

Appendix A

‘Z’ Clauses, for use with CON19006 TSC4 Contract Data Part 1

Additional Conditions of Contract

The *additional conditions of contract* stated in the Contract Data are part of this contract.

Z.1 Freedom of Information Act and the Environmental Information Regulations

Z.1.1 The *Contractor* shall provide all assistance to enable the *Client* to comply with any request received under the Freedom of Information Act 2000 and/or the Environmental Information Regulations should either be applicable to the *Client*.

Z.1.2 In no event shall the *Contractor* or its Sub-Contractors respond directly to a Request for Information unless expressly authorised to do so by the *Client*.

Z.2 Data Protection Act

Z.2.1 This shall mean the Data Protection Act 2018 and all other relevant data protection legislation in force from time to time.

Z.2.2 The *Contractor* and the *Client* will comply with the Data Protection Act 2018 and treat all personal data of the other with at least the same regard as their own.

Z.3 Confidentiality

Z.3.1 The *Contractor* and the *Client* acknowledge and agree to keep confidential the other's confidential information with at least the same care and due diligence as each keeps its own confidential information.

Z.3.2 Disclosure of confidential information shall only be to those employees, officers, including professional advisers, agents, and sub-contractors that need to know in order that the obligations under this contract are met.

Z.4 Transparency

Z.4.1 In order to comply with the Government's policy on transparency in the areas of procurement and contracts the Contractor agrees that the Client and the sourcing documents issued by the Client which led to its creation will be published by the Client on a designated web site.

Z.4.2 The entire Contract and all the sourcing documents issued by the Client will be published on the designated web site save where to do so would disclose information the disclosure of which would:

Z.4.2.1 contravene a binding confidentiality undertaking that protects information which the Client, at the time when it considers disclosure, reasonably considers to be confidential to the Contractor;

Z.4.2.2 be contrary to regulation 21 of the Public Contracts Regulations 2015 as amended; or

Z.4.2.3 in the reasonable opinion of the Client be prevented by virtue of one or more of the exemptions in the FOIA or one or more of the exceptions in the Environmental Information Regulation (EIR).

Z.4.3 If any of the situations in (i), (ii), (iii) apply the Contractor consents to the Contract or sourcing documents being redacted by the Client to the extent necessary to remove or obscure the relevant material and being published on the designated website subject to those redactions.

Z.4.4 In this entire clause the expression “sourcing documents” means the advertisement issued by the Client seeking expressions of interest, any pre-qualification questionnaire stage and the invitation to tender.

Z.5 Assignment

The following clause replaces core clause 26.1 in its entirety:

Z.5.1 The *Contractor* does not assign his interest in or any rights arising under this contract without the consent of the *Client* such consent not to be unreasonably withheld or delayed. The *Client* may assign, change or transfer his interest in this contract or any rights arising under it at any time without the consent of the *Contractor* and the *Client* notifies the *Contractor* of any such assignment, charge or transfer. The number of assignments to other Government bodies is unlimited. The number of assignments to non-Government bodies is limited to a maximum of two.

Z.6 Compliance with Legislation

Z.6.1 The *Contractor* shall exercise reasonable skill, care and diligence in the performance of the Services.

Z.7 Copyright

Z.7.1 “Documents” means all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the *Services* or *Task Orders* and all updates, amendments, additions and revisions to them and any services, designs, or inventions incorporated or referred to in them for any purpose relating to the *Services* or *Task Orders*.

Z.7.2 “Permitted Uses” means the design, provision, completion, reconstruction, modification, refurbishment, development, maintenance, funding, management, disposal, letting, occupation, fitting-out, advertisement, demolition, reinstatement, extension and repair of the *Services*.

Z.7.3 The *Contractor* grants the *Client*, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Documents prepared by, or on behalf of, the *Contractor* (except for models, CAD materials and calculations) for any purpose relating to the *Services*, including without limitation any of the Permitted Uses. Such licence shall enable the *Client* to copy and use such Documents in order to carry out an extension of the relevant project but such use shall not include a licence to reproduce the designs contained therein for the design thereof.

Z.7.4 The *Client*’s licence carries the right to grant sub-licences and is transferable to third parties without the consent of the *Contractor* and shall subsist notwithstanding the determination (for any reason) of the *Contractor*’s employment under this agreement.

Z.7.5 The *Contractor* is not liable for use of the Documents for any purpose other than that for which it was prepared and/or provided.

