Schedule 1

**NEC 3**

**STRICTLY PRIVATE and CONFIDENTIAL**

PROFESSIONAL SERVICES CONTRACT

MAIN OPTION A

June 2005

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| This document is NEC3 PSC with adoption of relevant Options and then amended to suit the requirements of MOD pursuant to the MOD’s license to use NEC3. |

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**CORE CLAUSES**

**1 General**

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Actions** | | |  | | | | | **10** | | | | | |  | | | |
|  | | |  | | | | | 10.1 | | | | | | The *Employer,* the *Employer* and the *Consultant* shall act as stated in this contract and in a spirit of mutual trust and co-operation. | | | |
| **Identified and defined** | | |  | | | | | **11** | | | | | |  | | | |
| **terms** | | |  | | | | | 11.1 | | | | | | In this Contract, terms identified in the Contract Data are in italics and defined terms set out in this clause and/or the Framework Agreement have capital initials. | | | |
|  | | |  | | | | | 11.2 | | | | | | 1. The Accepted Programme is the Consultant’s Programme (as detailed in clause 31) identified in the Contract Data or is the latest Programme accepted by the *Employer*. The latest Programme accepted by the *Employer* supersedes previous Accepted Programmes. | | | |
|  | | |  | | | | |  | | | | | | 1. Affected Property is the property of the *Employer* or Others which is affected by the *services* or used by the *Consultant* To Provide the Services and which is identified in the Contract Data. | | | |
|  | | |  | | | | |  | | | | | | 1. Background IPR means any IPR not created, or developed by or on behalf of the *Consultant* under or for the purpose of this Contract. | | | |
|  | | |  | | | | |  | | | | | | 1. NOT USED | | | |
|  | | |  | | | | |  | | | | | | 1. Change Management Process means the process outlined in clause 19L. | | | |
|  | | |  | | | | |  | | | | | | 1. Change of Control in respect of clause 19A.1 means: | | | |
|  | | |  | | | | |  | | | | | | (a) any sale, transfer, or disposal of any legal, beneficial or equitable interest in any or all of the shares in the *Consultant* including control over the exercise of voting rights conferred on those shares or the control over the right to appoint or remove directors or the right to dividends) and/or; | | | |
|  | | |  | | | | |  | | | | | | (b) any other arrangements that have or may have or which result in the same effect as (6)(a) above. | | | |
|  | | |  | | | | |  | | | | | | 1. Completion is when the *Consultant* has | | | |
|  | | |  | | | | |  | | | | | | * done all the work which the Scope states he is to do by the Completion Date and | | | |
|  | | |  | | | | |  | | | | | | * corrected Defects which would have prevented the *Employer* from using the *services* and Others from doing their work. | | | |
|  | | |  | | | | |  | | | | | | If the work which the *Consultant* is to do by the Completion Date is not stated in the Scope, Completion is when the *Consultant* has done all the work necessary for the *Employer* to use the *services* and for Others to do their work. | | | |
|  | | |  | | | | |  | | | | | | 1. The Completion Date is the *completion date* set out in the Contract Data Part 1 unless later changed in accordance with this contract. | | | |
|  | | |  | | | | |  | | | | | | 1. Confidential Information means: | | | |
|  | | |  | | | | |  | | | | | | 1. any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights, know-how of either Party and all personal data and sensitive data within the meaning of the Data Protection Act 1998; and | | | |
|  | | |  | | | | |  | | | | | | 1. the Commercially Sensitive Information   but excluding any information   * 1. which was public knowledge at the time of disclosure (otherwise than by breach of Clause 13B (Confidential Information);   2. which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;   3. which is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or   4. is independently developed without access to the Confidential Information. | | | |
|  | | |  | | | | |  | | | | | | 1. The Contract Date is the date when this Contract came into existence being the date of the relevant Demand Order duly executed by the Parties in accordance with the Framework Agreement. | | | |
|  | | |  | | | | |  | | | | | | 1. Commercially Sensitive Information is the information listed in the Consultant Commercially Sensitive Information Schedule 12 Annex D to this Contract being information notified by the Consultant to the Employer which is acknowledged by the Employer as being commercially sensitive information. | | | |
|  | | |  | | | | |  | | | | | | 1. Contract Records means all records, agreements, specifications, drawings, manufacturing data, information and documents that are produced in connection with the services. | | | |
|  | | |  | | | | |  | | | | | | 1. Consultant’s Task Order means the notification from the Consultant pursuant to the Change Management Process. | | | |
|  | | |  | | | | |  | | | | | | 1. Crown means the government of the United Kingdom (including the Northern Ireland Executive Committee and the Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government and particular bodies and government agencies. | | | |
|  | | |  | | | | |  | | | | | | 1. A Defect is:    * a part of the *services* which is not provided in accordance with the Contract or the Scope; or    * a part of the *services* which is not in accordance with the applicable law or the Accepted Programme; or    * a part of the *services* the design of which is the responsibility of the *Consultant*, if that design has not been prepared in accordance with the standard required by the Contract. | | | |
|  | | |  | | | |  | | | | | | 1. Environmental Information Regulations means the Environmental Information Regulations 2004 as the same may be revised and updated from time to time and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations. | | |
|  | | |  | | | |  | | | | | | 1. Equipment is items provided by the Consultant and used by him to Provide the Services and which the Scope does not require him to include in the Affected Property. | | |
|  | | |  | | | |  | | | | | | 1. Establishment is either a land parcel or collection of land parcels that function as an administrative whole to provide military capability. Occasionally these may be stand alone level 2 assets which may form part of a larger collective such as a garrison. | | |
|  | | |  | | | |  | | | | | | 1. [not used] | | |
|  | | |  | | | |  | | | | | | 1. Firm Price means a price/rate agreed for the *services* or any part of the *services* which is not subject to variation at any time during the Contract or such other period as the Contract states the Firm Price is to apply as the same are set out in the Price List. | | |
|  | | |  | | | |  | | | | | | 1. Fixed Price means a price/rate agreed for the *services* or any part of the *services* which is subject to variation only in accordance with the variation of price provisions contained in the Contract. | | |
|  | | |  | | | |  | | | | | | 1. FOIA means the Freedom of Information Act 2000 and any subordinate legislation made under this Act as the same may be revised and replaced from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation. | | |
|  | | |  | | | |  | | | | | | 1. Foreground IPR means any IPR created, or developed by or on behalf of the Consultant under or for the purpose of this Contract. | | |
|  | | |  | | | |  | | | | | | 1. Fraud means any offence under the law creating offences in respect of fraudulent acts. | | |
|  | | |  | | | |  | | | | | | 1. Head of Establishment means the *Employer* nominated individual responsible for an Establishment. | | |
|  | |  | | | |  | | | | | | | 1. Information means any information in any written or other tangible form disclosed to one Party by or on behalf of the other Party under or in connection with this Contract. | |
|  | |  | | | |  | | | | | | | 1. Insurance Table means the table at clause 81. | |
|  | |  | | | |  | | | | | | | 1. Intellectual Property Rights (“IPRs”) means patents, inventions, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off. | |
|  | |  | | | |  | | | | | | | 1. IP Materials means any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material. | |
|  | |  | | | |  | | | | | | | 1. Issued Property means any Plant, Material or Materiel or equipment provided by the Employer to the Contractor under this Contract. | |
|  | |  | | | |  | | | | | | | 1. Joint Venture (JV) company is two or more companies engaged in a solitary business enterprise for profit without actual partnership or incorporation. | |
|  | |  | | | |  | | | | | | | 1. A Key Date is the date by which work is to meet the Condition stated. The Key Date is the key date stated in the Contract Data and the Condition is the condition stated in the Contract Data unless later changed in accordance with this contract. | |
|  | |  | | | |  | | | | | | | 1. [not used] | |
|  | |  | | | |  | | | | | | | 1. List X means the grant of the necessary Facility Security Clearance under the national security requirements in accordance with the Cabinet Office Security Policy Framework which a contractor, consultant or sub-contractor is required to hold where a contract involves protectively marked aspects at the level of Confidential (within the meaning of the UK Government’s Protective Marking Scheme) or above. | |
|  | |  | | | |  | | | | | | | 1. Materiel is derived from property owned by the *Employer* and issued to the *Consultant* for the sole performance of this Contract. | |
|  | |  | | | |  | | | | | | 1. Others are people or organisations who are not the *Employer*, the *Consultant*, the Adjudicator or any employee, Subconsultant or supplier of the *Consultant*. | | | | | | |
|  | |  | | | |  | | | | | | 1. The Parties are the *Employer* and the *Consultant*. | | | | | | |
|  | |  | | | |  | | | | | | 1. Personnel means all employees, agents, consultants and Subconsultants (including Sub-contractors in the case of the Consultant) of either Party as the case may be. | | | | | | |
|  | |  | | | |  | | | | | | 1. PLC means Public Limited Company which is registered as such under the s4 of the Companies Act 2006. | | | | | | |
|  | |  | | | |  | | | | | | 1. The Prices mean the Firm Prices and the Fixed Prices for the *services* as referred to in the Demand Order or as otherwise calculated in accordance with this Contract. | | | | | | |
|  | |  | | | |  | | | | | | 1. The Price for Services Provided to Date is:    * the total of the Prices for the *services* which have been completed to date. | | | | | | |
|  | |  | | | |  | | | | | | 1. The Price List is the price list unless later changed in accordance with this Contract as detailed in Schedule 4. | | | | | | |
|  | |  | | | |  | | | | | | 1. The Project Bank Account (should the parties chose to operate one) is the bank account opened by the Consultant and held jointly with the Employer in accordance with the terms set out in Trust Deed and Bank Account Agreement. | | | | | | |
|  | |  | | | |  | | | | | | 1. To Provide the Services means to do the work necessary to complete the *services* in accordance with this Contract and all incidental work, services and actions which this Contract requires. | | | | | | |
|  | |  | | | |  | | | | | | 1. Relevant Day means the day which is thirty (30) days after the relevant assessment date as detailed in clause 50.1. | | | | | | |
|  | |  | | | |  | | | | | | 1. The Risk Register is a register of the risks which are listed in the Contract Data and the risks which the *Employer* or the *Consultant* has notified as an early warning matter. It includes a description of the risk and a description of the actions which are to be taken to avoid or reduce the risk. | | | | | | |
|  | |  | | | |  | | | | | | 1. Secret Matter is any matter connected with this Contract, or its performance which is designated in writing by the *Employer* as 'Top Secret', 'Secret', or 'Confidential', and will include any information concerning the content of such matter and anything which contains or may reveal that matter. | | | | | | |
|  | |  | | | |  | | | | | | 1. The Scope is information which either | | | | | | |
|  | |  | | | |  | | | | | | * specifies and describes the *services* or | | | | | | |
|  | |  | | | |  | | | | | | * states any constraints on how the *Consultant* Provides the Services | | | | | | |
|  | |  | | | |  | | | | | | and is either | | | | | | |
|  | |  | | | |  | | | | | | * in the documents which the Contract Data states it is in or | | | | | | |
|  | |  | | | |  | | | | | | * in an instruction given in accordance with this Contract. | | | | | | |
|  | |  | | | |  | | | | | | * or any other document forming part of this Contract. | | | | | | |
|  | |  | | | |  | | | | | | 1. The Employer means the individual appointed by the *Employer* (or his nominated representative) as the responsible official for the purposes of this Contract. | | | | | | |
|  | |  | | | |  | | | | | | 1. A Subconsultant is a person or organisation who has a contract with the *Consultant* or with a sub-consultant (of any tier) to the *Consultant* to provide part of the *services*. | | | | | | |
|  | |  | | | |  | | | | | | 1. Task Order is the notification from the *Employer* pursuant to Clause X19. | | | | | | |
|  | |  | | | |  | | | | | | 1. Theft means the Criminal Offence of Theft within the meaning of the: Theft Act 1968; the Theft Act (Northern Ireland) 1969; the Theft Act 1978; the Theft (Northern Ireland) Order 1978; and the Fraud Act 2006; or any other relevant superseding legislation which comes into force and/or within the meaning of any other applicable statutory provision or common law having application in England, Wales, Scotland or Northern Ireland. | | | | | | |
|  | |  | | | |  | | | | | | 1. Transparency Information is the content of this Contract in its entirety, including from time to time agreed changes to the Contract, and details of any payments made by the *Employer* to the *Consultant* under this Contract. | | | | | | |
|  | |  | | | |  | | | | | | 1. Trust Deed means the trust deed (if any) established for the operation of the Project Bank Account. | | | | | | |
|  | |  | | | |  | | | | | | 1. Unsuitable Third Party means any person: 2. whose activities do, in the reasonable opinion of the *Employer*, pose or could pose a threat to national security, incompatible with any operations or activities carried out by the *Employer* for the purposes contemplated by this Contract or any other of the *Employer’s* legal duties or other functions; or 3. who is, in the reasonable opinion of the *Employer*, inappropriate because the *Employer* has received specific information from the Crown, the Serious Fraud Office or the Crown Prosecution Service about the suitability of the proposed new third party to act in relation to the *service*; or 4. if the *service* includes, or will involve the disclosure of information about a Secret Matter, who is not a List X organisation. | | | | | | |
|  | |  | | | |  | | | | | | 1. Working Day means Monday to Friday excluding bank holidays. | | | | | | |
| **Interpretation and** | |  | | | | **12** | | | | | |  | | | | | | |
| **the law** | |  | | | | 12.1 | | | | | | In this Contract, except where the context shows otherwise, words in the singular also mean in the plural and the other way round and words in the masculine also mean in the feminine and neuter. | | | | | | |
|  | |  | | | | 12.2 | | | | | | The Contract will be considered as a contract made in England and subject to English Law. | | | | | | |
|  | |  | | | | 12.3 | | | | | | Without prejudice to the dispute resolution process set out in clause W1, each party hereby irrevocably submits and agrees to the exclusive jurisdiction of the Courts of England to resolve, and the laws of England to govern, any actions, proceedings, controversy or claim of whatever nature arising out of or relating to this Contract or breach thereof. | | | | | | |
|  | |  | | | | 12.4 | | | | | | Other jurisdictions may apply solely for the purpose of giving effect to this clause and for the enforcement of any judgement, order or award given under English jurisdiction. | | | | | | |
|  | |  | | | | 12.5 | | | | | | This Contract constitutes the entire agreement between the Parties and supersedes any previous agreement between the Parties for the services. Any services undertaken by the *Consultant* prior to the date of this Contract will be deemed to have been undertaken pursuant to the terms of this Contract. | | | | | | |
|  | |  | | | | 12.6 | | | | | | References to any statutes or statutory provisions will be construed as references to the same as they may be amended from time to time amended, modified or re-enacted. | | | | | | |
|  | |  | | | | 12.7 | | | | | | Headings or clauses and sub-clauses are for convenience only and do not affect the interpretation of this Contract. | | | | | | |
|  | |  | | | | 12.8  12.9 | | | | | | Save as otherwise provided in this Contract the *Consultant* shall not be or be deemed to be an agent of the *Employer* and the *Consultant* shall not hold itself out as having authority or power to bind the *Employer* in any way. This Contract shall not create a partnership between the *Employer* and the *Consultant* within the meaning of the Partnership Act 1890 or any landlord and tenant relationship other than where specifically contemplated by the terms of this Contract.  In this Contract:   * References to ‘Framework Agreement’ mean the Framework Agreement entered into between the *Employer* and the *Consultant* dated 25 July 2017. * Words/phrases defined in the Framework Agreement shall have the same meaning in this Contract * References to ‘this Contract’ shall mean ‘Contract’ as defined in the Framework Agreement | | | | | | |
| **Communications** | |  | | | | **13** | | | | | |  | | | | | | |
|  | |  | | | | 13.1 | | | | | | Each instruction, certificate, submission, proposal, record, acceptance, notification, reply and other communication which this Contract requires is communicated in a form which can be read, copied and recorded. Writing is in the *language of this Contract*. | | | | | | |
|  | |  | | | | 13.2 | | | | | | A communication (as described in clause 13.1 above) has effect when it is received at the last address notified by the recipient for receiving communications or, if none is notified, at the address of the recipient stated in the Contract Data. | | | | | | |
|  | |  | | | | 13.3 | | | | | | Any notice or other communication whatsoever which the *Employer* is required or authorised by this Contract to give or make to the *Consultant* will, without prejudice to any other method of giving or making it, be sufficiently given or made if it is sent by post in a prepaid letter addressed to the *Consultant* by name at the last known place of abode or business of the *Consultant* and if that letter is not returned through the post undelivered, that notice or communication will be deemed for the purposes of this Contract to have been given or made at the time at which the letter would in the ordinary course of post be delivered. | | | | | | |
|  | |  | | | | 13.4 | | | | | | The *Employer* replies to a communication submitted or resubmitted to him by the *Consultant* for acceptance. If his reply is not acceptance, the *Employer* states his reasons and the *Consultant* resubmits the communication within the *period for reply* taking account of these reasons. A reason for withholding acceptance may include that more information is needed in order to assess the *Consultant*’s submission fully. | | | | | | |
|  | |  | | | | 13.5 | | | | | | The *Employer* may extend the *period for reply* to a communication if the *Employer* and the *Consultant* agree to the extension before the reply is due. The *Employer* notifies the *Consultant* of the extension which has been agreed. | | | | | | |
|  | |  | | | | 13.6 | | | | | | The *Consultant* retains copies of drawings, specifications, reports and other documents which record the *services* for the *period for retention*. The copies are retained in the form stated in the Scope. | | | | | | |
|  | |  | | | | 13.7 | | | | | | A notification which this Contract requires is communicated separately from other communications. | | | | | | |
|  | |  | | | | 13.8 | | | | | | The *Employer* may withhold acceptance of a submission by the Consultant. Withholding acceptance for a reason stated in this Contract is not a compensation event. | | | | | | |
| **Freedom of Information Act (“FOIA”)** | |  | | | | 13A | | | | | | For the purposes of this clause 13A:  “Information" has the meaning given under section 84 of the (FOIA); and  "Requests for Information" has the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" applies). | | | | | | |
|  | |  | | | | 13A.1 | | | | | | The *Consultant* acknowledges that the *Employer* is subject to the requirements of the code of practice on government information, the FOIA and the Environmental Information Regulations and assists and co-operates with the *Employer* to enable the *Employer* to comply with its Information disclosure obligations. | | | | | | |
|  | |  | | | | 13A.2 | | | | | | The *Consultant*:   * transfers to the *Employer* all Requests for Information that it receives as soon as practicable and in any event within one week of receiving a Request for Information; * provides the *Employer* with a copy of all Information in its possession, or power in the form that the *Employer* requires within five (5) Working Days (or such other period as the *Employer* may specify) of the *Employer*'s request; and * provides all necessary assistance as reasonably requested by the *Employer* to enable the *Employer* to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations. | | | | | | |
|  | |  | | | | 13A.3 | | | | | | The *Employer* is responsible for determining in its absolute discretion (and procures that its sub-contractors do likewise) whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, the FOIA or the Environmental Information Regulations. | | | | | | |
|  | |  | | | | 13A.4 | | | | | | The *Consultant* does not respond directly to a Request for Information unless expressly authorised to do so by the *Employer*. | | | | | | |
|  | |  | | | | 13A.5 | | | | | | The *Consultant* acknowledges that the *Employer* may be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the *Consultant* or the service without consulting the *Consultant* or having taken their views into account. Where the *Employer* does not consult with the *Consultant*, the *Employer* takes reasonable steps, where appropriate, to give the *Consultant* advanced notice or draws the disclosure to the *Consultant*’s attention after any such disclosure. | | | | | | |
|  | |  | | | | 13A.6 | | | | | | The *Consultant* ensures that all Information is retained for disclosure in accordance with DIO DOC 12 (Commercially Sensitive Information) and permits the *Employer* and/or the *Employer* to inspect such records as requested from time to time. | | | | | | |
|  | |  | | | | 13A.7 | | | | | | The *Consultant* acknowledges that the Commercially Sensitive Information listed in DIO DOC 12 (Commercially Sensitive Information) is of indicative value only and that the *Employer* may be obliged to disclose Information, with or without consultation. | | | | | | |
| **Disclosure of Information** | | |  | | | | 13B | | | | |  | | | | | | |
|  | | | | 13B.1 | | | | | Subject to clauses 13B.4, 13B.5 and 13B.6 each Party: | | | | | | |
|  | | | |  | | | | | * will treat in confidence all Information it receives from the other; * will not disclose any of that Information to any third party without the prior written consent of the other Party, which consent will not unreasonably be withheld, except that the *Consultant* may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of this Contract; * will not use any of that Information otherwise than for the purpose of the Contract; and * will not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under this Contract   provided that:  the *Consultant* hereby gives irrevocable consent for the *Employer* to disclose any Information it receives from the *Consultant* (including Confidential Information) and the details of this Contract:   * to any party which has been invited by the *Employer* to submit a tender for appointment as the *Employer’s* SBP as described in Clause 19 so far as necessary for the purpose of preparing the tender; * to any party appointed as the *Employer’s* SBP as described in Clause 19 so far as necessary for the purpose of enabling that party to act as the SBP; * to the Incorporated Entity as described in Clause 19 so far as necessary for the purpose of enabling the Incorporated Entity to manage this Contract; * to any party appointed as Employer in respect of this Contract so far as necessary for the purpose of enabling the Employer to carry out the activities and tasks to be undertaken by the Employer under this Contract   and provided further that the *Consultant* hereby agrees upon receipt of notice from the Employer to disclose any Information (including Confidential Information) which the Contractor is required to disclose to the Employer under the terms of this Contract:   * to any party which has been invited by the *Employer* to submit a tender for appointment as the *Employer’s* SBP as described in Clause 19 so far as necessary for the purpose of preparing the tender; * to any party appointed as the *Employer’s* SBP as described in Clause 19 so far as necessary for the purpose of enabling that party to act as the SBP; * to the Incorporated Entity as described in Clause 19 so far as necessary for the purpose of enabling the Incorporated Entity to manage this Contract; * to any party appointed as Employer in respect of this Contract so far as necessary for the purpose of enabling the Employer to carry out the activities and tasks to be undertaken by the Employer under this Contract | | | | | | |
|  | | | | 13B.2 | | | | | The *Consultant* will take all reasonable precautions necessary to ensure that all Information disclosed to the *Consultant* by or on behalf of the *Employer* under or in connection with this Contract: | | | | | | |
|  | | | |  | | | | | a) is disclosed to Personnel only to the extent necessary for the performance of this Contract; and  b) is treated in confidence by them and not disclosed except with prior written consent or used otherwise than for the purpose of performing the *services* or having work performed for the *Employer* under this Contract or any sub-contract under it. | | | | | | |
|  | | | | 13B.3 | | | | | The *Consultant* will ensure that his Personnel are aware of his arrangements for discharging the obligations at clauses 13B.1 and 13B.2 before they receive Information and will take such steps as may be reasonably practical to enforce such arrangements. | | | | | | |
|  | | | | 13B.4 | | | | | The restrictions contained in Clauses 13B.1 and 13B.2 will not apply to any Information to the extent that either Party: | | | | | | |
|  | | | |  | | | | | 1. exercises rights of use or disclosure granted otherwise than in consequence of, or under, this Contract; 2. has the right to use or disclose the Information in accordance with other conditions of the Contract; or 3. can show:    * that the Information was or has become published or publicly available for use otherwise than in breach of any provision of this Contract or any other agreement between the Parties;    * that the Information was already known to it (without restrictions on disclosure or use) prior to it receiving it under or in connection with this Contract;    * that the Information was received without restriction on further disclosure from a third party who lawfully acquired it and who is himself under no obligation restricting its disclosure; or    * from its records that the same information was derived independently of that received under or in connection with this Contract;   provided the relationship to any other Information is not revealed. | | | | | | |
|  | | | | 13B.5 | | | | | Neither Party will be in breach of this clause where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Party making the disclosure will ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosure will in no way diminish the obligations of the Parties under this clause. | | | | | | |
|  | | | | 13B.6 | | | | | The *Employer* will not be in breach of this Contract where it can show that any disclosure of Information is made solely and to the extent necessary to comply with the FOIA or the Environmental Information Regulations. To the extent permitted by the time for compliance under the FOIA or the Environmental Information Regulations, the *Employer* will consult the *Consultant* where the *Employer* is considering the disclosure of Information under the FOIA or the Environmental Information Regulations and, in any event, will provide prior notification to the *Consultant* of any decision to disclose the Information. The *Consultant* acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the FOIA or the Environmental Information Regulations is a matter in which the *Employer* will exercise its own discretion, subject always to the provisions of the FOIA or the Environmental Information Regulations. For the avoidance of doubt, nothing in this clause will affect the *Consultant*’s rights at law. | | | | | | |
