19th November 2020 the *Consultant* submitted a tender response and was subsequently selected by the *Employer* to provide the *services*.
- (E) The *Consultant* has agreed to carry out the *services* in accordance with this agreement and the Framework Agreement.

IT IS AGREED AS FOLLOWS:

1. Definitions and Interpretation

This agreement (the "Call Off Contract") incorporates the conditions set out below of:

- The core clauses of the:
NEC3 Professional Services Contract (April 2013) the clauses for main Option G
dispute resolution Option W1 Secondary options X1, X2, X18 and option Z (being the amendments identified in the Contract Data),
which are supplemented and amended in accordance with such information and supplementary provisions as are provided in the Contract Schedules.
Together the "Conditions"

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

2. Entire Agreement

- 2.1. This Call Off Contract is the entire agreement between the parties in relation to the services and supersedes and extinguishes all prior arrangements, understandings, agreements, statements, representations or warranties (whether written or oral) relating thereto.
- 2.2 Neither party has been given, nor entered into this Call Off Contract in reliance on any arrangements, understandings, agreements, statements, representations or warranties other than those expressly set out in this Call Off Contract.
- 2.3 Nothing in this Clause 2 shall exclude liability in respect of misrepresentations made fraudulently.

3. Documents

- 3.1 The documents forming part of this Call Off Contract are:
1. this form of agreement duly executed by the Parties
 2. the Conditions
 3. the Contract Data
 4. the Scope (Annex E)
 5. the Tender Response – attached as separate document (Annex 1)
 6. the Schedule of Work & Pricing (Annex F)

Delivered on the date of this document. – 1 May 2021

Signed on behalf of the Secretary of State for Transport

Signature:

Name:

REDACTED

Role:

REDACTED

Date:

30/4/21

Executed TRL Limited acting by:

Signature

REDACTED

Name:

REDACTED

Role:

REDACTED

Date:

30/4/2021

B. PROFESSIONAL SERVICES CONTRACT ANNEX B - CONDITIONS OF CONTRACT

NEC3 PROFESSIONAL SERVICES CONTRACT (APRIL 2013) CORE CLAUSES

The terms and conditions of contract applied to this call-off are the core clauses of the NEC Professional Services (PSC) contract, with optional Z clauses as listed.

C. PROFESSIONAL SERVICES CONTRACT ANNEX C - CONTRACT DATA PARTS ONE AND TWO

**Professional Services
Contract Contract Data**

Part one – Data provided by the *Employer*

- 1
General**
- The *conditions of contract* are the core clauses and the clauses for main Option G, dispute resolution Option W1 and secondary Options X1, X2, X18 and Z of the NEC3 Professional Services Contract (April 2013).
 - The *Employer* is Department for Transport
 - The *Adjudicator* is the person chosen by the Parties from the list of *Adjudicators* published by the Chartered Institute of Arbitrators.
 - The *services* are Provision of RAIDS Work Package 4 – Automated Vehicle Support
 - The Scope is in Annex E
 - The *language of this contract* is English.
 - *The law of the contract* is the law of England, subject to the jurisdiction of the Courts of England.
 - The *period for reply* is two weeks.
 - The *period for retention* is 6 years following Completion or earlier termination.
 - The *Adjudicator nominating body* is the Chartered Institute of Arbitrators
 - The *tribunal* is arbitration
 - The following matters will be included in the Risk Register – not applicable
- 2 The Parties' main responsibilities**
- The *Employer* provides access to the following persons, places and things
 - Access to the RAIDS database, on completion or termination of the contract the *Employer* will remove the *Consultants* access rights to the database.
 - The *Consultant* will draft and agree an Exit Strategy with the *Employer* within six (06) months of contract commencement.

- 3 Time**
- The *starting date* is 1st May 2021. The contract will be for 3 years with the option to extend for two periods of twelve months (3+1+1).
 - The *Consultant* submits revised programmes at intervals no longer than one month.

- 4 Quality**
- The quality policy statement and quality plan are not required as part of this call off.
 - The *defects date* is not required as part of this call off.

- 5 Payment**
- The *assessment interval* is monthly
 - The *currency of this contract* is the pound sterling (£).
 - The *interest rate* is, unless the provisions of the Late Payment of Commercial Debts (Interest) Act 1998 otherwise require, 3% per annum above the Bank of England base rate in force from time to time.

- 8 Indemnity, insurance and liability**
- The amounts of insurance and the periods for which the *Consultant* maintains insurance are

| Event | cover | Period |
|---|---|---|
| failure of the <i>Consultant</i> to use the skill and care normally used by professionals providing services similar to the <i>services</i> | £73,110.55 in respect of each claim, the number of claims being unlimited, in any annual period of insurance, except for claims arising out of pollution or contamination, where the minimum amount of indemnity applies in the aggregate in any one annual period of insurance and £1 million in the aggregate in any one annual period of insurance for claims arising out of asbestos. | from the <i>starting date</i> until 6 years following completion of the whole of the <i>services</i> or earlier termination |

| | | |
|--|--|--|
| <p>death of or bodily injury to a person (not an employee of the <i>Consultant</i>) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i></p> | <p>£73,110.55 for each and every occurrence without limit to the number of occurrences in any one annual period of insurance except for claims in respect of pollution, contamination and products liability where the minimum amount of indemnity applies in the aggregate in any one annual period of insurance.</p> | <p>from the <i>starting date</i> until all notified Defects have been corrected or earlier termination</p> |
|--|--|--|

In respect of use of motor vehicles a limit of indemnity as required by statute.

| | | |
|--|---|--|
| <p>death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract</p> | <p>£73,110.55 or as required by statute whichever is the higher in respect of each occurrence, without limit to the number of occurrence in any one annual period of insurance.</p> | <p>from the <i>starting date</i> until all notified Defects have been corrected or earlier termination</p> |
|--|---|--|

- *The Consultant's* total liability to the *Employer* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to £73,110.55.

Optional Statements

If the *tribunal* is arbitration

- The *arbitration procedure* is the Chartered Institution of Arbitrators' Arbitration Rules (2000)]
- The place where arbitration is to be held is to be confirmed when applicable
- The person or organisation who will choose an arbitrator
 - if the Parties cannot agree a choice or
 - if the *arbitration procedure* does not state who selects an arbitrator is the Chartered Institute of Arbitrators

Option G is used:

- The *Consultant* prepares forecasts of the total Time Charge and *expenses* at intervals no longer than four weeks.
- The *exchange rates* are those published in the Financial Times on the *assessment date* when payment in another currency is included in the Price for Services Provided to Date.

Option X1 • The *index* is =Retail Prices Index

Option X2 • *The law of the project* is the law of England and Wales, subject to the jurisdiction of the Courts of England and Wales.

Option X18 • The *Consultant's* liability to the *Employer* for indirect or consequential loss is limited to £73,110.55.

• The *end of liability* date is 6 years after Completion of the whole of the *services*.