Z.8 Quality Management and Audit

- Z.8.1 The *Contractor* operates a quality management system for Providing the *Services* which complies with the relevant parts of ISO 9001:2015, has third party certification from a UKAS approved accreditation body (or its equivalent) or is operating in preparation for accreditation within 12 months of the Contract Date and complies with good industry practice or has a quality management system (i.e. written processes and procedures to ensure that the subject is properly managed and ensuring that legal requirements are met).
- Z.8.2 The *Contractor* provides to the *Service Manager*, within four weeks of the Contract Date, a quality policy statement and a quality plan for acceptance. The quality policy statement and quality plan comply with the requirements stated in the *Services Information* and are sufficiently detailed to demonstrate how the *Contractor* will provide the *Services* in accordance with this contract.
- Z.8.3 The *Contractor* keeps a controlled copy of the quality plan available for inspection by the *Service Manager* at all times.
- Z.8.4 The *Contractor* complies with an instruction from the *Service Manager* to:
- change the quality plan so that it complies with the requirements of this contract or
 - correct a failure of the *Contractor* to comply with the quality plan.
- Z.8.5 The *Service Manager* and other persons authorised by him may carry out periodic audits of the *Contractor's* quality management system as specified in the *Services Information*. The *Contractor* allows access to the Working Areas as specified in the *Service Information* and other premises used by the *Contractor* to provide the *Services* and provides all facilities and assistance necessary to enable such audits to be carried out.

Z.9 Retention of Documents

- Z.9.1 The *Contractor* retains throughout the period of 12 years following completion:
- Copies of drawings, specifications, reports, calculations and other documents which record any of the services;
 - Documents and information obtained or prepared by the *Contractor* or any subcontractor in connection with this contract.
- Z.9.2 The copies are retained in the form stated in the *Service Information*.
- Z.9.3 The *Contractor* permits the *Client* to examine documents held or controlled by the *Contractor* or any subcontractor.
- Z.9.4 The *Contractor* provides such oral or written explanations as is reasonably necessary.

Z.10 Contract Standard

- Z.10.1 In carrying out the *Services* the *Contractor's* obligation is to use:
- Z.10.1 The reasonable skill, care and diligence as would be expected of a competent and appropriately qualified professional service provider experienced in carrying out services of a similar nature, scope, size and complexity as the *Services*, and
 - Z.10.2 To the extent that the *Services* includes design, the skill, care and diligence in the design service as would be expected of an appropriately qualified and competent professional designer holding himself out as experienced in carrying out design

activities of a similar nature, scope, size and complexity to those entailed in the *Services*.

Z.11 Basis of Contract

Z.11.1 For the avoidance of doubt, this Term Service Contract CON19006 ("TSC") constitutes a framework under which the Client may, at its discretion, issue Task Orders to the Contractor. The Client is under no obligation to issue any Task Order(s) but once issued and accepted in accordance with the terms of this TSC, each Task Order shall form a binding contract between the Client and the Contractor. Any and all work and services to be performed by the Contractor shall be subject to a Task Order placed in accordance with, and subject to, the terms of this TSC.

Z.11.2 Where UK Shared Business Services Ltd is not the *Client*, UK Shared Business Services Ltd is the agent of the *Client* for the purpose of procurement and is authorised to enter into contracts for the supply of goods and services or the carrying out of services on behalf of the *Client*. UK Shared Business Services Ltd will not itself be a party to, nor have any liability under, the contract unless it is expressly specified by the *Client*.

Z.12 Collateral Warranty Agreements

Z.12.1 The *Contractor* procures from every designer and every subcontractor collateral warranty agreements in the formats identified by the *Client* and delivers executed copies in duplicate to the *Service Manager* no later than fifteen working days after the *Service Manager* has provided the *Contractor* with appropriate collateral warranty agreements suitable for execution, as example attached herewith.

Z.12.2 The *Contractor* is prohibited from appointing any party to provide sub-consultancy services, unless the following provisions are contained in the sub-consultant's form of appointment:

- An obligation to provide a collateral warranty in favour of the *Contractor*.
- That warranty to be executed as a deed and in the form attached to the contract.
- A requirement to have professional indemnity insurance in place for cover which is no less than £10m and to be maintained for a period of 12 years from completion of the sub-consultancy works.

Z.13 Insurance (Supplement to NEC4 TSC clause 83)

Z.13.1 All insurances required to be effected or maintained by the insuring party under NEC3 TSC clause 83, where applicable to this contract, are placed with reputable insurers, lawfully carrying on such insurance business in the United Kingdom, 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 or the Third Parties (Rights Against Insurers) Act (Northern Ireland) 1930 as amended by the Insolvency (Northern Ireland) Order 1989.

Z.13.2 If, without the approval of the *Service Manager*, the *Contractor* fails to effect and maintain any insurance that it is required to effect and maintain under NEC4 TSC clause 83 or obtains a different policy of insurance or fails to provide evidence of cover when required to do so, the *Client* may, but is not required to, effect and maintain appropriate insurance cover and deduct

the cost of doing so from any payment due to the *Contractor* under this contract, or recover such sum from the *Contractor* as a debt.