|  | | | | 13B.7 | | | | | Nothing in this clause will affect the Parties' obligations of confidentiality where information is disclosed orally in confidence. | | | | | | |
|  | | | | 13B.8 | | | | | The *Consultant* will take every precaution to ensure that information about the Contract, or arising from or connected with this Contract, is divulged only to the minimum number of employees and then only to the extent essential to each person's action in carrying out this Contract. The *Consultant* will not in any circumstances allow access by employees to general information not relating to the Establishment with which such employee is personally concerned. No information regarding the *services* being provided under the Contract or facilities to photograph or film will be given or permitted by the *Consultant* except with prior written permission of the *Employer*. | | | | | | |
|  | | | | 13B.9 | | | | | The *Consultant* will not communicate with representatives of the general and technical press, radio, television or other communications media unless specifically granted permission to do so in writing by the *Employer*. | | | | | | |
|  | | | | 13B.10 | | | | | The *Consultant* will fully indemnify the *Employer*, his servants or agents against the costs of dealing with any claims made in respect of information subject to the Data Protection Act 1998 which claims would not have arisen but for some act, omission or negligence on the part of the *Consultant*, his servants, agents, suppliers or any other person under his control. | | | | | | |
| **The *Employer*** | | |  | | | **14** | | | | | |  | | | | | | |
|  | | |  | | | 14.1 | | | | | | The *Employer’s* acceptance of a communication from the *Consultant* or of his work does not change the *Consultant*’s responsibility to Provide the Services or his liability for compliance with the terms of this Contract. | | | | | | |
|  | | |  | | | 14.2 | | | | | | The *Employer*, after notifying the *Consultant*, may delegate any of his actions and may cancel any delegation. A reference to an action of the *Employer* in this Contract includes an action by his delegate. In the event of any misunderstanding and/or clarification as regards the authority or areas of responsibility of a delegate, the *Consultant* may serve a written notice of clarification upon the *Employer.* Within 14 Working Days thereafter the *Employer* shall answer in writing the *Consultant’s* notice of clarification. | | | | | | |
|  | | |  | | | 14.3 | | | | | | The *Employer* may give an instruction, in accordance with the Change Management Process, to the *Consultant* which changes the Scope (including, but not limited to, ordering additional services).This does not constitute a compensation event in accordance with clause 60.1 but the effect on the Prices (if any) will be determined in accordance with Clause 19L (Change Management Process) and if the *Employer* wishes to proceed with the change the *Employer* shall issue a Task Orderin accordance with clause X19. | | | | | | |
|  | | |  | | | 14.4 | | | | | | The *Employer* may replace  *his delegate* after he has notified the *Consultant* in writing of the name of the replacement. | | | | | | |
| **Early warning** | | |  | | | **15** | | | | | |  | | | | | | |
|  | | |  | | | 15.1 | | | | | | The *Employer* and the *Consultant* give an early warning by notifying the other as soon as either becomes aware of any matter which could | | | | | | |
|  | | |  | | |  | | | | | | * Impact the total of the Prices, | | | | | | |
|  | | |  | | |  | | | | | | * delay Completion, | | | | | | |
|  | | |  | | |  | | | | | | * change the Accepted Programme, | | | | | | |
|  | | |  | | |  | | | | | | * delay meeting a Key Date, | | | | | | |
|  | | |  | | |  | | | | | | * impair the effectiveness of the *services* or | | | | | | |
|  | | |  | | |  | | | | | | * affect the work of the *Employer*, an *Employer*’s contractor or another consultant. | | | | | | |
|  | | |  | | |  | | | | | | The *Consultant* may give an early warning by notifying the *Employer* of any other matter which could increase the total of the Prices. The *Consultant* enters early warning matters in the Risk Register. Early warning of a matter for which a compensation event has previously been notified is not required. | | | | | | |
|  | | |  | | | 15.2 | | | | | | In general, early warnings notified in accordance with clause 15.1 will be considered on a monthly basis at risk reduction meetings as detailed in Schedule 18 Volume 2,. Notwithstanding any monthly meetings, either the *Employer* or the *Consultant* may instruct, given at least two (2) Working Days notice has been provided, the other to attend a risk reduction meeting. Each may instruct other people to attend if the *Employer* agrees but for the avoidance of doubt the *Consultant* will be deemed to have agreed to the attendance of the *Employer* at any such risk reduction meetings. | | | | | | |
|  | | |  | | | 15.3 | | | | | | At a risk reduction meeting, those who attend co-operate in | | | | | | |
|  | | |  | | |  | | | | | | * making and considering proposals for how the effect of the registered risks can be avoided or reduced, | | | | | | |
|  | | |  | | |  | | | | | | * seeking solutions that will bring advantage to all those who will be affected, | | | | | | |
|  | | |  | | |  | | | | | | * deciding on the actions which will be taken and who, in accordance with this Contract, will take them and | | | | | | |
|  | | |  | | |  | | | | | | * deciding which risks have now been avoided or have passed and can be removed from the Risk Register. | | | | | | |
|  | | |  | | | 15.4 | | | | | | The *Consultant*revises the Risk Register to record the decisions made at each risk reduction meeting and issues the revised Risk Register for the approval of the *Employer*. If a decision needs a change to the Scope, the *Employer* instructs the change as soon as reasonably possible in accordance with the Change Management Process. No decision taken at a risk reduction meeting and/or change to the Risk Register will operate to change the contractual allocation of risk hereunder or the obligations of the *Employer* or the *Employer* or a Head of Establishment, unless specifically instructed otherwise in writing by the *Employer*. | | | | | | |
| **Ambiguities and** | | |  | | | **16** | | | | | |  | | | | | | |
| **inconsistencies** | | |  | | | 16.1 | | | | | | The *Employer* or the *Consultant* notifies the other as soon as either becomes aware of any mistake, inaccuracy, discrepancy or omission in the design of the *services* or in the Scope or any other document forming part of this Contract. The *Employer* gives an instruction as to how the mistake, inaccuracy, discrepancy or omission is to be dealt with. Compliance with such an instruction by the *Consultant* shall not constitute a compensation event where the instruction relates to any mistake, inaccuracy, discrepancy or omission in the design of the *services* or in any part of the Scope or any other document forming part of this Contract which was provided by the *Consultant.* | | | | | | |
| **Illegal and impossible** | | |  | | | **17** | | | | | |  | | | | | | |
| **requirements** | | |  | | | 17.1 | | | | | | The *Consultant* notifies the *Employer* as soon as he considers that the Scope requires him to do anything which is illegal or impossible. If the *Employer* agrees, he gives an instruction to change the Scope appropriately. | | | | | | |
| **Assignment** | | |  | | | **18** | | | | | |  | | | | | | |
|  | | |  | | | 18.1 | | | | | | The *Consultant* will not give, bargain, sell assign, or otherwise dispose of the Contract or any part thereof, or the benefit or advantage of the Contract or any part thereof, without the previous consent in writing of the *Employer*. The *Employer* may assign the benefit of the whole or any part of the Contract at any time without the prior consent of the *Consultant*. | | | | | | |
| **Transformation** | | |  | | | **19** | | | | | |  | | | | | | |
|  | | |  | | | 19.1 | | | | | | The *Employer* is currently carrying out a transformation programme, as part of which it intends to appoint a strategic business partner (“SBP”) to manage the delivery function of the current Defence Infrastructure Organisation. As part of this transformation programme the delivery function may be transferred into a separate legal entity (the “Incorporated Entity”), which will be managed by the SBP, and which may be granted responsibility by the Employer for managing this Contract. The *Employer* reserves the right at any time to:   * appoint a third party to act as the *Employer’s* SBP, which role shall include managing the delivery function of the *Employer*; and * transfer the *Employer’s* delivery function to the Incorporated Entity, in which case the Incorporated Entity may be made responsible for managing this Contract.   In the event of any of the above circumstances, the *Employer* will notify the *Consultant* of the identity of the SBP or Incorporated Entity and the scope of the SBP or Incorporated Entity’s authority to act. | | | | | | |
| **Change of Control** | | |  | | | | **19A** | | | | |  | | | | | | |
|  | | |  | | | | 19A.1 | | | | | The *Consultant* will inform the *Employer*, as soon as practicable, in writing of any material Change in Control of the *Consultant*. The *Consultant* will not be required to submit any advice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the conduct of the *Consultant* in the UK or other jurisdictions where the *Consultant* may be subject to legal sanction arising from issue of such advice. | | | | | | |
|  | | |  | | | | 19A.2 | | | | | For the purposes of this clause ‘control’ means the power of a person to secure that the affairs of the *Consultant* are conducted in accordance with the wishes of that person:   * by means of the holding of shares, or the possession of voting powers in, or in relation to, the *Consultant*; or * by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the *Consultant* and a material Change of Control occurs if a person who controls the *Consultant* ceases to do so or if another person acquires control of the *Consultant*. | | | | | | |
|  | | |  | | | | 19A.3 | | | | | The *Consultant* will inform the *Employer* on each occurrence of a material change in control. Each advice will be taken to be in respect of all contracts with the *Employer*. The advice should be submitted to:  Mergers and Acquisitions Section  Directorate of Supplier Relations  Ash 1 #3103  Ministry of Defence  Abbey Wood  Bristol BS34 8JH | | | | | | |
|  | | |  | | | | 19A.4 | | | | | Where the material Change of Control is to an Unsuitable Third Party or where the *Consultant* is in breach of the provisions of this clause 19A, the *Employer* may terminate the *Consultant’s* employment under clause 90 of this Contract at any time. | | | | | | |
|  | | |  | | | | 19A.5 | | | | | Advice by the *Consultant* of any material change of control will not prejudice the existing rights of the *Employer* or the *Consultant* under the Contract nor create or imply any rights of either the *Consultant* or the *Employer* additional to the *Employer*’s right to receive that information. | | | | | | |
| **Waiver** | | |  | | | | **19B** | | | | |  | | | | | | |
|  | | |  | | | | 19B.1 | | | | | No act or omission of either Party will by itself amount to a waiver of any right or remedy unless expressly stated by that Party in writing. In particular, no reasonable delay in exercising any right or remedy, will by itself constitute a waiver of that right or remedy. | | | | | | |
|  | | |  | | | | 19B.2 | | | | | No waiver in respect of any right of remedy will operate as a waiver in respect of any other right or remedy. | | | | | | |
| **Severability** | | |  | | | | **19C** | | | | |  | | | | | | |
|  | | |  | | | | **19C.1** | | | | | If any provision of this Contract is held to be invalid, illegal or unenforceable to any extent then:   * such provision will (to the extent it is invalid, illegal or unenforceable) be given no effect and will be deemed not to be included in the Contract but without invalidating any of the remaining provisions of the Contract; and * the Parties will use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid, illegal or unenforceable provision. | | | | | | |
| **Third Party Rights** | | |  | | | | **19D** | | | | |  | | | | | | |
|  | | |  | | | | 19D.1 | | | | | Except as provided in clause 19D.2 and notwithstanding anything to the contrary elsewhere in the Contract, no right is granted to any person who is not a party to the Contract to enforce any term of the Contract in his own right and the Parties to the Contract declare that they have no intention to grant any such right. | | | | | | |
|  | | |  | | | | 19D.2 | | | | | Where, and only where, a clause in this Contract expressly states that a third party will be entitled to enforce a term of this Contract:   * the said third party will be entitled to enforce that term in his own right; * the *Consultant* will inform the said third party as soon as is reasonably practicable of the existence of the relevant right together with any other terms (including the terms of this clause) relevant to the exercise of that right; and * the third party's rights will be subject to any provision in the Contract that provides for the submission of disputes under the Contract generally or the said rights in particular to arbitration (such as in Secondary Option W).   The Parties’ rights to rescind or agree any variation under this Contract are not subject to the consent of any other party. | | | | | | |
| **Recovery of Sums Due** | | |  | | | | **19E** | | | | |  | | | | | | |
|  | | |  | | | | 19E.1 | | | | | Whenever under the Contract any sum of money will be recoverable from or payable by the *Consultant*, the same may be deducted from any sum then due or which at any time thereafter may become due to the *Consultant* under the Contract, or under any other contract with the *Employer* or with the Crown and/or such sum may be recoverable by the *Employer* from the *Consultant* as a debt. | | | | | | |
| **Decoupling clause** | | |  | | | | **19F** | | | | |  | | | | | | |
|  | | |  | | | | 19F.1 | | | | | If the *Consultant* will enter into any other contract with the Crown relating in any way to the subject matter of the Contract, then, no breach by the Crown of that other contract nor any other act or omission nor any written or oral statement nor any representation whatsoever of or by the Crown its servants or agents or other consultants relating to or connected with any other contracts as aforesaid will, regardless of any negligence on its part or their part:   * give the *Consultant* any right under the Contract to a compensation event or any other relief or remedy whatsoever against the *Employer*; or * affect, modify, reduce or extinguish either the obligations of the *Consultant* or the rights or remedies of the *Employer* or * be taken to amend, add to, delete or waive any term or condition of the Contract. | | | | | | |
| **Publicity** | | |  | | | | **19G** | | | | |  | | | | | | |
|  | | |  | | | | 19G.1 | | | | | The *Consultant* may publicise the *services* only with the *Employer*’s written agreement. | | | | | | |
|  | | |  | | | | 19G.2 | | | | | The *Consultant* will take all reasonable steps to ensure that the *Consultant’s* Personnel do not publicise the *services* other than in accordance with clause 19G.1. | | | | | | |
| **Audit** | | |  | | | | **19H** | | | | | In addition to any other rights under the Contract, the *Employer* and its agents may at any time and without notice audit the books and records being maintained by the *Consultant* whilst undertaking this Contract, including those books and records relating to any costs and expenses incurred by the *Consultant* or charged to the *Employer* and including those books and records being maintained by the *Consultant*'s subconsultants. | | | | | | |
| **Fraud and prevention of corruption** | | |  | | | | **19I** | | | | |  | | | | | | |
|  | | |  | | | | 19I.1 | | | | | Further to the requirements of Schedule 10 including Annex’s A – E.Fraud sections, the *Consultant* will maintain a robust Fraud Prevention and Ethics policy, which concurs with the *Employer’s* zero tolerance regimes with regard to Fraud and Theft. | | | | | | |
|  | | | | 19I.2 | | | | | The *Consultant* will produce and maintain a fraud risk register of potential fraud and theft risks to this Contract and show what controls they propose to address the risks identified. This is to be reviewed and updated annually from the date of this Contract until the *completion date.* | | | | | | |
|  | | | | 19I.3 | | | | | The *Consultant* will provide the *Employer* with a programme and details of fraud awareness training which is to be provided to the *Consultant*’s Personnel or any other persons under his control at regular intervals. Training is to clearly show what is expected from them to fulfil the Fraud prevention measures under this Contract. | | | | | | |
|  | | | | 19I.4 | | | | | The *Consultant* warrants that in entering this Contract he has not committed any Fraud and will have a robust Fraud prevention and ethics policy which concurs with the *Employer’s* zero tolerance regime with regard to Fraud and Theft. | | | | | | |
|  | | | | 19I.5 | | | | | The *Consultant* will procure that his Subconsultants are under equivalent contractual obligations as are set out in this clause 19I and will take all practicable steps to prevent Fraud or the risk of Fraud arising and will disclose the relevant provisions within the sub-contracts upon request by the *Employer*. | | | | | | |
|  | | | | 19I.6 | | | | | The *Consultant* warrants that he has read, and that his Personnel will comply with the detailed anti-fraud measures and recommendations set out within the Fraud Prevention ManualSchedule 10MOD Fraud, Theft, Corruption, Bribery and Irregularity Policy **(DIO DOC 36)** and the MOD Fraud Response Procedure Schedule 10 Annex Ehereto and upon entering into this Contract will circulate copies of the said Manual/Policies to each and every member of his Personnel at any time engaged in relation to this Contract. | | | | | | |
|  | | | | 19I.7 | | | | | The *Consultant* will, in complying with the measures and recommendations contained within The Fraud Prevention Manual Shedule 10, keep and maintain all relevant records, invoices, approvals, notes, minutes of meetings and all such other original Contract documents as may be required to verify work carried out by the *Consultant* and his Subconsultants so that they may be provided to the *Employer* upon request. | | | | | | |
|  | | | | 19I.8 | | | | | The *Consultant* will, in accordance with MOD Fraud Prevention Manual **Schedule 10,** carry out an internal audit on a period not greater than 6 monthly basis in respect of this Contract. Where the *Consultant* or its parent is a PLC the audit committee of the *Consultant* or PLC Company will manage and be responsible for such audit. Where the *Consultant* is a Joint Venture company, or a non-PLC, that company or Joint Venture Company will be set an audit committee to manage and be responsible for such audit. The audit committee will:   * Report to the *Employer* in respect of the standards achieved in the audit; * Notify the *Employer* of any fraud identified in any internal or external audit; and * Make recommendations to the *Employer* as to what measures should be taken to improve fraud prevention and forward an action plan to show recommendations are put in place and ensure that these are acted upon. | | | | | | |
|  | | | | 19I.9 | | | | | Without prejudice to clause 13B (Disclosure of Information) and clause 26G (Security Measures), the *Consultant* will immediately report to the *Employer* any circumstances giving rise to Fraud within his own organisation, that of his Subconsultants or the *Employer* or otherwise in relation to this Contract and will provide all such relevant information which may assist the *Employer* in dealing with such report efficiently and effectively. | | | | | | |
|  | | | | 19I.10 | | | | | The *Consultant* will immediately report to the *Employer* any act or omission, whether fraudulent, inadvertent or accidental which has resulted or could result in the *Employer* being charged for work and/or *services* which have not been carried out. | | | | | | |
|  | | | | 19I.11 | | | | | The *Employer* shall be entitled to terminate all or part of the *Consultant’s* employment under this Contract in accordance with clause 90 (Termination) in the event that the *Consultant,* any of its Subconsultants, any of its Personnel or any other party for whom it is responsible commits an act of Fraud or Theft. | | | | | | |
|  | | | | 19I.12 | | | | | The *Consultant* will fully co-operate and comply with any investigations and enquiries initiated by the *Employer*, the Defence Fraud Unit, the National Audit Office, the Police, or any other organisation identified by the *Employer* and/or any organisation acting on behalf of them. The *Consultant* will procure that his sub-contracts contain the same provisions, extracts of which are to be provided upon request by the *Employer*. | | | | | | |
|  | | | | 19I.13 | | | | | The *Employer* will be entitled to set-off, deduct, abate or recover as a debt against the *Consultant* all monies and losses howsoever arising in connection with or sustained as a consequence of Fraud including all associated investigation costs. | | | | | | |
|  | | | | 19I.14 | | | | | Any Fraud related actions under this clause 19l may be brought by the *Employer* or such other appropriate body by civil or criminal proceedings. Such proceedings will be brought in the English courts unless the Parties otherwise agree. | | | | | | |
| **Timescales** | | |  | | | | **19J** | | | | | The Parties act within such timescales as may be reasonable in all the circumstances where this Contract does not provide for a specific timescale | | | | | | |
| **Amendments to Contract** | | |  | | | | **19K** | | | | |  | | | | | | |
|  | | |  | | | | 19K.1 | | | | | The terms and conditions of this Contract may not be amended except by the written agreement of the duly authorised representatives of the Parties. | | | | | | |
|  | | |  | | | | 19K.2 | | | | | The written agreement of the Parties will be obtained only by:   * serially numbered amendment being issued to the *Consultant* by the *Employer*. The amendment will come into force only when the *Consultant* has despatched to the *Employer* on a DEFFORM 10B an unqualified acceptance of the *Employer*'s offer; or * the despatch by the *Employer* of a serially numbered amendment letter as an unqualified acceptance of an offer from the *Consultant*. | | | | | | |
|  | | | | 19K.3 | | | | | Any purported amendment to the terms and conditions of this Contract which does not satisfy the terms of this Condition will be of no effect. | | | | | | |
|  | | | | 19K.4 | | | | | Any changes of the Scope may only be made in accordance with the Change Management Process and the issue of a Task Order in accordance with clause X19. | | | | | | |
|  | | |  | | | | 19K.5 | | | | | If the scope of the *services* are reduced the *Employer* shall be free to appoint another consultant to carry out any part of the *services* that has been so removed. | | | | | | |
| **Change Management Process** | | |  | | | | **19L** | | | | |  | | | | | | |
|  | | |  | | | | 19L.1 | | | | | Either the *Employer* or the *Consultant* may propose changes to the Scope on the change proposal/demand order form at Schedule 3**.** If the *Consultant* proposes a change he shall also provide the *Employer*  with a statement containing the following supporting information:   * the reason for the proposed change; | | | | | | |
|  | | |  | | | | 19L.2 | | | | | Where changes to the Scope are proposed by either the *Employer* or the *Consultant*, the *Consultant* shall provide:   * the effect and/or impact, if any, which the change might have on the *Consultant’s* performance of this Contract; * estimates of the costs and/or the time involved in, or required for effecting the change; * confirmation and clarification where appropriate of how the *Consultant* proposed change would be of significant benefit to the *Employer*; * any other data or information whether financial or otherwise that the *Employer* may reasonably require in order to decide whether or not to authorise the *Consultant* to proceed with the change; * (where relevant) confirmation as to how the proposed change will affect any interface contracts (in particular any Defcon 2000, Standalone Prime or Regional Prime Contracts), operating simultaneously during the course of the *services*. | | | | | | |
|  | | |  | | | | 19L.3 | | | | | Before a change to the Scope proposed by either the *Employer* or *Consultant* can be approved, the *Consultant* shall submit a Consultant’s Task Order containing a quotation of the changes to the Prices and an estimate of the delay to any Completion Date. | | | | | | |
|  | | |  | | | | 19L.4 | | | | | In the quotation the *Consultant* shall use the rates and prices contained in the Price List to calculate the changes to the Prices. The format of the Task Order shall be as detailed on the change proposal/demand order form atSchedule 3. | | | | | | |
|  | | |  | | | | 19L.5 | | | | | Exceptionally, where the *Consultant* can demonstrate to the entire satisfaction of the *Employer* that the rates and prices contained in the Price List are not appropriate for pricing the proposed change, the *Consultant* shall submit his proposed revision to the Prices and the Price List on an alternative basis. In such exceptional circumstances, the *Consultant* must demonstrate to the complete satisfaction of the *Employer* that the rates and prices quoted are the most advantageous available and represent value for money for the *Employer*. | | | | | | |
|  | | |  | | | | 19L.6 | | | | | It shall be a condition precedent that for the *Consultant* to recover rates and prices different to those contained in the Price Listhe shall have fully complied with clause 19L.5 above and that the *Employer* shall have accepted in writing any such alternative rates or prices, prior to any further *services* and/or any consequent adjustments for the change being carried out under such alternative rates or prices. | | | | | | |
|  | | |  | | | | 19L.7 | | | | | Upon receiving the Consultant’s Task Order, the *Employer* shall be entitled to reject, accept the same or negotiate with the *Consultant* with a view to reaching an agreement on any adjustment to the Contract. | | | | | | |
|  | | |  | | | | 19L.8 | | | | | If the rates or prices cannot be agreed the *Consultant* or *Employer* shall be entitled to resolve the matter in accordance with clause W1 within 10 Working Days of a dispute arising after which time no challenge to the adjustments proposed by the *Employer* shall be capable of being made. The *Employer* shall have discretion whether or not to proceed with and approve the change following any determination in accordance with the dispute procedure. | | | | | | |
|  | | |  | | | | 19L.9 | | | | | The *Employer* may call a meeting with the *Consultant* to discuss any changes proposed by the *Consultant*. | | | | | | |
| **Negative Covenants** | | |  | | | | **19M** | | | | |  | | | | | | |
|  | | |  | | | |  | | | | | Unless the *Consultant* shall have obtained the prior written consent of the *Employer*, the *Consultant* shall not (or, to the extent the same is within his control, shall not permit any person to):   * Create, incur, assume or permit to exist any lien upon the Establishment or any other Affected Property or any part thereof, or upon any property of the *Employer*; * Sell, lease, assign, transfer or otherwise dispose of any of the *Employer* *'s* property (including all property owned, hired or used by the *Employer*); * Cause the *Employer* to be, or to become, responsible or liable for obligations of any other person; * Settle or compromise any action or claim or institute any proceedings, suits or litigation for or on behalf of the *Employer*. | | | | | | |
| **The *Employer’s*** | | |  | | | | **20** | | | | |  | | | | | | |
| **obligations** | | |  | | | | 20.1 | | | | | The *Employer* does not give an instruction to the *Consultant* which would require him to act in a way that was outside his professional code of conduct. | | | | | | |
|  | | |  | | | | 20.2 | | | | | Subject to clause 21.6 the *Employer* shall provide copies of any relevant documents, or relevant portions of documents, as well as technical, operational and other information to the extent reasonably available to the *Employer* and to the extent necessary, in the opinion of the *Employer*, for the performance by the *Consultant* of his obligations under this Contract. | | | | | | |