Option Z • The *additional conditions of contract* are clauses Z1 to Z650 set out at [], save for:

- **Z9,12,16,22,23,25,26,27,28,31,35,41,45,46,47**

Part two – Data provided by the *Consultant*

1 General – statements given in all contracts

- The *Consultant* is
Name: TRL
Limited
Crowthorne House, Nine Mile Ride, Wokingham, RG40 3GA
- The *key people* are
REDACTED

- The following matters will be included in the Risk Register – See tender response
- The total contract value is £58,488.44 including referenced extension options (i.e. 3+1+1 years)
- The *task schedule* is in the Schedule of Work & Pricing – Annex F

Contract Data relating to Z clauses

If Clause Z33 applies

- the required level of *professional indemnity insurance* is £73,110.55

If clause Z49 applies

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

| party | rating agency | <i>credit rating</i> |
|--------------------|------------------|---|
| <i>TRL Limited</i> | Dun & Bradstreet | Payment Behaviour – 69 Low-Moderate Risk Cash Flow Risk – 87 Low Risk |

D. PROFESSIONAL SERVICES CONTRACT ANNEX D – OPTIONAL Z CLAUSES

Clause Z1 Interpretation and the law

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

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

Clause Z2 Corrupt practices

Z2.1 The *Consultant* does not:

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

Z2.2 A failure to comply with this clause is treated as a substantial failure by the *Consultant* to comply with his obligations.

Clause Z3 Recovery of sums due from *Consultant*

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

Clause Z4 Assignment

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

agreement of the *Employer*.

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

Clause Z5 Discrimination

Z5.1 The *Consultant* does not discriminate directly or indirectly or by way of victimisation or harassment against any person contrary to the Equality Act 2010, any predecessor statute of it or any amendment or re-enactment of it from time to time (the "Discrimination Acts").

Z5.2 In Providing the Services, the *Consultant* co-operates with and assists the *Employer* to satisfy his duty under the Discrimination Acts to eliminate unlawful discrimination and to promote equality of opportunity between persons of different racial groups and between disabled people and other people.

Z5.3 Where any employee or Subconsultant employed by the *Consultant* is required to carry out any activity alongside the *Employer's* employees in any premises, the *Consultant* ensures that each such employee or Subconsultant complies with the *Employer's* employment policies and codes of practice relating to discrimination and equal opportunities.

Z5.4 The *Consultant* notifies the *Employer* in writing as soon as he becomes aware of any investigation or proceedings brought against the *Consultant* under the Discrimination Acts in connection with this contract and

- provides any information requested by the investigating body, court or *tribunal* in the timescale allotted,
- attends (and permits a representative from the *Employer* to attend) any associated meetings,
- promptly allows access to any relevant documents and information and
- cooperates fully and promptly with the investigatory body, court or tribunal.

Z5.5 The *Consultant* indemnifies the *Employer* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Employer* arising out of or in connection with any investigation or proceedings under the Discrimination Acts resulting from any act or omission of the *Consultant*.

Z5.6 The *Consultant* includes in the conditions of contract for each Subconsultant obligations substantially similar to those set out above.

Clause Z6 Conflict of interest

Z6.1 The *Consultant* does not take an action which would cause a conflict of interest to arise in connection with this contract. The *Consultant* notifies the *Employer* if there is any uncertainty about whether a conflict of interest may

exist or arise.

Z6.2 The *Consultant* immediately notifies the *Employer* of any circumstances giving rise to or potentially giving rise to conflicts of interest relating to the *Consultant* and/or the *Employer* (including without limitation its reputation and standing), of which it is aware or anticipates may justify the *Employer* taking action to protect its interests.

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

Z7.1 In clauses Z7, Z49 [Financial Distress] and Z50 [Change of Control]

—

new guarantee] and Z51 [Parent Company Guarantee]

- **Change of Control** is an event where a single person (or group of persons acting in concert)
 - acquires Control of the *Consultant* or
 - acquires a direct or indirect interest in the relevant share capital of the *Consultant* and as a result holds or controls the largest direct or indirect interest in (and in any event more than 25% of) the relevant share capital of the *Consultant*,
- **Consortium Member** is an organisation or person which is a member of a group of economic operators comprising the *Consultant*, whether as a participant in an unincorporated joint venture or a shareholder in a joint venture company,
- **Control** has the meaning set out in section 1124 of the Corporation Tax Act 2010,
- **Controller** is the single person (or group of persons acting in concert) that
 - has Control of the *Consultant* or a Consortium Member or
 - holds or controls the largest direct or indirect interest in the relevant share capital of the *Consultant* or a Consortium Member,
- **Credit Rating Threshold** means the minimum credit rating for the *Consultant*, a Consortium Member or a proposed guarantor, such credit rating being set out at Annex 2 to Schedule 16 of the Framework Agreement,
- **Framework Agreement** means the framework agreement pursuant to which this contract has been entered into
- **Guarantor** is a person who has given a Parent Company Guarantee to the *Employer* and
- **Parent Company Guarantee** is a guarantee of the *Consultant's* performance in the form set out in the Scope.

Z7.2 A Change of Control does not happen without the prior agreement

of the *Employer*, and if a Change of Control occurs without the *Employer's* prior consent, then the *Employer* may treat the Change of Control as a substantial failure by the *Consultant* to comply with his obligations.

Z7.3 The *Consultant* notifies the *Employer* immediately if a Change of Control has occurred or is expected to occur.

Z7.4 If the Change of Control will not allow the *Consultant* to perform its obligations under this contract, the *Employer* may treat the Change of Control as a substantial failure by the *Consultant* to comply with his obligations.

Z7.5 The *Consultant* notifies the *Employer* immediately of any material change in

- the direct or indirect legal or beneficial ownership of any shareholding in the *Consultant*. A change is material if it relates directly or indirectly to a change of 3% or more of the issued share capital of the *Consultant*, or
- the composition of the *Consultant*. A change is material if it
 - directly or indirectly affects the performance of this contract by the *Consultant* or
 - is considered substantial in accordance with Regulation 72(8) of the Public Contract Regulations 2015.

Z7.6 The *Consultant* notifies the *Employer* immediately of any change or proposed change in the name or status of the *Consultant*.

Z7.7 If the *Consultant* does not provide a notification required by clause Z7.5 or Z7.6, the *Employer* may treat that failure as a substantial failure by the *Consultant* to comply with his obligations.

Z7.8 In this clause Z7 a Change of Control in relation to

- material change in the ownership of shares in, or
- change in the name or status of

a Consortium Member is treated as a change relating to the *Consultant*.

Clause Z8 Appointment of *Adjudicator*

Z8.1 The *Adjudicator's* appointment under the NEC3 *Adjudicator's* Contract (April 2013) includes the following additional conditions of contract

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

this Agreement.”

Clause Z9 Project Bank Account – Not Used

Clause Z10 Prevention of fraud and bribery

Z10 Z10.1 In this clause Z10, Prohibited Act means any of the following:

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

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

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

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

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

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

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

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

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

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

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

Clause Z11 *Employer's Codes of Conduct*

Z11.1 The *Consultant* complies (and ensures that any person employed by him or acting on his behalf complies) with the *Employer's* Anti Bribery Code of Conduct and Anti-Fraud Code of Conduct, collectively 'the Codes'. The *Consultant* complies with the Codes until Completion and with

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

Conduct for a period of 6 years after Completion.