Z.13.3 For the avoidance of doubt, it is agreed that nothing in this clause relieves the *Contractor* from any of its obligations and liabilities under this contract.

Z.14 Building Information Modelling

CIC BIM Protocol

Z.14.1 In this clause, the Protocol is the CIC Building Information Modelling Protocol, 2nd edition 2018. Terms used in this clause are those defined in the Protocol.

Z.14.2 Clauses 1, 2, 5, 6, 7, 8, 9 and 10 of the Protocol are additional conditions of contract. Clauses 3 and 4 and Appendices 1, 2 and 3 of the Protocol are Service Information.

Z.14.3 The following are compensation events:

Z.14.3.1 The Contractor encounters an event which is outside his reasonable control and which prevents him from carrying out the Services specified in clause 4.1.2 of the Protocol.

Z.14.3.2 The *Client* revokes a licence granted under clause 6.6 of the Protocol.

Z.15 Plant and Materials

Z.15.1 Core clause 11.2(11) shall be deleted and all (or relevant part of) provisions referring to Plant and/or Materials be removed from the contract.

Z.16 Task Orders

Z.16.1 Core clause 19 shall be deleted and replaced with the following:

“19.1 (1) A Task is services which the Service Manager may instruct and that the Contractor may agree to carry out within a stated period of time.

(2) A Task Order is the Parties' agreement on the *Contractor's* to carry out a Task.

(3) Task Completion is when the Contractor has performed the services set out in the Task and corrected Defects (if any).

(4) Task Completion Date is the date for completion stated in the Task Order unless later changed in accordance with this contract.

19.2 A Task Order includes

- a detailed description of the services to be performed,
- a priced list of items of services in the Task in which items taken from the Price List are identified,
- the starting and completion dates for the Task, and
- the total of the Prices for the Task when Option A or C is used or the forecast total of the Prices for the Task if Option E is used.

When a Task Order is issued

- the priced list of items for the Task is inserted in the Price List, and
- the services involved are added to the Service Information.

19.3 The Contractor does not start the provision of any Services included in the Task until the Service Manager has instructed him to start carrying out the Task and performs the services so that Task Completion is on or before the Task Completion Date. No Task Order is issued after the end of the service period.

If Task Completion is after the end of the service period, the service period is extended until Task Completion. No Task Order shall be agreed by the Parties during this extended period.

The Service Manager may issue an instruction changing a Task Order. Such instruction to change a Task Order is a compensation event.

19.4 The *Contractor* submits a Task Order programme to the *Service Manager* for acceptance within the period stated in the Contract Data.

19.5 The Contractor shows on each Task Order programme which he submits for acceptance:

- the Task starting date and the Task Completion Date,
- planned Task Completion,
- the order and timing of the services which the Contractor plans to perform in order to complete the Task,
- provisions for float,
- time risk allowances,
- health and safety requirements and the procedures set out in this contract,
- the dates when, in order to provide the services in accordance with his Task Order programme, the Contractor will need access to the Affected Property,
- acceptances,
- equipment and other things to be provided by the Employer and information from Others,
- a statement of how the Contractor plans to perform the services identifying the resources which he plans to use and other information which the Service Information requires the Contractor to show on a Task Order programme submitted for acceptance.

19.6 Within one week of the Contractor submitting a Task Order programme to him for acceptance, the Service Manager either accepts the programme or notifies the Contractor of his reasons for not accepting it. A reason for not accepting the Task Order programme is that

- the Contractor's plans which it shows are not practicable,
- it does not show the information which this contract requires or
- it does not comply with the Service Information.

19.7 The Contractor shows on each revised Task Order programme

- the actual progress achieved and its effect upon the timing of the services,
- the effects of implemented compensation events,
- how the Contractor plans to deal with any delays and to correct notified Defects and
- any other changes which the Contractor proposes to make to the Task Order programme.

19.8 The Contractor submits a revised Task Order programme to the Service Manager for acceptance

- within the period for reply after the Service Manager has instructed him to and
- when the Contractor chooses to.

The latest programme accepted by the Service Manager supersedes previous accepted programmes.

19.9 The following are compensation events.

(1) The Service Manager gives an instruction changing a Task Order.

(2) The Contractor receives the Task Order after the starting date stated in the Task Order.

(3) The Employer does not provide the necessary right of access to the Affected Property in accordance with the latest accepted Task Order programme.