| **Providing the Services** | | |  | | | | **21** | | | | |  | | | | | | |
|  | | |  | | | | 21.1 | | | | | The *Consultant* Provides the Services in accordance with the Scope and the other applicable clauses of this Contract (including but not limited to, complying with the Accepted Programme and (where applicable) the ESTS for each Establishment). | | | | | | |
|  | | |  | | | | 21.2 | | | | | In Providing the Services, the *Consultant* minimises the interference caused to the Affected Property and the activities taking place in it. | | | | | | |
|  | | |  | | | | 21.3 | | | | | Without prejudice to any obligation of the *Consultant* contained anywhere in any document forming part of this Contract (including the Scope) the *Consultant* warrants and undertakes that:   * the *services* have been or will be carried out and completed exercising the reasonable skill care and diligence to be expected of a properly qualified and competent consultant of the relevant discipline experienced in the provision of like *services* to the *services* for projects of an equivalent type, size, scope and complexity to the project to which the *services* relate*;* * he shall comply and shall ensure that his Personnel and Subconsultants comply with any general or local Act of Parliament, any instrument rule or order made under any Act of Parliament, regulations and bylaws of any local or other statutory authority and any European Directive and/or regulation (referred to in the Contract documents as the **"Statutory Requirements"**) throughout the duration of this Contract. In the event of the *Consultant* failing to comply with any Statutory Requirements, he shall keep the *Employer* indemnified against all penalties and liabilities of every kind. For the avoidance of doubt, the *Employer* may set off any such liabilities against payments. | | | | | | |
|  | | |  | | | | 21.4 | | | | | The *Consultant* warrants that he has and his Personnel and Subconsultants have the experience and resources To Provide the Services (including where relevant the design of the *services*) and has/have experience of, and has/have provided *services* of a similar in size, scope, duration and complexity as the *services*. | | | | | | |
|  | | |  | | | | 21.5 | | | | | The *Consultant* will be deemed to have fully acquainted himself with the Affected Property and to have obtained all the same information as to risks, contingencies and all other circumstances which may influence or affect the *services* and no failure on the part of the *Consultant* to discover or foresee any such condition, risk, contingency or circumstances (whether the same ought reasonably to have been discovered or foreseen or not) will entitle the *Consultant* to an addition to the Prices or to claim indemnities or otherwise any additional sum. | | | | | | |
|  | | |  | | | | 21.6 | | | | | The *Consultant* will not be entitled to rely upon any survey, report or other document prepared by or on behalf of the *Employer* (including the Scope) regarding any such matter as is referred to in this clause and the *Employer* makes no representation or warranty as to the accuracy or completeness of any such survey, report or document (including the Scope) or any representation or statement whether negligently or otherwise made therein. | | | | | | |
|  | | |  | | | | 21.7 | | | | | [not used] | | | | | | |
|  | | |  | | | | 21.8 | | | | | The *Consultant* will provide continual supervision of the *services* and perform and provide everything necessary for the organisation and co-ordination of the *services* between its Personnel and Others. | | | | | | |
|  | | |  | | | | 21.9 | | | | | The *Consultant* designs the parts of the *services* that the Scope states he is to design. | | | | | | |
|  | | |  | | | | 21.10 | | | | | The *Consultant* shall submit the particulars of his design to the *Employer* within the period or periods stated in the Scope or (if no such period or periods are stated) within a period which will reasonably allow the *Employer* to raise queries. | | | | | | |
|  | | |  | | | | 21.11 | | | | | The *Employer* may raise such questions as it requires for the purpose of considering whether the design submitted to the *Employer* in accordance with clause 21.10 is in accordance with the Scope or any other requirement of this Contract. | | | | | | |
|  | | |  | | | | 21.12 | | | | | The *Consultant* shall respond promptly to any comments made or questions raised by the *Employer* in relation to any design particulars submitted by the *Consultant*. | | | | | | |
|  | | |  | | | | 21.13 | | | | | Notwithstanding any queries raised or comments made by the *Employer* under clause 21.11 or any other provision to the contrary in this Contract, the *Consultant* accepts entire responsibility for the design of the *services* (including all design work prepared before or after the date hereof (and whether carried out by or on behalf of the *Employer* or the *Consultant*)), all designs contained in the Scope and/or contained in any other document forming part of this Contract and for any mistake, inaccuracy, omission or discrepancy in such design or such documents. | | | | | | |
|  | | |  | | | | 21.14 | | | | | Nothing in this clause 21 or any other provision of this Contract shall relieve the *Consultant* of any liability under this Contract for any defect in the *services* or for any inconsistency between any design documents and no design shall be deemed to satisfy the requirements of this Contract by virtue of having been submitted to and/or considered by the *Employer* (or *Employer*) pursuant to the terms of this clause 21. | | | | | | |
| **People** | | |  | | | | **22** | | | | |  | | | | | | |
|  | | |  | | | | 22.1 | | | | | The Head of Establishment will provide such available administrative and technical facilities for the *Consultant*'s Personnel employed at an Establishment for the purpose of the Contract as may in his/her opinion be necessary for the effective and economical discharge of work under the Contract. These facilities will be provided free of charge unless otherwise stated in the Contract. The status to be accorded to the *Consultant*'s Personnel for messing purposes will be at the discretion of the Head of Establishment. | | | | | | |
|  | | |  | | | | 22.2 | | | | | Any land or premises (including compound and temporary buildings) made available to the *Consultant* by the *Employer* in connection with the Contract will be made available to the *Consultant* free of charge, unless otherwise stated in the Contract, and will be used by the *Consultant* solely for the purposes of performing the Contract. The *Consultant* will have the use of such land or premises as licensee and will vacate the same upon completion of the Contract. Any utilities required by the *Consultant* will be subject to the charges set out in this Contract. | | | | | | |
|  | | | | 22.3 | | | | | All fittings, equipment and consumables provided free of charge by the *Employer* to the *Consultant* or for use by the *Consultant* will be solely for the purposes of performing this Contract and will remain vested in the name of the *Employer*. | | | | | | |
|  | | | | 22.4 | | | | | The *Consultant* will have no claim against the *Employer* for any additional cost or delay occasioned by the closure for holidays of Establishments, where this is made known to him prior to entering into this Contract. | | | | | | |
|  | | |  | | | | 22.5 | | | | | Without prejudice to the provisions of Section 8 the *Consultant* will, except as otherwise provided for in this Contract, make good or, at the option of the *Employer*, pay compensation for all damage occurring to government property, which includes land and buildings, occasioned by the *Consultant* or the *Consultant*’s Personnel, arising from his or their presence on a an Establishment in connection with the Contract. | | | | | | |
|  | | |  | | | | 22.6 | | | | | The *Consultant* will submit in writing to the *Employer* for approval, initially and as necessary from time to time, a list of those of his Personnel who may need to enter an Establishment for the purpose of, or in connection with, work under the Contract, giving such particulars as the *Employer* may require, including full details of birthplace and parentage of any such Personnel who:  a) was not born in the United Kingdom; or  b) if he was born in the United Kingdom, was born of parents either or both of whom were not born in the United Kingdom. | | | | | | |
|  | | |  | | | | 22.7 | | | | | The *Employer* will issue passes for those Personnel who are approved by it in accordance with this clause 22.7 for admission to a Government Establishment and Personnel will not be admitted unless in possession of such a pass. Passes will remain the property of the *Employer* and will be surrendered on demand or on completion of the work. | | | | | | |
|  | | |  | | | | 22.8 | | | | | Notwithstanding the provisions of clauses 22.6 and 22.7 if, in the opinion of the *Employer*, any of the *Consultant*’s Personnel will misconduct himself, or it will not be in the public interest for any person to be employed or engaged by the *Consultant*, the *Consultant* will remove such person without delay on being required to do so and will cause the work to be performed by such other person as may be necessary (provided always that any such removal or replacement of any of the *Consultant’s* Personnel will not constitute a compensation event and the cost of compliance with any instruction in relation to the same will be borne by the *Consultant)*. | | | | | | |
|  | | |  | | | | 22.9 | | | | | The decision of the *Employer* upon any matter arising under clauses 22.7, 22.8 or 22.11 will be final and conclusive and without any liability to the Employer. | | | | | | |
|  | | |  | | | | | 22.10 | | | | The *Consultant* either employs each *key person* named to do the job for him stated in the Contract Data or employs a replacement person who has been accepted by the *Employer*. The *Consultant* submits the name, relevant qualifications and experience of a proposed replacement person to the *Employer* for acceptance. A reason for not accepting the person is that his relevant qualifications and experience are not as good as those of the person who is to be replaced. | | | | | | |
|  | | |  | | | | | 22.11 | | | | The *Employer* may, having stated his reasons, instruct the *Consultant* to remove a person employed by the *Consultant*. The *Consultant* then arranges that, after one day, the person has no further connection with the work included in this contract. | | | | | | |
| **Working with the** | | |  | | | | | **23** | | | |  | | | | | | |
| ***Employer* and Others** | | |  | | | | | 23.1 | | | | The *Consultant* co-operates with Others in obtaining and providing information which they need in connection with the *services*. The *Consultant* co-operates with Others and shares the Affected Property with them as stated in the Scope. | | | | | | |
|  | | |  | | | | | 23.2 | | | | Where necessary to Provide the Services, the *Consultant* holds or attends meetings with Others. The *Consultant* informs the *Employer* of these meetings beforehand and the *Employer* may attend them. | | | | | | |
|  | | |  | | | | | 23.3 | | | | If the *Employer* decides that the work does not meet the Condition stated for a Key Date by the date stated and, as a result, the *Employer* incurs additional cost either | | | | | | |
|  | | |  | | | | |  | | | | * in carrying out work or | | | | | | |
|  | | |  | | | | |  | | | | * by paying an additional amount to Others in carrying out work | | | | | | |
|  | | |  | | | | |  | | | | on the same project, the additional cost the *Employer* has paid or will incur is paid by the *Consultant*. The *Employer* assesses the additional cost within four weeks of the date when the Condition stated for that Key Date is met. | | | | | | |
|  | | |  | | | | | 23.4 | | | | The *Employer* and the *Consultant* provide facilities and other things as stated in the Scope. Any cost incurred by the *Employer* as a result of the *Consultant* not providing the facilities and other things he is to provide is assessed by the *Employer* and paid by the *Consultant*. | | | | | | |
| **Subconsulting** | | | | |  | | | | | **24** | |  | | | | | | |
|  | | | | |  | | | | | 24.1 | | If the *Consultant* subcontracts work, he is responsible for Providing the Services as if he had not subcontracted. This Contract applies as if a Subconsultant’s employees were the *Consultant*’s. | | | | | | |
|  | | | | |  | | | | | 24.2 | | The *Consultant* will ensure to the extent that they are applicable that the conditions of this Contract are included in any subcontracts placed by him for any part of the work under the Contract and the *Consultant* will not place subcontracts with any party unless that party agrees to assume the same obligations corresponding to those imposed on the *Consultant* in the conditions of this Contract. The *Consultant* will nevertheless remain liable for the due observance of these *conditions of contract* by his Personnel. | | | | | | |
|  | | | | |  | | | | | 24.3 | | The *Consultant* submits the name of each proposed Subconsultant to the *Employer* for acceptance. A reason for not accepting the Subconsultant is that his appointment will not allow the *Consultant* to Provide the Services. The *Consultant* does not appoint a proposed Subconsultant until the *Employer* has accepted him. | | | | | | |
|  | | | | |  | | | | | 24.4 | | The *Consultant* submits the proposed conditions of contract for each subcontract to the *Employer* for acceptance unless the *Employer* has agreed that no submission is required.  The *Consultant* does not appoint a Subconsultant on the proposed sub-contract conditions submitted without prior written consent from the *Employer*. A non-exclusive reason for not accepting them is that | | | | | | |
|  | | | | |  | | | | |  | | * they will not allow the *Consultant* to Provide the Service or * they do not include a statement that the parties to the subcontract will act in a spirit of mutual trust and co-operation; or * they do not operate so as to allow the *Employer* step-in rights as set out in clause 24A below; * they do not include a term which requires payment to be made to the Subconsultant within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the subcontract requirements. | | | | | | |
|  | | | | |  | | | | | 24.5 | | The *Consultant* will in relation to any subletting of any portion of the *services* (or the design thereof):   * procure that the relevant subcontract will, in all respects be compatible with the terms of this Contract and that all applicable obligations are contained within the terms and conditions of the relevant subcontract; * procure that all relevant subcontracts will be executed and delivered as a deed; and * provide to the *Employer* on demand certified copies of any subcontract. | | | | | | |
|  | | | | |  | | | | | 24.6 | | When placing subcontracts the *Consultant* gives consideration, as far as possible, to the placing of work on a competitive basis with supported employment enterprises registered with the Department for Work and Pensions under the Special Contracts Arrangement. Details of the capabilities of these enterprises are available from Job Centre Plus, Disability and Rehabilitation Division, Level 3 West Wing, Rockingham House, 123 West Street, Sheffield S1 4ER (Tel: 0114 259 6964). | | | | | | |
| **Step-In Rights** | | | | | |  | | | | **24A** | |  | | | | | | |
|  | | | | | |  | | | | 24A.1 | | The *Consultant* procures (by way of inclusion of relevant provisions in the subcontracts/the warranties to be given to the *Employer* by the Subconsultants) that in the event of determination of this Contract then its Subconsultants will, if so required by notice in writing given by the *Employer*, accept the instructions of the *Employer* or his appointee to the exclusion of the *Consultant* in respect of the *services* upon the terms and conditions of the relevant subcontracts. The *Consultant* acknowledges that the Subconsultants will be entitled to rely on a notice from the *Employer* as conclusive evidence for the purposes of this Contract of the determination of the *Consultant*’s employment under this Contract – and further acknowledges that such acceptance of the instructions of the *Employer* to the exclusion of the *Consultant* will not constitute any breach of a Subcontractor’s obligations to the *Consultant* under its subcontract. | | | | | | |
|  | | | | | |  | | | | 24A.2 | | The *Consultant* ensures that it is a term of his subcontracts that his Subconsultants do not exercise any right of determination of their employment under the subcontract without having first:   * copied to the *Employer* any written notices required to be sent prior to there being an entitlement to give notice that such employment is to be determined; and * given to the *Employer* two weeks’ prior written notice that it has the right under its subcontract to determine its employment thereunder. | | | | | | |
|  | | | | | |  | | | | 24A.3 | | The *Employer* may, not later than the expiry of the notice period set out in clause 24A.2 above, require the Subconsultants by notice in writing to accept the instructions of the *Employer* or his appointee to the exclusion of the *Consultant* in respect of the *service* on the terms and conditions of the subcontract. | | | | | | |
|  | | | | | |  | | | | 24A.4 | | It will be a condition of any notice given by the *Employer* under this clause 24A that the *Employer* or its appointee accepts liability for payment of the sums certified as due/properly due to the Subconsultants under the subcontract and for the performance of the *Consultant*’s obligations thereunder, including for the avoidance of doubt, payment for any sums outstanding at the date of such notice. Upon the issue of any step-in notice by the *Employer*, the subcontracts will continue in full force and effect as if they had been made between the *Employer* and the Subconsultants ab initio and no right of determination had arisen. The *Consultant* will procure that the subcontracts provide that, where the *Employer* steps in to the subcontracts, the Subconsultants will be liable to the *Employer* in lieu of the *Consultant*. | | | | | | |
| **Other responsibilities** | | | |  | | | | | **25** | |  | | | | | | |
|  | | | |  | | | | | 25.1 | | The *Consultant* obtains approval from Others where necessary to Provide the Services. | | | | | | |
|  | | | |  | | | | | 25.2 | | The *Employer* provides access to a person, place or thing to the *Consultant* as stated in the Contract Data on or before the later of its *access date* and the access date for it shown on the Accepted Programme. | | | | | | |
|  | | | |  | | | | | 25.3 | | The *Consultant* obeys an instruction which is in accordance with this Contract and is given to him by the *Employer*. | | | | | | |
|  | | | |  | | | | | 25.4 | | The *Consultant* acts in accordance with Statutory health and safety requirements | | | | | | |
|  |  | | | | | | | | 25.5 | | The *Consultant* will at all times ensure that there is no trespass by the *Consultant* or its Personnel on or over any adjoining or neighbouring property arising out of, or in the course of, or caused by the carrying out of the *services* and the *Consultant* will prevent damage or injury to any persons including (but without limitation) the occupiers of adjoining or neighbouring property and members of the public. | | | | | | |
|  |  | | | | | | | | 25.6 | | The *Consultant* will be responsible for and will indemnify the *Employer* from and against any and all expenses, liabilities, losses, claims and proceedings resulting from any failure or default by the *Consultant* in performing his obligations under clause 25.5. | | | | | | |
| **Conflicts of Interest** |  | | | | | | | | **26A** | |  | | | | | | |
|  |  | | | | | | | | 26A.1 | | The *Consultant* takes appropriate steps to ensure that neither the *Consultant* nor any of the *Consultant’s* Personnel is placed in a position where, in the reasonable opinion of the *Employer*   * there is or may be an actual conflict or potential conflict, between the pecuniary or personal interests of the *Consultant* and the duties owed to the *Employer* under the provisions of the Contract; or   + the behaviour of the *Consultant* or the *Consultant’s* Personnel is not in the *Employer*’s best interest or might adversely affect the *Employer*’s reputation. | | | | | | |
|  |  | | | | | | | | 26A.2 | | The *Consultant* as soon as reasonably practicable discloses to the *Employer* full particulars of any behaviour which might give rise to an actual or potential conflict. | | | | | | |
|  |  | | | | | | | | 26A.3 | | The *Employer* may, in accordance with clause 90 (Termination), terminate all or part of the Contractor’s employment under the Contract and/or take such other steps it deems necessary where, in the reasonable opinion of the *Employer*, there is or may be an actual conflict or potential conflict, between the financial or personal interests of the *Consultant* or the *Consultant’s* Personnel and the duties owed to the *Employer* under the provisions of the Contract. The actions of the *Employer* pursuant to this clause do not prejudice or affect any right of action or remedy which has accrued or will accrue to the *Employer*. | | | | | | |
| **Corrupt Gifts and Payments of Commission** |  | | | | | | | | **26B** | |  | | | | | | |
|  | | | | | | | | 26B.1 | | In addition to clause 19I, the *Consultant* will not do, and warrants that in entering the Contract he has not done any of the following (hereafter referred to as “Prohibited Acts”):  a) offer, promise, give or agree to give to any Crown servant any gift or financial advantage of any kind as an inducement or reward;   * for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this or any other contract with the Crown; or * for showing or not showing favour or disfavour to any person in relation to this or any other contract with the Crown.   b) enter into this or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by him or on his behalf, or to his knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the *Employer*. | | | | | | |
|  |  | | | | | | | | 26B.2 | | If the *Consultant* or his Personnel does any of the Prohibited Acts or commits any offence under the Bribery Act 2010 with or without the knowledge or authority of the *Consultant* in relation to this Contract or any other contract with the Crown, the *Employer* will be entitled:  a) to terminate all or part of the *Consultant’s* employment under the Contract in accordance with clause 90 (Termination) and recover from the *Consultant* the amount of any loss resulting from the termination;  b) to recover from the *Consultant* the amount or value of any such gift, consideration or commission; and  c) to recover from the *Consultant* any other loss sustained in consequence of any breach of this clause 26B, where the Contract has not been terminated. | | | | | | |
|  |  | | | | | | | | 26B.3 | | In exercising its rights or remedies under this clause 26B, the *Employer* will:  a) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the Prohibited Act;  b) give all due consideration, where appropriate, to action other than termination of the Contract, including (without being limited to);   * requiring the *Consultant* to procure the termination of a subcontract where the Prohibited Act is that of a Subconsultant or anyone acting on its or their behalf;   + requiring the *Consultant* to procure the dismissal of an employee (whether its own or that of a Subconsultant or anyone acting on its behalf) where the Prohibited Act is that of such employee. | | | | | | |
|  |  | | | | | | | | 26B.4 | | Recovery action taken against any person in Her Majesty’s service will be without prejudice to any recovery action taken against the *Consultant* pursuant to this clause. | | | | | | |
| **Intellectual Property Rights** |  | | | | | | | | **26C** | |  | | | | | | |
|  |  | | | | | | | | 26C.1 | | Subject to the retention by the *Consultant*, or the third party owner (as the case may be) of the *Consultant*’s Background IPR, and where appropriate a license back to the *Consultant* to use the IP Materials for all purposes connected with this Contract, the *Consultant* assigns (or ensures that the third party owner assigns) to the *Employer*, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials specific to Contract. These assignments takes effect on the date of this Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the *Consultant* or the third party owner (as the case may be)*.* The *Consultant* executes (or ensures that the third party owner executes) all documentation necessary to execute these assignments. | | | | | | |
|  |  | | | | | | | | 26C.2 | | The *Consultant* does not, and procures that the *Consultant’*s Personnel do not, (except when necessary for the performance of this Contract) without prior written consent of the *Employe*r, use or disclose any such Intellectual Property Rights in the Foreground IPR. | | | | | | |
|  |  | | | | | | | | 26C.3 | | All Foreground IPR whether created by the *Consultant* or any of his Personnel or a third party belongs to the *Employer* and all Background IPR furnished or made available to the *Consultant* by or on behalf of the *Employer* remains the property of the *Employer*. | | | | | | |
|  |  | | | | | | | | 26C.4 | | The *Consultant* waives or procures a waiver of any moral rights subsisting in copyright produced for this Contract. | | | | | | |
|  |  | | | | | | | | 26C.5 | | The *Consultant* ensures that the third party owner of any Background Intellectual Property Rights in IP Materials that are delivered by or on behalf of the *Consultant* in relation to the performance by the C*ontractor* of its obligations under this Contract grants to the *Employer* a non-exclusive licence or, if itself a licensee of those rights, grants to the *Employer* an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence is non-exclusive, perpetual, royalty free and irrevocable and includes the right for the *Employer* to sub-licence, transfer, novate or assign to other Government Departments, any replacement *Consultant* or to any other third party. | | | | | | |
|  |  | | | | | | 26C.6 | | | | The *Consultant* does not infringe any Intellectual Property Rights of any third party in providing the *services* and the *Consultant*, from the date of this Contract indemnifies and keeps indemnified and holds the *Employer* harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the *Employer* may suffer or incur as a result of or in connection with any breach of this clause, except where such claim arises from the use of data supplied by the *Employer* which is not required to be verified by the *Consultant* under any provision of this Contract. | | | | | | |
|  |  | | | | | | 26C.7 | | | | The *Employer* notifies the *Consultant* in writing of any claim or demand brought against the E*mployer* for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the C*ontractor*. | | | | | | |
|  |  | | | | | | 26C.8 | | | | The *Consultant* at its own expense conducts all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the *Consultant*, provided always that the *Consultant*:  (a) consults the *Employer* on all substantive issues which arise during the conduct of such litigation and negotiations;  (b) takes due and proper account of the interests of the *Employer*; and  (c) does not settle or compromise any claim without the *Employer*’s prior written consent (not to be unreasonably withheld or delayed). | | | | | | |
|  |  | | | | | | 26C.9 | | | | The *Employer* at the *Consultant*’s request affords to the *Consultant* all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the *Employer* or the *Consultant* by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the *Consultant*’s obligations under this Contract and the *Consultant* indemnifies the *Employer* for all reasonable costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. | | | | | | |
|  |  | | | | | | 26C.10 | | | | The *Employer* does not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the *Employer* or the *Consultant* in connection with the performance of its obligations under this Contract. | | | | | | |
|  |  | | | | | | 26C.11 | | | | If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the *Contracto*r is made in connection with this Contract or in the reasonable opinion of the *Consultant* is likely to be made, the *Consultant* notifies the *Employer* as soon as reasonably practicable and, at its own expense and subject to the consent of the *Employer* (not to be unreasonably withheld or delayed), uses its best endeavours to:   * modify any *services* without reducing the performance or functionality of the same, or substitute alternative works of equivalent performance and functionality, in order to avoid the infringement or the alleged infringement, provided that the provisions herein apply mutatis mutandis to such modified *service* or to the substitute works; or * procure a licence to use and provide any part of the *services* which is the subject of the alleged infringement, on terms which are acceptable to the *Employer*;   and in the event that the *Consultant* is unable to comply with these requirements within twenty-eight (28) days of receipt of the *Consultant*’s notification the *Employer* may terminate this Contract by written notice. | | | | | | |