Z11.2 A failure to comply with this clause is treated as a substantial failure by the *Consultant* to comply with his obligations.

Clause Z12 *Payment for subcontracted services – Not Used*

Clause Z13 *Fair payment*

Z13.1 The *Consultant* assesses the amount due to a Subconsultant without taking into account the amount assessed under this contract.

Z13.2 The *Consultant* includes in the contract with each Subconsultant

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

Z13.3 The *Consultant* notifies non-compliance with the timescales for payment through the Efficiency and Reform Group Supplier Feedback Service. The *Consultant* includes this provision in each subcontract, and requires Subconsultants to include the same provision in each sub subcontract.

Z13.4 A failure to comply with this condition is treated as a substantial failure by the *Consultant* to comply with his obligations.

Clause Z14 *Confidentiality*

Z14.1 A new clause 70.3 is deleted and replaced by the following:

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

keep) confidential and does not:

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

except that the *Consultant* may disclose information

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

Z14.2 The *Consultant* may only disclose the *Employer's* Confidential Information to its personnel who are directly involved in Providing the Services and who need to know the information, and shall ensure that such personnel are aware of and shall comply with these obligations as to confidentiality.

Z14.3 The *Consultant* may only disclose the *Employer's* Confidential Information to its personnel who need to know the information, and shall ensure that its personnel are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any default, act or omission of any of the *Consultant's* personnel causes or contributes (or could cause or contribute) to the *Consultant* breaching its obligations as to confidentiality under or in connection with this contract, the *Consultant* shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any of the *Consultant's* personnel, the *Consultant* shall provide such evidence to the *Employer* as the *Employer* may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the *Consultant* is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from the *Consultant's* personnel, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with the *Consultant's* personnel in connection with obligations as to confidentiality.

Z14.4 At the written request of the *Employer*, the *Consultant* shall procure

that those members of the *Consultant's* personnel identified in the *Employer's* notice signs a confidentiality undertaking prior to commencing any work in accordance with this contract.

Z14.5 Where the *Employer* supplies the *Consultant* with press cuttings provided to the *Employer* under the terms of the *Employer's* licence with the Newspaper Licensing Agency ("NLA"), the *Consultant* does not reproduce the cuttings or forward them to any third party unless the *Consultant* has first entered into an agreement with NLA authorising it to do so.

Clause Z15 Security Requirements

Z15.1 The *Consultant* complies with, and procures the compliance of its personnel, with:

- the Security Provisions contained in the Scope.

Clause Z16 Official Secrets Act – Not Used

Clause Z17 Data protection

Z17.1 In this Clause Z17, the following terms take the following meanings:

Consultant Personnel: means all directors, officers, employees, agents, consultants and Consultants of the Consultant and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement

Controller takes the meaning given in the Data Protection Legislation.

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

Data Protection Legislation: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

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

Data Protection Officer takes the meaning given in the Data Protection Legislation.

Data Subject takes the meaning given in the Data Protection Legislation.

Data Subject Access Request: 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.

DPA 2018: means the Data Protection Act 2018

GDPR: the General Data Protection Regulation (*Regulation (EU) 2016/679*)

Law: means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Consultant is bound to comply;

LED: Law Enforcement Directive (*Directive (EU) 2016/680*)

Party: a Party to this Agreement ;

Personal Data takes the meaning given in the Data Protection Legislation.

Personal Data Breach takes the meaning given in the Data Protection Legislation.

Processor takes the meaning given in the Data Protection Legislation.

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

Sub-processor: any third party appointed to process Personal Data on behalf of the Consultant under this Contract

Z17.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Employer is the Controller and the Consultant is the Processor. The only processing that the Consultant is authorised to do is listed in this Clause Z17.2 by the Employer and may not be determined by the Consultant.

Z17.2.1 Subject matter of the processing;
Collection of road vehicle collision information to generate anonymous road and vehicle safety data.

Z17.2.2 Duration of the processing;
1st May 2021 to 30th April 2026

Z17.2.3 Nature and purposes of the processing;
The contractor will process data to generate detailed yet anonymous records of real world road vehicle collisions to enable the causes and consequences to be understood by the research community. Personal data is used to retrieve

anonymous questionnaire and injury information. However personal data will not be retained for any longer than is necessary to obtain responses from hospitals and collision participants. The contractor will adhere to the conditions of approval stipulated by the Health Research Authority's Research Ethics Committee and the Confidentiality Advisory Group.

Z17.2.4 Type of Personal Data;

Name, address, date of birth / age

Z17.2.5 Categories of Data

Subject; Road vehicle collision participants

Z17.2.6 Plan for Destruction of Data;

The anonymous information generated will be retained indefinitely in the study database.

Personal data used to obtain the anonymous data from hospitals and collision participants is not retained.

Z17.3 The Consultant shall notify the Employer immediately if it considers that any of the Employer's instructions infringe the Data Protection Legislation.

Z17.4 The Consultant shall provide all reasonable assistance to the Employer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Employer, include:

Z17.4.1 a systematic description of the envisaged processing operations and the purpose of the processing; Z17.4.2 an assessment of the necessity and proportionality of the processing operations;

Z17.4.3 an assessment of the risks to the rights and freedoms of Data Subjects; and

Z17.4.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

Z17.5 The Consultant shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

Z17.5.1 process that Personal Data only in accordance with Clause Z17.2 unless the Consultant is required to do otherwise by Law. If it is so required the Consultant shall promptly notify the Employer before processing the Personal Data unless prohibited by Law; Z17.5.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Employer as appropriate to protect against a Data Loss Event having taken account of the:

1. nature of the data to be protected;

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2. harm that might result from a Data Loss Event;
 3. state of technological development; and
 4. cost of implementing any measures;

Z17.5.3 ensure that :

1. the Consultant Personnel do not process Personal Data except in accordance with this Contract (and in particular Clause Z17.2);
2. it takes all reasonable steps to ensure the reliability and integrity of any Consultant 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 Employer or as otherwise permitted by this Contract; and
 - iv. have undergone adequate training in the use, care, protection and handling of Personal Data; and

Z17.5.4 not transfer Personal Data outside of the European Economic Area unless the prior written consent of the Employer has been obtained and the following conditions are fulfilled:

-
1. the Employer or the Consultant has provided appropriate safeguards in relation to the transfer;
 2. the Data Subject has enforceable rights and effective legal remedies;
 3. the Consultant complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 4. the Consultant complies with any reasonable instructions notified to it in advance by the Employer with respect to the processing of the Personal Data;

Z17.5.5 at the written direction of the Employer, delete or return Personal Data (and any copies of it) to the Employer on termination of the Contract unless the Consultant is required by Law to retain the Personal Data.

Z17.6. Subject to clause Z17.7, the Consultant shall notify the Employer immediately if it:

- Z17.6.1. receives a Data Subject Access Request (or purported Data Subject Access Request);
- Z17.6.2 receives a request to rectify, block or erase any Personal Data;
- Z17.6.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- Z17.6.4 receives any communication from the Information Commissioner or any other regulatory Employer in connection with Personal Data processed under this Contract;
- Z17.6.5 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
- Z17.6.6 becomes aware of a Data Loss Event.