- (4) The Employer does not provide something which he is to provide as stated in the Service Information in accordance with the latest accepted Task Order programme.
- (5) The Employer or Others do not work in accordance with the latest accepted Task Order programme or within the conditions stated in the Service Information.
- (6) An event which
 - . stops the Contractor completing a Task or
 - stops the Contractor completing a Task by the Task Completion Date, and which
 - neither Party could prevent, and
 - is not one of the other compensation events stated in this contract.
- (7) A Task Completion Date is later than the end of the service period.
- (8) The Service Manager gives an instruction to stop or not to start any work
- (9) The Service Manager does not reply to a communication from the Contractor within the period required by the contract.
- (10) The Service Manager changes a decision which he has previously communicated to the Contractor.
- (11) The Service Manager withholds an acceptance for a reason not stated in the contract.
- (12) An or inspection done by the Service Manager causes unnecessary delay.
- (13) A change to the Affected Property other than a change as a result of the provision of the services under the Task Order.
- (14) An event which is an Employer's risk in this contract.
- (15) The Service Manager notifies a correction to an assumption which he has stated about a compensation event.
- (16) A breach of contract by the Employer which is not one of the other compensation events in this contract.

19.10 If, due to the compensation event, planned Task Completion is delayed, the delay to the Task Completion Date is stated in the Contractor's quotation for the event and a programme is submitted with details of the assessment of the delay.

Assessments of delay include time risk allowances and are based on the assumption that the Task Order programme can be changed and that delays were or will be reasonably incurred.

A delay to the Task Completion Date is assessed as the length of time that, due the compensation event, planned Task Completion is delayed.

The Service Manager may assess the delay if, when the Contractor submits quotations for a compensation event, the Contractor has not submitted a Task Order programme required by this contract.

19.11 The changes to the calculated total of the Prices for the Task Order and any delay to the Task Completion Date are included in the Service Manager's notification implementing a compensation event.

Z.17 Contractor's Main Responsibilities

Z.17.1 Core clause 21 is deleted

Z.17.2 Core clause 23.2 shall read as follows:

"The *Client* and the *Contractor* provide facilities and other things as stated in the Service Information."

Z.17.3 Core clause 24.3 is deleted

Z.17.4 Core clause 31.2 and core clause 31.3 are deleted

Z.18 Quality Management

Core clauses 41, 42, 43 and 44 are deleted and replaced with the following:

- Z.18.1 “ 41 Until the *defects date*, the *Service Manager* notifies the *Contractor* of each Defect as soon as he finds it and the *Contractor* notifies the *Service Manager* of each Defect as soon as he finds it. At the relevant Task Completion Date the *Contractor* notifies the *Service Manager* of the Defects which have not been corrected. After the relevant Task Completion and until the *defect date*, the *Contractor* notifies the *Service Manager* of each Defect as soon as he finds it. The *Service Manager's* rights in respect of a Defect which the *Service Manager* has not found or notified by the *defects date* are not affected.
- Z.18.2 42 The *Contractor* corrects a Defect whether or not the *Service Manager* notifies him of it. The *Contractor* corrects Defects within a time which minimises the adverse effect on the *Service Manager* or Others. If the *Contractor* does not correct a Defect within the time required by this Contract, the *Service Manager* assesses the cost to him of having the Defect corrected by other people and the *Contractor* pays this amount.”

Z.19 Payment

Z.19.1 Core clause 50 shall read as follows:

- Z.19.1.1 “50.1 The *Contractor* assesses the amount due and submits at each assessment date. The first assessment date is decided by the *Contractor* to suit the procedures of the Parties and is not later than the *assessment interval* after the *starting date*. Later assessment dates occur at the end of each *assessment interval* until eight weeks after the *defects date* and at completion of the *services* as set out in the relevant Task Order.
- Z.19.1.2 50.2 Invoices submitted by the *Contractor* include all the details stated in the Service Information to show how the amount due has been assessed. The first invoice is for the amount due. Other invoices are for the change in the amount due since the previous invoice.
- Z.19.1.3 50.3 The amount due is the Price for Services Provided to Date, plus other amounts to be paid to the *Contractor* less amounts to be paid by or retained from the *Contractor* under the contract. Any tax which the law requires the *Client* to pay to the *Contractor* is included in the amount due.”