|  |  | | | | | | 26C.12 | | | | The *Consultant* grants to the *Employer* a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) (and where appropriate worldwide) in perpetuity to use any Background IPR or other IPR that the *Consultant* owns and which the *Employer* reasonably requires in order to exercise its rights and take the benefit of this Contract. | | | | | | |
|  |  | | | | | | 26C.13 | | | | Where the *Consultant* secures a licence from a third party in any software for the provision of part of the *service* it will do so in the name of the *Employer* in perpetuity with the right to sublicense to any third party nominated by the *Employer* for the purposes of performing any part of the *service* which is provided at any time pursuant to this Contract. | | | | | | |
|  |  | | | | | | 26C.14 | | | | Where the *Consultant* uses any of its own software for the provision of any Works it will grant a free irrevocable licence to the *Employer* in perpetuity with the right to sublicense to any third party nominated by the *Employer* to use the software for the purposes of continuing to operate any part of the *services* provided at any time under this Contract. | | | | | | |
|  |  | | | | | | 26C.15 | | | | The *Consultant* shall mark any copyright work on the title page or in the title box with the legend: “Prepared by (*print Consultant’s name*) for the Ministry of Defence, Defence Infrastructure Organisation, under Contract Number (insert *this contract number*) on (*date/month/year*)” on any specification, plan, drawing, or any of the other deliverable document prepared by the *Contractor* under this Contract. The *Consultant* shall also identify any confidential information contained in the copyright work, which was provided by a third party not employed in the performance of *services* under the Contract. | | | | | | |
| **[Not used** |  | | | | | | **26D]** | | | |  | | | | | | |
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| **Access and Facilities Provided by the *Contractor*** |  | | | | | | **26E** | | | |  | | | | | | |
|  | | | | | | 26E.1 | | | | The *Consultant's* progress and quality standards in performing the *services* under the Contract will be monitored by the *Employer*. The *Consultant* will provide to the *Employer* all reasonable access to his premises for these purposes and those in connection with audit in accordance with clause 19H. | | | | | | |
|  |  | | | | | | 26E.2 | | | | The *Consultant* will provide, at no additional cost to the *Employer*, such accommodation and facilities for representatives of the *Employer* as the *Employer* may reasonably require. All accommodation provided will be adequately furnished, lit, heated and ventilated and will include suitable cloakroom and communication facilities. | | | | | | |
|  |  | | | | | | 26E.3 | | | | As far as is reasonably practical the *Consultant* will ensure that the provisions in clauses 26E.1 and 26E.2 are included in his subcontracts. Access to such Subconsultant’s premises will be arranged by the *Employer* through the *Consultant*. | | | | | | |
| **Retention and Supply of Records and Data** |  | | | | | | **26F** | | | |  | | | | | | |
|  | | | | | | 26F.1 | | | | The *Consultant* will store and maintain all Contract Records and will make them available to the *Employer* as the *Employer* may reasonably require when requested upon reasonable notice. | | | | | | |
|  |  | | | | | | 26F.2 | | | | Subject to clause 13B (Disclosure of Information), the *Consultant* will permit all Contract Records to be examined and if necessary copied, by or on behalf of the *Employer* or will provide copies to the *Employer* at the *Employer’s* reasonable cost. | | | | | | |
|  |  | | | | | | 26F.3 | | | | Unless the Scope specifies otherwise the Contract Records will be retained for a period of at least six (6) years after completion of the *services* PROVIDED ALWAYS THAT notwithstanding the generality of this clause 26F.3 all Contract Records executed under seal or expressed to be executed as deeds will be retained by the *Consultant* for a minimum period of twelve (12) years following completion of the *services*. | | | | | | |
|  |  | | | | | | 26F.4 | | | | The *Employer* will be entitled at any time to make copies of Contract Records supplied under this clause, as the *Employer* may think fit and to use such Contract Records (or copies of them) in any UK Government Department and such use will not, unless otherwise provided for in the Contract, extend to the use for tendering or manufacturing purposes. | | | | | | |
|  |  | | | | | | 26F.5 | | | | Control Copies will be maintained by the *Consultant* in such media and formats as the *Employer* may agree. Control Copies will not be altered by the *Consultant* in any way which changes the build standard except as authorised in writing by the *Employer*. Control Copies will be deemed to be the Property of the *Employer*, and the *Employer* may take possession of any or all Control Copies notwithstanding any administration, receivership, winding-up or liquidation of the *Consultant* or any transfer of its assets to any third party. | | | | | | |
| **Security Measures** |  | | | | | | **26G** | | | |  | | | | | | |
|  |  | | | | | | 26G.1 | | | | The *Consultant* will:  a) take all reasonable steps to ensure that all Personnel engaged on any work in connection with the Contract have notice that the Official Secrets Acts 1911-1989 apply to them and will continue so to apply after the completion or termination of the Contract; and  b) if directed by the *Employer*, ensure that any Personnel will sign a statement acknowledging that, both during the term of the Contract and after its completion or termination, he is bound by the Official Secrets Acts 1911-1989 (and where applicable by any other legislation). | | | | | | |
|  |  | | | | | | 26G.2 | | | | Unless he has the written authorisation of the *Employer* to do otherwise, neither the *Consultant* nor any of his Personnel will, either before or after the completion or termination of the Contract, do or permit to be done anything which they know or ought reasonably to know may result in Secret Matter being disclosed to or acquired by a person in any of the following categories:  a) who is not a British citizen;  b) who does not hold the appropriate authority for access to the protected matter;  c) in respect of whom the *Employer* has notified the *Consultant* in writing that the Secret Matter will not be disclosed to or acquired by that person;  d) who is not one of the *Consultant’s* Personnel;  e) who is one of the *Consultant’s* Personnel and has no need to know the information for the proper performance of the Contract. | | | | | | |
|  |  | | | | | | 26G.3 | | | | Unless he has the written permission of the *Employer* to do otherwise, the *Consultant* and his Personnel will, both before and after the completion or termination of the Contract, take all reasonable steps to ensure that:  a) no photograph of, or pertaining to, any Secret Matter will be taken and no copy of or extract from any Secret Matter will be made except to the extent necessary for the proper performance of the Contract;  b) any Secret Matter is at all times strictly safeguarded in accordance with the Security Policy Framework and upon request, is delivered up to the *Employer* who will be entitled to retain it.  A decision of the *Employer* on the question of whether the *Consultant* has taken or is taking reasonable steps as required by this clause, will be final and conclusive. | | | | | | |
|  |  | | | | | | 26G.4 | | | | The *Consultant* will:  a) provide to the *Employer*:   * upon request, such records giving particulars of all Personnel who have had at any time, access to any Secret Matter that is required to be kept in accordance with clause 26G.3(b); * upon request, such information as the *Employer* may from time to time require so as to be satisfied that the *Consultant* and his Personnel are complying with his obligations under this clause, including the measures taken or proposed by the *Consultant* so as to comply with his obligations and to prevent any breach of them; * full particulars of any failure by the *Consultant* and his Personnel to comply with any obligations relating to Secret Matter arising under this clause immediately upon such failure becoming apparent;   b) ensure that, for the purpose of checking the *Consultant's* compliance with the obligation in clause 26G.3(b), a representative of the *Employer* will be entitled at any time to enter and inspect any premises used by the *Consultant* which are in any way connected with the Contract and inspect any document or thing in any such premises, which is being used or made for the purposes of the Contract. Such representative will be entitled to all such information as he may reasonably require. | | | | | | |
|  |  | | | | | | 26G.5 | | | | If at any time either before or after the completion or termination of the Contract, the *Consultant* or any of his Personnel discovers or suspects that an unauthorised person is seeking or has sought to obtain information directly or indirectly concerning any Secret Matter, the *Consultant* will forthwith inform the *Employer* of the matter with full particulars thereof. | | | | | | |
|  |  | | | | | | 26G.6 | | | | If the *Consultant* proposes to make a subcontract which will involve the disclosure of Secret Matter to the Subcontractor, the *Consultant* will:  a) submit for approval of the *Employer* the name of the proposed Subcontractor, a statement of the work to be carried out and any other details known to the *Consultant* which the *Employer* will reasonably require;  b) incorporate into the subcontract the terms of Schedule 11and such secrecy and security obligations as the *Employer* will direct. In the Annex 'Agreement' will mean the 'Subcontract', 'First Party' will mean the '*Consultant*' and 'Second Party' will mean the 'Subcontractor';  c) inform the *Employer* immediately he becomes aware of any breach by the Subcontractor of any secrecy or security obligation and, if requested to do so by the *Employer*, terminate the subcontract. | | | | | | |
|  |  | | | | | | 26G.7 | | | | The *Employer* will in accordance with clause 90 (Termination) be entitled to terminate all or part of the *Consultant’s* employment under the Contract immediately if:  a) the *Consultant* is in breach of any obligation under this clause; or  b) the *Consultant* is in breach of any secrecy or security obligation imposed by any other contract with the Crown;  where the *Employer* considers the circumstances of the breach jeopardise the secrecy or security of the Secret Matter. | | | | | | |
| **Discrimination** |  | | | | | | **26H** | | | |  | | | | | | |
|  |  | | | | | | 26H.1 | | | | The *Consultant* will not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010 or any statutory modification or re-enactment thereof relating to discrimination in employment. | | | | | | |
|  |  | | | | | | 26H.2 | | | | The *Consultant* will take all reasonable steps to secure the observance of the provisions of clause 26H.1 hereof by all his Personnel and *Consultant* and all other persons under his control employed in the execution of the Contract. | | | | | | |
|  |  | | | | | | 26H.3 | | | | The *Consultant* will immediately notify the *Employer*, of any prosecution or proceedings, brought under the legislation detailed in clause 26H.1, against the *Consultant*, his Personnel and all other persons under his control employed in the execution of the Contract. | | | | | | |
|  |  | | | | | | 26H.4 | | | | Notification by the *Consultant* of such information will not prejudice any rights of the *Employer* or the *Consultant* under the Contract. | | | | | | |
| **Transparency** |  | | | | | | **26I** | | | |  | | | | | | |
|  |  | | | | | | 26I.1 | | | | Notwithstanding any other term of this Contract the *Consultant* understands that the *Employer* may publish the Transparency Information to the general public. The *Consultant* will assist and co-operate with the *Employer* to enable the *Employer* to publish the Transparency Information. | | | | | | |
|  |  | | | | | | 26I.2 | | | | Before publishing the Transparency Information to the general public in accordance with clause 26I.1 above, the *Employer* will redact any information that would be exempt from disclosure if it was the subject of a request for information under the FOIA or the Environmental Information Regulations 2004, including the *Consultant* Commercially Sensitive Information. | | | | | | |
|  |  | | | | | | 26I.3 | | | | The *Employer* may consult with the *Consultant* before redacting any information from the Transparency Information in accordance with clause 26I.2. The *Consultant* acknowledges and accepts that its representations on redactions during consultations may not be determinative and that the decision whether to redact information is a matter in which the *Employer* will exercise its own discretion, subject always to the FOIA or the Environmental Information Regulations. | | | | | | |
| **Accounting for the Property of the *Employer*** |  | | | | | | **26J** | | | |  | | | | | | |
|  | | | | | | 26J.1 | | | | The *Consultant* will:  a) maintain a Public Store Account (“PSA”), as defined in DEFSTAN 05-99, which will include a complete list of all property of the *Employer*, as defined in clause 26J.2, and record for that property all transactions or other accounting information specified in the Scope;  b) supply to the *Employer* quarterly reports on the current PSA holdings. At least one report in any twelve-month accounting period or part thereof will be a reconciled report. This will be submitted with the Annual Certificate Form AAC 32 as required in DEFSTAN 05-99. The other three reports submitted in the period may be un-reconciled advisory reports. The submission by the *Consultant* and receipt by the *Employer* of these reports will not prejudice any rights or obligations of the *Employer* or the *Consultant* under the Contract;  c) ensure that the PSA is available for inspection by the *Employer* at any reasonable time;  d) on being given eight weeks’ notice or any other period as has been stated in the Contract permit, and co-operate with, the *Employer* to conduct audits of the PSA in a manner to be determined by the *Employer*; where the *Employer* has reasonable grounds to doubt the integrity of the PSA to the extent that the *Employer* is not satisfied of the proper use of property of the *Employer*, an audit may be conducted without notice;  e) retain the PSA for a period of three years after disposal of the last item of the property of the *Employer*, or for any other period as may be specified in the Contract;  f) if the *Employer* agrees that a Subconsultant at whatever level of subcontracting will have responsibility in the Subconsultant’s PSA for property of the *Employer* issued in aid of the Contract, the *Consultant* will include in any subcontract with those Subconsultants only the provisions corresponding to those set out in this clause that apply to property of the *Employer* issued in aid of the subcontract, in particular clauses 26J.1, 26J.2, 26J.4 and 26J.7; and  g) manage the Government Furnished Assets (“GFA”) component of the PSA in accordance with the provisions of DEFSTAN 05-99; and implement any new edition of or amendment to DEFSTAN 05-99 within twelve weeks of the publication date of the new edition. These amendments will not have retrospective effect. | | | | | | |
|  |  | | | | | | 26J.2 | | | | For the purposes of this clause 'property of the *Employer'* means GFA and fixed assets, including property issued under clause 70.4 and property of the *Employer* issued to the *Consultant* under any other authorising document [except for property vested in the *Employer* under clause 71.1. | | | | | | |
|  |  | | | | | | 26J.3 | | | | For the avoidance of doubt, it is a condition of this Contract that this clause will apply to all property issued to the *Consultant* from the date of this Contract, whether in aid of the Contract, any other contract or other agreement with the *Employer*. Property of the *Employer* issued prior to the date of this Contract may be subject to separate contractual arrangements. | | | | | | |
|  |  | | | | | | 26J.4 | | | | The o Obligations of the *Consultant* arising under this clause in respect of property of the *Employer* issued in aid of the Contract will survive completion of the Contract and will not be completed until all such obligations are fulfilled including the provisions of clause 26J.1(e). | | | | | | |
|  |  | | | | | | 26J.5 | | | | The obligations of the *Consultant* arising under this clause in respect of property of the *Employer* unconnected with the Contract will survive completion of the Contract and will not be completed until all those obligations are fulfilled including the provisions of clause 26J.1(e) unless and until a subsequent contract containing clause 26J is placed with the *Consultant* at which time obligations in respect of any remaining property of the *Employer* unconnected with the Contract will be subsumed in the subsequent contract. | | | | | | |
|  |  | | | | | | 26J.6 | | | | If, after completion of the Contract, no subsequent contract is placed containing clause 26J within the period detailed at clause 26J.1(e), then the obligations of the *Consultant* arising under this clause in respect of property of the *Employer* unconnected with the Contract will cease on expiry of the period detailed at clause 26J.1(e). | | | | | | |
|  |  | | | | | | 26J.7 | | | | The *Employer* reserves the right to amend PSA without further consultation where the amendments arise from the *Employer’s* proper and reasonable accounting requirements. For the purposes of this clause, PSA will be regarded as part of the *services* and subject to the terms of this Contract. If the *Employer* exercises this right:  a) the *Consultant* will implement the amendment to PSA at the commencement of the *Employer’s* next accounting year provided that a notice of six months or such other period as may expressly be agreed between the *Employer* and *Consultant* is given to the *Consultant*. These amendments will not have retrospective effect; and   1. the *Consultant* will inform the *Employer* as soon as practicable, but in any event within three months of notice having been given, if the *Consultant* cannot comply with the amendment to PSA;   but any amendment made pursuant to this clause 26J.7 will not constitute a change to the Scope and will not constitute a compensation event for the purpose of this Contract. | | | | | | |
| **Environment and Carbon Management** |  | | | | | | **26K** | | | |  | | | | | | |
|  | | | | | | 26K.1 | | | | The *Consultant* will use its best endeavours to improve the environmental efficiency of the provision of the *services* and at all times demonstrate to the *Employer* a commitment to compliance with environment legislation in force from time to time. | | | | | | |
|  |  | | | | | | 26K.2 | | | | In particular the *Consultant* will where possible use energy efficient vehicles, reduce, reuse and recycle waste generated, use energy for buildings and equipment in an efficient manner, and use and reuse water and other resources in an efficient manner. | | | | | | |
| **Health & Safety**  **and the Environment** |  | | | | | | **26L** | | | |  | | | | | | |
|  | | | | | | 26L.1 | | | | The *Consultant* will Provide the Services in accordance with the *Employer*’s health and safety and sustainable development and environmental management requirements and in compliance with Schedule 18 Volume 4 Section 3.3. The *Consultant* will indemnify and keep the *Employer* indemnified from and against any direct claims, actions, liabilities, losses, costs, expenses and damages arising as a result of the *Consultant’s* negligence in complying with its obligations under this clause 26L. The *Consultant* may be required to attend safety training at any Establishment, which may be arranged from time to time by the *Employer*. | | | | | | |
|  |  | | | | | | 26L.2 | | | | Prior to commencing the *services* the *Consultant* will provide the *Employer* with full details of all known hazardous materials and substances used or stored on the Affected Property and of any such materials which are not clearly labelled or appropriately stored, and will inform the *Employer* whether the Affected Property contains any toxic, hazardous or carcinogenic substances along with its procedures for dealing with and carrying out the disposal of any hazardous or toxic waste as required within Schedule 18 Volume 4 Section 3.3. | | | | | | |
|  |  | | | | | | 26L.3 | | | | The *Consultant* notifies the *Employer* of any health and safety hazards of which it is aware or ought reasonably to be aware, which may arise in connection with the performance of this Contract. The *Consultant* will also draw these hazards to the attention of the *Employer* and Others any other persons engaged by the *Consultant* in the performance of the *services* at any Affected Property, or any other person who may be affected by these hazards. | | | | | | |
|  |  | | | | | | 26L.4 | | | | The *Consultant* will procure that all Personnel will familiarise themselves with the emergency procedures laid down by the *Employer* and the *Consultant* and any other relevant Health and Safety policies and procedures adopted by the *Consultant* in accordance with Schedule 18 Volume 4 SECTION 3.3 | | | | | | |
|  |  | | | | | | 26L.5 | | | | The *Consultant* must and will procure that the Personnel at all times comply with all legal requirements including but not limited to the "Duty of Care" provisions contained in part II of the Environmental Protection Act 1990 and any relevant regulations made under that Act and must ensure that all Personnel, perform their duties in accordance with the Health and Safety Acts. | | | | | | |
|  |  | | | | | | 26L.6 | | | | All property of the *Consultant* and his Personnel will be at the risk of the *Consultant* whilst it is on any Government Establishment, and the *Employer* will accept no liability for any loss or damage howsoever occurring thereto or caused thereby, except as follows:  a) where any such loss or damage was caused or contributed to by any act, neglect or default of any of the *Employer’s* Personnel then the *Employer* will accept liability therefore to the extent to which such loss or damage is so caused or contributed to as aforesaid; and b) where any property of the *Consultant* has been taken on charge by the Head of Establishment, and a proper receipt has been given therefore, then the *Employer* will be liable for any loss or damage occurring to that property while held on such charge as aforesaid, save to any extent such loss or damage is caused or contributed by any act neglect or default of the Contractor or any of the Contractor Personnel. | | | | | | |
|  |  | | | | | | 26L.7 | | | | The *Consultant* will report any injury, disease or dangerous occurrence at any Government Establishment arising out of the performance of this Contract, which is required to be reported under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (“RIDDOR”) to the Head of Establishment in accordance with Schedule 18 Volume 4SECTION 3.3. This would be in addition to any report, which the *Consultant* may be required to submit under RIDDOR to the relevant enforcing authority (e.g. Health and Safety Executive or Local Authority). | | | | | | |
|  |  | | | | | | | | | 26L.8 | Where the *Consultant* enters a Government Establishment for the purpose of performing work under the Contract:  a) The *Consultant* will notify the Head of Establishment and the *Employer* of:   * any health and safety hazards associated with the work to be performed by him or any of his Personnel; * any foreseeable risks to the health and safety of all persons associated with such hazards; and * any precautions to be taken by him as well as any precautions which, in his opinion, ought to be taken by the *Employer*, in order to control such risks.   b) The *Employer* will notify the *Consultant* of:   * any material health and safety hazards of which it is aware and which may be encountered by the *Consultant* or any of his Personnel on the Government Establishment and which a competent *consultant* could not be expected to have known about or have foreseen; and * any precautions (but without being responsible for the same) which, in its opinion, ought to be taken by the *Consultant*, in order to control such risks.   c) The *Consultant* will notify his Personnel of and, where appropriate, provide adequate instruction in relation to:   * the hazards, risks and precautions notified by him to the *Employer* under clause 26L.8(a); * the hazards, risks and precautions notified by the *Employer* to the *Consultant* under clause 26L.8(b); and * the precautions which, in his opinion, ought to be taken by his Personnel in order to control those risks.   d) The *Consultant* will provide the Head of Establishment and the *Employer* with:   * copies of those sections of his own and, where appropriate, his Personnel’s safety policies which are relevant to the risks notified under clause 26L.8(a); * copies of any related risk assessments; and * copies of any notifications and instructions issued by him to his Personnel under clause 26L.8(c).   e) The *Employer* will provide the *Consultant* with:   * copies of those sections of its own safety policies which are relevant to the risks notified under clause 26L.8(b); * copies of any related risk assessments; and * copies of any notifications and instructions issued by it to its employees similar to those called for from the *Consultant* under clause 26L.8(c),   and the *Consultant* will comply with the safety policies and the *Employer* Policies. | | | | | |
| **Consultant’s Warranties** |  | | | | | | | | | **26M** | The *Consultant* hereby represents and warrants for the benefit of the *Employer* that:   * The *Consultant* is a company validly existing and is authorised to conduct its business under the laws of England. The *Consultant* has the power and authority to enter into this Contract, and to perform his obligations hereunder. * The *Consultant* shall immediately notify the *Employer* if it becomes insolvent (as defined in clause 113 of the Housing Grants, Construction and Regeneration Act 1996 (as amended) and/or if any claim, litigation, arbitration or administrative proceeding is in progress or pending or threatened against him or any of his assets or any party which has given the *Employer* a guarantee or indemnity in respect of the *Consultant’s* obligations and liabilities under the Contract which will or might have a materially adverse effect on the ability of the *Consultant* to perform his obligations under this Contract; * The *Consultant* has and will maintain the necessary training, experience and capability to perform all of his obligations under this Contract; * The *Consultant* based his tender on his own inspection and own independent verification of any information made available to him by the *Employer* with the Scope. The *Consultant* acknowledges that no entitlements to changes, extensions of time or hardship claims on the basis that the *Consultant* has failed to carry out his own due diligence on all aspects of the documents will be accepted by the *Employer*. * The *Consultant* shall immediately notify the *Employer* if there is any change in its key Subconsultants. * The *Consultant* shall immediately notify the *Employer* of any change in his credit rating (for example, Dun & Bradstreet (D&B), Moody's, Standard & Poor (S&P) or Fitch IBCA) from that existing at the time of Contract award. Notification by the *Consultant* of such information shall not prejudice any rights of the *Employer* or the *Consultant* under the Contract. | | | | | |
| **Fair Employment (Northern Ireland) Act 1989** |  | | | | | | | | | **26N** |  | | | | | |
|  |  | | | | | | | | | 26N.1 | The *Consultant* shall not sub-contract the carrying out of the *services* under this Contract to an “unqualified person” within the meaning of section 38(2) of the Fair Employment and Treatment (Northern Ireland) Act 1988 as amended by the Fair Employment and Treatment Order (Amendment) Regulations (Northern Ireland) 2003. | | | | | |
| **Employee Transfer ARRANGEMENTS on entry/Staff Transfer on exit** |  | | | | | | | | | **28A** |  | | | | | |
|  | | | | | | | | | 28A.1 | The Parties shall comply with their respective employment pensions and associated obligations set out in [*insert cross reference to TUPE schedule*] for the purposes of which references therein to “the Authority” shall mean “the Employer” as defined in the Contract Data. | | | | | |