Z17.7 The Consultant's obligation to notify under clause Z17.6 shall include the provision of further information to the Employer in phases, as details become available.

Z17.8 Taking into account the nature of the processing, the Consultant shall provide the Employer with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint,

communication or request made under Clause Z17.6. (and insofar as possible within the timescales reasonably required by the Employer) including by promptly providing:

- Z17.8.1 the Employer with full details and copies of the complaint, communication or request;
- Z17.8.2 such assistance as is reasonably requested by the Employer to enable the Employer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation; Z17.8.3 the Employer, at its request, with any Personal Data it holds in relation to a Data Subject; Z17.8.4 assistance as requested by the Employer following any Data Loss Event;
- Z17.8.5 assistance as requested by the Employer with respect to any request from the Information Commissioner's Office, or any consultation by the Employer with the Information Commissioner's Office.

Z17.9 The Consultant shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Consultant employs fewer than 250 staff, unless:

- Z17.9.1 the Employer determines that the processing is not occasional;
- Z17.9.2 the Employer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- Z17.9.3 the Employer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

Z17.10 The Consultant shall allow for audits of its Data Processing activity by the Employer or the Employer's designated auditor.

Z17.11 The Consultant shall designate a Data Protection Officer if required by the Data Protection Legislation.

Z17.12 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Consultant must:

- Z17.12.1 notify the Employer in writing of the intended Sub-processor and processing;
- Z17.12.2 obtain the written consent of the Employer; Z17.12.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause Z17 such that they apply to the Sub-processor; and

Z17.12.4 provide the Employer with such information regarding the Sub-processor as the Employer may reasonably require.

Z17.13 The Consultant shall remain fully liable for all acts or omissions of any Sub-processor.

Z17.14 The Employer may, at any time on not less than 30 Working 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 this Contract).

Z17.15 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office publishes guidance. The Employer may on not less than 30 Working Days' notice to the Consultant amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Officer.

**Clause
Z18** **Disclosure of information**

Z18.1 A Disclosure Request is a request for information relating to this contract received by the *Employer* pursuant to the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or otherwise.

Z18.2 The *Consultant* acknowledges that the *Employer* may receive Disclosure Requests and that the *Employer* may be obliged (subject to the application of any relevant exemption and, where applicable, the public interest test) to disclose information (including commercially sensitive information) pursuant to a Disclosure Request. Where practicable, the *Employer* consults with the *Consultant* before doing so in accordance with the relevant Code of Practice. The *Consultant* uses his best endeavours to respond to any such consultation promptly and within any deadline set by the *Employer* and acknowledges that it is for the *Employer* to determine whether or not such information should be disclosed.

Z18.3 When requested to do so by the *Employer*, the *Consultant* promptly provides information in his possession relating to this contract and assists and co-operates with the *Employer* to enable the *Employer* to respond to a Disclosure Request within the time limit set out in the relevant legislation.

Z18.4 The *Consultant* promptly passes any Disclosure Request which it receives to the *Employer*. The *Consultant* does not respond directly to a Disclosure Request unless instructed to do so by the *Employer*.

Z18.5 The *Consultant* acknowledges that the *Employer* is obliged to publish the provisions of this contract in accordance with the Cabinet Office Efficiency Reform Group Guidance Note entitled "Transparency – Publication of New Central Government Contracts" dated December 2010 (or any later revision) except to the extent that any information in it is exempt from disclosure pursuant to the Freedom of Information Act 2000. The *Employer* consults

with the *Consultant* before deciding whether information is exempt, but the *Consultant* acknowledges that the *Employer* has the final decision. The *Consultant* co-operates with and assists the *Employer* to publish this contract in accordance with the *Employer's* obligation.

Clause Z19 Records and Audit Access

Z19.1 The *Consultant* keeps documents and information obtained or prepared by the *Consultant* or any Subconsultant in connection with the contract for a period of 6 years after the end date.

Z19.2 The *Consultant* permits the *Employer*, Comptroller, Auditor General and any other auditor appointed by the *Employer* to examine documents held or controlled by the *Consultant* or any Subconsultant.

Z19.3 The *Consultant* provides such oral or written explanations as the *Employer* or Comptroller and Auditor General considers necessary.

Z19.4 The *Consultant* acknowledges that, for the purpose of examining and certifying the *Employer's* accounts or any examination pursuant to Section 6(1) of the National Audit Act 1983, the Comptroller and Auditor General or any other auditor appointed by the *Employer* may examine documents held or controlled by the *Consultant* or any Subconsultant and may require the *Consultant* to provide such oral or written explanations as he considers necessary. The *Consultant* promptly complies with any such requirements at his own cost. This clause does not constitute a requirement or agreement for the purposes of section 6(3)(d) of the National Audit Act 1983 for the examination, certification or inspection of the accounts of the *Consultant* and the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the *Consultant* is not a function exercisable under this contract. The *Consultant* permits the Comptroller and Auditor General to examine documents held or controlled by the *Consultant* or any Subconsultant. The *Consultant* provides such oral or written explanations as the Comptroller and Auditor General considers necessary.

Clause Z20 Reporting: Small and Medium Enterprises

Z20.1 In this clause Z17 SME is

- a Subconsultant or
- a subconsultant to a

Subconsultant and

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

balance sheet greater than 10 million Euros and

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

Z20.2 For each SME employed on the *services*, the *Consultant* reports to the *Employer* each quarter from the *starting date* until Completion and at the *defects date*

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

date. Z20.3 The *Consultant* acknowledges that the *Employer* may

- publish the information supplied under clause Z20.2, along with the *Consultant's* name and this contract name and
- pass the information supplied under this clause Z20 to any Government Department who may then publish it along with the names of the SMEs, the *Consultant's* name and this contract name.

Z20.4 The *Consultant* ensures that the conditions of contract for each Subconsultant who is an SME include

- a term allowing the *Employer* to publish the information supplied under Z20.2 and
- obligations substantially similar to those set out in this clause Z20.

Z20.5 The *Consultant* further ensures that the conditions of contract for each Subconsultant include a requirement that the conditions of contract for any Sub Subconsultant engaged by the Subconsultant who is an SME include obligations substantially similar to those set out in clause Z20.4.

Z20.6 The *Consultant* keeps accounts and records of his Time Charge and expenses and allows the *Employer* to inspect them at any time within working hours.

Clause Z21

Changes to rates and prices

Z21.1 The Parties may at any time agree a reduction to the percentage for business overheads and profits stated in the Schedule of Cost Components.

Z21.2 The reduced percentage apply to any *services* performed after the reduction is agreed.

Z21.3 If the *Consultant* does not agree a reduction requested by the *Employer*, the *Employer* may terminate the *Consultant's* obligation to Provide the Services by notifying the *Consultant*.

Clause Z22 Euro functionality – Not Used

Clause Z23 Payment of the *Consultant's* share – Not Used

Clause Z24 The *Employer's* liability

Z24.1 The *Employer's* total liability to the *Consultant* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to £73,110.55, and applies in contract, tort or delict or otherwise to the extent allowed under the *law of the contract*.