Z.19.2 Core clause 51 shall read as follows:

- Z.19.2.1. “51.1 Each payment is made within three weeks of receiving the *Contractor's* invoice or if a different period is stated in the Contract Data, within the period Stated. Each payment is the amount due less previous payments.
- Z.19.2.2 51.2 Payments are in the currency of this contract unless otherwise stated in this contract.
- Z.19.2.3 51.3 The date payment becomes due is the date the *Client* receives each invoice referred to in clause 51.1
- Z.19.2.4 51.4 If the *Client* does not accept the *Contractor's* assessment of the amount due, he notifies the *Contractor* of his reasons and the amount which he assesses is due before the payment becomes due. He pays the amount of his assessment. The agreed part of the invoice is paid. The *Contractor* either
- corrects the invoice to a sum agreed with the Employer or
 - provides further information to justify the invoice.
- Z.19.2.5 51.4 If a payment is late or has been delayed because of a disagreement, interest is paid. Interest is assessed from the date by which the late payment

should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made.

Z.19.2.6 51.5 Interest is calculated on a daily basis at the *interest rate* and is simple interest.”

Z.19.3 Core clause 52.1 is deleted

Z.20 Compensation Events

Z.20.1 Core clause 61.1(1) is deleted

Z.20.2 New core clause 61.1(8) is inserted

“(8) An event which

- stops the *Contractor* completing the services set out in the relevant Task Order
- stops the *Contractor* completing the services by the date shown in on the relevant Task Order Accepted Programme

and which

- neither Party could prevent

is not one of the other compensation events stated in this contract.”

Z.20.3 Core clause 63.7 shall read as follows:

“The rights of the Client and the Contractor to changes to the Prices and to the relevant Task Order programme are their only rights in respect of a compensation event.”

Z.21 Insurance and Liability

Z.21.1 Core clause 80 and core clause 81 are deleted

Z.21.2 Core clause 82 shall read as follows:

“The *Contractor* indemnifies the *Client* against claims, proceedings, compensation events and costs payable arising out of an infringement by the *Contractor* of the rights of Others, except an infringement which arose out of the use by the *Contractor* of things provided by the *Client*.”

Z.21.3 Core clause 83.3 is deleted

Z.21.4 The insurance table at 83.3 shall be replaced with the following table:

INSURANCE TABLE

Insurance against	Minimum amount of cover
Liability of the <i>Contractor</i> for claims made against him arising out of his failure to use the skill and care normally used by professionals providing services similar to the <i>services</i>	The amount stated in the Contract Data
Liability for death of or bodily injury to a person (not an employee of the <i>Contractor</i>) or loss of or damage to property resulting from an action or failure to take action by the <i>Contractor</i>	The amount stated in the Contract Data for any one event

Liability for death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this Contract	The greater of the amount required by the applicable law and the amount stated in the Contract Data for any one event
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Z.21.5 Core clause 84.2 is deleted

Z.21.6 New core clause 87 is inserted

“Notwithstanding anything to the contrary contained in this contract, the total liability of the *Contractor* to the *Client* and/or any third party under or in connection with this contract, whether under an indemnity, in contract or in tort, for negligence or for breach of statutory duty or otherwise (other than in respect of personal injury or death) shall be further limited to that proportion of such loss and damage which it would be just and equitable to require the *Contractor* to pay having regard to the extent of the *Contractor's* responsibility for the same and on the basis that :

- 1) all other consultants and all contractors and sub-contractors appointed in connection with the project concerned shall have provided contractual undertakings on terms no less onerous than this contract to the *Client* in respect of the carrying out of their obligations;
- 2) there are no exclusions of or limitations on liability nor joint insurance or co-insurance provisions between the *Client* and any other party referred to in this clause; and
- 3) all other consultants and all contractors and all sub-contractors have paid to the *Client* such proportion which it would be just and equitable for them to pay having regard to the extent of their responsibility of the loss and damage.”

Z.22 Priced Contract

Z.22.1 Not used

Z.23 Target Contract

Z.23.1 Not used

Z.24 Cost Reimbursable Contract

Z.24.1 Core clause 24 is deleted

Z.24.2 Core clause 41.7 is deleted

Z.25 Option X18

Z.25.1 Option X18.2 is deleted

Z.25.2 Option X18.4 shall read as follows:

“The *Contractor's* liability to the *Client* for Defects is limited to the amount stated in the Contract Data”

Z.25.1 Option X18.5 shall read as follows:

“The *Contractor's* total liability to the *Client* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to the amount stated in the Contract Data and applies in contract, tort or delict and otherwise to the extent allowed under the *law of the contract*.

The excluded matters are amounts payable by the *Contractor* as stated in this contract for

- loss of or damage to third party property;
- infringement by the *Contractor* of the rights of *Others*; and

- death of or bodily injury to a person other than an employee of the *Contractor*;
- *Contractor's* share if Option C applies.

Z.27 Option X20

Z.27.1 Not used

Z.28 Third Parties

Z.28.1 The following provision is inserted

“For the avoidance of doubt nothing in this agreement shall confer or purport to confer on any third party any benefit or right to enforce any term of this agreement.”