**3 Time**

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| --- | --- | --- | --- | --- |
| **Starting, Completion and** |  | **30** |  | |
| **Key Dates** |  | 30.1 | The *Consultant* does not start work until the *starting date* and does the work so that Completion is on or before the Completion Date. | |
|  |  | 30.2 | The *Employer* decides the date of Completion and certifies it within one week of the date. | |
|  |  | 30.3 | The *Consultant* does the work so that the Condition stated for each Key Date is met by the Key Date. | |
| **The Consultant’s Programme** |  | **31** |  | |
|  |  | 31.1 | If a Programme is not identified in the Contract Data, the *Consultant* submits a first Programme to the *Employer* for acceptance within the period stated in the Contract Data. | |
|  |  | 31.2 | The Consultant’s Programme will (unless the *Employer* agrees otherwise) include the following as a minimum and the *Consultant* will include additional information as necessary to demonstrate the basis of proper control. The *Consultant* (unless the *Employer* agrees otherwise) shows on each Programme which he submits for acceptance | |
|  |  |  | * the *starting date*, Key Dates and Completion Date, | |
|  |  |  | * planned Completion, | |
|  |  |  | * the order and timing of the operations which the *Consultant* plans to do in order to Provide the Services, | |
|  |  |  | * the order and timing of the work of the *Employer* and Others as last agreed with them by the *Consultant* or, if not so agreed, as stated in the Scope, | |
|  |  |  | * the dates when the *Consultant* plans to meet each Condition stated for the Key Dates and to complete other work needed to allow the *Employer* and Others to do their work, | |
|  |  |  | * 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 programme, the *Consultant* will need | |
|  |  |  | | * access to the Affected Property as stated in the Scope, |
|  |  |  | | * acceptances, and |
|  |  |  | | * information and approval from Others, |
|  |  |  | * for each operation, a statement of how the *Consultant* plans to do the work identifying the resources which he plans to use and | |
|  |  |  | * other information which the Scope requires the *Consultant* to show on a Programme submitted for acceptance. | |
|  |  | 31.3 | Within two weeks of the *Consultant* submitting a Programme to him for acceptance, the *Employer* either accepts the Programme or notifies the *Consultant* of his reasons for not accepting it. A reason for not accepting a Programme is that | |
|  |  |  | * the *Consultant*’s Programmes which it shows are not practicable, | |
|  |  |  | * it does not show the information which this Contract requires, | |
|  |  |  | * it does not represent the *Consultant*’s Programmes realistically or | |
|  |  |  | * it does not comply with the Scope. | |
|  |  |  |  | |
| **Revising the programme** |  | **32** |  | |
|  |  | 32.1 | The *Consultant* shows on each revised programme | |
|  |  |  | * the actual progress achieved on each operation and its effect upon the timing of the remaining work, | |
|  |  |  | * the effects of implemented compensation events, | |
|  |  |  | * how the *Consultant* plans to deal with any delays and to correct notified Defects and | |
|  |  |  | * any other changes which the *Consultant* proposes to make to the Accepted Programme. | |
|  |  | 32.2 | The *Consultant* submits a revised programme to the *Employer* for acceptance | |
|  |  |  | * within the *period for reply* after the *Employer* has instructed him to, | |
|  |  |  | * when the *Consultant* chooses to and, in any case, | |
|  |  |  | * at no longer interval than the interval stated in the Contract Data from the *starting date* until Completion of the whole of the *services*. | |
|  |  | 32.3 | The *Consultant* shall attend a progress meetings with the *Employer* in accordance with the requirements of the Scope to assess progress on the Contract. | |
| **Reporting Obligations** |  | **32A** |  | |
|  |  | 32A.1 | The *Consultant* shall provide the *Employer* with a monthly written report within 3 Working Days from the end of each month. Such report shall include:   * the matters referred to in the Scope . * such other matters, including any other adhoc reports, as the *Employer* may reasonably direct; * written confirmation from the *Consultant* that he has complied with all of his obligations under this Contract. * information as agreed and requested from time to time by the *Employer*. | |
|  |  | 32A.2 | The *Consultant*, when employed within the boundaries of an Establishment, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force for the conduct of personnel at the Establishment. Details of such rules, regulations and requirements shall be provided, on request, by the Head of Establishment concerned. | |
| **Access** |  | **32B** |  | |
|  |  | **32B.1** | The *Employer* grants to the *Consultant* a right of access to the Affected Property as shown on the Accepted Programme or as otherwise agreed by the *Employer* (acting reasonably) but the *Consultant* will obtain the necessary consents in order to Provide the Services and any failure to gain access, otherwise than by the *Employer* removing the *Consultant’s* right of access, will not be a compensation event. | |
| **Instructions to stop or** |  | **33** |  | |
| **not to start work** |  | 33.1 | The *Employer* may instruct the *Consultant* to stop or not to start any work and may at any time within the next six (6) months instruct him that he may re-start or start it. | |
|  |  | 33.2 | If within 6 months from the date of postponement the *Employer* instructs the *Consultant* to resume work, then any payments made shall be considered as payments on account towards the total of the Prices. | |
|  |  | 33.3 | If the *Employer* has not instructed the *Consultant* to resume work which has been postponed at a date six months from the date of postponement, the *Employer* will be deemed to have given an instruction under clause 14.3 changing the Scope to remove the postponed work from the s*ervices.* | |
| **Acceleration** |  | **34** |  | |
|  |  | 34.1 | The *Employer* may instruct the *Consultant* to submit a quotation for acceleration to achieve Completion before the Completion Date. The *Employer* states changes to the Key Dates to be included in the quotation. A quotation for an acceleration comprises proposed changes to the Prices and a revised programme showing the earlier Completion Date and the changed Key Dates. The *Consultant* submits details of his assessment with each quotation. | |
|  |  | 34.2 | The *Consultant* submits a quotation within the *period for reply*. | |
|  |  | 34.3 | Any instruction to accelerate to achieve Completion before the Completion Date (or achieve a Condition before the relevant Key Date) does not constitute a compensation event in accordance with clause 60.1 but the effect on the Prices (if any) will be determined in accordance with Clause 19L (Change Management Process) and if the *Employer* wishes to proceed with the acceleration the *Employer* shall issue a Task Order in accordance with clause X19. | |