Z24.2 The excluded matters are the amounts payable to the *Consultant* as stated in this contract for

- the total of the Prices if Option A applies,
- the Price for Services Provided to Date and the *Consultant's* share if Option C applies and
- the Price for Services Provided to Date if Option E applies.

Z24.3 The *Employer's* liability to the *Consultant* is limited to that proportion of the *Consultant's* losses for which the *Employer* is responsible under this contract.

Clause Z25 Tax Non-Compliance – Not Used

Clause Z26 Quality Management Points – Not Used

Clause Z27 Transfer of work – not used

Clause Z28 Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”) – Not Used

Clause Z29 Extension of the contract

Z29.1 The *Employer* may notify the *Consultant* that the *Completion Date* is to be three years from the contract start date (30th April 2024) or plus one year (30th April 2025) or plus one year (30th April 2026)

Z29.2 The *Employer* must notify the *Consultant* of a change to the *Completion Date* with a minimum of 3 months notice.

Clause Z30 Changes to *staff rates* and Subconsultants

Z30.1 When the *Consultant* proposes a revision to an existing *staff rate* or a new *staff rate*, the proposal is accompanied by a certificate from the

Consultant's (or if appropriate Consortium Member's) Chief Financial Officer or Director of Finance (or an equivalent officer authorised to bind the *Consultant* and agreed by the *Employer* before the proposal is issued) confirming that the proposal

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

Z30.2 If a Subconsultant wishes to propose revisions to an existing staff rate or a new staff rate and the *Consultant* considers that, in order to comply with any law, the Subconsultant should submit its proposal directly to the *Employer*, the *Consultant* submits a request to that effect to the *Employer* for acceptance. A reason for not accepting the *Consultant's* request is that the law does not require the Subconsultant to submit its proposal directly to the *Employer*. If the *Employer* accepts the *Consultant's* request, the *Consultant* directs the Subconsultant to submit its proposal directly to the *Employer*.

Z30.3 Where, in order to verify an invoice submitted by the *Consultant*, the *Employer* requires a Subconsultant to provide

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

and the *Consultant* considers that, in order to comply with any law, the Subconsultant should submit its records and certificate directly to the *Employer*, the *Consultant* submits a request to that effect to the *Employer* for acceptance. A reason for not accepting the *Consultant's* request is that the law does not require the Subconsultant to submit its records and certificate directly to the *Employer*. If the *Employer* accepts the *Consultant's* request, the *Consultant* directs the Subconsultant to submit its records and certificate directly to the *Employer*.

Z30.4 The *Consultant* includes in the conditions of contract for each Subconsultant

- provisions substantially similar to those set out in clause Z30.1,
- a right for the *Employer* to audit any records and certificates provided by the Subconsultant under this clause Z30,
- an obligation on the Subconsultant to discuss directly with the *Employer* any concerns that the *Employer* may have as to the accuracy of any records and certificates provided by the Subconsultant,

-
- a right for the *Consultant* to recover from the Subconsultant (or to deduct from any amount that would otherwise be due to the Subconsultant) the amount of any overpayment identified by the *Employer* as a result of its audits and discussions with the Subconsultant and
 - an acknowledgment from the Subconsultant that the *Employer* may enforce these provisions directly against the Subconsultant under the Contracts (Rights of Third Parties) Act 1999.

Clause Payment options – Not Used
Z31

Clause Insurance cover
Z32

Z32.1 All insurances required to be effected and maintained under this contract are placed with reputable insurers, to whom the other party has no reasonable objection and upon customary and usual terms prevailing for the time being in the insurance market. The said terms and conditions do not include any term or condition to the effect that any insured must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930, Third Parties (Rights Against Insurers) Act 2010 or the Third Parties (Rights Against Insurers) Act (Northern Ireland) Order 1930 as amended by the Insolvency (Northern Ireland) Order 1989.

Z32.2 Nothing in this clause relieves the *Consultant* from any of its obligations and liabilities under this contract.

Clause Professional indemnity insurance
Z33

Z33.1 If required to obtain *professional indemnity insurance*, the *Consultant* obtains and maintains the *professional indemnity insurance* upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business on the basis and in an amount not less than that stated in the Contract Data, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions do not include any term or condition to the effect that the *Consultant* must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930 or the Third Parties (Rights Against Insurers) Act (Northern Ireland) 1930 as amended by the Insolvency (Northern Ireland) Order 1989.

Z33.2 The *Consultant* does not without the prior written approval of the *Employer* settle or compromise with the insurers any claim which the *Consultant* may have against the insurers and which relates to a claim by the *Employer* against the *Consultant*, nor by any act or omission lose or prejudice

the *Consultant's* right to make or proceed with such a claim against the insurers.

Z33.3 The *Consultant* immediately informs the *Employer* if the *professional indemnity insurance* ceases to be available at rates and on terms that the *Consultant* considers to be commercially reasonable. Any increased or additional premium required by insurers by reason of the *Consultant's* own claims record or other acts, omissions, matters or things particular to the *Consultant* is deemed to be within commercially reasonable rates.

Z33.4 The *Consultant* co-operates fully with any measures reasonably required by the *Employer* including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the *Employer* undertakes in writing to reimburse the *Consultant* in respect of the net cost of such insurance to the *Consultant* above commercially reasonable rates or, if the *Employer* effects such insurance at rates at or above commercially reasonable rates, reimbursing the *Employer* in respect of what the net cost of such insurance to the *Employer* would have been at commercially reasonable rates.

Z33.5 The above obligation in respect of *professional indemnity insurance* continues notwithstanding termination of the *Consultant's* employment under this contract for any reason whatsoever, including (without limitation) breach by the *Employer*.

Clause Z34 Termination and omission of work

Z34.1 If the *Employer* instructs a change to the Scope which involves the omission of part of the services, the *Employer* may engage other people to carry out the part omitted. The instruction is assessed as a compensation event, except that if the instruction is given for insolvency or a default by the *Consultant*, the assessment includes a deduction of the forecast additional cost to the *Employer* of completing the services.

Z34.2 The following is added at the end of the first bullet point in clause 91.1 of the *conditions of contract*:

“unless instructed otherwise by the *Employer*”.

Z34.3 The following are treated as a substantial failure by the *Consultant* to comply with his obligations

- a key resource needed by the *Consultant* to Provide the Services is no longer available and the *Consultant* does not propose an alternative resource acceptable to the *Employer*
- progress and performance will be formally reviewed quarterly, however in instances where there are significant deviations from the agreed delivery plan weekly or monthly reporting may be required.

Clause Z35 Not Used

Clause Z36 Termination – PCRs, Regulation 73

Z36.1 The *Employer* may terminate the *Consultant's* obligation to Provide the Services if one of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applied to the *Consultant* at the Contract Date. This is treated as a termination because of a substantial failure of the *Consultant* to comply with his obligations.

Z36.2 The *Employer* may terminate the *Consultant's* obligation to Provide the Services if

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

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

Clause Z37 Value Added Tax (VAT) Recovery

Z37.1 Where under this contract any amount is calculated by reference to any sum which has been or may be incurred by any person, the amount shall include any VAT in respect of that amount only to the extent that such VAT is not recoverable as input tax by that person (or a member of the same VAT group) whether by set off or repayment.