Z.29 Payment to other parties

Z29.1 The *Contractor* shall ensure, pursuant to obligations imposed on the *Client* under Regulation 113(2)(c) of the Public Contracts Regulations 2015 (as amended), that any subcontract awarded by the *Contractor* contains suitable provisions to impose, as between the parties to the subcontract, requirements that –

- (i) any payment due from the *Contractor* to the *subcontractor* under the subcontract is to be made no later than the end of a period of 30 days from the date on which the relevant invoice is regarded as valid and undisputed;
- (ii) any invoices for payment submitted by the *subcontractor* are considered and verified by the *Contractor* in a timely fashion and that undue delay in doing so is not to be sufficient justification for failing to regard an invoice as valid and undisputed; and
- (iii) any *subcontractor* will include, in any subcontract which it in turn awards, suitable provisions to impose, as between the parties to that subcontract, requirements to the same effect as those imposed in paragraphs (i), (ii) and (iii) of this Clause Z.30, subject to suitable amendment to reflect the identities of the relevant parties.

Z29.2 For the avoidance of doubt, in any situations that the *Client* is making payments to the *Contractor* without being presented with an invoice, the absence of an invoice does not waiver any obligation regarding payments made by the *Contractor* to its *subcontractors* or supply chain.

Z29.3 The *Contractor* shall ensure, pursuant to the Governments payment objectives that it shall in its performance of this Contract meet the standard required of payment of 95% of invoices paid within 60 days across two six monthly reporting periods of the *Client's* choice to its so as to demonstrate to the *Client* that it has an appropriate and effective payment system in place for any *subcontractors* or supply chain associated with this Contract.

Z29.4 The *Contractor* shall be obliged during its performance of the Contract to provide evidence to the *Client* that payments being made to its *subcontractors* or supply chain, by either of the following methods:

- (i) information can be easily be obtained directly and free of charge by the *Client* from a national database, with details provided by the *Contractor* on how the *Client* may access this information at any time during the performance of the Contract when requested to do so by the *Client*; or

- (ii) the information shall be provided to the *Client* by email free of charge on frequency advised below, such as the supplier has a sufficiency of invoice volumes to do so and that the volumes of invoices handled by the *Contractor* accurately represents the assurance sought.

Z29.5 The *Contractor* shall not be obliged to provide such above assurances to the *Client* during the Contract by either of the above referred methods, in the following circumstances only:

- (i) if the *Contractor* in its performance of the Contract does not at any time need to engage a *subcontractor*; or
- (ii) if the volumes of invoices processed by the *Contractor* in its performance of the Contract falls below the above required standard, due to the volumes of invoices processed by the *Contractor*, being particularly high or particularly low as measurement by percentage may distort the true picture. In such circumstances the *Contractor* shall suitably inform the *Client* of either of these situations supported by a suitable declaration and supporting evidence.

Z29.6 For the avoidance of doubt, the *Client* reserves the right at any time in considering the *Contractors* submission or information secured via access to any national data base, to seek further explanation or declaration from the *Contractor* to ensure that payments meet the required obligations placed upon the *Client*.

Z29.7 The *Contractor* shall without reservation assist the *Client* to the reasonable extent as is requested, to assist the *Client* to secure these assurances during the Contract.

Z.30 Sub-Contractors

Z30.1 The *Client* may (without cost to or liability of the *Client* require the *Contractor* to replace any *subcontractor* where in the reasonable opinion of the *Client* any mandatory or discretionary grounds for exclusion referred to in Regulation 57 of the Public Contracts Regulations 2015(as amended) apply to the *subcontractor*.

Z.31 Taxation obligations of the Contractor

Z31.1 The relationship between *Client* and the *Contractor* shall be that of “independent *Contractor*” which means that the *Contractor* is not a *Client* employee, worker, agent or partner, and the *Contractor* shall not give the impression that they are.

Z31.2 As this is not an employment Contract, the *Contractor* shall be fully responsible for all their own tax, including any national insurance contributions arising from carrying out the Services.

- (1) The *Contractor* in respect of consideration received under this Contract, the *Contractor* shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.
- (2) Where the *Contractor* is liable to National Insurance Contributions (NICs) in respect of consideration received under this Contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.
- (3) The *Client* may, at any time during the term, completion extension or post termination of this Contract, request the *Contractor* to provide information which demonstrates how the *Contractor* complies with its obligations under tax and National insurance Clauses (1) and (2) above or why those Clauses do not apply to it.

Z31.3 A request under Clause (3) above may specify the information which the *Contractor* shall provide and the period within which that information must be provided.