**4 Quality**

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| **Quality management** |  | **40** |  |
| **system** |  | 40.1 | The *Consultant* operates a quality management system for Providing the Services as stated in the Scope. The quality management system complies with the requirements stated in the Scope. |
|  |  | 40.2 | The *Consultant* provides the *Employer*, within the period stated in the Contract Data, with a quality policy statement and a quality plan for acceptance. The quality policy statement and quality plan comply with the requirements stated in the Scope. |
|  |  | 40.3 | The *Consultant* complies with an instruction from the *Employer* to the *Consultant* to correct a failure to comply with the quality plan. |
|  |  | **40A** |  |
|  |  | 40A.1 | The *Consultant* shall provide a management organisation to co-ordinate and deliver the *services* as set out in Conditions of the Framework Agreement based upon the management regime approved at Contract award. The *Consultant’s* management organisation is as set out inSchedule 15. |
|  |  | 40A.2 | If the *Consultant* wishes at any time to change the management regime he shall notify the *Employer* of the proposed change together with reasons and with an assessment of the effects of the proposed change on delivery of the *services*. If the *Employer* is satisfied that the proposed change would not adversely affect the delivery of the *services* the *Employer* shall approve the change to the management regime. The *Employer* shall be further entitled following a proposal from the *Consultant* or at any other time to make alternative recommendations as to the management regime and/or require changes to be made to the management regime so that the *services* are capable of being delivered in accordance with the other provisions of the Contract. |
| **Correcting Defects** |  | **41** |  |
|  |  | 41.1 | Until the *defects date*, the *Employer* notifies the *Consultant* of each Defect as soon as he finds it and the *Consultant* notifies the *Employer* of each Defect as soon as he finds it. At Completion the *Consultant* notifies the *Employer* of the Defects which have not been corrected. After Completion and until the *defects date*, the *Consultant* notifies the *Employer* of each Defect as soon as he finds it. The *Employer*’s rights in respect of a Defect which the *Employer* has not found or notified by the *defects date* are not affected. |
|  |  | 41.2 | The *Consultant* corrects a Defect whether or not the *Employer* notifies him of it. The *Consultant* corrects Defects within a time which minimises the adverse effect on the *Employer* or Others. In addition to other remedies available to the *Employer*, if the *Consultant* does not correct a Defect within the time required by this Contract, or agreed with the *Employer*, the *Employer* assesses the cost to the *Employer* of having the Defect corrected by other people and the *Consultant* pays this amount. |
| **Accepting Defects** |  | 43 |  |
|  |  | 43.1 | The *Consultant* and the *Employer* may each propose to the other (via the Change Management Process) that the Scope should be changed so that a Defect does not have to be corrected. The Employer has complete discretion as to whether or not the Employer will agree to any change but if he does so and accepts the *Consultant*’s quotation, the *Employer* issues a Task Order to change the Scope and the Prices accordingly. |
| **Delayed delivery of service** |  | 44 |  |
|  |  | 44.1 | The *Consultant* will notify the *Employer* when delivery of any part of the *Services* is delayed beyond the date required under this Contract. In the event that any *Services* are not delivered, the *Employer* will determine if the *Consultant* has already received payment for those s*ervices*. If payment has been received the *Employer* will instruct the *Consultant* to calculate the value of the undelivered s*ervices* using the pricing information in the Price List and the next payment application will be abated by a corresponding amount or (if the *Employer* does not agree with the *Consultant*’s calculation) such other amount as the *Employer* shall certify together with any additional amounts incurred by the *Employer* by reason of the undelivered s*ervices* being delivered by another *Consultant*. If and when the *Consultant* delivers the outstanding s*ervices*, he will be entitled to recover the sum abated in the next interim payment. |
|  |  | 44.2 | In the event that the *Consultant* has failed to deliver any part of the *services* by the time required under this Contract, the *Employer* may determine that the *Services* should not be delivered or may be delivered by another *Consultant*. The *Employer* will instruct the *Consultant* to calculate the value of the undelivered s*ervices* using the pricing information in the Price List and the next payment application will be reduced by a corresponding amount or (if the *Employer* does not agree with the *Consultant*’s calculation) such other amount as the *Employer* shall certify together with any additional amounts incurred by the Employer by reason of the undelivered *Services* being delivered by another *Consultant*. |

**5 Payment**

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| **Pricing Provisions** |  | **50A** | |  |
|  |  | 50A.1 | | All Prices are inclusive of overheads, and profit, but are exclusive of VAT. ,Travel and subsistence will be payable in addition to the Fixed Prices but only with prior approval in the Task Order issued by the *Employer*. In such circumstances, the *Employer* and the *Consultant* will agree the most cost effective option for travel. Where *Employer* transport is available this shall be used unless an alternative is more cost effective. Travel and subsistence costs shall be agreed based on Civil Service Class II rates current at the date of the relevant Task Order. |
|  |  | 50A.2 | | For Enabling Services and in exceptional circumstances the *Employer* and *Consultant* may agree a price based on a limit of liability using the applicable Prices set out in the Price List. The limit of liability shall be the maximum value the *Employer* will pay. The *Consultant* shall be paid for the actual service provided based on the Prices. The *Consultant* shall provide the *Employer* with regular reports of expenditure against the limit of liability, including any request for a change in accordance with the Change Management Process. Should the *Consultant* exceed the limit of liability such expense shall be entirely at the *Consultant’s* own risk. |
|  |  | 50A.3 | | The *Employer* reserves the right to inspect the records of the *Consultant* or his Subconsultant to substantiate any claim for payment. |
| **Milestone Payments** |  | **50B**  50B.1 | | Where the Consultant is providing *services* in support of Defcon 2000, Standalone Prime Contracts or other long term requirements the *Consultant* shall be entitled to request milestone payments. Such arrangements shall be in accordance with the terms of the applicable agreement. In the event that no such terms are provided, the *Consultant* shall be entitled to apply for and to be paid milestone payments for s*ervices* delivered provided that:   * all *services* to which the milestone payment relates have been properly carried out to the reasonable satisfaction of the *Employer;* * the milestones are completed by the Consultant in the sequence shown in the agreed milestone payment schedule attached to the relevant Demand Order; and * the *Consultant*  has complied with all of his contractual obligations at the date of the milestone. |
|  |  | 50B.2 | | The *Consultant*  shall comply with the following procedure before being entitled to any milestone payment ;   * the *Consultant*  shall provide the *Employer* with written notice of the date on which he expects to reach a milestone not less than 2 weeks before that date; * subject to the *Employer’s* confirmation of completion of a milestone in accordance with Clause 50B.3, the Consultant shall provide to the *Employer* an application for payment with: * written confirmation that the milestone has been completed; * all necessary documentation reasonably required by the *Employer* to demonstrate that the milestone has been reached; and * written confirmation as evidence that the *Consultant*  has complied with the requirements of Clause 19I. |
|  |  | 50B.3 | | Not later than 2 weeks after the *Consultant* has complied with Clause 50B.2 the *Employer* shall send to the Consultant either*:*   * a written notice confirming that the milestone has been achieved by the *Consultant; or* * a written notice that the milestone has not been achieved, setting out the reasons for this conclusion |
| **Assessing the amount due** |  | **50** | |  |
|  |  | 50.1 | | The *Employer* assesses the amount due at each assessment date (being the relevant assessment date set out in the relevant Demand Order or in relation to milestone payments the date of the *Employer’s* notice under clause 50B.3 |
|  |  | | 50.2 | The amount due is:   * the Price for Services Provided to Date, * plus other amounts to be paid to the *Consultant*, * less amounts to be paid by or retained from the *Consultant*. |
|  |  | | 50.3 | If no Programme is identified in the Contract Data and/or the *Employer* and the *Consultant* have not agreed a suitable performance assessment criteria framework (“**PACF**”), then without prejudice to any other remedy the *Employer* may have one quarter of the Price for Services Provided to Date is retained in assessments of the amount due until the *Consultant* has submitted a first Programme to the *Employer* for acceptance showing the information which this Contract requires and has agreed a PACF with the *Employer*. |
|  |  | | 50.4 | In assessing the amount due, the *Employer* considers any application for payment the *Consultant* has submitted on or before the assessment date. The *Consultant’s* application is the notice of payment to the *Employer* specifying the amount due at the payment date and stating the basis on which the amount was calculated. If no application is received on or before the assessment date (or no valid invoice has been received by the *Employer* in accordance with clause 51.1) the amount due (and therefore the notified sum) shall be nil. |
|  |  | | 50.5 | The *Employer* corrects any wrongly assessed amount due in a later payment certificate. |
|  |  | | 50.6 | The *Employer* certifies a payment within one week of each assessment date. The *Employer’s* certificate is the notice of payment to the *Consultant* specifying the amount due at the payment due date. |
|  |  | | 50.7 | The date on which payment becomes due is ten (10) days after the assessment date. The final date for payment is the Relevant Day. |
|  |  | | 50.8 | In respect of each payment instalment the *Employer* shall pay to the *Consultant* by the Relevant Day (subject to any pay less notice issued in accordance with clause 50.9) the amount certified by the *Employer* under clause 50.6 (notified sum), or where an amount has not been so certified by the *Employer* the sum stated in the Contractor’s application for payment as referred to in clause 50.4 (notified sum). |
|  |  | | 50.8A | The *Employer* shall be entitled to set off against any amount due to the *Consultant* under any payment or otherwise, such sums as represent its actual losses or a reasonable estimate of the same arising out of the *Consultant’s* failure to carry out his obligations under this Contract or under any other contract between the *Employer* and the *Consultant* and such sums as the *Employer* considers it is entitled to from the *Consultant* pursuant to this Contract or any other contract the *Employer* has with the *Consultant.* |
|  |  | | 50.8B | Whenever under the Contract any sum of money shall be recoverable from or payable by the *Consultant* the same may be deducted from any sum then due, or which at any time thereafter may become due, to the *Consultant* under the Contract, or under any other contract with the *Employer*, or with the Crown. |
|  |  | | 50.9 | If either Party intends to pay less than the notified sum, he notifies the other Party not later than fifteen (15) days before the final date for payment by stating the amount considered to be due and the basis on which that sum is calculated. A Party does not withhold payment of an amount due under this Contact unless he has notified his intention to pay less than the notified sum as required by the Contract. |
|  |  | | 50.10 | In relation to giving notices under this clause 50 it is immaterial that the amount then considered to be due may be zero. |
|  |  | | 50.11 | A pay less notice given by the *Employer* under this clause 50 may be given on its behalf by the *Employer* or any other person who the *Employer* notifies the *Consultant* as being authorised to do so |
|  |  | | 50.12 | Where the *Consultant* enters into a sub-contract with a Subconsultant for the purpose of performing this Contract, he will cause a term to be included in such sub-contract which requires payment to be made to the Subconsultant within a specified period not exceeding thirty (30) days from receipt of a valid claim as defined by the sub-contract requirements. In the event that the duration of the service to be carried out under such sub-contract is agreed by the *Consultant* and Subconsultant as being more than forty-five (45) days, the *Consultant* and his Subconsultant may agree a timetable of one or more interim payments to be made upon satisfactory completion of previously agreed milestones. |
| **Payment Under CP&F** |  | | **51** |  |
|  |  | | 51.1 | The *Consultant* will no later than ten (10) days before the Relevant Day submit an invoice for the notified sum (less any amount stated in a pay less notice issued under clause 50.9) (“CP&F invoice”), using a properly prepared message structure and format for an invoice in accordance with the arrangements in DEFFORM 30 Agreement. Once an invoice is certified and signed by the *Employer* it will be retained for audit purposes. |
|  |  | | 51.2 | Upon submission of the invoice the *Employer* will within five (5) Working Days receipt the request on the invoice system for the notified sum (less any amount stated in a pay less notice issued under clause 50.9). |
|  |  | | 51.3 | The receipting by the *Employer* of the request for the notified sum in clause 51.2 (“Payment Approval”) will enable payment to be made by the *Bill Paying Branch*. |
|  |  | | 51.4 | NOT USED |
|  |  | | 51.5 | Notwithstanding any statement to the contrary any documentation received from the *Consultant*, the Payment Approval will not be construed as acceptance by the *Employer* of the performance of the *Consultant*’s obligations nor as a waiver of his rights and remedies under this Contract or otherwise. |
| **Unique Order Identifier** |  | | 51.6 | For the purposes of this clause, Unique Order Identifier (“UOI”) are generated by CP&F. This Contract will reference UOIs. The application of UOIs is at the line item level. The *Consultant* must quote the applicable UOI in any communication concerning a line item. |
|  |  | | 51.7 | Confirmation of receipt of deliveries by UOIs will not be construed as an acceptance for the purposes of DEFCON 525 or any other term of this Contract relating to acceptance by the *Employer*. |
| **Payment & Interest** |  | | 52 |  |
|  |  | | 52.1 | All valid, properly prepared invoices submitted to the *Employer* in accordance with this clause will be paid by the *Employer* on or before the Relevant Day. |
|  |  | | 52.2 | Where and to the extent that the debt would otherwise be a 'qualifying debt' under the Late Payment of Commercial Debts (Interest) Act 1998 (“the Debts Act”):  a) the interest provided for by this clause 52.2 is a contractual remedy and is not a statutory interest. Therefore, to the extent permissible by law, the provisions of the Debts Act relating to statutory interest will not apply to this Contract;  b) from the day after the Relevant Day and thereafter until payment is made, simple interest at a rate calculated in accordance with clause 52.2 (c) of this clause, may be claimed by the *Consultant* on the value of all valid claims for payment (or unpaid parts thereof);  c) without prejudice to clause 52.2(a), the rate of interest referred to in clause 52.2(b) will be the prevailing rate of statutory interest (as defined in the Debts Act) on the Relevant Day;  d) no interest will be payable for any period of delay attributable to the conduct of the *Consultant*;  e) all claims for interest made pursuant to this clause 52.2 will be notified in writing to the *commercial officer*; and  f) any interest pursuant to this clause 52.2 will not form a part of the Prices and, as a remedy for late payment, will not be subject to VAT. |
|  | | 52.3 | If the *Employer* corrects the amount due in a later payment approval, then the *Employer* will pay interest on the corrected amount. Interest will be calculated from the date when the correct amount was certified until the date when the corrected amount is included in a later payment approval. |
|  |  | | **53** | NOT USED |
| **Banking & Financial Dealings Act 1971** |  | | **54** |  |
|  | | 54.1 | Where any act is required to be done within a specified period after or from a specified date:   * the period begins immediately after that date; and * where the specified period would include Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a Bank Holiday in England and Wales, or, as the case may be, in Scotland or in Northern Ireland, that day will be excluded. |
| **Value Added Tax** |  | | **55** |  |
|  |  | | 55.1 | The Prices exclude any UK output Value Added Tax (“VAT”) and any similar EU (or non-EU) taxes chargeable on the supply of the *services* by the *Consultant* to the *Employer*. |
|  |  | | 55.2 | If the *Consultant* is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of his business activities at the time of any supply, and the circumstances of any supply are such that the *Consultant* is liable to pay the tax due to HM Revenue and Customs (“HMRC”), the *Employer* will pay to the *Consultant* in addition to any sum due under clause 50.8 (or any other sum due to the *Consultant*) a sum equal to the output VAT chargeable on the tax value of the supply of the *services*, and all other payments under this Contract according to the law at the relevant tax point. In the event of any doubt about the applicability of the tax in such cases, the *Employer* may require the *Consultant* to obtain and pass to the *Employer* a formal ruling from HMRC. |
|  |  | | 55.3 | The *Consultant* is responsible for the determination of VAT liability. The *Consultant* is to consult his local VAT office in cases of doubt. The *Consultant* will notify the *Employer* of the *Employer’s* VAT liability under this Contract, and any changes to it, when the liability is other than at the standard rate of VAT. |
|  |  | | 55.4 | Where a supply of the *services* comes within the scope of UK VAT, but the *Consultant* is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the *Employer* will be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the *services*. |
|  |  | | 55.5 | Where the *services* are deemed to be supplied to the *Employer* outside the UK, the *Consultant* may be required by the laws of the country where the supply takes place to register there for EU (or non- EU) turnover or similar tax. In that event, the *Employer* will pay to the *Consultant* in addition to any sum due under clause 50.8 (and any other sum due to the *Consultant* under this Contract) sum equal to the tax the *Consultant* is liable to pay to the tax authorities of the country in question in relation to *services*. |
|  |  | | 55.6 | For the avoidance of doubt, the *Employer* will not be required to pay any sum in respect of the *Consultant’s* input VAT (and / or similar EU and non-EU input taxes) in relation to the service supplied under this Contract. |
| **Customs Duty Drawback** |  | | **57** |  |
|  |  | | 57.1 | The Prices will be inclusive of any UK Customs and Excise or other duty payable. The *Consultant* will not be entitled to make, nor will the *Consultant* make any claim for drawback of UK import duty on any Plant, Materials or Equipment supplied for use for or in connection with the provision of the *services* which may be for shipment overseas. |