Clause Z38 Tax Arrangements of Public Appointees

Z38.1 For the purposes of this clause

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

Z38.2 Where any Staff are liable to be taxed in the United Kingdom in respect of consideration received under this contract, the *Consultant* complies, and procures that the Staff comply, with the Income Tax (Earnings

and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration.

Z38.3 Where any Staff are liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, the *Consultant* complies, and procures that the Staff comply, with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration.

Z38.4 The *Employer* may, at any time during the term of this contract, request the *Consultant* to provide information to demonstrate either how any member of Staff is complying with clauses Z38.2 and Z38.3 or why those clauses do not apply to it.

Z38.5 If the *Consultant* fails to provide information in response to a request under clause Z38.4

- within the *period for reply* or
- which adequately demonstrates either how any member of Staff is complying with clauses Z38.2 and Z38.3 or why those clauses do not apply to it

the *Employer* may

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

Z38.6 If the *Employer* receives or identifies information through any means which demonstrates that a member of Staff is not complying with clauses Z38.2 and Z38.3, the *Employer* may treat such non-compliance as a substantial failure by the *Consultant* to comply with his obligations.

Z38.7 The *Consultant* acknowledges that the *Employer* may

- supply any information which it receives under clauses Z38.4 or Z38.6 or
- advise the non-supply of information

to the Commissioners of Her Majesty's Revenue & Customs [or Revenue Scotland]^[1] for the purpose of the collection and management of revenue for which they are responsible.

Clause Z39

Consortia

Z39.1 Where two or more Consortium Members comprise the Consultant, each Consortium Member is jointly and severally liable to the Employer for the performance of the Consultant's obligations under this contract.

Z39.2 If the joint venture arrangement is terminated for any reason, the Employer may

-
- terminate this contract with immediate effect and
 - treat the termination of this contract as a substantial failure by the Consultant to comply with his obligations.

Z39.3 Clause 90.1 of the conditions of contract is amended by inserting after “the other Party” in each of the second, third and fourth places where it appears the words “(or, in the case of the Consultant, any Consortium Member)”.

Clause Z40 Subconsulting

Z40.1 Before:

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

Z40.2 The *Consultant* does not appoint the proposed Subconsultant (or allow the Subconsultant to appoint the proposed subsubconsultant) until the *Employer* has accepted the submission. A reason for not accepting the submission is that it shows that there are grounds for excluding the proposed Subconsultant or subsubconsultant under regulation 57 of the Public Contracts Regulations 2015.

Z40.3 If requested by the *Employer*, the *Consultant* provides further information to support, update or clarify a submission under clause Z40.1.

Z40.4 If, following the acceptance of a submission under clause Z40.2, it is found that one of the grounds for excluding the Subconsultant or subsubconsultant under regulation 57 of the Public Contracts Regulations 2015 applies, the *Employer* may instruct the *Consultant* to

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

Clause Z41 Energy Efficiency Directive – Not Used

Clause Z42 Compliance with statutory requirements

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

- acts of parliament and any instruments, rules, orders, regulations,

notices, directions, bye-laws, permissions and plans for the time being made under or deriving validity from them;

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

Clause Z43 **Negotiation**

Z43.1 Without prejudice to either Party's right to refer a dispute to the *Adjudicator* in accordance with clause W1 or W2 (as appropriate), any dispute or difference between the Parties arising out of or relating to this contract is referred by either Party initially to representatives of the *Employer* and *Consultant* for negotiation and resolution.

Z43.2 If any dispute is not resolved within ten working days after it has been referred to the Parties' representatives (or such longer period as the Parties may agree), it is referred to an authorised senior officer of the *Employer* and an authorised senior officer of the *Consultant* for negotiation and resolution.

Z43.3 If any dispute cannot be resolved within ten working days after it has been referred to the authorised senior officers of the *Employer* and *Consultant* (or such longer period as the Parties may agree) either Party may decline to continue to participate in the negotiation.

Clause Z44 **Mediation**

Z44.1 Without prejudice to either Party's right to refer a dispute to the *Adjudicator* in accordance with clause W1 or W2 (as appropriate), any dispute or difference between the Parties arising out of or relating to this contract and which has not been resolved by negotiation is referred to mediation in accordance with the provisions of this clause.

Z44.2 The procedure and associated provisions for mediation pursuant to this clause are as follows:

- a neutral adviser or mediator ('the Mediator') is chosen by agreement between the *Employer* and the *Consultant* or, if they are unable to agree upon the identity of the Mediator within ten working days after a request by one Party to the other, or if the Mediator agreed upon is unable or unwilling to act, either Party may within ten working days from the date of the proposal to appoint a Mediator or within ten working days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("CEDR") to appoint a

Mediator; and

- the Parties meet with the Mediator within ten working days of his appointment in order to agree the programme for exchange of all relevant information and the procedure under which negotiations will be held. The Parties may at any stage seek guidance from CEDR regarding a suitable procedure.

Z44.3 Unless otherwise agreed by the Parties, all negotiations connected with the dispute and any settlement agreement relating to it are confidential and without prejudice to the rights of the Parties in any future proceedings.

Z44.4 In the event that the Parties reach agreement on the resolution of the dispute, the agreement is reduced to writing and is binding on both Parties once it is signed by a duly authorised senior officer of the *Employer* and a duly authorised senior officer of the *Consultant*.

Z44.5 Failing agreement, the *Employer* and *Consultant* may agree to invite the Mediator to provide a non-binding but informative opinion in writing. No such invitation is made without the written consent of both Parties. If it is agreed that such an invitation is to be made, the opinion is provided on a without prejudice basis and is not used in evidence in any proceedings relating to this contract without the written consent of both Parties.

Z44.6 The *Employer* and the *Consultant* each bears their own costs in relation to any reference made to the Mediator and the fees and all other costs of the Mediator are borne jointly in equal proportions by both Parties unless otherwise directed by the Mediator.

Z44.7 In the event that the *Employer* and the *Consultant* fail to reach agreement within forty working days after the Mediator's appointment, or such longer period as may be agreed, the dispute may be referred to the *tribunal*.

Clause Z45 Collateral Warranty Agreements – Not Used

Clause Z46 Access to MOD sites – Not Applicable

Clause Z47 MoD DEFCON Requirements – Not Applicable

Clause Z48 Intellectual Property Rights

Z48.1 Intellectual Property Rights are any current and future legal and equitable interests in patents, trademarks, design rights, copyright, know-how and other similar rights, whether or not registered or capable of registration.

Z48.2 All Intellectual Property Rights in documents and other materials created by or on behalf of the *Employer* in connection with the contract are the property of the *Employer* or the Crown.

Z48.3 The *Consultant* hereby assigns to the *Employer* all present and future Intellectual Property Rights in all documents and other materials created by or on behalf of the *Consultant* or any Subconsultant in performing its obligations under, or otherwise in connection with, the contract. The *Consultant* obtains from Subconsultants equivalent rights over the documents and other materials prepared by the Subconsultant. This assignment takes effect either on the Contract Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Intellectual Property Rights, as appropriate.