Z31.4 In the case of a request mentioned in clause (3) above, the provision of inadequate information or a failure to provide the information within the requested period, during any term or extension, may result in the *Client* terminating the Contract.

Z31.5 Any obligation by the *Contractor* to comply with Clause (1), (2), (3) shall survive any term, extension, completion or termination and the *Contractors* obligations to Indemnify the *Client* shall survive without limitation until such time as any of these obligations are complied with.

Z31.6 The *Client* may supply any information, including which it receives under Clause (3) to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.

Z31.7 If the *Client* has to pay any such obligations owed by the *Contractor* under Clauses (1) and (2) then the *Contractor* shall pay back to the *Client* in full, any money that the *Client* has to pay, and the *Contractor* shall also pay back the *Client* for any fine or compensate the *Client* for any other punishment imposed on the *Client* because the tax or national insurance due was not paid by the *Contractor*.

Z.32 Cyber Essentials Questionnaire

Z32.1 The Contractor agrees that during any term or extension it shall complete and return the attached questionnaire as advised below.

Note: The Client also reserves the right to amend or increase these frequencies, as it deems necessary to secure assurance in order to comply with Government advice and direction.

Z32.2 The Client requires such interim assurances to ensure that the Contractor is still compliant with the security needs of this Contract.

Z32.3 The Contractor shall complete and return the questionnaire to the contact named in the Contract on the anniversary of the commencement of the Contract



Copy of Statement
of Assurance Questio

Z.33 General Data Protection Regulations (GDPR)

Z33.1 The *Contractor* warrants that that it shall under this Contract:

- (i) Process only on documented instructions (Annex A) by the *Client*, including regarding international transfers (unless, subject to certain restrictions, legally required to transfer to a third country or international organisation);
- (ii) provide all reasonable assistance to the *Client* in the preparation of any Data Protection Impact Assessment (see <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=EN> of the GDPR). prior to commencing any processing. Such assistance may, at the discretion of the *Client*, include;
 - a. systematic description of the envisaged processing operations and the purpose of the processing;

- b. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- c. an assessment of the risks to the rights and freedoms of Data Subjects; and
- d. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

Z33.2 The *Client* may require further assurances during the Contract through a series of questions as to *Contractors* GDPR compliance.

Z33.3 Notwithstanding any other remedies available to the *Client*, the *Contractor* shall fully indemnify the *Client* as a result of any such breach of the General Data Protection Regulations (GDPR), by the *Contractor* or any other party used by the *Contractor* in its performance of the Contract, that results in the *Client* suffering fines, loss or damages.

Z33.4 For the avoidance of doubt this clause shall require the *Contractor* to ensure that this Contract from its Start Date shall be performed in such a way so as to be compliant with any existing Data Protection Act and will meet the requirements of the GDPR.

Annex A - Schedule of Processing, Personal Data and Data Subjects

Z33.5 *The information required under this Annex A shall be provided against each Task Order, where appropriate.*

Z33.6 The *Contractor* shall only process in accordance with the instructions as advised below and comply with any further written instructions with respect to processing by the *Client*. Any such further written processing instructions required by the *Client* shall be incorporated into this Schedule and shall be the subject of a formal amendment to this Contract.

1. The contact details of the *Clients* Data Protection Officer are: [Insert Contact details]
2. The contact details of the *Contractors* Data Protection Officer are: [Insert Contact details]
3. The *Contractor* shall comply with any further written instructions with respect to processing by the *Client*.

Z33.7 Any such further instructions shall be incorporated into this Schedule

Description	Details
Subject matter of the processing	<i>The information required under this Annex A shall be provided against each Task Order, where appropriate.</i>
Duration of the processing	<i>The information required under this Annex A shall be provided against each Task Order, where appropriate.</i>
Nature and purposes of the processing	<i>The information required under this Annex A shall be provided against each Task Order, where appropriate.</i>
Type of Personal Data	<i>The information required under this Annex A shall be provided against each Task Order, where appropriate.</i>
Categories of Data Subject	<i>The information required under this Annex A shall be provided against each Task Order, where appropriate.</i>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<i>The information required under this Annex A shall be provided against each Task Order, where appropriate.</i>

- Z33.8 The *Contractor* agrees that during any term or extension it shall complete and return the attached questionnaire as advised below.
Note: The *Client* also reserves the right to amend or increase these frequencies, as it deems necessary to secure assurance with regards to compliance.
- Z33.9 The *Client* requires such interim assurances to ensure that the *Contractor* is still compliant with the needs of the GDPR Act due to the implications of a breach.
- Z33.10 The *Contractor* shall complete and return the questionnaire to the contact named in the Contract on the anniversary of the commencement of the Contract.
- Z33.11 The *Contractor* agrees that any financial burden associated with the completion and submission of this questionnaire at any time, shall be at the *Contractor's* cost to do so and will not be reimbursable.