**6 Compensation events**

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| **Compensation events** |  | **60** |  |
|  |  | 60.1 | The following are compensation events. |
|  |  |  | (1) The *Employer* gives an instruction under clause 17.1 changing the Scope. |
|  |  |  | (2) The *Employer* does not provide the right of access to the Affected Property in accordance with the Accepted Programme. |
|  |  |  | (3) The *Employer* does not provide something which he is to provide as stated in the Scope in accordance with on the Accepted Programme. |
|  |  |  | (4) The *Employer* gives an instruction to stop or not to start any work or to change a Key Date where that instruction is not due to the default, act or omission of the *Consultant*  or any of his Personnel. |
|  |  |  | (5) The *Employer* does not work in accordance with the Accepted Programme or within the conditions stated in the Scope. |
|  |  |  | (6) NOT USED |
|  |  |  | (7) The *Employer* changes a decision which he has previously communicated to the *Consultant*. |
|  |  |  | (8) The *Employer* unreasonably withholds an acceptance (other than acceptance of a quotation for acceleration) for a reason not stated in this contract. |
|  |  |  | (9) A breach of contract by the *Employer* which is not one of the other compensation events in this contract and which after all reasonable mitigation by the *Consultant* causes a material increase in the *Consultant’s* costs of providing the *services*. |
| **Notifying compensation** |  | **61** |  |
| **events** |  | 61.1 | For compensation events which arise from the *Employer* giving an instruction or changing an earlier decision, the *Employer* notifies the *Consultant* of the compensation event at the time of giving the instruction or changing the earlier decision. He also instructs the *Consultant* to submit quotations in accordance with the Change Management Process, unless the event arises from a fault of the *Consultant* or quotations have already been submitted. The *Consultant* puts the instruction or changed decision into effect. |
|  |  | 61.2 | The *Employer* may instruct the *Consultant* to submit quotations for a proposed instruction or a proposed changed decision. The *Consultant* does not put a proposed instruction or a proposed changed decision into effect. |
|  |  | 61.3 | The *Consultant* notifies the *Employer* of an event which has happened or which he expects to happen as a compensation event if |
|  |  |  | * the *Consultant* believes that the event is a compensation event and |
|  |  |  | * the *Employer* has not notified the event to the *Consultant*. |
|  |  |  | If the *Consultant* does not notify a compensation event within three weeks of becoming aware of the event, he is not entitled to a change in Prices, the Completion Date or a Key Date unless the *Employer* should have notified the event to the *Consultant* but did not. |
|  |  | 61.4 | If the *Employer* decides that an event notified by the *Consultant* |
|  |  |  | * arises by reason of any act, omission, breach or default by the *Consultant* or his Personnel, |
|  |  |  | * has not happened and is not expected to happen, |
|  |  |  | * has no effect upon the Price, Completion or meeting a Key Date |
|  |  |  | * is not one of the compensation events stated in this contract, or |
|  |  |  | * has not been duly mitigated by the *Consultant.* |
|  |  |  | he notifies the *Consultant* of his decision that the Prices, the Completion Date and the Key Date are not to be changed. |
|  |  |  | If the *Employer* decides otherwise, he notifies the *Consultant* accordingly and instructs him to submit quotations in accordance with the Change Management Process. |
|  |  |  | If the *Employer* does not notify his decision to the *Consultant* within either |
|  |  |  | * two weeks of the *Consultant*’s notification or |
|  |  |  | * a longer period to which the *Consultant* has agreed, or |
|  |  |  | * a longer period specified by the *Employer* (being not more than 4 weeks), |
|  |  |  | the *Consultant* may notify the *Employer* to this effect. If the *Employer* fails to reply within two weeks of this notification, the Consultant will be entitled to issue a further notification to the *Employer* with a copy to the *commercial manager*. A failure by the *Employer* to reply within two weeks of this further notification is treated as acceptance by the *Employer* that the event is a compensation event and an instruction to submit quotations in accordance with the Change Management Process. |
|  |  | 61.5 | If the *Employer* decides that the *Consultant* did not give an early warning of the event which an experienced consultant could have given, he notifies this decision to the *Consultant* when he instructs him to submit quotations. |
|  |  | 61.6 | If the *Employer* decides that the effects of a compensation event are too uncertain to be forecast reasonably, he states assumptions about the event in his instruction to the *Consultant* to submit quotations. Assessment of the event is based on these assumptions. If any of them is later found to have been wrong, the *Employer* notifies a correction. |
|  |  | 61.7 | A compensation event is not notified after the *defects date*. |
|  |  | 61.8 | A compensation event is not be notified where the reason for the event arises from any act, omission or other default of the *Consultant* or his Personnel. |
|  |  |  |  |
| **Quotations for** |  | **62** |  |
| **compensation events** |  | 62.1 | After discussing with the *Consultant* different ways of dealing with the compensation event which are practicable, the *Employer* may instruct the *Consultant* to submit alternative quotations. The *Consultant* submits the required quotations to the *Employer* and may submit quotations for other methods of dealing with the compensation event which he considers practicable. |
|  |  | 62.2 | Quotations for compensation events comprise proposed changes to the Prices and any delay to the Completion Date and Key Dates assessed by the *Consultant*. The *Consultant* submits details of his assessment with each quotation. If the Programme for remaining work is altered by the compensation event, the *Consultant* includes the alterations to the Accepted Programme in his quotation. |
|  |  | 62.3 | The *Consultant* submits quotations as soon as possible, but in any event, within three weeks of being instructed to do so by the *Employer*. The *Employer* replies within four weeks of the submission. His reply is |
|  |  |  | * an instruction to submit a revised quotation, |
|  |  |  | * an acceptance of a quotation, |
|  |  |  | * a notification that a proposed instruction will not be given or a proposed changed decision will not be made or |
|  |  |  | * a notification that he will be making his own assessment. |
|  |  | 62.4 | The *Employer* instructs the *Consultant* to submit a revised quotation only after explaining his reasons for doing so to the *Consultant*. The *Consultant* submits the revised quotation as soon as possible, but in any event within three weeks of being instructed to do so. |
|  |  | 62.5 | The *Employer* extends the time allowed for |
|  |  |  | * the *Consultant* to submit quotations for a compensation event and |
|  |  |  | * the *Employer* to reply to a quotation |
|  |  |  | if the *Employer* and the *Consultant* agree to the extension before the submission or reply is due. The *Employer* notifies the extension that has been agreed to the *Consultant*. |
|  |  | 62.6 | If the *Employer* does not reply to a quotation within the time allowed, the *Consultant* may notify the *Employer* to this effect. If the *Consultant* submitted more than one quotation for the compensation event, he states in his notification which quotation he proposes is to be accepted. If the *Employer* fails to reply within two weeks of this notification the Consultant will be entitled to issue a further notification to the *Employer* with a copy to the *commercial* officer. A failure by the *Employer* to reply within two weeks of this further notification is treated as acceptance by the *Employer* that the event is a compensation event and an instruction to submit quotations in accordance with the Change Management Process. |
| **Assessing compensation** |  | **63** |  |
| **events** |  | 63.1 | The changes to the Prices are assessed as the effect of the compensation event upon the Prices, using : |
|  |  |  | * the rates and prices contained in the Price List; or |
|  |  |  | * exceptionally, where the *Consultant* can demonstrate to the entire satisfaction of the *Employer* that the rates and prices contained in the Price List are not appropriate for pricing the effect of the compensation event on the Prices, the *Consultant* shall submit his proposed revision to the Fixed Prices. In such circumstances the *Consultant* must demonstrate to the complete satisfaction of the *Employer* that the rates and prices are the most advantageous and represent value for money for the *Employer.* |
|  |  | 63.2 | The effect of a compensation event may reduce as well as increase the Prices. |
|  |  | 63.3 | A delay to the Completion Date is assessed as the length of time that, due to the compensation event, planned Completion is later than planned Completion as shown on the Accepted Programme. A delay to a Key Date is assessed as the length of time that, due to the compensation event, the planned date when the Condition stated for a Key Date will be met is later than the date shown on the Accepted Programme. |
|  |  | 63.4 | The rights of the *Employer* and the *Consultant* to changes to the Prices, the Completion Date and the Key Dates are their only rights in respect of a compensation event provided that a compensation event under the grounds of clause 60.1(2), 60.1(3) and/or 60.1(5) shall not entitle the Consultant to any rights or remedies otherwise than as set out in clause 63.3 and so that the provisions of clauses 62 and 63 allowing for any changes increasing the Prices shall not apply in the case of these compensation events. |
|  |  | 63.5 | If the *Employer* has notified the *Consultant* of his decision that the *Consultant* did not give an early warning of a compensation event in accordance with clause 15 which an experienced consultant could have given, the event is assessed as if the *Consultant* had given early warning and had taken such actions as the *Employer* (acting reasonably) decided should have been taken to mitigate, avoid or reduce any increase to the total of the Prices or any impairment of the performance of the *services*.. |
|  |  | 63.6 | Assessment of the effect of a compensation event includes risk allowances for cost and time for matters which have a significant chance of occurring and are at the *Consultant*’s risk under this contract. |
|  |  | 63.7 | Assessments are based upon the assumptions that the *Consultant* reacts competently and promptly to the compensation event that any costs due to the event are reasonably incurred and that the Accepted Programme can be changed. |
|  |  | 63.8 | Where the Price List has been changed consequent upon a compensation event than these Prices may be used for subsequent assessments of the Prices for Services Performed to Date. |
|  |  | 63.9 | The following are deducted from the assessment of compensation events |
|  |  |  | * the cost of events for which this Contract requires the *Consultant* to insure and |
|  |  |  | * other costs paid to the *Consultant* by insurers. |
| **The *Employer*’s** |  | **64** |  |
| **assessments** |  | 64.1 | The *Employer* assesses a compensation event via his own Task Order. |
|  |  |  | * if the *Consultant* has not submitted a quotation and details of his assessment within the time allowed, |
|  |  |  | * if the *Employer* decides that the *Consultant* has not assessed the compensation event in accordance with this Contract in a quotation and he does not instruct the *Consultant* to submit a revised quotation, |
|  |  |  | * if, when the *Consultant* submits quotations for a compensation event, he has not submitted a Programme or alterations to a Programme which this Contract requires him to submit or |
|  |  |  | * if, when the *Consultant* submits quotations for a compensation event, the *Employer* has not accepted the *Consultant*’s latest Programme for one of the reasons stated in this Contract. |
|  |  | 64.2 | The *Employer* assesses a compensation event using his own assessment of the Programme for the remaining work if |
|  |  |  | * there is no Accepted Programme or |
|  |  |  | * the *Consultant* has not submitted a programme or alterations to a Programme for acceptance as required by this Contract. |
|  |  | 64.3 | The *Employer* notifies the *Consultant* of his assessment of a compensation event and gives him details of it within the period allowed for the *Consultant*’s submission of his quotation for the same event. This period starts when the need for the *Employer’s* assessment becomes apparent. |
|  |  | 64.4 | If the *Employer* does not assess a compensation event within the time allowed, the *Consultant* may notify the *Employer* to this effect. If the *Consultant* submitted more than one quotation for the compensation event, he states in his notification which quotation he proposes is to be accepted. If the *Employer* fails to reply within two weeks of this notification the Consultant will be entitled to issue a further notification to the *Employer* with a copy to the c*ommercial officer*. A failure by the *Employer* to reply within three weeks of this further notification is treated as acceptance of the *Consultant*’s quotation by the *Employer*. |
| **Implementing** |  | **65** |  |
| **compensation events** |  | 65.1 | A compensation event is implemented when |
|  |  |  | * the *Employer* notifies his acceptance of the *Consultant*’s Task Order and in accordance with the Change Management Process, |
|  |  |  | * the *Employer* notifies the *Consultant* of his own assessment via a Task Order or |
|  |  |  | * a *Consultant*’s quotation is treated as having been accepted by the *Employer* in accordance with clause 64.4. |
|  |  | 65.2 | The assessment of a compensation event is not revised if a forecast upon which it is based is shown by later recorded information to have been wrong. |
|  |  | 65.3 | The changes to the Price List are included in the Task Order (or the *Consultant’s* Task Order which the *Employer* has accepted) implementing a compensation event. |

**7 Rights to material**

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| **The Parties’ use of** |  | **70** |  |
| **material** |  | 70.1 | The *Employer* has the right to use the material provided by the *Consultant* for the purpose stated in the Scope. The *Consultant* obtains from a Subconsultant, equivalent rights for the *Employer* to use material prepared by the Subconsultant. |
|  |  | 70.2 | On Completion of the whole of the *services*, the *Consultant*: |
|  |  |  | * returns to the *Employer*, materials and Materiel provided by the *Employer*; and |
|  |  |  | * provides information and other things as stated in the Scope. |
|  |  | 70.3 | The *Consultant* has full responsibility and liability for all materials and Materiel during the carrying out of the *services* and compensates the *Employer* for any loss or damage occurring to the same. |
|  |  | 70.4 | The *Consultant* may use the material provided by him under this Contract for other work unless stated otherwise in the Scope. |
| **Issued Property** |  | 71 | For the purpose of this clause 71 the term “Issued Property” will mean any materials and Materiel provided by the *Employer* to the *Consultant* under this Contract. |
|  |  | 71.1 | Subject to clauses 71.2 and 71.5 below, within 14 days of receipt of any Issued Property provided by the *Employer*, or such other longer period as may be specified in this Contract, the *Consultant* will:  a) check the Issued Property to verify that it corresponds with the Issued Property specified in this Contract;  b) conduct a reasonable visual inspection; and  c) conduct any additional inspection and testing as may be necessary and practicable to check that the Issued Property is not defective or deficient for the purpose for which it has been provided;  and notify the *Employer* of any defects, deficiencies or discrepancies discovered. |
|  |  | 71.2 | Where Issued Property is packaged it will not be unpacked earlier than is necessary. The period identified at clause 71.1 above will count from the date on which packages are opened. |
|  |  | 71.3 | The *Employer* will within a reasonable time after receipt of any notice under clause 71.1 replace, re-issue or authorise repair of Issued Property agreed to be defective or deficient and, if appropriate, the *Employer* will revise the delivery schedule. If appropriate, the *Employer* will also issue written instructions for the return or disposal of the defective or deficient Issued Property. |
|  |  | 71.4 | In the event that the *Employer* fails to provide, replace, or authorise repair of defective or deficient Issued Property within a reasonable time of receipt of a notice in accordance with clause 71.1, if appropriate a fair and reasonable revision will be made to the delivery schedule provided that the *Consultant* has taken all reasonable measures to mitigate the consequences of any such delay. |
|  |  | 71.5 | Clauses 71.1 – 71.4 do not apply in the following circumstances:  a) where Issued Property is issued for the purpose of repair, overhaul, conversion or other work to be performed on the Issued Property, inspection of such property will be as specified in this Contract;  b) where the *Consultant* can show that the Issued Property cannot be fully tested until it has been integrated with other items, inspection of such property will be as specified in this Contract. |
|  |  | 71.6 | Subject to clause 71.9 below and any limitation or exclusion of liability as may be specified in this Contract, the *Consultant* will be responsible for the safe custody and due return of Issued Property, whether or not incorporated into the Affected Property, and will be responsible for all loss or damage thereto, until re-delivered in accordance with the *Employer's* instructions or until the expiry of the period specified in clause 71.10. |
|  |  | 71.7 | The *Consultant* will be responsible for such calibration and maintenance of the Issued Property as is specified in the Scope. |
|  |  | 71.8 | If requested, the *Employer*, within a reasonable time, and where practicable before delivery of the Issued Property, will notify the *Consultant* of the value of the Issued Property. |
|  |  | 71.9 | The *Consultant* will not be liable in respect of:  a) defects or deficiencies notified to the *Employer* in accordance with clause 71.1 or latent defects which the *Consultant* can show could not reasonably have been discovered by means of the activities described at clause 71.1;  b) fair wear and tear in Issued Property resulting from its normal and proper use in the execution of this Contract (except insofar as the deterioration is contributed to by any misuse, lack of care or want of maintenance by the *Consultant*);  c) Issued Property rendered unserviceable as a direct result of ordinary performance of this Contract;  d) any loss or damage to Issued Property arising from:   * aircraft or other aerial devices or objects dropped from them, including pressure waves caused by aircraft or such devices whether travelling at sonic or supersonic speeds; * ionising radiation or contamination by radioactivity from any nuclear fuel or from nuclear waste from the combustion of nuclear fuel; * the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof; * riot, civil commotion, civil war, rebellion, revolution, insurrection, military or usurped power or acts of the Queen’s enemies. |
|  |  | 71.10 | On Completion of the whole of the services the *Consultant* will forward a list of Issued Property still held to the *Employer*. Return or disposal of such Issued Property will be as specified in the Scope, or as instructed by the *Employer* or *Employer* at Contract completion. If no disposal instructions are specified in this Contract the *Employer* will provide such instructions within two months of the *Consultant's* written request to do so. |
| **Publicity** |  | **72** |  |
|  |  | 72.1 | The *Consultant* may publicise the *services* only with the *Employer*’s written agreement. |
|  |  | 72.2 | The *Consultant* does not disclose information obtained in connection with the *services* except when necessary to carry out his duties under this Contract. |

**8 Indemnity, insurance and liability**

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| **Indemnity** |  | **80** |  | |
|  |  | 80.1 | The *Consultant* indemnifies the *Employer* against losses, damages, expenses, claims, proceedings, compensation and costs payable arising out of a breach by the *Consultant* of its obligations under this contract or an infringement by the *Consultant* of the rights of Others, except an infringement which arose out of the use by the *Consultant* of things provided by the *Employer*. | |
| **Insurance cover** |  | **81** |  | |
|  |  | 81.1 | The *Consultant* provides the insurances stated in the Insurance Table except any insurance which the *Employer* is to provide as stated in the Contract Data. The insurances provide cover from the Contract Date until the end of the periods stated in the Contract Data. | |
|  |  |  | **INSURANCE TABLE** | |
|  |  |  | **Insurance against** | **Minimum amount of cover** |
|  |  |  | Liability of the *Consultant* 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 *services* | £30,000,000 |
|  |  |  | Liability for death of or bodily injury to a person (not an employee of the *Consultant*) or loss of or damage to property resulting from an action or failure to take action by the *Consultant* | Tenderer to insert value |
|  |  |  | Liability for death of or bodily injury to employees of the *Consultant* arising out of and in the course of their employment in connection with this contract | Tenderer to insert value |
|  |  | 81.2 | When requested by a Party the other Party provides certificates from his insurer or broker stating that the insurances required by this contract are in force. | |
|  |  | 81.3 | The *Consultant* shall not be entitled to recover from the *Employer* any sum paid by way of excess or deductible under the insurances whether under the Prices in the Contract; through any other terms of this Contract; or otherwise. | |
|  |  | 81.4 | Neither failure to comply nor full compliance with the insurance provisions of this Contract shall limit or relieve the *Consultant* of its liabilities and obligations under this Contract and in particular the *Consultant’s* obligations in compliance with any indemnity provisions contained in this Contract. | |
|  |  | 81.5 | The supply to the *Employer* of any evidence of insurance cover shall not imply acceptance by the *Employer* that the extent of insurance cover is sufficient or that the terms and conditions thereof are satisfactory, in either case, for the purposes of this Contract. | |

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| **Nuclear Indemnity** |  | 82 |  |
|  |  | 82.1 | Definitions  In this clause:-   * 1. **"Beneficiaries"** means the *Consultant* and any sub-consultant of the *Consultant*, or any sub-consultant of such sub-consultant, provided that in the case of a sub-consultant (or sub-consultant of a sub-consultant), the *Employer* has agreed in writing that such person shall be a Beneficiary for the purposes of this definition;   2. **"Nuclear Accident"** shall have the meaning ascribed to it in BR3019(1) Part 1, namely, "an unexpected event which is likely to lead to, or has resulted in, a release of fission products external to the fuel";   3. **“Naval Base” means Her Majesty’s Naval Base Clyde, including Faslane Naval base & RNAD Coulport**   4. "Nuclear Matter" shall have the meaning ascribed to it under section 26 of the Nuclear Installations Act 1965 and shall also include any nuclear fuel and any explosive nuclear assembly or nuclear component thereof;   5. "Nuclear Reactor" means any plant (including any machinery, equipment or appliance) designed or adapted for the production of atomic energy by a fission process in which a controlled chain reaction can be maintained without an additional source of neutrons;   6. **“Paris/Brussels Conventions”** means the Paris Convention on Third Party Liability in the Field of Nuclear Energy of 1960, as supplemented by the Brussels Supplementary Convention of 1963 and as amended by the Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention of 1988, each as amended, supplemented and/or substituted from time to time and all matters agreed pursuant to their terms;   7. "Radioactive Material" shall have the meaning ascribed to it under section 1 of the Radioactive Substances Act 1993;   8. "Radioactive Waste" shall have the meaning ascribed to it under section 2 of the Radioactive Substances Act 1993 and shall include any other nuclear waste and nuclear waste from combustion or any nuclear fuel and nuclear waste from any explosive nuclear assembly or nuclear component thereof; and   References in this Contract to any legislation (including without limitation the Nuclear Installations Act 1965 and the Radioactive Substances Act 1993) shall be such legislation as supplemented, amended or replaced from time to time (including in particular the implementation into domestic law of any past or future changes to the Paris/Brussels Conventions). |
|  |  | 82.2  82.2 | Indemnity  The *Employer* shall indemnify and keep the Beneficiaries indemnified from and against:-  1.9 any loss or contamination of, or damage to, any property of, leased or on hire or on loan to the Beneficiaries (other than property so leased, on hire or on loan which is owned by the *Employer*) and any loss of use thereof thereby suffered by the Beneficiaries and any reasonable expenses (but not loss of profit) properly incurred as a direct result of such loss, contamination or damage; or  1.10 any action, claim (including for the avoidance of doubt any claim which arises out of or results from the acts or omissions of the Beneficiaries or which is made under the Radiation Workers Compensation Scheme) or proceedings brought by a third party (including for the avoidance of doubt employees, officers, agents or sub-contractors of any tier of the Beneficiaries and employees, officers, agents or sub-contractors of any tier of the *Employer*);  insofar as such loss, damage, contamination, loss of use, action, claim or proceedings as aforesaid ("Liability") shall arise out of or result from:-  (a) the radioactive properties, or a combination of those and any toxic, explosive or other hazardous properties of any Nuclear Matter, Radioactive Material or Radioactive Waste which:  (i) is at the Naval Base, or is in the course of carriage between one part of the Naval Base and another;  (ii) is discharged on or from the Naval Base, or in the course of carriage between one part of the Naval Base and another; or   1. is intended to be used, is being used or has been used in connection with the operation of a Nuclear Reactor in any nuclear powered warship which is, or was, the property of the *Employer* or which is or was at the Naval Base during the Contract Period of the Framework Agreement or any Contract made under or pursuant to it with the agreement of the *Employer*; or 2. the emission of ionising radiations on or from the Naval Base; and   1.11 any action, claim or proceedings brought by a third party in respect of any matter for which the *Employer* is liable pursuant to the Nuclear Installations Act 1965 by virtue of its responsibility under a licence under that Act as authorisee in respect of the Naval Base, to the extent of that liability.  **Exclusions**  1.11 The indemnity in paragraph 82.2 shall not apply to the extent:-  1.11.1 of the first £50,000 of any such Liability, except where the Liability arises out of or results from a Nuclear Accident, in which case the figure shall be £100,000; or  1.11.2 to which the Beneficiaries are indemnified under and successfully indemnified by any other provision of this Contract or any contract made under or pursuant to it ; or  1.11.3 to which the Beneficiaries are insured in respect of and successfully insured against such Liability. |
|  |  | 82.3 | **Conduct of Claims**  1.12 The Beneficiaries shall:-  1.12.1 forthwith upon sustaining any loss or damage or being notified of any claim or demand by a third party to which, in each case, paragraph 82.2 applies, furnish in writing to the *Employer* particulars thereof and thereafter afford to the *Employer* such assistance and furnish such particulars and information as the *Employer* may from time to time reasonably require;  1.12.2 allow the *Employer* after receiving a request in writing from the *Employer* to have control of all actions, claims or proceedings under paragraph 1.10 above and the exclusive right to determine the conduct of such actions, claims or proceedings, including the right to appoint counsel and solicitors; and  1.12.3 not without the prior written consent of the *Employer*, pay, compound or settle any action, claim or proceeding within the scope of this indemnity nor knowingly do nor knowingly permit anything to be done which may prejudice or adversely affect the defence or disposal thereof. |
|  |  | 82.4 | The indemnity hereby given shall extend to any Liability which the Beneficiaries may, with the prior consent in writing of the *Employer*, assume or incur (whether or not legally required so to do), by reason of any indemnity given by the Beneficiaries. |
|  |  | 82.5 | **Waiver**  The *Employer* hereby waives any claim against the Beneficiaries arising out of or resulting from any of the circumstances referred to in paragraph 82.2 above, provided always that this paragraph 82.5 shall not have effect in relation to the first £50,000 of any such claim except where the claim arises out of or results from a Nuclear Accident, in which case the figure shall be £100,000.  Where, in terms of paragraphs 3.1 and 6 above, the liability of the *Employer* is expressed to exist only above a particular monetary threshold, then that threshold shall apply separately to each and every Beneficiary. |