Z48.4 Background IPR means Intellectual Property Rights owned by the *Consultant*, a Subconsultant or a third party and which are not assigned to the *Employer* pursuant to clause Z48.3. In respect of Background IPR, the *Consultant* grants a non-exclusive, world-wide, perpetual, irrevocable, royalty free licence (including the right to sub-licence) to the *Employer* to use the Background IPR for all purposes of the *Employer*. Each licence granted under this clause Z48.4 by the *Consultant* survives the termination or expiry of this contract and cannot be terminated by the *Consultant* or its assignees. The *Consultant* obtains from the Subconsultants or third parties equivalent rights over Background IPR owned by the Subconsultants or third parties.

Z48.5 The *Employer* grants to the *Consultant*, or procures the direct grant to the *Consultant* of, a non-exclusive, non-transferable, revocable licence to use all Intellectual Property Rights and Background IPR owned (or capable of being so licensed or procured without cost) by the *Employer* and reasonably required by the *Consultant* in order to Provide the Service. Any such licence is granted for the duration of this contract solely to enable the *Consultant* to comply with its obligations under this contract.

Clause 49 Financial Distress

Z49.1 In this clause Z49 Credit Rating is the *credit rating* or any revised long term *credit rating* issued by a rating agency accepted by the *Employer* in respect of the *Consultant*, a Consortium Member or any Guarantor.

Z49.2 The *Consultant* notifies the *Employer* within one week if any of the following events occurs in relation to the *Consultant*, a Consortium Member or a Guarantor

- its Credit Rating falls below the relevant *credit rating*,
- a further fall in its Credit Rating below the relevant credit rating,
- it issues a profits warning to a stock exchange or makes any other public announcement about a material deterioration

in its financial position or prospects,

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

Z49.3 If any of the events listed in clause Z49.2 occurs, the *Employer* may require the *Consultant* to give to the *Employer* a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Consultant* and accepted by the *Employer* who (in either case)

- meets the Credit Rating Test and
- has a Credit Rating at least equal to the *credit rating* for the person to whom the event listed in clause Z49.2 has occurred.

Z49.4 The *Employer* may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Consultant* who does not comply with clause Z49.3 if the *Consultant* gives to the *Employer* an assurance that the Controller or the alternative guarantor will so comply within 18 months of the *Employer's* acceptance. If so, the Parties agree a process for reviewing the financial standing of the Controller or the alternative guarantor during that period in order to demonstrate to the *Employer* that it will so comply by the end of that period.

Z49.5 If

- the *Consultant* fails to notify the *Employer* that an event listed in clause Z49.2 has occurred,
- neither the Controller nor any alternative guarantor proposed by the *Consultant* complies with clause Z49.3,
- the *Consultant* does not give to the *Employer* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Employer* within four weeks of a request from the *Employer* to do so or
- the *Consultant* fails to demonstrate to the *Employer* that the Controller or the alternative guarantor accepted by the *Employer* will comply with clause Z49.3 within 18 months of the *Employer's* acceptance

the *Employer* may treat such failure as a substantial failure by the

Consultant to comply with his obligations.

**Clause
50**

Change of Control – new guarantee

- Z50.1 If a Change of Control occurs, the *Consultant* provides to the *Employer*
- certified copies of the audited consolidated accounts of the Controller for the last three financial years,
 - a certified copy of the board minute of the Controller confirming that it will give to the *Employer* a Parent Company Guarantee if so required by the *Employer* and
 - any other information required by the *Employer* in order to determine whether the Controller
 - meets the Credit Rating Test and
 - has a Credit Rating at least equal to the *credit rating* for the original Guarantor (if there is one) or the *Consultant* (if there is not).
- Z50.2 If the Controller does not comply with the tests in clause Z50.1 or (if applicable) does not provide the legal opinion required in clause Z50.6, the *Consultant* may propose an alternative guarantor to the *Employer* for acceptance. The *Consultant* provides to the *Employer* the details set out in clause Z50.1 and (if applicable) the legal opinion required in clause Z50.6 in relation to the proposed alternative guarantor. A reason for not accepting the proposed alternative guarantor is that he does not comply with the tests in clause Z50.1 or (if applicable) does not provide the legal opinion required in clause Z50.6.
- Z50.3 If so required by the *Employer*, the *Consultant* within four weeks gives to the *Employer* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Employer*.
- Z50.4 The *Employer* may accept a Parent Company Guarantee from the Controller or an alternative guarantor proposed by the *Consultant* who does not comply with the tests in clause Z50.1 if the *Consultant* gives to the *Employer* an assurance that the Controller or the alternative guarantor will so comply within 18 months of the *Employer's* acceptance. If so, the Parties agree a process for reviewing the financial standing of the Controller or the alternative guarantor during that period in order to demonstrate

to the *Employer* that it will so comply by the end of that period.

Z50.5 If

- neither the Controller nor any alternative guarantor proposed by the *Consultant* complies with the tests in clause Z50.1 or provides the legal opinion required by clause Z50.6,
- the *Consultant* does not give to the *Employer* a Parent Company Guarantee from the Controller or an alternative guarantor accepted by the *Employer* within four weeks of a request from the *Employer* to do so or
- the *Consultant* fails to demonstrate to the *Employer* that the Controller or the alternative guarantor accepted by the *Employer* will comply with the tests in clause Z50.1 within 18 months of the *Employer's* acceptance

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

Z50.6 If the Controller, or any alternative guarantor proposed by the *Consultant*, is not a company incorporated in and subject to the laws of England and Wales, the *Consultant* provides a legal opinion from a lawyer or law firm which is

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

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

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

Clause 51 Parent Company Guarantee

- Z51.1** If required by the *Employer*, the *Consultant* gives to the *Employer* a Parent Company Guarantee. If the Parent Company Guarantee was not given by the Contract Date, it is given to the *Employer* within four weeks of the Contract Date or the *Employer's* request, whichever is later. Parent Company Guarantees are given by
- for a standalone company – the Controller,
 - for an unincorporated JV (“more than one party”) – the Controller

of each Consortium Member or

- for an incorporated JV – the Controller of each Consortium Member.

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

Z51.2 A failure to comply with this condition is treated as a substantial failure by the *Consultant* to comply with his obligations.

Clause 650 Offshoring of data

Z650.1 In this clause

Risk Assessment is a full risk assessment and security review carried out by the *Employer* in accordance with [HMG Security Policy Framework (SPF) including HMG IA Standard No. 1 - Technical Risk Assessment, October 2009, Issue No: 3.51 and ICT Offshoring (International Sourcing) Guidance dated July 2011] or any later revision or replacement.

Z650.2 The Consultant does not store any of the *Employer's* data that is classified as Official or higher in accordance with "Government Security Classifications" dated April 2014 (or any later revision or replacement)

- offshore or
- in any way that it could be accessed from an offshore location

until *the Project Manager has confirmed to the Consultant that* either

- the *Employer* has gained approval for such storage in accordance with "*Offshoring information assets classified at OFFICIAL*" dated November 2015 (or any later revision or replacement) or
- such approval is not required.

Z650.3 The Consultant ensures that no premises are used in Providing the Works until

- such premises have passed a Risk Assessment or
- the Project Manager confirms to the Consultant that no Risk Assessment is required.