GDPR Assurance
Questionnaire May1

Z.34 Supply Chain Visibility

Governmental oversight on Improving visibility of subcontract opportunities available to SMEs and VCSEs in the supply chain

- Z34.1 1) The Contractor shall:
- 1.1 subject to clause 3, advertise on Contracts Finder all subcontract opportunities arising from or in connection with the provision of the Goods and/or Services and/or Works above a minimum threshold of £50,000 that arise during the Contract Period;
 - 1.2 within 90 days of awarding a subcontract to a subcontractor, update the notice on Contracts Finder with details of the successful subcontractor;
 - 1.3 monitor the number, type and value of the subcontract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Contract Period;
 - 1.4 provide reports on the information at clause 1.1.3 to the Client in the format and frequency as specified by the Client below; and
 - 1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- Z34.2 2) Each advert referred to in clause 1.1 above shall provide a full and detailed description of the subcontract opportunity with each of the mandatory fields being completed on Contracts Finder by the Contractor.
- Z34.3 3) NOTE: The Client does not require the Contractor to comply with Clause 1.1 under its contractual obligation to any and all subcontracts that were arranged or existed prior to the award of the contract i.e. when the Contractor has already established its supply-chain as part of the tendering process.
- Z34.4 For the avoidance of doubt the obligation at Clause 1.1 shall only apply in respect of subcontract opportunities arising after the contract award date.
Additional exemptions that the Client will also consider a waiver this requirement Clause 1.1 to advertise on Contracts Finder are:

- where there are issues of national security, which mean that subcontracts cannot be openly advertised;
- where a contract is to be delivered overseas and the resulting subcontracts can only be delivered by in-country partners and/or there are local laws, customs, or security issues that mean subcontracts cannot be advertised;
- where the Contractor has confirmed there will be no subcontracted spend;

Z34.5 4) Notwithstanding clause 1, the Client may by giving its prior written approval, agree that a subcontract opportunity is not required to be advertised on Contracts Finder.

Management Charges and Information

Z34.6 1. In addition to any other management information requirements set out in this Contract, the Contractor agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME Management Information (MI) Reports to the Client which incorporate the data described in the MI Reporting template below which is:

- 1.1 the total contract revenue received directly on a specific contract;
- 1.2 the total value of sub-contracted revenues under the contract (including revenues for non-SMEs/non-VCSEs); and
- 1.3 the total value of sub-contracted revenues to SMEs and VCSEs.

Z34.7 2. The SME Management Information Reports shall be provided in the correct format as required by the MI Reporting Template and any guidance issued by the Client from time to time. The Contractor shall use the initial MI Reporting Template which is set out in the Annex to this Schedule and which may be changed from time to time (including the data required and/or format) by the Client by issuing a replacement version. The Client shall give at least thirty (30) days' notice in writing of any such change and shall specify the date from which it must be used.

Z34.8 3. The Contractor further agrees and acknowledges that it may not make any amendment to the current MI Reporting Template without the prior written approval of the Client.

MI Reporting Template

Report Subject matter Dateline From XX/XX/XXXX to X/X/XXXX	Value £ (Pounds Sterling)
total contract revenue received directly on a specific contract	
the total value to date of report of sub-contracted revenues under the contract (including revenues for non-SMEs/non-VCSEs)	
the total value of sub-contracted revenues to SMEs and VCSEs	

Z.34.9 4. The Contractor shall provide the following above MI Reporting Template to the Client on the following basis:

Z34.9.1 The Contractor shall complete and return the report to the contact named in the Contract on the anniversary of the commencement of the Contract

4.1. The Client maybe required by the Cabinet Office Crown Commercial Services to amend the MI reporting table from time to time. The Client shall give the Contractor at least (30) Days' notice in writing of any such change and shall specify the date from which it must be used.

4.2. The Contractor agrees that any financial burden associated with the

completion and submission in a timely, full and accurate manner of this MI reporting table at any time, shall be at the Contractor cost to do so and will not be reimbursable.

- Z34.10 5. The Client will not specify or direct the Contractor in regard to how it undertakes any procurement activity, however the Contractor is expected to allow a reasonable and proportionate amount of time for bidders to reply to its advertised opportunities. Any and all contracts awarded by the Contractor as a result of the advertised opportunity, shall be the subject of an update to the original advertised notice within 90 days of award and details of the successful Contractor shall be published on Contracts Finder.

Supplier Guidance and assistance

The Contractor can register on Contracts Finder by following link
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/694326/Contracts_Finder_public_sector_Contractors_user_guide_v_2.0.pdf