**9. Termination**

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| **Termination** | |  | **90** | | |  | |
|  | |  | 90A.1 | | | If either Party wishes to terminate the *Consultant*’s obligation to Provide the Service, he notifies the *Employer* and the other Party giving details of his reason for terminating. The *Employer* issues a termination certificate to both Parties promptly if the reason complies with this Contract. | |
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|  | |  | 90.1 | | | The Employer may terminate the *Consultant*’s obligation to Provide the Services by notifying the *Consultant* if the *Consultant* has done one of the following or its equivalent. | |
|  |  |  | | | * If the *Consultant* is an individual and has | |
|  |  |  | | * presented his petition for bankruptcy, | | |
|  |  |  | | * had a bankruptcy order made against him, | | |
|  |  |  | | * had a receiver appointed over his assets or | | |
|  |  |  | | * made an arrangement with his creditors. | | |
|  |  |  | | * If the *Consultant* is a company or partnership and has | | |
|  |  |  | | * had a winding-up order made against it, | | |
|  |  |  | | * had a provisional liquidator appointed to it, | | |
|  |  |  | | * passed a resolution for winding-up (other than in order to amalgamate or reconstruct), | | |
|  |  |  | | * had an administration order made against it, | | |
|  |  |  | | * had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of its undertaking or assets or | | |
|  |  |  | | * made an arrangement with its creditors. | | |
|  |  | 90.2 | | The *Consultant* may terminate his obligation to Provide the Services by notifying the *Employer* if the *Employer* has not paid an amount certified by the *Employer* as properly due and payable (and no valid pay less notice has been given) within thirteen weeks of the issue of a notice by the *Consultant* to the *Employer* that payment is overdue. | | |
|  |  | 90.3 | | The *Employer* may terminate the *Consultant*’s obligation to Provide the Services by notifying the *Consultant* if | | |
|  |  |  | | * the *Employer* no longer requires the Consultant to carry out the *services,* | | |
|  |  |  | | * the *Consultant* has failed to comply with his obligations and has not put the default right within two weeks of a notification by the *Employer*, | | |
|  |  |  | | * + the provisions of clause 19A.4 apply, | | |
|  |  |  | | * + the provisions of clause 19I.11apply, | | |
|  |  |  | | * + the provisions of clause 26A.3 apply, | | |
|  |  |  | | * + the provisions of clause 26B.2 apply, | | |
|  |  |  | | * + the provisions of clause 26C.11 apply, or | | |
|  |  |  | | * + the provisions of clause 26G.7 apply. | | |
|  |  | 90.4 | | The *Employer* may terminate the *Consultant*’s obligation to Provide the Services by notifying the *Consultant* if an event occurs which | | |
|  |  |  | | * stops the *Consultant* completing the *services* or | | |
|  |  |  | | * stops the *Consultant* completing the *services* by the date shown on the Accepted Programme and is forecast to delay Completion by more than 13 weeks, | | |
|  |  |  | | and which | | |
|  |  |  | | * neither Party could prevent and | | |
|  |  |  | | * an experienced consultant would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it. | | |
| **Procedures on termination** |  | | **91** | | |  |
|  |  | | 91.1 | | | On termination |
|  |  | |  | | | * the *Consultant* does no further work necessary to Provide the Services, |
|  |  | |  | | | * the *Employer* may complete the *services* (and employ other consultants for that purpose) and may use any material to which he has title and may instruct the *Consultant* to remove any Equipment and materials, |
|  |  | |  | | | * the *Employer* may require the *Consultant* to assign the benefit of any subconsultancy or other contract related to performance of this contract to the *Employer,* |
|  |  | |  | | | * The *Employer* may, at his discretion take over from the *Consultant* at a fair and reasonable price, if payment has not already been made, all used and undamaged materials, in the possession of the *Consultant* and properly provided by or supplied to the *Contractor* for the performance of this Contract. |
|  |  | |  | | | * The *Consultant* will prepare and deliver to the *Employer* within an agreed period, or in default of agreement within such period as the *Employer* may specify, a list of all such unused and undamaged materials, in addition to materials vested in the *Employer*, liable to be taken over by or previously belonging to the *Employer* and will deliver these in accordance with the directions of the *Employer*. |
|  |  | |  | | | * the Parties continue to comply with the constraints and obligations in this contract on, |
|  |  | |  | | | * the use of material prepared or obtained by the *Consultant*, |
|  |  | |  | | | * publicising the *services,* |
|  |  | |  | | | * the *Consultant* gives to the *Employer* information resulting from work carried out to date and information the *Consultant* has obtained which he has a responsibility to provide under this contract, |
|  |  | |  | | | * + the *Consultant* shall provide to the *Employer* details of all additional costs including his profit that the *Consultant* has reasonably incurred in carrying out his obligations up to the date of the termination certificate but excluding all other losses including future losses and any other loss of profit arising by reason of the termination,   + the *Consultant* shall as soon as reasonably possible, but in any event not more than 1 week after the notice of termination certificate, provide the *Employer* all financial documents to substantiate a final payment to the *Consultant*,   + the *Consultant* shall soon as reasonably possible, but in any event not more than 2 weeks after the termination certificate, forward all accumulated records to the *Employer* for retention, |
|  |  | |  | | | * + the *Consultant* shall forthwith deliver to the *Employer* all records and documentation held in connection with the s*ervices*. Furthermore, the *Employer* shall have the right to take possession of all results of services done by or on behalf of the *Consultant* under this Contract,   + the *Employer* may complete any outstanding *services* itself, and   + the *Employer* may employ any other consultant to complete any outstanding *services* and in either case may use such data, database, reports, drawings, computer software object code, source code and associated documentation, specifications, designs or other material generated, or inventions made, under this Contract which shall have vested in so as to become the property of the *Employer.* |
|  |  | | 91.2 | | | Upon expiry or termination of all or any part of the Contract, the *Consultant* provides all reasonable co-operation, assistance and information to the *Employer* (and to any replacement contractor appointed by the *Employer*) for a period of up to six (6) months from the date of expiry of the Contract Period or termination if requested, to the extent necessary to effect an orderly assumption of the *services* by the *Employer* or the replacement consultant. |
|  |  | | 91.3 | | | Save as otherwise expressly provided in the Contract:   * termination or expiry of this Contract is without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract prejudices the right of either Party to recover any amount outstanding at such termination or expiry and   termination of this Contract does not affect the continuing rights, remedies or obligations of the *Employer* or the *Consultant* under clause 8 (Indemnity, Insurance and Liability) and clause 92 (Procedures on Termination) and Clause 26C(IPR); 26 G (security measures) and/or clause 28 A (Employee transfers) and/or under any other provision of this Contract which is expressed to survive termination or which is required to give effect to such termination and the consequences of such termination. |
|  |  | | 91.4 | | | On the termination of the Contract for any reason, the *Consultant*:   * immediately returns to the *Employer* all Confidential Information, Personal Data and IP Materials relating to the Contract in its possession or in the possession or under the control of any Personnel which was obtained or produced in the course of providing the *services*; * immediately delivers to the *Employer* all property (including materials, documents, information and access keys) provided to the *Consultant* for the purposes of the Contract. Such property is to be handed back in good working order (allowance to be made for reasonable wear and tear); * assists and co-operates with the *Employer* to ensure an orderly transition of the *services* to any replacement contractor and/or the completion of any work in progress;   promptly provides all information concerning the *services* which may reasonably be requested by the *Employer* for the purposes of adequately understanding the provision of the *services* or for the purpose of allowing the *Employer* or any replacement contractor to conduct due diligence. |
|  |  | | 91.5 | | | If the *Consultant* does not immediately return all Confidential Information, IP Materials relating to the Contract and property, the *Employer* may recover possession thereof and the *Consultant* grants a licence to the *Employer* or its appointed agents to enter (for the purposes of such recovery) any premises of the *Consultant* or its Personnel. |
|  |  | | 91.6 | | | Where the Contract is terminated the *Consultant* shall provide all reasonable assistance to assist with the orderly transition of the *services* to a replacement *consultant* and the provision of information concerning the *services* which the E*mployer* may request free of charge. |
| **Payment on termination** |  | | **92** | | |  |
|  |  | | 92.1 | | | A final payment is made as soon as possible after termination. The amount due on termination includes |
|  |  | |  | | | * an amount due assessed as for normal payments |
|  |  | |  | | | Provided that the *Employer* shall not be liable to pay the *Consultant* any money on account of the Contract until all the costs of completion of the s*ervices*, and all other loss and expense incurred by the *Employer* have been ascertained and the amount thereof agreed by the *Employer*. The *Consultant* shall then only be entitled to receive payment of any outstanding sum or sums (if any) as would (but for such termination) have been due to him in respect of any *services* which the *Consultant* has satisfactorily completed under this Contract prior to its termination after first deducting there from the amount of the *Employer’s* costs, damages, losses and expenses as aforesaid. If such amount of the *Employer’s* costs, damages, losses and expenses shall exceed the sum which would otherwise have been payable to the *Consultant* in respect of such *services* satisfactorily completed by the *Consultant* prior to termination of the Contract, then the *Consultant* shall upon demand pay to the *Employer* the amount of such excess and shall be deemed to be a debt due by the *Consultant* to the *Employer* and shall be recoverable accordingly with no deduction or set off whatsoever. In the event that either the *Employer* or the *Consultant* does not agree the sums calculated as owing, either party shall be entitled to invoke the dispute procedure in accordance with clause W1 within 1 week of being notified of sums due. In the event that no such notice is given, the amount thereof agreed by the *Employer* shall be final and conclusive. |

**DISPUTE RESOLUTION**

**Option W1 (DEFCON 530)**

W1.1 Subject always to the right of either Party to refer any dispute to adjudication as described in clauses W2.1 to W2.31 below, the Parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Contract through negotiations between the respective representatives of the Parties having authority to settle the matter, which attempts may include the use of any Alternative Dispute Resolution (“ADR”) procedure on which the Parties may agree.

W1.2 In the event that the dispute or claim is not resolved by negotiation, or where the Parties have agreed to use an ADR procedure, by the use of such procedure, the dispute shall be referred to arbitration.

W1.3 The Party initiating the arbitration shall give a written Notice of Arbitration to the other Party. The Notice of Arbitration shall specifically state:

a) that the dispute is referred to arbitration; and

b) the particulars of the Contract out of or in relation to which the dispute arises.

W1.4 Unless otherwise agreed in writing by the Parties, the arbitration and this clause shall be governed by the provisions of the Arbitration Act 1996.

W1.5 It is agreed between the Parties that for the purposes of the arbitration, the arbitrator shall have the power to make provisional awards as provided for in Section 39 of the Arbitration Act 1996.

W1.6 For the avoidance of doubt it is agreed between the Parties that the arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential as between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in relation to the arbitration process may be made beyond the tribunal, the Parties, their legal representatives and any person necessary to the conduct of the proceedings, without the concurrence of all the parties to the arbitration.

W2.1 Either Party to the Contract may (insofar as the Housing Grants, Construction and Regeneration Act 1996 (as amended by the Local Democracy, Economic Development and Construction Act 2009) (“the Act”) applies) at any time refer any dispute arising under the Contract to adjudication in accordance with this clause notwithstanding that any legal proceedings have been commenced in respect of such dispute.

W2.2 Any decision of the *Employer*, the *Employer’s* instruction or change to the Scope which is the subject of adjudication shall remain in force until the decision of the Adjudicator.

W2.3 For the purposes of clauses W2.1 – W2.31 the term ‘dispute’ shall include any difference as defined by the Act.

W2.4 If either Party requires adjudication they shall notify the Adjudicator. The notice shall:-

W2.4.1 specify the matter in dispute;

W2.4.2 set out the principal facts and arguments relating to the dispute; and

W2.4.3 have appended all relevant documents which the Party referring the disputes relies upon.

W2.5 A copy of the notice referred to in paragraph W2.4 and the appended relevant documents shall be sent to the other Party at the same time.

W2.6 The Adjudicator shall indicate, within four (4) days of receipt of a copy of the notice under paragraph W2.4, his willingness to act.

W2.7 Where the Adjudicator has not indicated his willingness to act in accordance with paragraph W2.6 or where no Adjudicator has been named in the Agreement, either Party may apply to the Chairman of The Technology and Construction Solicitors Association (“TeCSA”) for a nomination, in which case, the following procedure will apply:-

W2.7.1 the application shall be in writing, accompanied by a copy of the Contract (without copies of any annexed documents, unless they are relevant to the dispute), a copy of the written notice requiring adjudication, and TeCSA’s appropriate appointment fee;

W2.7.2 the Chairman of TeCSA shall endeavour to secure the appointment of an Adjudicator and the referral to him of the dispute within seven (7) days from the notice requiring adjudication; and

W2.7.3 any person so appointed, and not any person named in the Agreement whose readiness or willingness is in question, shall be the Adjudicator.

W2.8 The Chairman of TeCSA shall have the power by written notice to the Parties to replace the Adjudicator with another nominated person if and when it appears necessary to him to do so. The Chairman of TeCSA shall consider whether to exercise such power if any party shall represent to him that the Adjudicator is not acting impartially, or that the Adjudicator is physically or mentally incapable of conducting the adjudication, or that the Adjudicator is failing with necessary dispatch to proceed with the adjudication or make his decision. In the event of a replacement under this clause, directions and decisions of the previous Adjudicator shall remain in effect unless reviewed and replaced by the new Adjudicator, and all timescales shall be recalculated from the date of the replacement.

W2.9 Where an Adjudicator has already been appointed in relation to another dispute arising out of the Contract, the Chairman of TeCSA may appoint either the same or a different person as the Adjudicator.

W2.10 Within seven (7) days of receipt of the notice referred to in clause W2.4, the other Party may submit to the Adjudicator any statement, representations or documents which that Party relies upon relating to the dispute.

W2.11 The scope of the Adjudication shall be the matters identified in the notice requiring adjudication, together with:-

W2.11.1 any further matters which all Parties agree should be within the scope of the Adjudication; and

W2.11.2 any further matters which the Adjudicator determines must be included in order that the adjudication may be effective and/or meaningful.

W2.12 The Adjudicator may rule upon his own substantive jurisdiction, and as to the scope of the adjudication.

W2.13 The underlying purpose of the adjudication is to resolve disputes between the Parties that are within the scope of the adjudication as rapidly and economically as is reasonably possible.

W2.14 Decisions of the Adjudicator shall be binding until the dispute is finally determined by arbitration pursuant to this clause W2 or by agreement.

W2.15 The Adjudicator shall have the power to review and revise any certificates or other things issued or made in accordance with the Contract.

W2.16 The Adjudicator shall act fairly and impartially, but shall not be obliged or empowered to act as though he were an arbitrator.

W2.17 The Adjudicator shall establish the procedure and timetable for the adjudication.

W2.18 Without prejudice to the generality of clause W2.17, the Adjudicator may if he thinks fit:-

W2.18.1 require the delivery of written statements of case;

W2.18.2 require any Party to produce a bundle of key documents, whether helpful or otherwise to that Party’s case, and to draw such inferences as may seem proper from any imbalance in such bundle that may become apparent;

W2.18.3 require the delivery to him and/or the other Parties of copies of any documents other than documents that would be privileged from production to a court;

W2.18.4 limit the length of any written or oral submission;

W2.18.5 require the attendance before him for questioning of any Party or employee or agent of any Party;

W2.18.6 make site visits;

W2.18.7 make use of his own specialist knowledge;

W2.18.8 obtain advice from specialist consultants, provided that at least one of the Parties so requests or consents;

W2.18.9 meet and otherwise communicate with any Party without the presence of other Parties;

W2.18.10 make directions for the conduct of the adjudication orally or in writing;

W2.18.11 review and revise any of his own previous directions;

W2.18.12 conduct the adjudication inquisitorially, and take the initiative in ascertaining the fact and the law; and

W2.18.13 reach his decision with or without holding an oral hearing, and with or without having endeavoured to facilitate an agreement between the Parties.

W2.19 The Adjudicator shall exercise such powers with a view of fairness and impartiality, giving each Party a reasonable opportunity, in light of the timetable, of putting his case and dealing with that of his opponent.

W2.20 The Adjudicator may not:-

W2.20.1 require any advance payment of, or security for, his fees;

W2.20.2 receive any written submissions from one Party that are not also made available to the other;

W2.20.3 refuse any Party the right at any hearing or meeting to be represented by any representative of that Party’s choosing who is present; or

W2.20.4 act or continue to act in the face of a conflict of interest.

W2.21 The Adjudicator shall reach a decision with twenty-eight (28) days of referral or such longer period as is agreed by the Parties after the said dispute has been referred to him. The Adjudicator shall be entitled to extend the said period of twenty-eight (28) days by up to 14 days with the consent of the Party by whom the dispute was referred.

W2.22 If a Party shall request adjudication, and it is subsequently established that he is not entitled to do so, that Party shall be solely responsible for the Adjudicator’s fees and expenses.

W2.23 Save as aforesaid, the Parties shall be jointly responsible for the Adjudicator’s fees and expenses including those of any specialist consultant appointed under clause W2.18.8. In his decision, the Adjudicator shall have the discretion to make directions with regard to those fees and expenses. If no such directions are made, the Parties shall bear such fees and expenses in equal shares, and if any Party has paid more that such equal share, that Party shall be entitled to contribution from the other Party accordingly.

W2.24 The Adjudicator may in any decision direct the payment of such compound or simple interest as may be commercially reasonable.

W2.25 All decisions of the Adjudicator shall be in writing and shall include his reasons for his decision.

W2.26 Every decision of the Adjudicator shall be implemented without delay. The Parties shall be entitled to such reliefs and remedies as are set out in the decision, and shall be entitled to summary enforcement of any such reliefs and remedies, regardless of whether such decision is, or is to be, the subject of any challenge or review. No Party shall be entitled to raise any right of set-off, counterclaim or abatement in connection with any enforcement proceedings.

W2.27 Neither TeCSA, nor its Chairman, nor deputy, nor the Adjudicator nor any employee or agent of any of them shall be liable for anything done or not done in the discharge or purported discharge of his functions as Adjudicator, whether in negligence or otherwise, unless the act or omission is in bad faith.

W2.28 The adjudication and all matters arising in the course of it are and will be kept confidential by the Parties except insofar as necessary to implement or enforce any decision of the Adjudicator or as may be required for the purpose of any subsequent legal proceedings.

W2.29 In the event that any Party seeks to challenge or review any decision of the Adjudicator in any subsequent arbitration, the Adjudicator shall not be joined as a party to, nor shall he be subpoenaed or otherwise required to give evidence or provide his notes in, such arbitration.

W2.30 No Party shall, save in case of bad faith on the part of the Adjudicator, make any application to the courts whatsoever in relation to the conduct of the adjudication or the decision of the Adjudicator until such time as the Adjudicator has made his decision, or refused to make a decision, and until the Party making the application has complied with any such decision.

W2.31 In relation to any matter or thing as to which a decision of the *Employer* under the Contract is by the Contract expressed to be final and conclusive, the Adjudicator shall not be entitled to vary or overrule any such decision and the *Consultant’s* only remedy (if at all) shall be to financial compensation.

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| **Parent company** | **X4** |  |
| **guarantee** | X4.1 | Upon the Contract Date the *Consultant* , WHERE APPLICABLE, will execute and deliver to the *Employer* a parent company guarantee executed as a deed and delivered by the *Consultant’s* parent company named in the Service Information. Notwithstanding any other provisions of this Contract no payments will become due to the *Consultant* under this Contract while the *Consultant* remains in default of this clause X4.1. |

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| **Task Order:** | **X19** |  |
|  | X19.1 | (1) A Task Order is issued by the *Employer* when:   * the *Employer* notifies his acceptance of the *Consultant’s* Task Order submitted in accordance with the Change Management Process; or * the *Employer* notifies his own Task Order in accordance with clause X19.1(2) or clause 64.1.   2) The *Employer* may issue his own Task Order if:   * the *Consultant* has not complied with the requirements of the Change Management Process; or * the *Employer* decides that the *Consultant* has not properly priced any changes to the Prices in accordance with the Price List; or * the *Consultant* has not properly described any changes to the Scope; or * where applicable, the *Consultant* has not submitted a Programme or alterations to a Programme which this Contract requires him to submit; or * where applicable, the *Employer* has not accepted the *Consultant’s* latest Programme for one of the reasons stated on this Contract; or * the *Employer* does not wish to proceed with the change to the Scope. |
| **Providing the Service** | X19.2 | A Task Order includes:   * a detailed description of the changes to the Scope, * full details of the changes to the Prices and the Price List (assessed in accordance with the Price List).’ * details of changes to the Programme (if applicable) and the Completion Date. |
| **Time** | X19.3 | The *Consultant* does not start any *services* or work additional to the s*ervices* until the *Employer* has issued a Task Order. Any *services* undertaken by the *Consultant* prior to such approval shall be undertaken entirely at the *Consultant’s* own risk. No approved change shall in any way vitiate or invalidate the Contract. No Task Order is issued after the end of the term of the Contract. |
| **Introduction of Task Orders to Contract** | X19.4 | Upon the issue of a Task Order by the *Employer* under clause X19.1(1) the Scope and/or the Prices and Price List and/or the Completion Date will be changed in accordance with the details set out in that Task Order (or the *Consultant’s* Task Order which the *Employer* has accepted). |

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| **Definitions** | **Y(UK)2** | |
|  | Y2.1 | (1) The Act is The Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009. |
|  |  | (2) A period of time stated in days is a period calculated in accordance with Section 116 of the Act. |
| **Dates for payment** | Y2.2 | The date on which a payment becomes due is ten days after the assessment date. |
|  |  | The final date for payment is the Relevant Day. |
|  |  | The *Employer*’s certificate is the notice of payment to the *Consultant* specifying the amount of the payment due at the payment due date (the notified sum) and stating the basis on which the amount was calculated. |
| **Notice of intention to withhold payment** | Y2.3 | If either Party intends to pay less than the notified sum, he notifies the other Party not later than fifteen days (the prescribed period) before the final date for payment by stating the amount considered to be due and the basis on which that sum is calculated. A Party does not withhold payment of an amount due under this Contract unless he has notified his intention to pay less than the notified sum as required by this Contract. |
| **Suspension of performance** | Y2.4 | If the *Consultant* exercises his right under the Act to suspend performance it is a compensation event. |