Z650.4 The Consultant complies with a request from the Project Manager

to provide any information required to allow the Employer to

- gain approval for storing data or allowing access to data from an offshore location in accordance with Z650.2 or
- conduct a Risk Assessment for any premises in accordance with Z650.3.

Z650.5 The Consultant ensures that any subcontract (at any stage of remoteness from the Employer) contains provisions to the same effect as this clause.

Z650.6 A failure to comply with this condition is treated as a substantial failure by the Consultant to comply with his obligations.

E. PROFESSIONAL SERVICES CONTRACT ANNEX E – THE SCOPE

1. THE SCOPE

- 1.1 The support and guidance provided to the Police is only for collisions involving an automated vehicle, where such a vehicle is defined as one equipped with SAE Level 2 safety system or greater and one in which the system provides autonomous lateral (steering) and longitudinal (acceleration/braking) control inputs for a specific driving situation.
- 1.2 The Consultant will provide support and guidance but will not direct the investigation of relevant collisions as this is the responsibility of the Police.
- 1.3 The Consultant will be responsible for developing the necessary contacts and data sharing agreements with the Police to enable them to provide email, telephone and potentially on-site support.
- 1.4 The Consultant will be responsible for maintaining ongoing awareness of the support that has been made available by this contract.
- 1.5 The Consultant will keep a record of support provided and details of collisions excluding any personal or sensitive data.
- 1.6 The contract will be for 3 years with annual break points and will include the possibility of two one- year extensions.

2. THE REQUIREMENT – AUTOMATED VEHICLE COLLISION SUPPORT

- 2.1 The Consultant will establish a Memorandum of Understanding with Police Forces, on behalf of the Employer, liaising with appropriate National Police bodies such as National Roads Policing Intelligence Forum (NRPIF) to ensure engagement and support for notifications and subsequent collaboration.
- 2.2 Where necessary the Consultant will update current automated vehicle support guidelines that are currently published on the National Crime Agency intranet enabling Police officers to access the guidance. The contractor may opt to publish the guidelines in other locations with the approval of the Employer's project officer.
- 2.3 The Consultant will setup a notification phone line and email address for use of the police which will be staffed during office hours (9am – 5pm).

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- 2.4 All calls/emails and subsequent activities will be logged, escalating and reporting to the Employer's project officer as necessary.
- 2.5 The log will include the following information as a minimum:
- 2.5.1 Collision severity;
 - 2.5.2 Number of automated vehicles involved;
 - 2.5.3 Number of 'normal' vehicles involved;
 - 2.5.4 Number and severity of casualties in automated vehicles;
 - 2.5.5 Number and severity of casualties in 'normal' vehicles;
 - 2.5.6 Outline of the advice provided to the Police;
 - 2.5.7 Collision date;
 - 2.5.8 Collision time;
 - 2.5.9 Make/Model of vehicles involved;
 - 2.5.10 Police force;
 - 2.5.11 Police reference;
 - 2.5.12 Description of collision including details of automated systems fitted to vehicles.
- 2.6 The Consultant's support team must have significant relevant experience of collision investigation and a detailed understanding of the technology and systems fitted to automated vehicles.
- 2.7 Up to an hour of telephone/email support per enquiry will be pre-authorised, additional time, site visits or vehicle examination will need specific authorisation from the Employer's project officer.

3. KEY MILESTONES AND DELIVERABLES

- 3.1 The Consultant will maintain a log of all enquiries and report immediately to the Employer any collisions of significant interest.
- 3.1.1 The following Contract milestones/deliverables shall apply:

| Milestone/Deliverable | Description | Timeframe or Delivery Date |
|-----------------------|-------------|----------------------------|
|-----------------------|-------------|----------------------------|

| | | |
|---|--|---|
| 1 | Where necessary update currently published automated vehicle support guidelines. | Within 2 weeks of Contract Start Date |
| 2 | Review and where necessary update MoU with National Police bodies. | Within 1 month of Contract Start Date |
| 3 | Ongoing monitoring and reporting of enquiries from Police. | Monthly reporting for financial purposes, quarterly reporting for performance and forecasting throughout the contract duration. |

4. MANAGEMENT INFORMATION/REPORTING

- 4.1 Progress will be formally reviewed quarterly, however in instances where there are significant issues additional reporting may be required.

5. VOLUMES

- 5.1 The Employer does not expect significant numbers of collisions.

6. CONTINUOUS IMPROVEMENT

- 6.1 The Consultant will be expected to continually improve the way in which the required Services are to be delivered throughout the Contract duration.
- 6.2 The Consultant can present new ways of working to the Employer during quarterly Contract review meetings.
- 6.3 Changes to the way in which the Services are to be delivered must be brought to the Employer's attention and agreed prior to any changes being implemented.

7. QUALITY

8. *Every case will be subject to review by the technical management team* – At the Tender Clarification stage a response to our question confirmed that this was included in error and therefore is not part of the scope. Throughout the contract period the Consultant must work with the appointed technical management team to ensure output is technically correct and of acceptable quality. **STAFF AND CUSTOMER SERVICE**

- 8.1 The Consultant shall provide a sufficient level of resource throughout the duration of the Contract in order to consistently deliver a quality service.
- 8.2 The Consultant's staff assigned to the Contract shall have the relevant qualifications and experience
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to deliver the Contract to the required standard.

- 8.3 The Consultant shall ensure that staff understand the Employer's vision and objectives and will provide excellent customer service to the Employer throughout the duration of the Contract.

9. SERVICE LEVELS AND PERFORMANCE

- 9.1 The Employer will measure the quality of the Consultant's delivery using the following KPI/SLA.

| KPI/SL A | Service Area | KPI/SLA description | Target |
|-------------|-------------------|-----------------------------------|---|
| 1 | Telephone support | Availability of telephone support | During office hours (9am – 5pm), with same working day response |
| 2 | Email support | Response time | 1 working day |

10. SECURITY AND CONFIDENTIALITY REQUIREMENTS

- 10.1 The Consultant will ensure that the procedures in place to provide support to the Police adhere to the requirements of the Data Protection Act 2018.

11. PAYMENT AND INVOICING

- 11.1 Invoices will be reviewed and paid monthly.
- 11.2 Payment can only be made following satisfactory delivery of pre-agreed services and deliverables.
- 11.3 Before payment can be considered, each invoice will be supported by a summary breakdown of work completed and the associated charges.
- 11.4 Invoices should be submitted to:

DfT Shared Services

Centre Accounts

Payable Team

5 Sandringham

Park Swansea

Vale Swansea

12. CONTRACT MANAGEMENT

12.1 Attendance at Contract Review meetings shall be at the Consultant's own expense.

13. LOCATION

13.1 The support provided for road vehicle collisions on the roads of Great Britain. The Consultant may carry out work from a location of their choice.

TENDER RESPONSE

REDACTED

F. PROFESSIONAL SERVICES CONTRACT ANNEX F – SCHEDULE OF WORK & PRICING (INCLUDING PRICE LIST FROM ORIGINAL TENDER RESPONSE)

REDACTED

G. PROFESSIONAL SERVICES CONTRACT ANNEX G – STAFF TRANSFER – NOT USED